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EDITORIAL

Professor Dave Ward, De Montfort University

This is the third and final issue of Volume 6, which has been dedicated to the memory of Professor Brian Williams. The volume has focussed throughout on the topic of social justice, a cause dear to Brian's heart and for which his advocacy and scholarship were renowned. An influential and energetic partner in the development of this journal and much valued friend and colleague, Brian died tragically in a road accident in March 2007.

In the manner of the first issue (BJCJ 6(1)), the articles presented cover a number of policy areas and practice approaches within the field of criminal and community justice. The authors provide authoritative and, on occasions, provocative and challenging accounts of the topics they have chosen. They offer some scholarly analysis and thoughtful reflection on the prospects for promoting or, in some cases, restraining the development of social justice.

In the first article in this volume, Boeck and colleagues rework some of the data gathered in their project within the ESRC's Pathways in and out of Crime research network. Through the lens of the concept 'social capital' they relate findings on features of 'resilience' to criminal behaviour, to ideas about how young people may be actively assisted to negotiate key life transitions, facilitating their desistance from crime. They emphasise the importance of the concept of the 'agentic' individual, in other words, a positive view of our youth as people capable of exercising choices and shaping their futures.

Denis Bracken, in a Canadian contribution, takes the medical disorder, foetal alcohol syndrome, as a case example in which to examine discrimination within the Canadian criminal justice system against Aboriginal people. Bracken carefully examines the evidence. He argues that one cannot assume that foetal alcohol syndrome, as a link to problem drinking in adulthood, is a major contributing factor to Aboriginal peoples' over-involvement with the criminal justice system, a common view based on stereotypes of the "drunken Indian". Rather the relationship between the syndrome and the incarceration of Aboriginal people, is connected to discrimination, economic marginalisation and broader health and social development issues, which may also have alcohol dimensions.

Drawing on evidence from her study of murder investigations, Sheila Brown examines the social and welfare consequences of the police inquiry. She describes how a legal-scientific model of responding to murder, drives the investigation. This approach, she argues, excludes a broader perspective on murder victimization with the result that the complex and distressing effects of the murder inquiry itself on those bereaved by the homicide are neglected. Third Sector organizations are not in a position to take on responsibility. In a particularly pertinent section, she examines the contradictory nature of the role of the police Family Liaison Officer. Brown shows not only how victims' real needs may not be

met but also the danger of misuse of a relationship in which, in sensitive and highly emotional circumstances, understanding of the ground-rules may well differ.

From the perspective of an academic lawyer, Ian Edwards carefully evaluates two discourses to be found within the notion of 'shaming': degrading shaming, popularly described as "naming and shaming" and the alternative, constructive or reintegrative shaming. He argues that they are mutually exclusive. Edwards considers how the Government has made use of each, creating ambiguity through political expediency, and how wider community-based justice initiatives are endangered by conflating the two approaches. While no panacea, restorative justice should be preferred as offering the more constructive discourse and practice framework for the shaming process.

Carolyn Hoyle and Stephen Noguera critically evaluate the role of parents as supporters of young offenders during restorative proceedings and consider their suitability to play the formal role of Appropriate Adult. It is a timely entry into the very contemporary debate about the rights of children vis a vis their parents. Hoyle and Noguera, drawing upon some vivid interview data, show how parents feel ashamed, embarrassed and as if they themselves are on trial and may react in ways that are authoritarian and punitive. Importantly, these feelings and reactions can undermine the very purpose of an Appropriate Adult presence and, more widely, frustrate the viability or success of a restorative response.

The final article, by Philip Whitehead, considers the impact and significance of the different formats by which Probation Officers prepare and present Pre-Sentence Reports to the courts. The trend is towards briefer formats which can be produced more speedily. Whitehead contends that increasing the usage of briefer layouts could have profound implications for delivering criminal and social justice. He considers the ideological, political and economic factors which are pushing towards these outcomes.

At the end of these three issues and some 21 articles, what have we learned about social justice as a concept and what lessons can be deduced for policy makers and practitioners?

Social justice is described by Jan Fook (2002, p.vi) as, reflexively, a concern about social disadvantage and those who experience it and a commitment to social reform and change. In terms of practical outcomes, she asks, "how do our ideals and theories assist us in the everyday practices and settings which are, and often seem, beyond our control?" In a new book on research for social justice, Beth Humphries (2008, p25) goes someway towards answering this question. Citing the work of Craig (2002), she presents a two-fold approach to the promotion of social justice. Besides attention to political and structural issues which reside in the public domain, she demands processes which are truly person-focussed, incorporating and promoting diversity, dignity and participation as key values. Humphries sets out three key standards:

- Evidence: demonstrating the reality of injustice in people's lives.
- Voice: facilitating the right of people on the margins to be heard.
- Participation: working alongside excluded and deprived people and promoting their involvement.

With these standards in mind, the acid test for this collection is whether it has taught us more about the contexts, nature and causes of disadvantage within criminal justice? What can we find about policies and approaches to address these problems and improve the experiences and status of those who experience them?

Our contributors have taken us, often vividly, into a wide variety of settings, all penetrated to some degree by the criminal justice apparatus, in the UK, Europe and beyond, in which social disadvantage and structural inequity are manifest. In broad terms they range from custodial to community settings, apply to adults and young people and have aspects which embrace the dimensions ethnicity, gender and the myriad of other means through which Justice and, in turn, injustice are mediated. They cover formal judicial processes as well as penal and quasi penal responses. The interfaces with social welfare are distinguished and explored.

Topics are not confined within national boundaries. The second issue (BJCJ 6(2)) was devoted to a collection of articles on restorative justice compiled by the multinational membership of the European Union's COST A21 research network. Here we saw that, while there are often similarities in targeted outcomes, also there are distinctive approaches and definitions of success related to particular cultures and legal and policy frameworks. We viewed different value positions on crime and ways of responding to it. Also, we saw how differences in research orientation were reflected in, and had an influence on, national ideas about ways of dealing with crime and victims.

Threading through the majority of papers in all three issues, we can see the dehumanising, demoralising and diminishing consequences of policies and practices which view and treat people as different and, in various ways, outside the mainstream. We learn about processes which sometimes contravene their rights but invariably violate their dignity. People are stereotyped and distanced, often in the name of meeting wider justice goals and the effective functioning of its apparatus, but also, on occasion, in the cause of well intentioned and benevolent welfare objectives. And, it matters not where they stand in system of Justice: offender or victim, adult or child, in court or outside, in custody or in the community. While we may not have been confronted in this volume with the stark excesses of torture nor the extraordinary arbitrary exercise of power, we see frequently how the relationship of formal justice, as exercised, and the maintenance of human rights is contradictory and uncomfortable.

As stated in my editorial for the first issue, this volume sought to make a contribution, first of all worthy of Brian - one with which he would have been happy be associated – and one which would add richness and texture to thinking about and conceptualisation of

social justice. With hindsight, the latter objective now seems to be rather formal and sterile and, on review, to understate the potential impact and significance of what has written. Returning to Fook's and Humphries' thoughts on social justice, what runs through the various articles are convincing and scholarly expositions of the wide-ranging structural and personal dimensions of inequity and injustice and a resounding call to take up the equally broad political and human challenges required to promote social justice.

Reviewing this volume in the light of Humphries' three standards, I feel confident that our authors have made significant contributions to the pool of evidence on social justice: to understandings of the concept and to strategies for action. By description or direct report we have heard the voices of many diverse participants in the justice system, commanding attention to the issues and arguments presented.

At some point in these articles each one of us will find issues that relate to our own life-worlds. It would be foolhardy to imagine that inequity and injustice are a problem of others, the excluded and disadvantaged. Social justice demands participation in a common campaign for human rights, personal dignity and greater fairness in access to services and resources. Current times of 'credit crunch' and economic downturn make this particularly pressing and challenging. The pursuit of social justice becomes even more timely and necessary as the threat of inequity and injustice is magnified and, probably, widened. I believe that the contributions to this volume can provide materials and inspiration to those committed to take up this challenge.

References

Craig, G. (2002) Poverty, social work and social justice, *British Journal of Social Work,* 32(6), 669-682.

Fook, J. (2002) *Social Work: Critical Theory and Practice*. London: Sage.

Humphries, B. (2008) *Social Work Research for Social Justice*, Basingstoke: Palgrave Macmillan.

SOCIAL CAPITAL, RESILIENCE AND DESISTANCE: THE ABILITY TO BE A RISK NAVIGATOR

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Abstract

There has been increasing attention to the role of social capital in fostering resilience to risk and challenging life transitions, particularly for young people (Evans, 2002). In the criminological arena recent studies have focused on the role of social capital in facilitating desistance from crime (Farrall, 2002, 2004). Such studies have also emphasised the crucial inter-play between agency and structure (Giddens, 1998), and the concept of the 'agentic' individual capable of exercising choices and shaping their futures (Ward and Maruna, 2007). In this article we explore the role of social capital in assisting young people to negotiate key life transitions, and in particular how social capital (or the absence of it) can facilitate or hinder desistance from crime.

Key Words: Desistance, life transitions, resilience, risk, social capital, young people

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Introduction

In a post modern society transitions and pathways are forged within a globalised system of trans-national corporations and a universalized mass-mediated consumer culture. Heavy targeting of young people by firms marketing consumer products offers new ways for young people to constitute themselves within a "fluidity of opportunities and moments of consumption" (Kenway & Bullen, 2001 in Vaughan, 2005 p182), producing all manner of indeterminate domains and possibilities of identity for young people (Vaughan, 2005 p181). However, it is argued that this fluidity has also created a sense of 'risk' and an increased individualisation within society leading to the replacement of stable identities based on familiar social class hierarchies with multiple, fragmented and more uncertain identities based on 'life-style' and consumer choices. (Mitchell et al, 2001). Research on youth transitions shows that young people face a range of social, cultural and economic risks that make contemporary life particularly challenging, many of which are beyond their ability to influence and control (Furlong & Cartmel, 1997). Furthermore, there is not one single, uniform way of growing up and a context of social exclusion does not

generate just one sort of youth transition (MacDonald & Marsh, 2001). Transitions and trajectories through life are a matter of negotiation and the interaction of structure and agency is seen as central to understanding this process (EGRIS, 2001).

Structure and Agency

Youth research highlights the interaction of agency and structural influences and its impact on life transitions. Young people as 'active agents' means that as individuals they have the possibility and the freedom to create, change and influence events within their life transitions. This personal and individual engagement, known as agency, is influenced but not determined by existing structures (Evans, 2002) and is shaped by the experiences of the past, the chances present in the current moment and the perceptions of possible futures.

Young people's experiences of life are complicated by the fact that they can react and respond to structural influences, that they can make their own decisions with respect to a number of major, as well as minor, life experiences and that they can actively shape some important dimensions of their experiences. Evans refers to this as 'bounded agency': Young adults manifest a sense of agency, but there are a number of boundaries or barriers that circumscribe and sometimes prevent the expression of agency (Evans, 2002 p261).

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All this raises the important question about the individual's 'power resources', that is, the capacity and competency to act, to choose alternatives and to implement them (Bloor, 1995; Rhodes, 1997), and the range of limitations on these resources. What is the relationship between the resources young people have available to them and their resourcefulness in drawing upon these to forge their futures? (Thomson et al, 2003 p33). The relationship between resources and resourcefulness is complex and variable; the exploration of how resources are implicated in individual biographies of social mobility shows that individual resources of ability and ambition do not necessarily translate into

success for all young people (Holland et al, 2007). In effect, some young people have the personal and social resources to navigate and some do not, in other words to be 'resourceful' (Boeck et al, 2006).

Do Young People have Choices?

Neo-liberal social policies (including crime policies) have tended to characterise the citizen, including young people, as 'active citizens' required to self-risk manage from an early age (Kemshall, 2008). Active citizens are required to make 'prudent choices' (Kemshall, 2002) and to self-regulate away from negative risks, for example crime. Contemporary neo-liberal policies construct the individual as active, autonomous shapers of their own worlds (Rose, 2000). However, these approaches fail to appreciate that "individuals can react quite differently to apparently similar events and that this reaction is not fixed, clear or predictable" (MacDonald & Marsh, 2001 p383). Thus, choices can be heavily constrained and actions and choices made by young people are not open and free. Choices are often constrained by a practical knowledge and understanding of what is possible, a knowledge and understanding that is clearly mediated by locality, gender and class, and to a lesser extent, ethnicity (Raffo and Reeves, 2000; MacDonald & Marsh, 2001).

In our study, described below, many young people felt that their choices were heavily constrained, by the power and views of adults, by lack of adult support for their choices, a sense that their actions would have little impact, or a sense that choices were already heavily constrained. However, we also found examples of resiliency: determination and the ability to find new opportunities and make new choices.

How do Young People Navigate their Options? The Relevance of Social Capital

In youth research the ideas about social capital have been applied to young people's friendship and socialising networks formed in their neighbourhoods, schools, leisure and interest groups, as a way of considering whether these are helpful in enabling young people to move on in their lives and access jobs, training and education, or whether they act to hold them back and deter them from trying new things (Holland, 2005; Boeck et al, 2006; Weller, 2007). A key theme within these studies has been the 'extent to which young people access and/or generate social capital and exhibit agency in its acquisition and deployment' (Holland, 2005 p2). Our research was located within a social justice and social inclusion perspective embedded in ideologies of democratic empowerment and change that are sensitive to young people's rights and civil liberties (Chawla and Malone, 2002 p129). Our approach was rooted in a critical awareness of the systems and institutions that promote or hinder progress toward social equality and respect for human dignity (Noguera, 2005).

Methodology

The research was an ESRC funded 4 year study of pathways into and out of crime for young people. The main purpose of the study was to investigate the relationship between social capital and young people's navigation of risk, and the role social capital may play in young people's risk decision making and their resilience to risky pathways (Kemshall, Fleming and Boeck, 2003). The project used a staged methodology utilising combined qualitative and quantitative methods comprising: a pilot of a social capital framework through in-depth interviews and focus groups; pilot of a risk interview schedule; 24 in-depth interviews and 17 focus groups with 77 young people. Following initial analysis of this data (using NUDIST QSR 6) a survey covering risk and social capital was completed with 500 young people and analysed using both NUDIST and SPSS. Detailed analysis of the whole data set followed, and key findings were re-examined with a small sample (n=12) of serious and persistent young offenders through in-depth interviews. The young people all came from the Midlands area, were in the age range 11-19, and comprised one hundred and thirty one young people accessed largely through young offender teams (YOTs), and those labelled as "at risk" accessed largely through youth inclusion projects (YIPs) which include both known offenders or those deemed to be "at risk" of offending. Four hundred and fifty eight young people were accessed through local schools and youth groups and may well contain some young people who have offended, total sample n=589. It is recognised that the distinction between offender and non-offender is somewhat artificial, although those contacted through YOTs were known offenders within the criminal justice system and where possible persistent or high-risk offenders were targeted. For ethical reasons young people in other settings were not asked to disclose themselves as offenders.

What is Social Capital?

Most definitions of social capital revolve around the notion of "social networks, the reciprocities that arise from them, and the value of these for achieving mutual goals" (Baron, Field and Schuller, 2001:1); as such social capital is seen as a set of relationships and interactions that have the potential to be transformative (Weller, 2007). Thus social capital is seen as a social resource that not only contributes to the wellbeing of people and communities but also can give access to opportunities, education and the labour market.

Young people engage with others through a variety of associations forming many different types of networks. Sometimes each of these networks has different sets of norms, trust and reciprocity. Social networks are not only important in terms of emotional support but also crucial in giving people more opportunities, choice and power (Boeck et al, 2006). However there can be significant differences between the types of networks people have, not only in quantity but also in quality. The concept of social capital can encapsulate these differences. In our work we define social capital as:

> …a resource that stems from the bulk of social interactions, networks and network opportunities that either people or communities have within a specific environment. This environment is characterised by a commonality of mutual trust and reciprocity and informed by specific norms and values (Boeck et al, 2006b p1).

Social Capital and Risk Navigation

As already argued above, actions and choices are not completely free and individual social capital both supports and constrains people's actions (Raffo and Reeves, 2000). Individual social capital can be understood as the system of social relations that surrounds the young person, and which provides a significant social, material and cultural resource to young people as they navigate the individualised risks of post-modernity (Bourdieu, 1986; Coleman, 1998). In effect, this social capital forms the 'habitus' within which young people generate their routine practices and behaviours. Central to this individualised social capital are the networks young people are part.

The study found two distinct groups of young people: those with a tightly bonded network based upon their immediate locale of the street, local park and home; and those with a more diverse network centred on school/college. The locality based networks were often small, static in nature and the young people engaged in a restricted range of activities (e.g. 'hanging about the street', 'visiting friends' houses'):

> … we like to go out and have a good time together…We know the same people, we hang around the same area, we like the same things, we like the same clothes. I don't know, some people I can trust, some people I can't (Young Woman FG10).

The more diverse networks based on school/college were more dynamic, and young people engaged in more 'after school activities' and a diverse array of leisure activities. These networks also had greater opportunity to connect with other networks beyond their immediate locale and to form a more 'dynamic social capital' (Boeck et al, 2006). The tightly bonded networks can be characterised as having strong ties but weak opportunities, and the diverse networks as having weaker ties but strong opportunities (Granovetter, 1973). These opportunities are varied, but include the opportunity to engage in social learning (Raffo and Reeves, 2000), develop a wider radius of trust (Boeck et al, 2006), and provide important structural opportunities for change (Aguilera, 2002). The tightly bonded networks are more prevalent amongst participants contacted through the YIPS and YOTS (60%), with a contrasting 91% of young people contacted through schools/colleges represented in diverse networks.

What are the implications of these differing networks? Membership of a tightly bonded network provides access to a restricted social capital, with consequently diminished opportunity to make changes or to exercise choice. Nan Lin (2001 pp46–54) posits differences between "homophilous" and "heterophilous" interactions (also termed

"bonding" and "bridging" ties by Putnam, 2000) as core social capital processes that sustain stratification. Homophilous interactions are those that occur between similarly positioned others. Because similarly positioned others are unlikely to have spare and diverse resources to offer, homophilous interactions are not as helpful for getting ahead and yield low return when the motivation for action is the desire to gain resources (Maryah Stella Fram, 2004). Young people in such homophilous networks can be characterised as in a state of 'risk stagnation'. For these young people, leaving their present lifestyle (which might conventionally is labelled as 'high risk') is itself a risk, and one they may be ill equipped to take. This resonates with work by MacDonald and Marsh (2001) who found that, while 'connections to local networks could help in coping with the problems of 'social exclusion' and generate 'inclusion', they could simultaneously limit the possibilities of escaping the conditions of 'social exclusion". Paradoxically, while considered by others to be 'risk takers' they actually pursue activities that compound their position of vulnerability, and exhibited greater levels of passivity in their approach to risk. For example:

> 'Well I'd rather not have the hassle. Well to me it's a bad thing I'm talking about basically, if you've got risks involved it's more complicated ain't it? I'd rather do things that are simple and easy. I don't like having to take risks, I don't like having to go out of my way to do things'
> (Young Man INT 8).

They cling to the certainty of the tightly bonded group, even where this group inhibits their ability to move on and to 'develop strategies to effectively cope with… transitions in the long term' (Raffo and Reeves, 2000 p158), as reflected in the view of one respondent:

> 'With some people I would say . . . they . . probably feel safer inside one environment and they don't want to leave the environment. If they've got all the experience necessary to stay there, they'd rather stay there pretty much forever rather than ever have to try and make it somewhere else, because it involves all the effort that they put in before to do something that they've not done before, and its something they can't grasp, they can't calculate the risks that they'd have to put in to start somewhere else'
> (Young man INT 6).

This contrasts with those young people who are in a situation of 'risk navigation'. These young people are characterised by diverse and wider ranging networks, a sense of belonging to a wider locale, and a focused and active outlook in life. These young people are more likely to fulfil the requirements of the 'active citizen' (Rose, 2000), demonstrating an awareness of their own futures and demonstrating the skills and capacities to action them. Their wider and diverse networks facilitate increased opportunities for social learning, opportunities to rehearse risk management strategies and choices, and to gain experiential knowledge of risk choices and their outcomes.

Cost-benefit calculations are better informed, and the range of possible choices and possible futures is extended, as the following discussion in a focus group illustrates:

> …the consequences, if you take a risk which you know you shouldn't take but you go over the top, at that moment in time as you are doing it, it feels good but then you get into trouble and then its really not worth it.
>
> . . ., I act stupid and my friends think I am silly but I get on alright at school. I am not one of the top pupils though but my aim is to do the best I can at school and try hard. As soon as school is finished it is up to you what you do, but if you want to do a job where it doesn't include A levels if you get them A levels it is always handy if you change your mind.
>
> **So education is important you, for you also and for you. How come education is important for you?**
> Because if you know you want to succeed you need qualifications
>
> We see how people live and we see what is on TV and what people have in life and the situations they are in and I feel if you get the right education, get the right job and you have enough money to live a decent life, to have what you want in life without being greedy but you have got what you want and need.
>
> If you don't have education where are you going to be…?
> (Young men FG 9).

Edwards and Foley (1998) argue that it is not just about the 'size and density' of the network, it is also about the resources that the network brings. Networks are an important resource for young people and their decision making on risk, and the differing types (tightly bonded or diverse) have implications for their power and opportunity to act differently, in essence for their situational agency:

> It sounds stupid but you know like you have got different animals that is what people are like, this group is like lions and then over there are sheep or whatever, each group is different.
>
> **And each group gives you something?**
> Because one of the groups made me really settle down, get my head down and start working, but my other group offered me fun
> (Young man FG 7).

Outlook on Life and Risk Taking

Much research on the life-course and criminality has shown that desistance from crime is associated with successful transition to adult roles, a positive conception of self, and a belief in one's self-efficacy (Maruna, 2001; Uggen et al, 2004). Crucial to this is the

individual's perception of their own future, their outlook in life and whether they adopt an active or fatalistic approach to risk. Interestingly in our study the young people recruited via the YOTs/YIPs expressed a pessimistic and often hopeless outlook on life. This was evidenced in their passivity about their futures and their perception that their own actions would have little impact on their life course. Their future aspirations were unrelated to present skills and competences and, in answer to a question about what they would be doing in five years time, responses (75%) varied from being "a footballer", to "being a millionaire" to "being in jail":

> **What do you think you'll be doing in a year's time?**
> Fuck knows.
>
> **Next week?**
> Dunno… Slopping out…
> (Young man FG 11).

Interestingly, this group were the least likely to involve anyone else in the resolution of problems in their life or in assisting them with crucial moments in the life course, again underlining their potential isolation and more limited radius of trust. Young people contacted through the YOTs/YIPs quite often had views of the future which seemed to relate to apathy, a sense of boredom and, at other times, to hopelessness and frustration. Raffo and Reeves contend that some individual systems of social capital are more helpful in achieving aspirations than others, because they facilitate learning and the development of 'competence, self-confidence, self-esteem and identity' (2000 p151). Elder (1985) in a seminal work on life transitions, argues that all change entails a potential loss of control. How risk is perceived and managed depends on past experiences, perceptions of self-efficacy and the imagined future possibilities (see also Evans, 2002; Evans and Heinz, 1994; Evans et al, 2001).

The neo-liberal policy drive towards responsibilisation has emphasised the 'active and prudent citizen' (Kelly, 2001), in which prudentialism requires the active citizen (including young people) to adopt a calculating attitude towards all decisions and to self-manage the life course (O'Malley, 2004). However, prudentialism presumes high levels of self-efficacy and a strong belief in the power of primary control - a belief that citizens can 'make themselves up', constantly re-train, re-adapt and rise above negative personal circumstances (Rose, 2000). Our research found a different reality, particularly for young offenders who were characterised by their lack of prudentialism and a fatalistic approach to the future. Young offenders considered that being prudent about the future was pointless, and lives were lived almost exclusively in the present:

> 'I think it is better to just take each day as it is and see what happens'.
>
> 'It is hard to aim here, I am not thinking about it anymore because when I get back to reality it really pees me off'
> (Young men FG 11).

Perceptions of self-efficacy amongst the offender group were low and, as a consequence, their capacity to act prudentially is limited. It is difficult to act prudentially if one perceives one's actions will have limited impact on future outcomes. The implications of this can be severe, with offenders blamed for not changing, for taking risks, and an increased social exclusion and stigma for those who are perceived as not willing to change. Blame for the lack of a calculative attitude has not been confined to young offenders, but has extended to all young people seen as potentially vulnerable or risky (Kelly, 2003). For offenders in particular, the inability to self-risk manage has become the focus of corrective programmes and compulsory treatment (Goldson, 2000, 2002).

However, strong networks with a high degree of trust, being trusted and a positive attitude to the future combined to create resiliency to risk. In essence, respondents perceived that there was too much to lose and this reframed any calculative approach to risk decisions. The potential losses attached to changing networks, loss of trust and future career perspectives were seen as high:

> It depends what you like doing, a couple of years ago me and another lad we skived half a day off school and came back to his house. At the time it was a laugh because you think 'I should be at school'. Because you are so used to being there, you think 'I should be at school but I am not' and it is that exciting feeling. I got found out and I lost respect off my mum and dad, I lost trust of mum and dad which had to be rebuilt. I lost trust and respect off the teachers as well because if you do something stupid like that you always leave yourself in the black really and you have to start all over again, so you always learn
> (Young man FG 7).
>
> Yes, it's different, if somebody is doing a sport they want to get somewhere with it don't they? Doing a hobby they want to get somewhere doing the hobby so they are not exactly going to do something bad which is going to ruin the chance for them to do whatever. My friend is in football he has got a scholarship for when he leaves school this year and I am on probation now and he is not 'cos he has got his own mind and his football stopped him from doing whatever I was doing, like 'ah no my football if the police catch me I cant play', do you get me? But if it wasn't for the football he would probably be here cos there was nothing stopping him
> (Young man FG 4).

In addition, social networks, including those offering a position of trust and care are also crucial to desistance (see Maruna 2001) and can heighten the perceived sense of loss if risks are taken. For example:

> The risk isn't for me going back to prison, I don't care about that, send me there for as long as you like. But it's my little sister, I like being with her and not seeing at Christmas and my mum . . . My little brother's in prison at the minute and she gets all upset of that.
>
> **Right, ok. So, if I asked you that question, what would prevent you from taking a risk?**
> If I was going to lose something that I don't want to lose.
>
> **And what would those things be?**
> Like my freedom, my family, and my friends. Things like that. Like if I took a risk to rob a bank - I wouldn't rob a bank, cause I'd think 'Look, I could go to prison, I could lose my friends, my family, lose my house and lose my freedom', so it would be pretty pointless
> (Young man INT 8).

Those young people in more diverse networks expressed a more positive outlook on life, reflected in higher levels of self-efficacy, and a focused and active outlook. They expressed a more positive attitude to their futures and greater self-efficacy about risk decisions (Laub and Sampson, 2001, 2003). These young people are better able to 'navigate risks' (Boeck et al, 2006c), manage life transitions, and take the risks associated with 'moving on' and leaving problematic situations: important aspects to enhance resilience to re-offending. Even where risks had 'gone wrong', or mistakes had been made, participants remained optimistic about future risks and life chances:

> 'I don't think that I've got to a point where everything is closed off and the end of the line, there are end of line signs written all over the place. I think there are things that are closed now that weren't before, but it's not terminal, it doesn't stop quite as much, the sidings on some of the lines don't work whereas they would have done before, now they don't so you've got less options but still a big range, there's still a lot of them. It's not like there's only one option and that's it'
> (Young man INT 6).

In our conversations with young people they often referred to key adults in their lives who had supported them through difficult and confusing times. In several tightly bonded groups young people have identified one outsider (in example below, 'J', who is a worker from a YIP whom they trust and who is not part of their immediate peer group and family). This is an example of a 'significant adult' whom they have met and who has gained their trust. These adults were key people who supported young people in weighing up choices, making informed individual strategic decisions about life transitions and

getting access to resources –material and social, which helped them to firstly 'set sail' but ultimately to navigate the complexities of life. These are illustrated by the focus group discussion below:

> **Can I ask a question, who do you trust?**
> Not many…
> Mum and dad, 'J' (YIP worker), you two and that's it and each other.
> Each other and family.
>
> If I needed to tell someone something that I had done I wouldn't be able to tell my mum, I would tell 'J'.
>
> **What is the difference?**
> Depends what it was…
> Life…. if we did crime or something we would tell 'J' but if we punched someone we would tell 'J' and our parents.
> It depends what the situation is…

Social ties, reciprocity and trust in and from significant adults seem to enhance the development of a positive conception of self and perceptions of self-efficacy. In order for these relationships with adults to be meaningful they should not be based on providing only information or advice. Advice from individuals, who are seen as part of an external system, with few, if any, authentic links to the lives of young people, carries little or no importance for these young people (Walther et al, 2005). Boeck, Fleming and Kemshall (2006b), have explored this in a short publication for practitioners with suggestions for ways of working with young people that might enhance their social capital (http://www.dmu.ac.uk/Images/ESRC%20practitioners%20leaflet%20final%20-%20pdf_tcm6-10497.pdf).

This publication makes a number of suggestions (created with youth work practitioners) as to what practitioners can do to enable young people to 'navigate life transitions' by developing more dynamic social capital. These include working to increase the diversification of networks, enlarging their circle of trust, encouraging a more focused outlook on life and a sense of belonging as well as generalising reciprocity.

Conclusion

Maryah Stella Fram (2004) asserts that social networks are important not only in terms of who is there, but also in terms of who is missing, particularly for those individuals at the economic and social margins. A social capital analysis illuminates the absence of advantaged social ties, and that absence becomes more than simple personal preference or happenstance. It takes on political dimensions, as processes of inclusion and exclusion are seen to sustain class boundaries by constraining access to opportunities and resources for mobility. This reflects and reinforces Farrall's description of desistance: "…as not just an individual decision but as a set of processes mediated by significant social institutions,

such as employment, educational institutions, the family, political engagement and peer relations…also emphasizes the importance of understanding how these institutions operate and how they might be harnessed to assist desistance" (Farrall, 2007, p93).

As such desistance, from a social capital perspective, means the ability to navigate complex social situations and being able, not only to avoid risks but also to take and negotiate important social risks, such as forming new networks and expanding the radius of trust, that allow young people to enhance their choice and outlook in life. A focus on social capital as a resource and as the social context in which people negotiate every day life would involve paying attention to locale, peers, networks, and the social resources to which people have access. Work with 'at risk' young people would need to strengthen desistance by enabling people to enhance 'dynamic' and 'extended' social capital.

Interventions with young people (both offenders and non-offenders) in the social policy and crime arenas have become key sites for self-actualisation programmes, emphasising 'active citizenship' (Rose, 2000), educational transitions, and integration into the labour market (see Kemshall, 2008 for a full review). Interventions are framed within a 'corrective agenda', targeted at individual behaviours and choices, with little reference to social context or structural issues (see Kemshall, 2002). As Farrall (2004) has argued, community sentences for offenders have tended to emphasize human capital (for example skill acquisition, correct thinking) with limited impact on desistance; interventions with young offenders have tended to follow suit (Kemshall, 2007). At its most basic, this can result in skill acquisition for employment but no access to the networks or opportunities that promote or maintain access to the labour market.

The role of social capital in intersecting with, and helping to create, turning points in the life course of young people should be a key focus for the enhancement of resilience. This would require workers to focus on 'enhancing the social capital' of offenders (Farrall, 2004). This should include: enhancing the range and diversity of groups to which the young person belongs; the range and diversity of trusted adults the young person has contact, which may include strengthening family bonds (Farrall, 2004); retention in education, training or employment; and the use of mentoring schemes. This would build the important 'dynamic' social capital necessary to 'getting on' and 'getting out' (Boeck et al, 2006a). In essence, dynamic social capital enables people to access new contacts and relationships, information and options without destroying important bonding social capital.

In the context of difficult transitions, for example into the labour market, bridges to other milieus and social spheres are necessary to gain experience, support, and opportunities. For young people with key choices to make, widespread network relationships contribute to processes of self-assurance, personal development and, in turn, resilience and desistance. Accordingly, in practice, interventions with young people need to turn the spotlight from young people as problems in themselves on to the problems they encounter, enabling them to see, and engage with, opportunities to develop a much wider range of

options for action and change (Ward, 2000 p56) and, in the process, networks and relationships.

The acquisition of personal self-efficacy and competence in decision making, with which this is bound up, is more likely to occur through 'doing' rather than by mere information giving, the provision of facilities or experiences, or corrective thinking programmes (Walther et al, 2005). It requires policy initiatives, especially those that are directed towards development and support of young people, to connect with the intended beneficiaries. This is also more likely to occur when young people and workers work in partnership, engaging actively together on issues which the young people can see as relevant to their lives (Shildrick and MacDonald, 2008). For people looking to so engage with young people, it means creating circumstances for young people to develop active listening, critical thinking, and problem posing skills; it also involves starting with young people's perceptions of their world, identifying issues that are meaningful and relevant to them, and facilitating their participation and ownership of decisions and actions they take (Arches and Fleming, 2007 p43).

Such a perspective challenges the assumption that the structural aspects of the problems young people face are less accessible (Barry, 2004) and are, therefore, 'off-limits'. Such a perspective leads to practices which focus on the individual as the locus for change while the worker acts as the conduit to social capital (McNeill, 2006). Ward (2008 p402) expresses a concern that such disaggregation of the development of human and social capital, of the personal from the social, inevitably carries "a subtle hint of 'responsibilisation' (Kemshall, 2002)" however warm, empathetic and supportive the context and beneficent the purpose.

With this in mind, the processes for the enhancement of both social and human capital, represented in young people who are competent 'agentic individuals' possessing skills of 'reflexivity' and for 'risk navigation', are to be viewed as interacting and inextricably entwined. This requires, on the one hand, a distancing from 'deficit' and 'blaming the victim' perspectives, however subtle, and, certainly, from crude neo-liberal approaches and, on the other hand, a positive commitment to young people having the right to be heard, to have an active part in setting the agenda for action and, importantly, a right to take action on their own behalf.

References

Arches J and Fleming J (2007) ''Building our own monument': A social action group revisited', *Practice*, 19(1), pp33 – 45

Aguilera, M. B. (2002) The impact of social capital on labour force participation: evidence from the 2000 Social Capital Benchmark Survey. *Social Science Quarterly*, 83(3), pp853-874.

Baron, S., Field, J. and Schuller, T. (2001) *Social Capital: Critical Perspectives*. Oxford: Oxford University Press.

Barry, M. (2004) *Understanding Youth Offending: In Search of "Social Recognition"*, PhD dissertation, Stirling, University of Stirling.

Bloor, M. (1995). *The Sociology of HIV Transmission*. London: Sage.

Boeck, T., Fleming, J. and Kemshall, H. (2006a) 'The Context of Risk Decisions: Does Social Capital Make a Difference?' *Forum: Qualitative Social Research* 7(1).

Boeck, T., Fleming, J. and Kemshall, H. (2006b) *Social Capital and Young People. a practitioners' leaflet;* http://www.dmu.ac.uk/Images/ESRC%20practitioners%20leaflet%20final%20-%20pdf_tcm6-10497.pdf.

Boeck, T., Fleming, J., Hine, J. and Kemshall, H. (2006c) 'Pathways into and out of crime for young people', *Childright* July/August, pp18-21.

Bourdieu, P. (1986). 'The Forms of Capital', in J. Richardson, (ed.), *Handbook of Theory and Research for the Sociology of Education*, New York: Greenwood Press.

Chawla, L. and Malone, K. (2002). 'Neighbourhood Quality in Children's Eyes', in P.Christensen, and M. O'Brien, (eds), *Children in the City: Home, Neighborhood, and Community*, London: Routledge.

Coleman, J. (1988) Social capital in the creation of human capital. *American Journal of Sociology*, 94, pp95-120.

Edwards, B. & Foley, M. W. (1998). Civil society and social capital and beyond Putman. *American Behavioural Scientist*, 42(1), pp124-139.

EGRIS 2001 'Misleading Trajectories: Transition Dilemmas of Young Adults in Europe', *Journal of Youth Studies*, 4(1), pp101-118.

Elder, G. H. (1995) Life trajectories in changing societies. In: A. Bandura (ed.) *Self-Efficacy in Changing Societies*. Cambridge: Cambridge University Press.

Evans, K, Rudd, P., Behrens, M., Kaluza, J. & Wooley, C. (2001). Reconstructing fate as choice? Initial findings from the comparative study 'Taking Control?': personal agency and social structures in young adult transitions in England and the new Germany. *Young*, 9 (3), pp2-29.

Evans, K. (2002) Taking Control of their Lives? Agency in Young Adult Transitions in England and the New Germany. *Journal of Youth Studies*, 5(3), pp245-269.

Evans, K. and Heinz, W. R. (eds.) (1994) *Becoming adults in England and Germany*. London: Anglo-German Foundation.

Farrall, S. (2002) *Rethinking What Works with Offenders*. Cullompton: Willan.

Farrall, S. (2004) Social capital and offender re-integration: Making probation desistance focused. In: S. Maruna and R. Immarigeon (eds.) *After Crime and Punishment: Ex-Offender Reintegration and Desistance from Crime*. Cullompton: Willan.

Farrall, S. (2002) Desistance. In R. Canton, and D. Hancock, (eds.) *Dictionary of Probation and Offender Management*, Cullompton: Willan.

Furlong, A. & Cartmel, F. (1997) *Young People and Social Change: Individualization and risk in late modernity*, Buckingham: Open University Press.

Granovetter, M. S. (1973) 'The Strength of Weak Ties', *American Journal of Sociology*, 78(6), pp1360-1380.

Giddens, A. (1998) *The Third Way: The Renewal of Social Democracy*. Oxford: Polity Press.

Goldson, G. (2000) 'Children in Need' or 'Young Offenders'? Hardening Ideology, Organizational Change and New Challenges for Social Work with Children in Trouble', *Child and Family Social Work*, 5, pp255–265.

Goldson, G. (2002) 'New Labour, Social Justice and Children: Political Calculation and the Deserving–Undeserving Schism', *British Journal of Social Work* 32, pp683–695.

Hagan, J. and McCarthy, B. (1997) *Mean Streets: Youth Crime and Homelessness*. Cambridge: Cambridge University Press.

Holland, J. Reynolds, T. and Weller, S (2007) Transitions, Networks and Communities: The Significance of Social Capital in the Lives of Children and Young People. *Journal of Youth Studies*, 10(1), pp97-116

Hucklesby, A. (2008) Vehicles of desistance? The impact of electronically monitored curfew orders. *Criminology and Criminal Justice* 8(1), pp51-71.

Kahneman, D. and Tversky, A. (1982). The simulation heuristic, In D. Kahneman, P. Slovic and A. Tversky (eds.) *Judgement under uncertainty: Heuristics and biases*. New York: Cambridge University Press.

Kelly, P. (2001) 'Youth at Risk: processes of individualisation and responsibilisation in the risk society', *Discourse: studies in the cultural politics of education*, 22(1), pp23-33.

Kelly, P. (2003) 'Growing up as Risky Business? Risks, Surveillance and the Institutionalised Mistrust of Youth', *Journal of Youth Studies* 6(2), pp165–80.

Kemshall, H., Boeck, T. and Fleming, J. (2003). *Young people, social capital and the negotiation of risk*. Seminar to the University of Sheffield Centre for Criminological Research, available online at: http://www.shef.ac.uk/pathways-into-and-out-crime/reports/progress_report_project4.htm

Kemshall, H. (2002) Effective Practice in Probation: an example of 'Advanced Liberal Responsibilisation'. *Howard Journal* 41 (1), pp41-58.

Kemshall, H. (2007) Risk assessment and risk management: the right approach? In: M. Blyth, E. Solomon and K. Baker (eds.) *Young People and 'risk'*. Researching Criminal Justice Series. Bristol: Policy Press.

Kemshall, H. (2008) Risks, Rights and Justice: Understanding and Responding to Youth Risk. *Youth Justice* 8 (1), pp21-37.

Kenway & Bullen 2001 in Vaugham (2005)) 'The Pathways Framework meets Consumer Culture: Young People, Careers, and Commitment', *Journal of Youth Studies* 8 (2), pp173-186.

Laub, J. and Sampson, R. (2001) Understanding desistance from crime. In: M. Tonry (ed.) Crime and Justice: A Review of Research, vol 28. Chicago, Ill: University of Chicago Press.

Laub, J. and Sampson, R. (2003) *Shared Beginnings*, Divergent Lives. Harvard: Harvard University Press.

Lin, Nan. 2001. *Social Capital: A Theory of Social Structure and Action*. New York: Cambridge University Press.

Maruna, S. (2001) *Making Good: How Ex-Convicts Reform and Rebuild Their Lives*. Washington, DC: American Psychological Association

Maryah Stella Fram. (2004) Research for Progressive Change: Bourdieu and Social Work. *Social Service Review* 78(4), pp553-576

MacDonald, R. and Marsh, J. (2001) 'Disconnected Youth?' *Journal of Youth Studies* 4 (4), pp373-391

McNeill, F. (2006) A desistance paradigm for offender management, *Criminology and Criminal Justice*, 6(1), pp39-62.

Mitchell, W., Crawshaw, P., Bunton, R. and Green, E. (2001) Situating young people's experience of risk and identity. *Health, Risk and Society*, 3(2), pp217-234.

Noguera, P. (2005) Youth, social justice, and communities: toward a theory of urban youth policy. *Social Justice*. 32(3)

O'Malley, P. (2004) 'The Uncertain Promise of Risk', *The Australian and New Zealand Journal of Criminology* 37(3), pp323–43.

Petersen, A. (1996). Risk and the regulated self: the discourse of health promotion as politics of uncertainty. *Australian and New Zealand Journal of Sociology*, 32(1), pp44-57.

Putnam, R. (2000) *Bowling Alone - The Collapse and Revival of American Community*. New York: Simon & Schuster.

Raffo, C. and Reeves, M. (2000) Youth Transitions and Social Exclusion: Developments in Social Capital Theory. *Journal of Youth Studies*, 3(2), pp147-166.

Rhodes, T. (1997) 'Risk theory in epidemic times: sex, drugs and the social organisation of 'risk behaviour'', *Sociology of Health and Illness*, 19(2) pp737-748.
Rose, N. (2000) Government and control. *British Journal of Criminology*, 40, pp321-339.
Shildrick, T and MacDonald, R. (2008) Understanding youth exclusion: critical moments, social networks and social capital, *Youth and Policy*, 99, pp. 43-54.
Thomson, R., Henderson, S. and Holland, J. (2003) 'Making the Most of What You've Got? Resources, Values and Inequalities in
Uggen,C. Manza, J. and Behrens, A. (2004) Less than the Average Citizen: Stigma, Role Transition, and the Civic Reintegration of Convicted Felons. In: Maruna, S. and Immarigeon, R. (eds) *After Crime and Punishment: Pathways to Offender Reintegration*. Cullompton: Willan.
Vaughan, K. (2005) 'The Pathways Framework meets Consumer Culture: Young People, Careers, and Commitment', *Journal of Youth Studies* 8 (2), pp173-186.
Walther, A., Stauber, B. and Pohl, A. (2005) 'Informal Networks in Youth Transitions in West Germany: Biographical Resource or Reproduction of Social Inequality?' *Journal of Youth Studies* 8 (2), pp221-240.
Ward, D. (2000) Totem Not Token: Groupwork as a Vehicle for User Participation, in H. Kemshall and R. Littlechild (eds.) *User Involvement and Participation: Research Informing Practice*. London: Jessica Kingsley.
Ward, D. (2008) BJSW Critical Commentary: What Works in Probation Offender Management: evidence for a new direction? *British Journal of Social Work*, 38(2), pp.395-405.
Ward, T. and Maruna, S. (2007) *Rehabilitation. Key Ideas In Criminology*. London: Routledge.
Woolcock, M. 2001 'Microenterprise and social capital: A framework for theory, research, and policy', *Journal of Socio-Economics*, 30 (2), pp193-198.

CANADA'S ABORIGINAL PEOPLE, FETAL ALCOHOL SYNDROME & THE CRIMINAL JUSTICE SYSTEM[1]

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Abstract

This paper is an examination of fetal alcohol spectrum disorder (FASD) and the related conditions of fetal alcohol syndrome (FAS), fetal alcohol effects (FAE), and alcohol-related birth effects (ARBE)3 as they pertain to the Canadian criminal justice system, and specifically to Aboriginal Canadian offenders. FASD is considered a problem for the criminal justice system in general, but the over-representation of Aboriginal persons at various levels of the Canadian system, in particular in the Prairie Provinces of Canada (Alberta, Saskatchewan and Manitoba) places an additional factor into any consideration of the issue. This is further complicated by the fact that, as suggested by Tait (2003), it is important to recognize the 'secondary disabilities' identified as part of FASD in the context of those social characteristics that are the result of colonialism and related policies of discrimination, attempts at forced assimilation and economic marginalization experienced by Aboriginal people. Thus the high incarceration rate of Aboriginal people which many see as an outcome of colonialism, combined with common stereotypes of the "drunken Indian" may lead one to assume that FASD is a major contributing factor to Aboriginal peoples' over-involvement with the criminal justice system. What is really the issue at hand is the relationship between FASD and incarceration of Aboriginal people, not as an indicator of the connection between alcoholism addiction and Aboriginals, but rather as a sign that incarceration of Aboriginal people is connected to discrimination, and broader health and social development issues (the outcome of colonialism) and which may also include FASD. The problems of identifying offenders with FASD in the criminal justice system (and in particular the prison system), presents as disproportionately a problem of Aboriginal people. This must be taken into account when developing policies and practices around FASD and criminal justice.

Key Words: Aboriginal people, criminal justice, discrimination, fetal/foetal alcohol disorder/syndrome, health

Introduction[2]

This paper will begin with a discussion of FASD and some of the problems encountered with identifying it in both young people and adults. It will then consider some of the challenges posed by FASD and the criminal justice system, challenges not unlike those presented by other persons with cognitive deficits. This will be followed by a discussion of the over-representation of Aboriginal persons in the criminal justice system. It will then examine briefly the literature on the health of Aboriginal people in Canada, and the connections between the impact of colonialism and health. FASD is an important aspect of the relationship between health issues for Aboriginal peoples and health research. The paper concludes by discussing policy and practice issues as they relate to identifying and providing support for those with FASD among Aboriginal peoples in the criminal justice system

What is FASD?

Foetal Alcohol Spectrum Disorder covers a range of conditions resulting from foetal exposure to alcohol. It is:

> a serious neuro-developmental and/or physical disorder that can result in disabilities that have lifelong physical, mental, behavioural and social consequences. FASD is caused by prenatal exposure to alcohol. The amount of alcohol necessary to cause FASD remains unknown…Alcohol crosses freely through the placenta. The first 3 to 7 weeks after conception is the period when alcohol can cause the greatest physical abnormalities. However, alcohol continues to impact the foetus throughout gestation, particularly the developing brain (Stade, et al. 2004).

Health Canada (Canada, 2003) follows the generally accepted view about the incidence of FAS. It is thought to occur in the range of 1 to 3 out of every 1000 live births. The range of alcohol-related disorders is estimated at 9.1 per 1,000. This rate is widely used to estimate the rate of FAE. It is based on international data, and at present there is no firm estimate of its incidence nationally based on Canadian research (Chudley et al. 2005).

The conditions subsumed under the FASD umbrella can result in a number of physical and mental disabilities. Examples include skeletal abnormalities such as facial deformities; physical disabilities such as kidney and internal organ problems; cognitive impairment such as difficulty understanding the consequences of one's actions; learning disabilities, particularly in mathematical concepts and other cognitive deficits (Canada 2006). It is important to understand that not all persons with any of the range of conditions considered under the umbrella of FASD will necessary show any or all of them. In fact, the diagnosis of FASD remains a matter of some contention. Attempts have been made to develop guidelines for diagnosis and there continues to be some disagreement about the need for confirming alcohol use and the extent of its use by the mother during pregnancy

(Tait, 2003). Observational diagnosis becomes more difficult over time, as some of the more common facial characteristics (assuming they were present to begin with) may start to become less recognizable.

Secondary disabilities are those which 'are potentially preventable, and result from the environment which many of these individuals experience' (Grant, et al. 2006 p1). Examples in the case of FASD might include poor school performance, drug addiction, conflict with the law, etc. Of particular relevance to the current study is the research by a leading American author and investigator into FASD (Streissguth, et al. 2004). She and her colleagues reviewed the life situations of 415 young people who had been identified with either FAS or FAE. They were interested in identifying what they called the risk of 'adverse life outcomes' for persons with these conditions under FASD. The results indicated the following adverse life experiences for their sample: trouble with the law (60%), interrupted school experiences (61%), confinement in prison/detention centre, psychiatric setting or residential alcohol/drug treatment (50%), repeated inappropriate sexual behaviours (49%) and alcohol/drug problems (35%). More positively, they found that 'good stable families, with enduring relationships with their children with FAS/FAE, appear to be a critical protective factor for helping children avoid adverse life outcomes' (p10).

It is also generally accepted that the physical conditions under FASD are life-long conditions which can be successfully managed, but not reversed. The research by Streissguth and her colleagues, along with other research would suggest that persons with FASD can anticipate significant social and behavioural problems throughout their lifetimes.

FASD & Criminal Justice

Criminal justice system personnel have begun to recognize the impact of FASD at various stages of the system although the extent of FASD among offenders is difficult to assess. A survey of provincial and territorial correctional systems published in 2003 (Burd, et al.) found the incidence to be an average of .087 per 1000 of offender population of the 10 (out of a possible 13) systems that participated. Yukon Territory reported the highest incidence which was 2.6% per 1000. The authors speculated that this overall rate is lower than expected, if one accepts the internationally accepted rate of 9.1 per 1000 of the population. None of the jurisdictions reporting indicated that they had a screening process within their correctional systems to identify those with FASD and were relying on identification of an FASD prior to admission to the criminal justice system, and that identification being accurately reported within the system (It is important to note that this study did not include the federal penitentiary or parole population).

As is the case with the broader term 'the mentally disordered offender', persons with FASD create particular problems for the assumption by the legal system of innocence until proven guilty. For example, many offenders plead guilty as part of plea bargaining

processes that can lead to a reduced charge and often a less severe sentence than if the original charge had been heard by the court. Such activity is common in many legal systems, and can be seen as placing pressure on defendants to plead guilty. Research by Moore and Green (2005) presented examples from court cases, appeal decisions and other legal research of unreliable testimony on the part of persons with an FASD disorder as well as false confessions. The implication here is that FASD offenders may admit to things they did not do during police interrogation, and plead guilty without understanding the implications of such a plea. Assuming a finding of guilt by the courts, there is a presumption in legal systems based in English common law that the offender is a rational actor capable of ultimately recognizing right from wrong and learning from her/his mistakes. However, as the study quoted above found, 'Persons with FASD, as a group, challenge the underlying premise that defendants understand the relationship between actions, outcomes, intentions, and punishment' (Moore & Green, 2004 p5).

All of the ways that the system responds after a finding (or admission) of guilt, pose particular problems for the FASD offender. Some jurisdictions allow for informal, 'alternative' or 'diversion' processes to take place, assuming that the offender is prepared to admit to the offence. These may take the form of family group conferences, victim-offender mediation and/or reconciliation and other alternative measures. Most of these are used in youth proceedings, although some are also being used at the adult level.

These alternative measures (nearly all of which fall into the general category of 'restorative justice' processes) assume that an offender is prepared to accept responsibility for the offence. Many of them are based on a process in which the victim can be heard, and the hope is that the offender will respond with both understanding and remorse. This is a difficult issue for the FASD offender, as research has shown that:

> …they do not learn from their experiences; they do not connect cause and effect. They tend to be egocentric, being unable to appreciate their effect on others or to take another's perspective. This can be interpreted as lack of empathy and remorse. People with FASD can have sporadic memory recall, which can be influenced by suggestion. They can confabulate, confusing details of a specific event with previous and subsequent real events and with fictional events. They may have poor concepts of time and sequence (Fast & Conry 2004 p162 emphasis original).

The result is that many of these offenders, particularly if the FASD condition has not been identified, are deemed as inappropriate for these alternative measures, or as having failed to benefit from them if they do not follow through on what is agreed as part of an alternative process (Enns, 2004).

For the majority of cases that proceed to court, once the court has decided on guilt, the next step in the process is sentencing. Sentencing implies that the court has taken a number of factors into account (e.g. seriousness of the offence, extent of harm to a victim

and level of remorse by the offender, previous response to other criminal justice interventions, etc.) prior to the passing of a sentence. At the risk of oversimplifying, sentences in Canada fall into two categories: custodial and community. Custodial sentences mean a period of time in a prison, where release in advance of the expiry of the sentence may be based on the offender's institutional behaviour and participation in correctional programmes. Community sentences range from fines and community work to a period of time under supervision usually as part of a probation order. They rely on the offender being able to make her/his own way in society, but with conditions related to regular reporting, and possibly to participation in a community-based program to address offending issues.

There is greater research on the issue of FASD among offenders in correctional facilities, perhaps because with this population close observation can occur over longer periods. The opportunity to diagnose offenders as having some aspect of FASD therefore may also be greater. As well, difficulties in functioning are more readily observable in a custodial population. A study by the Correctional Service of Canada 10 years ago (Boland et al. 1998) suggested the possibility that FASD offenders 'may adapt relatively easily to the structured environment of the institution' but could have difficulty 'with the close interpersonal relationships that take place in a confined setting' (p 72). This was echoed in a more recent finding, also by the Correctional Service of Canada. 'While the prison environment is temporarily structured, it is noisy, over stimulating, requires new coping skills be learned quickly, and there are many opportunities to be misled by other offenders looking for people to participate in illegal activities' (Grant, et al. 2006 p2). In short, those with FASD are not likely to function well in a prison environment, and may be subject to misunderstandings by prison staff and harassment by other offenders. That said, Boland et al. in the study cited above, made reference to an unpublished American study concerning knowledge of correctional staff about FASD. The study reported that the behavioural characteristics of those with FASD were known to correctional personnel, although these staff did not know what the characteristics represented nor that they might be connected with pre-natal exposure to alcohol.

There has been some debate over whether a community sanction is a 'better' sanction for those with a FASD. The structure of a prison setting is thought helpful but, as indicated above, the offender is open to abuse. On the community side, an offender who is given a community sanction may or may not have sufficient support available from either the probation officer or some other community person. Without such support, a return to crime seems likely. Verbrugge (2003) provides examples at the youth level in which, in one case, a judge sentenced a young offender to custody on the grounds that due to the offender's FASD, he was not amenable to rehabilitation. He also identifies the problems of using custody. 'A common justification for not incarcerating youth with FASD is the fear that their risk level will be increased through bringing them in contact with anti-social individuals.'

Aboriginal Over-Representation in Canadian Criminal Justice

FASD and criminal justice in Canada are often considered in the public mind as almost uniquely Aboriginal problems. This is a misconception, born out of the percentages of aboriginal people involved in the criminal justice system in Canada. Aboriginal people in Canada are disproportionately represented in Canadian criminal justice. This is a well-known fact in Canada. Academic studies going back to the 1980's demonstrated this, and current Canadian government statistics continue to bear it out. In 1988, a study done at the University of British Columbia by Michael Jackson for the Canadian Bar Association found that at the federal level (those serving sentences of 2 years or more) 10% of the male inmate population was Aboriginal (and 13% of the female inmate population), although at the time Aboriginal people represented 2% of the Canadian population. At the provincial level (those inmates serving less than two years) in Manitoba and Saskatchewan, Aboriginal people were between 6 and 7% of the population, but constituted 46% (Manitoba) and 60% (Saskatchewan) of prison admissions (Jackson 1988, p216) Recent figures, nearly 20 years on, are similar. According to figures published by the Canadian government in October, 2006 'In 2004/2005, Aboriginal people accounted for 22% of admissions to provincial/territorial sentenced custody, 17% of admissions to federal custody, 17% of admissions to remand, 17% of probation admissions and 19% of admissions to conditional sentence[3]" (Canada, 2006b). Aboriginal people currently make up 3% of the Canadian population. In the provinces mentioned in the Jackson study, the figures have not improved since 1988. In Manitoba, Aboriginal people make up 11% of the population, but 70% of admissions to sentenced custody, and for Saskatchewan the figures are 10% and 77%. For Aboriginal women, the figures are even more disproportionate. In Saskatchewan, almost 9 of every 10 (or 87%) of female admissions to custody were Aboriginal. Manitoba and the Yukon were not much better at 83% of female admissions being Aboriginal. As the Federal study pointed out with notable understatement 'since 2000/2001, the proportion of sentenced admissions represented by Aboriginal people has increased for both males and females'.

The reasons why have also been subjected to scrutiny, mostly by provincial government commissions of enquiry or federal royal commissions, the first being in Manitoba[4] which began its work in 1988. The Report of the Aboriginal Justice Inquiry (Hamilton & Sinclair, 1991) pointed out that Aboriginal people are subject to different practices at most steps in the criminal justice process. For example, the inquiry stated that:

- Aboriginal accused are more likely to be denied bail.
- Aboriginal people spend more time in pre-trial detention than do non-Aboriginal people.
- Aboriginal accused are more likely to be charged with multiple offences than are non-Aboriginal accused.
- Lawyers spend less time with their Aboriginal clients than with non-Aboriginal clients.
- Aboriginal offenders are more than twice as likely as non-Aboriginal people to be incarcerated.

Over-representation assumes either that Aboriginal people commit disproportionately more crimes, or are subject to discrimination within the system. The Manitoba Commission's answer was that both are true. However, a greater number of crimes committed is not due to any natural inclination toward crime among Canada's Aboriginal people, but rather because 'the causes of Aboriginal criminal behaviour are rooted in a long history of discrimination and social inequality that has impoverished Aboriginal people and consigned them to the margins of Manitoban society.' It would seem that as far as the statistics are concerned, the situation has not changed in terms of over-representation and one may also assume that this process of discrimination and social inequality continues in various forms up to the present day. (Avery Kinew, 2006)

Aboriginal Health Issues and FASD

What is the impact then of over-representation of Aboriginal people in the criminal justice system on considerations of FASD? If FASD is the problem for the criminal justice system that it appears to be, and Aboriginal people make up a substantial and disproportionate percentage of those under sentence across the country, does this suggest a connection between FASD and Aboriginal peoples in conflict with the law? A brief examination of the connections between colonialism and the health of Aboriginal people generally may provide some help in answering these questions.

There is an important body of literature which examines the health inequalities experienced by Canada's aboriginal people. Avery Kinew, 2006, Tait, 2000, Tait, 2003a, Tait, 2003b, Kirkmeyer et al. 2000, Canada 1996 are all important examples of this work. The reserve system which was designed in the 19th century to keep Aboriginal people away from both economically productive farmland and emerging urban centres, legislation which denied Aboriginal peoples certain basic rights of citizenship, and perhaps most importantly the residential schools system which was part of a concerted effort at forced assimilation[5], have all played a major part in the higher incidence of factors indicating ill health of Canada's Aboriginal people. As the Royal Commission stated in 1996:

> We are deeply troubled by the evidence of continuing physical, mental and emotional ill health and social breakdown among Aboriginal people. Trends in the data on health and social conditions lead us to a stark conclusion: despite the extension of medical and social services (in some form) to every Aboriginal community, and despite the large sums spent by Canadian governments to provide these services, Aboriginal people still suffer from unacceptable rates of illness and distress. The term 'crisis' is not an exaggeration here (Canada 1996, p15, Ch. 3).

Although there are indications of improvement, the situation overall has not changed significantly since the Royal Commission reported in 1996. More recent data from Health Canada (2000) and the Canadian Institute for Health Information (2004) would indicate that the health of Aboriginal people continues behind those of the general Canadian population.

It is only in the past 15 years or so that the impact of colonialism generally, or the residential school system more specifically, has been the subject of research in Canada with respect to Aboriginal people. The trauma related to the residential school experience, and in particular the intergenerational impact of the trauma has been brought out into the open (Quinn, 2007; Wesley-Esquimaux & Smolewski, 2004). The various commissions of inquiry and the Royal Commission mentioned above have helped to bring these issues into the consciousness of non-Aboriginal Canadians as well as governments. Tait (2003a, 2003b) has written on the issue of FASD and Aboriginal people, looking specifically at the connections between the legacy of colonialism and residential schools experiences, and the linking of FASD to Aboriginal people in both the public mind, and in research studies. The connections between what are termed 'secondary disabilities' of FASD and Aboriginal people merits careful scrutiny. How does one assess some of the apparent indicators of ill health without considering the context within which those indicators appear? The danger is that in considering, for example, the abuse of alcohol by a particular segment of the population, in this case Aboriginal peoples, both the context in which it may occur, and the influence of common stereotypes, are ignored. Of importance to the present discussion is the possibility that attempts to identify the prevalence FASD among Aboriginal People could in fact contribute to discrimination and oppression in ways that end up promoting misunderstandings about both the incidence of FASD within Aboriginal communities, and its connection or lack thereof to over-representation of Aboriginal people in the criminal justice system.

The concerns of Aboriginal peoples in Canada, and on particular concerns like FASD and Aboriginal over-representation in criminal justice, may be part of more complex processes of resistance and attempts for a stronger voice in self-government and self-determination. One set of health researchers has commented on the importance of:

> …ownership of the epidemiological narrative as a critical issue in the production of public understandings of the nature of Aboriginal communities. In Canada, and elsewhere, epidemiological portraits of Aboriginal sickness and misery act as powerful social instruments for the construction of Aboriginal identity. Epidemiological knowledge constructs an understanding of Aboriginal society that reinforces unequal power relationships; in other words, an image of sick, disorganized communities can be used to justify paternalism and dependency (O'Neil, Reading, & Leader 1998 p 230).

Discussions of FASD and Aboriginal people must be mindful of the pitfalls of making too many assumptions about its prevalence, especially among criminal justice offender populations. If over-representation is the result of factors identified by the various Commissions of Inquiry and the Royal Commission, it is perhaps possible that the same or similar factors are at work in the identification of FASD among Aboriginal peoples. One author and researcher who has written extensively on the issue is Catherine Tait (Tait,

2000, 2003a, 2003b). Her work has tried to demonstrate that FASD, although a problem of both Aboriginal and non-Aboriginal communities alike, has been promoted in such a way as to link FASD with individual decisions by Aboriginal women to drink while pregnant.

> …the diagnostic category FAS not only provides a medicalized framework to explain undesirable behavior by individuals and collective dysfunction in Aboriginal communities, but it also provides hope for a better future that is perceived to be obtainable through straightforward changes in behavior—that being the refraining by pregnant women from alcohol use. Significant gains will be made, according to many Aboriginal and non-Aboriginal health and social service providers involved in FAS prevention, specifically a reduction in the range of social problems/"secondary disabilities" attributed to alcohol-related pathology…the source of "Indian problems" to an increasing degree is situated on the backs of Aboriginal women who are led to believe that they have physiologically damaged the brains of large numbers of their children due to their alcohol use (Tait, 2003 p 339-340).

Her conclusion is that the impact of colonialism, discrimination, etc. has been ignored. Instead, the implication appears to be one of 'simply' getting Aboriginal women to stop consuming alcohol during pregnancy and this will eliminate the problem of FASD in Canada. Health research has clearly demonstrated that it is inappropriate to see health as exclusively the result of 'lifestyle choices' and issues around substance abuse as well as other indicators of ill health are also directly related to income inequality, poverty and social exclusion (Raphael, 2002). These are the very factors which many Aboriginal persons in Canada confront every day, as the outcome of their experience with colonialism. For pregnant Aboriginal women seeking treatment of their addiction, barriers to pre-natal care can include, among others, 'unavailability of childcare; fear of having children apprehended were mothers to admit to being addicted; the powerful stigma attached to being pregnant and addicted; and barriers related to treatment programs, such as whether such programs are woman-centred and culturally appropriate' (Mitten, 2004 pp9-20).

FASD, Aboriginal People & Criminal Justice

Correctional administrators must live with the very real possibility of FASD among their inmate populations. Correctional administrators in the Canadian prairies provinces, Manitoba and Saskatchewan in particular, must combine this with the likelihood that given the high percentages of Aboriginal people among their inmates, if there are inmates with FASD, they are probably Aboriginal due to their over-representation in the system.

Research currently underway by the Correctional Service of Canada is attempting to identify the extent of FASD in the federal inmate population, while being mindful of the problems indicated above. As one of the researchers pointed out '[I]n Canada, many

people see the FASD issue as being one associated with the Aboriginal population. We believe that in fact it is more linked to social issues that are prevalent in all groups' (Grant, 2006 personal communication). The problem still remains of what correctional personnel can do with respect to working with those showing signs of FASD, even before a reliable diagnosis is available, and how whatever is proposed can be culturally sensitive to Aboriginal offenders. Contemporary correctional theory in Canada, the UK, the USA and other countries, assumes that programmes for offenders, be they operated in the community or in correctional facilities, are effective if properly structured and delivered. The key to effective (and in this case, effective means being able to reduce the likelihood of reoffending) correctional programmes is adherence to 3 key principles: accurate assessment of risk, identification of criminogenic needs, and programs that match the learning styles of the offenders (also known as the responsivity principle). Assessment of risk is based on accurate collection of information, much of it gathered from the offender her/himself. Persons with cognitive impairment may not be very reliable in the provision of such information, weakening the risk assessment. Many of the programs thought to be consistent with offenders' learning styles are based on cognitive-behavioural theory. While the debate continues over how well this approach to offender management is generally, its use on more specific populations, particularly women offenders, also has attracted debate (e.g. Mair, 2004). With respect to FASD offenders, little can be found in the literature on correctional programming. The Correctional Service of Canada study referred to above (Boland et al. 1998) suggested that 'cognitive-behavioral [programs] with a strong component of interpersonal skills training is helpful for individuals with FAS/FAE because it is more concrete, directive and skills-based than other therapeutic approaches' (p 76).

More broadly, there is a need to take into account the particular needs of Aboriginal FASD offenders, just as Canadian correctional systems have been forced to consider the needs of all Aboriginal offenders. Aboriginal people are also developing their own responses (e.g. Anderson, 2002).

A few suggestions for policy and practice emerge from this discussion. First, there is a clear need for better screening for FASD incidence both within the general population, and in the criminal justice system. Sensitivity must be maintained to the issues surrounding the general experiences of discrimination and oppression of Aboriginal people in Canadian society when considering screening, especially in the inmate populations. The current CSC study (mentioned above) has identified these as issues to be given major consideration in their current research. Social workers will need to be aware of the potential for stereotyping Aboriginal offenders, particularly those where FASD is a possibility but has not been identified. Community-based programs (e.g. diversion programs, family group conferencing, sentencing circles etc.) may be suitable for Aboriginal persons with a FASD, but possibly only within a context that has strong connections to Aboriginal culture and extensive follow-up support that remains consistent with the cultural aspects of the program.

Summary/Conclusions

Any discussion of FASD and criminal justice in Canada must take account of two major issues. The first is the continuing over-representation of Aboriginal persons in the criminal justice system. The second is the impact of three centuries of colonial policies toward Aboriginal persons, and in particular the legacy of discrimination, forced assimilation (largely through the Residential School system) and economic marginalization. Both have created the situation in which FASD among offenders in the criminal justice system is seen to be a problem unique to Aboriginal offenders. Policies toward FASD have been criticized for not recognizing the impact of colonialism on research and identification of FASD. All of this has had implications for criminal justice policy and practice. At the same time, there are Aboriginal persons in the criminal justice system who have been identified as having some aspect of FASD, and for whom services need to be provided. The test for practitioners and policy makers is to develop ways of identifying FASD among offenders which does not perpetuate the stereotypes of Aboriginal peoples. Partnerships with Aboriginal communities in developing screening tools may be one way to do this. A further challenge is to develop programs of support both within the criminal justice system and beyond, which is respectful of and inclusive towards aboriginal culture and traditions. (Mitten 2004) Failure to do either will result in little progress towards addressing this issue, for Aboriginal peoples and others.

End Notes

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3 A conditional sentence is one in which the offender is permitted to serve a custodial sentence in the community, most often under a form of house arrest.

4 The present author was a research consultant to that Inquiry.

5 Although not part of the reserve system, the Mètis were subjected to a systematic loss of their land, often originally promised by the federal or provincial governments (Canada 1996, pp. 33-34, Chp.5). Economic marginalization followed.

References

Anderson, D. (2002) 'Traditional Aboriginal Justice' in *Ontario Association of Friendship Centres Special Report: Aboriginal Approaches to Fetal Alcohol Syndrome/Effects*. Toronto: Ontario Association of Friendship Centres.

Avery Kinew, K. (2006) 'Returning to Pimatiziwin: Overcoming Indigenous People's Health Inequalities in Manitoba and Canada. The Role of Research, Intervention, Advocacy and Alliances in Social Work'. Unpublished paper presented at the *Health Inequalities Seminar Series*, University of Coventry, March 27-29, 2006

Boland, F. J., Burrill, R., Duwyn, M. & Karp, J. (1998) *Fetal Alcohol Syndrome: Implications For Correctional Service*. Ottawa: Correctional Service of Canada

Burd, L., Selfridge, R. H., Klug, M. G., Juelson, T., (2003) Fetal Alcohol Syndrome in the Canadian Corrections System, *Journal of FAS International*, Volume 1. http://www.motherisk.org/JFAS_documents/FAS_Corrections_REV.pdf

Canada (1996) *Royal Commission on Aboriginal Peoples* Report Ottawa: Indian and Northern Affairs Canada. http://www.ainc-inac.gc.ca/ch/rcap/sg/ sgmm_e.html

Canada (2000) *Statistical Profile on the Health of First Nations in Canada-Highlights*. Ottawa: Health Canada. http://www.hc-sc.gc.ca/fnih-spni/pubs/gen/stats_profil_e.html

Canada (2003) *Fas/Fae Information Tool Kit*. Halifax: Population and Public Health Branch First Nations and Inuit Health Branch Atlantic Region

Canada (2006a) *It's Your Health: Fetal alcohol Spectrum Disorder*. Ottawa: Health Canada.

Canada (2006b) Adult Correctional Services in Canada, *Juristat* 26(5)

Canadian Institute for Health Information (2004) Improving the Health of Canadians Chapter 4: *Aboriginal People's Health*, Ottawa: Canadian Institute for Health Information (http://www.cihi.ca)

Chudley, A. E., Conry , J., Cook, J. L., Loock, C., Rosales, T., and LeBlanc, N. (2005) Fetal alcohol spectrum disorder: Canadian guidelines for diagnosis. *Canadian Medical Association Journal* 172 (3/05) pp. S1- S21

Enns, K. W. (2004) *Community justice forums and offenders with intellectual disabilities*. Unpublished MSW Practicum Report, Manitoba: University of Manitoba

Fast, D. K. & Conry, J. (2004) The challenge of fetal alcohol syndrome in the criminal legal system. *Addiction Biology* 9(6/04) pp161-166

Fast, D. K. & Conry, J. & Loock, C. (1999). 'Identifying FAS Youth in the Criminal Justice System' *Developmental and Behavioral Pediatrics*, 20 pp370-372.

Grant, B. A., MacPherson, P. and Chudley, A. E. (2006) Update on Research in a Federal Prison on Fetal Alcohol Spectrum Disorder. Unpublished paper

Grant, B. A. (2006) Personal communication

Hamilton, A.C., and Sinclair, C.M. (1991). *Report of the Aboriginal Justice Inquiry of Manitoba*. Volume 1: The Justice System and Aboriginal People. Winnipeg: The Queen's Printer.

Jackson, M. (1988). Locking up Natives in Canada: *A Report of the Canadian Bar Association Committee on Imprisonment and Release*. Ottawa: Canadian Bar Association

Kirmayer, L. J., Brass, G. M., Tait, C. L. (2000). 'The Mental Health of Aboriginal Peoples: Transformations of Identity and Community'. *Canadian Journal of Psychiatry*, 45(7) pp607-617.

Law Reform Commission of Canada (1991) *Report on Aboriginal Peoples and Criminal Justice: Equality, Respect and the Search for Justice*. Ottawa: Law Reform Commission

Mair, G. (ed.) (2004) *What Matters in Probation*. Cullompton: Willan Publishing.

Mitten, R. (2004) *Fetal Alcohol Spectrum Disorders (FASDS) and the Justice System: A submission to the (Saskatchewan) First Nations and Metis Justice Reform Commission, Final Report, Volume II* http://www.asantecentre.org/_Library/docs/Criminalization_of_FAS.pdf reference for CrimofFASD.pdf

Moore, T. E. and Green, M. (2004) Fetal Alcohol Spectrum Disordere (FASD): A need for closer examination by the criminal justice system. *Criminal Reports* 19(1) pp99-108

O'Neil, J. (2004) Aboriginal Health Governance, *Journal of Aboriginal Health* 1(1) p4

O'Neil, J., Reading, J. & Leader, A. (1998). 'Changing the Relations of Surveillance: the development of a discourse of resistance in Aboriginal epidemiology' *Human Organization*, 57(2) pp.230-237

Quinn, A. (2007) "Reflections in Intergenerational Trauma: Healing as a Critical Intervention." *First Peoples Child & Family Review*, 3 pp72-82

Raphael, D. (2002) *Poverty, Income Inequality, and Health in Canada*. Toronto: The CSJ Foundation for Research and Education http://www.socialjustice.org/pdfs/PovertyIncomeHealth.pdf

Stade, B., Clark, K. & D'Agostino, D. (2004) Fetal Alcohol Spectrum Disorder and Homelessness: Training Manual *Journal of FAS International*, 2:e10 – June http://www.motherisk.org/JFAS/econtent_commonDetail.jsp?econtent_id=63

Streissguth, A., Bookstein, F. L., Barr, H. M., Sampson, P. D., O'Malley, K. and Kogan Young, J. (2004) Risk factors for adverse life outcomes in fetal alcohol syndrome and fetal alcohol effects. *Journal of Developmental & Behavioral Pediatric*, 25(4) pp 228-239

Tait, C. L. (2000). Aboriginal Identity and the Construction of Fetal Alcohol Syndrome. In L.J.Kirmayer, M.E. Macdonald and G.M. Brass (eds.) (2000). *The Mental Health of Indigenous Peoples: Proceedings of the Advanced Study Institute*. Montreal: Culture and Mental Health Research Unit. Report No. 10: 95-111.

Tait, C. L. (2003a) *"The Tip Of The Iceberg": The "Making" of Fetal Alcohol Syndrome in Canada*. Unpublished PhD dissertation, McGill University available from http://www.mcgill.ca/files/namhr/Tait-2003.pdf

Tait, C. L. (2003b) *Fetal Alcohol Syndrome among Aboriginal People in Canada: Review and Analysis of the Intergenerational Links to Residential Schools*. Ottawa: Aboriginal Healing Foundation

Verbrugge, P. (2003) *Fetal Alcohol Spectrum Disorder and the Youth Criminal Justice System: A Discussion Paper*. Ottawa: Department of Justice. http://www.justice.gc.ca/en/ps/rs/rep/2003/rr03yj-6/rr03yj-6.html

Wesley-Esquimaux, C. C., & Smolewski, M. (2004). *Historic trauma and aboriginal healing*. Ottawa: Aboriginal Healing Foundation

THE MURDER INQUIRY AND THE COMPLEXITIES OF VICTIM EXPERIENCES: THE NEED FOR A COMMUNITY AND SOCIAL JUSTICE PERSPECTIVE

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Abstract

This paper draws on research evidence from the author's study of murder investigation1 in order to generate questions about social and welfare consequences of the contemporary murder inquiry. The paper discusses findings from interviews with Senior Investigating Officers, Detectives from Outside Inquiry Teams and Family Liaison Officers, Scientific Support, and Media Communications divisions. The legal-scientific logic of responding to murder, with an ever sharper focus on forensic strategy, drives the murder inquiry and characterises the wider policy and social response to murder. This excludes a broader community justice perspective on criminal homicide victimization. The need to respond effectively to complex cumulative effects of the murder inquiry itself on primary victims and the homicide-bereaved is neglected. Third Sector organizations are left with inadequate resources to 'pick up the pieces'. The paper concludes by supporting recent critics of victim policies and victim based research, in calling for further collaborative research between third sector organizations and universities with the aim of achieving better outcomes for victims; and asserts the need for a community and social justice, rather than an exclusively juridical perspective.

Key Words: Murder, detection, forensic investigation, human factors in criminal investigation, victims, homicide bereavement, community justice, social justice, evidential considerations.

Introduction

This paper draws on research conducted by the author on murder inquiries within a large police force[1]. It is concerned with the internal logic of the murder inquiry and its sometimes iatrogenic consequences for victims[2]. Within the already tense and often partisan debates surrounding victims' 'needs' and 'rights', and the emergence since the

1980's of a distinctive victim-focussed strand in UK policy and academic research (Goodey 2005), criminal homicide victimization occupies an especially sensitive position (Innes 2003) and sits at the centre of a controversial symbolic territory. Politics of various kinds tends to subsume the voices of homicide survivors and the dead cannot speak for themselves. Further, death remains a taboo subject, so that to focus a concerted attention on it can seem negative.

The classic academic monograph on homicide bereavement and the politics of survivors' organizations by Paul Rock (Rock 1998a, 1998b; though see also Ruback and Thompson 2001 and a limited number of studies reported by Victim Support 2006) remains one of the few in-depth academic studies. Rock gives a comprehensive account of bereavement through homicide and identifies crucial aspects of the ways in which the bereavement 'career' is affected by the criminal justice system. Principal among these are the powerlessness imposed by the forensic process, the effects of being treated as a suspect by the police whilst in deep grief, and the traumatic effects of separation from the dead person and powerlessness over the body (Rock 1998b). In the policy sphere, recent, good quality descriptive research - albeit small scale and sampled from victim service/support group users (Victim Support 2006) - has sought to identify service needs in relation to Victim Support. Findings from the latter research include results that suggest involvement with the criminal justice system itself 'can significantly disrupt and protract the grief process, as well as fuelling some of the emotional difficulties [of traumatic bereavement by homicide]' (Malone 2007, p384). Malone reports that victims' emotional responses are 'constrained and perverted' by features of the criminal investigation and the 'intense period of police investigations, post-mortems, and media attention' (Malone 2007 p387). Ruback and Thompson (2001 p140) in the US context found that 'when family members of homicide victims deal with the criminal justice system following the murder of their loved ones, their involvement can exacerbate many of the psychological wounds brought on by the homicide'.

The Murder Inquiry: Scientific- Legal Blaming

As well as listening to those bereaved by homicide, one of the ways of better understanding the issues that arise for the victims through the process of the inquiry is to start from inside the logic of the murder inquiry itself. In the contemporary inquiry a major element of this is the underlying logic of the inquiry, which may be characterised as one of scientific-legal blaming, part of a juridical process of 'laying blame accurately' (Douglas 1992).

> I think also perceptions have changed in terms of …what's expected of science and detection, I mean pre 1984 DNA evidence wasn't really there, if you could show that that person's blood type was only 1 in 20 of the population, that was considered strong evidence, …whereas now you're talking one in a million, … expectations are raised, …
>
> Increasingly the only way to prove a crime against any particular person is scientifically (Senior officers, CID).

Detectives talk of themselves as truth seekers (as opposed to lawyers), 'feeding' lawyers who in an adversarial system are seen as 'proof seekers' concerned with the process of achieving a victorious definition of reality at trial; and 'fed' by scientific and technological experts whose competences and procedures are imbricated throughout the socio-technical environment of cases (Brown 2006). No-one in all this is there 'for' the victims except in the abstract legal sense of attaining justice through a successful prosecution; an outcome that is often glibly and inaccurately associated with emotional 'closure' for the homicide-bereaved.

That these paradigms are taken for granted as appropriate and sufficient modes of organizing the social response to murder is in part an historical outcome of centuries of power/knowledge 'discourse wars' across the medico-scientific and legal formations of governance (Foucault 1977, 1980, 1991). Further, Douglas' work on blame shows how in Western societies science and technology became harnessed to forensic processes with the effect of making us feel that they enable us to lay blame accurately, objectively: finding the 'true' cause or culprit of a social evil becomes an aim in itself (Douglas 1992). Although not Douglas' application, this is an apposite way of seeing murder detection. In this, science and law assert a claim to drive the inquiry. This is embedded within the contemporary governance of criminal investigation, expressed for example in the National Policing Plans and the new wave of Police Science and Technology Strategies (http://police.homeoffice.gov.uk/publications/operational-policing/). By examining in more detail how the logic of the inquiry impacts upon decisions affecting victims, the following sections question its sufficiency as a social response to the problem of murder and examine what further needs are created by the inquiry itself.

The Body of Evidence and the Dehumanization of the Victim

The first and major consequence of the 'scientific blaming' of the murder inquiry for the victims, is its transformation of the murdered person into a forensic surface, a site of special scientific interest that bears little relationship to the biographical body or the body-in-life. This can have damaging consequences both for the dignity of the primary victim and for the well being of survivors.

Sudden and violent death has been shown by anthropological and sociological studies to be problematic in Western culture. The contemporary West has a preoccupation with the body as far more than just a container for the spirit; it is a surface for the inscription of identity (Featherstone 1995, Hallam, Hockey and Howarth 1999, Turner 1996). Hence, in any sort of death the slipping away of bodily integrity is thus disturbing, but in traumatic deaths where the materiality of the body is damaged, it can be devastating (Hallam, Hockey and Howarth 1999 p132).

Funeral rites are aimed precisely at reattaching, however temporarily, the human subjectivity to the dead container, recalling for the death ritual the person-in-life. The importance of the body's 'normal' visibility in death is the recreation of a presentation of self and individuality. Bodily 'wholeness' is important in the humanization of the cadaver (Hallam, Hockey and Howarth 1999 p132). Similarly research with bereaved parents has shown parents' need to 'create' an identity for unborn or newborn babies who die before they achieve 'personhood', through rituals of photographing, naming, dressing, or funeral rituals (Heald and Brown 1994): a need that was often seen as pointless or morbid by medical and mortuary professionals. Yet these constitute what might be called normalizing rituals for many people, enabling rites of passage to precede and facilitate grieving for the departure of a person-in-life to a person-in-death by maintaining the integrity of biography and personhood.

The rupture of the normalizing ritual processes surrounding the body-in-death happens in a number of possible ways in the aftermath of murder. Murder victims' bodies may be already damaged by the perpetrator, then subjected to two or even multiple post-mortems, rendering them profane corpses, the reality of which may be frightening, shocking and repulsive. Victims are likely to be young, 'unfinished' (the most common age groups of the homicide victim in England and Wales are 0-5 years, 16-20 years, and 21-35 years - Brookman 2005 p34). At the extreme, in the murder case the body itself may be absent altogether and the mourning process is severely disrupted. There may be extensive delays before the bodily remains are released for funerary rituals. In any case the process of loss, already worsened by trauma, is further spoiled by the prior demands of scientific and legal processes:

> [Even] police officers don't know that we have second postmortems in 90% of murders, and having to explain to the family that not only has the Home Office pathologist just cut your loved one up and had his brain out, and heart, and stitched him back up, now 28 days later the defence pathologist is going to open him up and have a go and a look round (Family Liaison Officer).

These multiple legal violences visited upon the victim are congruent with legal norms. In the first place, the victim as a dead person has no legal rights, and there is generally no property in a dead body under common law (Griffith 2004, Herring and Chau 2007) .Whilst the law places a high value on the integrity of the living body (McGuinness 2008), 'the dead are another species, some would say, or no species at all, hence...objections to actions that violate the physical integrity of the corpse are 'scarcely rational' ' (McGuinness 2008 p3). The Police and the Crown Prosecution Service act for the Crown, not for the victim. The criminal justice process does not acknowledge that, as McGuinness (2008: 4) puts it, the 'death of the body is not the end of the biographical person'. The removal of an organ, for example, can cause immense distress for relatives in its violation of bodily integrity, yet for the pathologist it is merely an object, for other players in the investigation, an evidentiary artefact that becomes superfluous once it has been weighed, measured and samples taken and tested. (Department of Health 2000, cited in McGuiness 2008 p4).

In a wider sense than the post-mortems themselves, the status of the dead body in the suspected murder case - even in situ at the scene of death - is that of evidential artifact. In this both the procedures of the murder inquiry, laid out in MIRSAP (Major Incident Room Standard Operating Procedures) (ACPO/Centrex 2005), and MIM (Murder Investigation Manual) (ACPO/Centrex 2006), and the law itself, are incapable of attending to the emotional needs of the bereaved. This is reflected in the way in which detectives and forensic managers speak about bodies. They stress the priority of preserving the 'integrity' of the body-as-crime scene, without any reflexivity on the practice of the destruction of the integrity of the humanity of the body that this demands:

> Whatever you do ...you are an individual, as an SIO having to make extremely difficult and pressured decisions...two elderly ladies had been stabbed and killed in the house, dragged from one room to another really, but I made a decision that night to leave these two ladies in situ, not a nice decision but forensically a correct decision to make
> (SIO (Senior Investigating Officer)).

> You've got to try and think ahead and the thing that I think about and I'm sure other detectives who've worked on it, is, let's get things secure now but we're always thinking about Crown Court, that's the thing we think about. As soon as we get there, how are we gonna preserve and secure the best evidence here and what is gonna get us up and running very quickly so we think about, and we're thinking about, what if we do this, what are the implications of that, and basically good procedure is laid down in the, well, the murder manual... so that you know that you've got that secure, that we have got a common path to and from the scene and the body, nobody's gone in and out, we've commenced a scene log so we've got preservation of the scene, integrity of it so we can present something when an SIO comes out, it's a professional package that we're presenting to him to say this is what we've done boss and we're ready to go with it
> (DS (Detective Sergeant), Outside Inquiry Team).

Pursuing the 'Watertight Case' and the Welfare of Those Left Behind: the Side-Effects of Scientific Detection

> In the Criminal Justice System, there's much more reliance on science in that respect, the degree of proof that's required…
> (SIO).

Beyond the specific issues of the body in death, many other aspects of the murder inquiry can impact upon the memory of the direct victim and upon the survivors. Officers interviewed made constant reference to the necessity to pre-empt any evidential issues in the light especially of the provisions of the Police and Criminal Evidence Act 1984, the consequences of the Byford Report and the Macpherson Inquiry, and the Criminal Procedure and Investigation Act 1996. The development of the Home Office Large Scale Major Enquiry System (Unisys' HOLMES (Home Office Large Major Enquiry System) and HOLMES 2) also strongly frames the logic of the murder inquiry and the perceptions of officers, based as it is on a cross-referencing database depending upon iterative sequences of 'actions'. An individual murder case may raise many thousands of 'actions', all of which in a HOLMES run inquiry will be computer logged and capable of raising more actions. The concomitant growth in the capability of, and financial investment in, scientific support services, along with the development of national databases for surveillance and criminal investigation, produces a drive toward 'integrity' of evidence and procedures, thus securing cases more effectively against any undermining either at the CPS stage or by the defence. What is rarely considered is that whatever the benefits of these changes in terms of 'justice', they have undoubted side effects on those who become embroiled in inquiries.

It is tautological to call murder inquiries 'invasive'. Nevertheless, it should be recognised that for the reasons outlined above, they have become increasingly invasive, with repurcussions for the privacy and the dignity of the victim, and with practical and emotional repurcussions for the homicide bereaved.

Waiting for Science: the Watertight Case as an Ideal Goal

One assumption is that constant advances in scientific techniques produce unquestioned benefits for victims of crime - an ideology behind both the National Policing Plan (NPP) and the Police Science and Technology Strategy (PSTS). Consequentially, the attitude among senior detectives, driven partly with a view to future triumphs, and partly by rules on disclosure (Hutton, Johnston and Sampson 2006) and the possibility of future appeals, increasingly seems to be the gathering of 'just in case' evidence for scientific analysis - either 'just in case' it is decided that analysis may be legally desirable later, or 'just in case' future scientific competences emerge at some indeterminate point and the tissue or other matter may become useful in case of appeals or 'cold case' reviews:

> SIO: Yeh. I think, probably, hopefully, in another 5 years time there may be some other forensic method whereby it's – it's very sensitive now, but it will be ultra sensitive in future, that we will be able to get some DNA [ie in this case] because it's definitely …[victim, who spoke before she died of multiple stab wounds] never said whether he was wearing gloves, I mean had he been wearing gloves when she was propositioned, prostitutes generally think twice about that sort of thing.
>
> SB: So you will keep it [the physical evidence]…

> SIO: Oh, we'll keep it for ever. We've got a case now, ... 1964…and the DNA's just come about and hopefully we will find the offender,...We are confident about DNA. We're also confident about the percentage chances of it being a particular individual … at the time when DNA first came out it was 1 in 10,000 so some judges will say now it's 1 in 10 million, more improvement may be needed to convict the offender just on the DNA itself. …but all the time we're making great strides.
>
> SB: So presumably, the more you are able to do that then cold case reviews will just increase and increase?
>
> SIO: Yeh. Yeh.
>
> I'm saying a job four years ago…blood was found at the scene, couldn't do anything with the blood but it was saved and then as procedures have improved four years down the line they're now saying that it was your man, that is your man, without that technology then it would remain undetected (DS , Outside Enquiry Team).

In the cold case review the welfare consideration given to victim issues is partial at best. Will the process of historical investigation help bereaved relatives still alive? How? This is a hugely untested proposition, since all processes of grieving differ and all cases differ; there can be no blanket consideration to apply. Ten or twenty or more years on, what criteria are to be applied to historical reinvestigation?

One particularly sad example, cited in the above detective's quote, is that of a case re-opened in 2003. In 1964 aged thirteen years old, the victim was strangled with her own stockings, multiply sexually assaulted, and left naked in a heap of manure by the side of the road. A huge investigation at the time, widely reported in the media, failed to produce a prosecution. With the review, all the original details and even more intimate information regarding the sexual assault, were released via the press, TV Crimewatch, and the Internet. The victim will never rest. She is virtualized, aged thirteen, a smiling schoolgirl, alongside digitized photographs of the manure heap and her stockings. To date no charges have yet been laid, five years after the case was reopened. The case details may be read on internet murder sites for voyeurs. In 2005 police released information that her killer, who raped her, had gonorrhea, whilst hospital managers refused to disclosed patient details from their sexually transmitted disease records. The victim would be nearly 60. She cannot speak, but her enduring presence is not dignified.

Public Image, Private Griefs: Politics, Funding and High Profile CSI (Crime Scene Investigation)

It is not too extreme to suggest that the ideological and political pressures to be seen to be applying the highest level science to the murder investigation over-ride other considerations where central government is willing to provide large sums of pump-priming

money for forensics. Since only budgets constrain a potentially open-ended forensic strategy, and conversely since a strong forensic strategy provides a way of levering more resources and status into a service, this in turn pushes senior personnel towards a focus on ways of securing increased funding from central sources for forensic strategies:

> We have increased by 25% the number of people we have on crime scene examination and we have taken extra people on board to do that. The government have paid for the DNA expansion programme so basically for every crime scene that we visit we will submit at least one item for forensic examination, now maybe at one time we would not have submitted it, now the government fund us to submit the evidence from the crime scene and they will pay for the tests, they will pay for a criminal justice sample to be taken from anyone who is arrested and... so the government has very much funded a lot of the technology ...I'm the only department in [the force] who's got everything they applied for , I got £ 2.6m ... the importance of science has gone up.. its £400,000 extra in the coming year the government has given us to fund DNA submissions and DNA examinations...I think that commitment from our senior command team emphasises the way that they've seen the need for more resources for science (Scientific Support Manager).

One scientific support manager, whilst extolling the virtues of his own department, noted phlegmatically the unquestioning reliance on 'science', as with low copy number DNA testing:

> Yeh, it's the answer to everything, in't it? …. I criticise the forensic science service because three years ago when they discovered the possibility of getting low copy number, they circulated it round the world and pushed it , quite aggressively within the police service,... yeh, we've proved we can do it in laboratory conditions, but on that door handle is my DNA, everybody elses' DNA, who's been through this room, today, or for the last 6 weeks, or the last 6 months in some cases, and its gonna give you a mixed profile … We had a homicide inquiry about 18 months ago where we got a minute trace of low copy number mixed DNA underneath the victim's fingernails, we have spent £35,000 trying to identify that DNA. We think the DNA has come from the scissors used in the post mortem from a pervious post mortem that has not been sterilised properly – but we don't know – and so for us, for [victim's family's] closure, there's still DNA there that we've not identified (Scientific Support Manager).

Whilst the chances of technical justice - a successful conviction - may be somewhat enhanced by this 'sledgehammer to crack a nut' approach, the benefits to victims are not entirely obvious. It must be remembered that the NDNAD (National DNA Database) was intended to combat volume crime and to support surveillant assemblages (Haggerty and Ericson 2000, Johnson and Williams 2007). The vast majority of murder cases have always been cleared up, principally because of the relative rarity of stranger-murders and the preponderance of police intelligence and witness evidence in these cases:

> Intelligence usually comes first. Then you look at how you can turn that intelligence into … evidence. There may be certain known suspects and you get intelligence coming in all the time…in this particular case (an execution style shooting of a known local criminal) you get intelligence coming in and you're assessing whether its from a reliable source. Now in this particular case …there was one particular piece of intelligence that came in – which we assessed as being extremely reliable – its basically weighing up the value of each source of information…
> (SIO).

> We received intelligence to say that a murder had occurred... Basically we got a call that we were fairly confident with…as I say there was no body…but we proceeded on the basis that something had happened. So initially we got the scenes of crime and the forensic team down there, … the first thing from there, we wanted to trace the two adult occupants…we found out that the children [4 children of female occupant] had been taken to relatives ... we worked on the basis that whatever had happened in the house ... they needed to go into care and it worked very well, … because we were able to speak to them about what had happened in the house … on video…actually about the person who was the victim. [interviewed by trained officer/presence of social worker]. So we knew… that a male person had been in the house, and that he'd been asleep in the downstairs lounge, he'd been having an affair with the woman from the house…when her estranged common-law husband returned and attacked him and severely injured him…so we knew from then on in what had happened in the house…on the basis of the children's evidence [conviction was secured].

In the last case cited, extensive additional scientific and technical resources were deployed in order to find the victim's body, but the crucial pivot for the case was in the end supplied by the child witnesses and other witness evidence. The detail of this complex case, beyond the scope of the present discussion, left a trail of trauma and uncovered a range tangentially related domestic abuse and violent offending that impacted upon extended families and the local community. The heavy financial investment included mobilising thermal imaging equipped helicopters and massive search operations, but the real aftermath was left with limited welfare services to cope with.

Most detectives interviewed stressed the continuing importance of what they called 'traditional police work' and could be critical of 'over the top' forensic strategies: one cited an as yet unsolved case where many forensic samples were taken from the waste land surrounding the immediate site of the attack, and from potential suspects, with almost no perceived likelihood of them proving useful in the foreseeable future. He commented, 'I'm sure you could spend a million pounds on a murder inquiry ...like for example [case], we were taking DNA off everybody'. Nevertheless, detectives were unanimous in believing that forensic methodology would be the ultimate driving force of detection.

Crime Scene: A Place to Call Home?

The popularity of TV-CSI in the UK (screened on Channel 5 several times weekly) belies the reality of having one's house declared a crime scene. One analysis revealed that over half of homicide events in three police force areas in England and Wales took place in someone's house - most often the victim's home or a home shared by victim and perpetrator (Brookman 2005 p42). This means that any other members of the family or household are immediately excluded from their home and denied access to their belongings as forensic integrity takes priority. A Family Liaison Officer recounted her conflict with her SIO over a family denied access to their belongings:

> With the house fire [case] everything was burnt, furniture, all the documentation, so not only are these poor people grieving…there's so much else that goes on with it...the home's been gutted and the SIO's humming and hawing about whether the defence will want to go in or what, and I said look whether the defence wants to go in or not its got to be made safe and the family are wanting to go in and get possessions...

Hence the criminal justice process itself prolongs problems with housing, access to benefits, lack of basic necessities. Meanwhile, there is no overarching responsibility for issues arising specifically from one's property being a crime scene (such as paying for temporary accommodation, lack of basic belongings, loss/destruction of documents), on top of the need to grapple with bureaucracies whilst in the turmoil of having murdered relatives, being at the centre of suspicion, perhaps having children taken into care, and almost certainly an attendant financial crisis. Extensive forensic processing not only delays access to the home, but may result in numerous personal effects being bagged as exhibits and removed for storage. Again, Officers invoke the 'just in case' defence of extensive exhibit removal and forensic sample-taking:

> A lot ...I think though has evolved like that because of errors made in the past and because of things with criminal... case processes, so if we didn't totally forensic that house, ...You never know what you're gonna have to answer further down the line so if you didn't do it thoroughly, actually worked through...otherwise you leave yourself open, you leave yourself open to criticisms as well from the court process don't you, from whoever, and also you leave your defence loop hole open don't ya? Coz if you don't cover

> all the bases, all the things that he, he, you almost have to pre-empt, you have to...So you...have to do things just in-case and I'm sure that, I'm sure if you explored it, we must have wasted masses of money on that, but you can't not do it.

The primacy of evidential integrity then determines that every possible forensic exhibit is tracked and stored for possible future requirements:

> The Criminal Procedure and Investigations act in 1996 … basically what that's saying is that material that you come into possession of during an enquiry, it might go as evidence to find the defendant guilty but it also might go as evidence to suggest that he's not committed that crime ...and they've got you, you know, you've got to have it examined, you've got to have a result…its got to be tight...you've got to hold on to everything pending whether this man or woman's going to lodge an appeal...We are using garages out here now for storage... it's frightening (OET (Outside Enquiry Team) Detective).

In any event once the home becomes a crime scene it is thoroughly turned over by complete strangers, leaving no privacy intact. The worst thing that happens to most people is having their luggage lost by an airline: having one's entire life effects made vulnerable in this way produces a myriad of difficulties.

Family Matters: FLO's and Problems Contingent upon the Inquiry

More unacknowledged human consequences arise in murder cases from the stark reality that the most likely perpetrator in a murder case, especially where the victim is a woman or a small child, is a partner or parent or other close relative (Brookman 2005). As a consequence family members are often treated as potential suspects. Bitter family disputes may arise, particularly where as is frequently the case, relatives are accusing or implicating each other, or where the trauma of the death and its many implications (whether for inheritance of money, personal effects, custody of children, domicile, decisions about funeral arrangements and so on) is complicated by there being a suspicion over the family itself. Even where there is no suspect identified from within the direct family, conflicts can still emerge over blame and 'rights'.

Family Liaison Officers are placed into the midst of the family situation and find themselves at the centre of these conflicts but their role is not to resolve or manage it except to ensure the smooth flow of the investigation from the police perspective. Police procedure manuals are quite clear about the role of the FLO as a member of the murder inquiry team. They are not there to provide a welfare role to the family, and in a sometimes slightly disingenuous way some FLO's do not always seem to disimbue families of this belief as strongly as they might, to 'keep the families on side' for the purposes of intelligence gathering. FLO's are primarily in place to effectively use their proximity for

information gathering in building a case. At the same time for the more family-centred FLO's, it also makes them feel conflicted as they see the pain suffered by the family and sometimes even try inappropriately to 'help':

> Its not a welfare role but I mean, you do get involved in it, I mean this particular family didn't have a lot of money, had a lot of kids as well so you know, at Christmas time myself and my colleague wanted to go out and buy them stuff and you do get yourself involved...(FLO).

Nevertheless families under the misapprehension that FLO's are primarily there to help them are then in for a shock:

> ...I mean a lot of information does go in from the family…you do find yourself putting everything in, plus we keep our logs as well and everything goes in there, all the discoveries, that the family has made to us ... if it's a domestic murder then it's of paramount importance, but even when it's not a domestic murder the lifestyle and the friends and the behaviour of the victim are very, very important and very often lead us to the killer (FLO).

> You are primarily there to gather evidence and information and feed it into the incident room... the officers that we've just trained up, they're very experienced hard nosed detectives, you know, who want to do the job because it's not tea and sympathy, you are actually part of the investigation team... (FLO).

Building a good relationship with the family for the FLO is primarily about getting them 'on side' and placating hostilities against the police, particularly where the family are 'known':

> One that I dealt with last year where the family distrusted the police, didn't think we were interested in the case, the relationship between the family and the SIO and the FLO totally broke down and communication had to be carried out through an intermediary, but we needed that family on board, we needed information and we didn't want them to be our enemies we wanted them working alongside us - in a case like that the FLO's job is paramount… So in some cases the FLO, after the OIC (sic) and the SIO and the disclosure officer, the most important job.

Family relationships can be further harmed by the presence of FLOs: they cited cases where some members of the family would blame others for the death, or even blame the victim, or where peoples' grief and anger was so strong that it led to the commission of further offences within the family. The kinds of inquiries that are made may arouse suspicions across family members, or lead indirectly to the revelation of previously hidden

activities (examples cited by FLO's included extra-marital affairs, drug-taking and other lifestyle factors, and prostitution). Explosive revelations like this can occur as a direct consequence into a murder inquiry when a family is already in trauma, and subsequent marital and other forms of family breakdown are not uncommon.

There is no available means of mediating or resolving conflicts in families deeply affected by murder and the process of the inquiry, and they are typically left to 'get on with it' once the case comes to trial. Generally they are referred on to Victim Support to 'pick up the pieces':

> We pass people on to Victim Support…any sort of needs that they have got we will channel them in the right direction... its so much easier for you to make a telephone call ...than the family, but again you have to be careful because if you do too much for them they'll ring you up two years later when they've got a parking fine. Pass them onto the appropriate agency
> (FLO).

Information Needs and Emotional Needs: Controlling the Information Flows and Preserving 'Integrity' in the Murder Inquiry

Because the control of information flows is so important for successful case-building, it lies at the centre of the investigative process. This is seen as central to the 'integrity' of the inquiry. This has particular implications for those bereaved by the homicide, for whom the smallest pieces of information can be either devastating, or conversely grasped almost as lifelines in a psychologically threatening episode. This manifests both as an emotional desire for information to the minutist detail about the case and the death itself, and a need for information that can help resolve immediate practical problems.

Officers' interpretation of 'integrity' could vary and a number of features in the inquiry determined officer's decisions about information control. The principal amongst these was the perceived risk that family members might compromise the inquiry by sharing information with other family members or with acquaintances who were either nominated suspects or connected to nominated suspects; or indeed convey information that might appear to jeapordise different but potentially related investigations (for example where drugs were involved). Family members were often perceived by officers to be members of criminal groups, or to live in close knit 'criminal' communities, or found via HOLMES to cross-reference with individuals 'known' to the police:

> Well I told the family every step of the way what we'd got, …[but] the family were, difficult, for other reasons, you had to be careful about some of the things you told them because they would have told other people who would have told other people [the murder victim's partner was her pimp and also a drug dealer]
> (SIO).

> The other complication was as well that the extended family, particularly in this locality were into criminality...
> (OET).

In relation to…and er, we gave him quite a lot of information...but then all of a sudden this other, this other son turned up and we had no idea who he was, and next minute he was on TV and he's saying about this and that and he was a bit of a, not a loose cannon as such, but, we had no idea why, you know...he'd come up on telly...'cos we hadn't spoken to him. And then we are, we were conscious then of the fact that we needed to be a little bit more careful what we disclosed into the family.

Conclusion: Responding to Murder Victimization Beyond the 'Case'

This perspective from inside the police inquiry enables us to see how the primary victim lacks legal status, and that very little dignity is left open to them or their memory in the highly scientific processes of contemporary management of homicide death. Added to this are the ever-present possibilities of future reviews.

Homicide survivors find themselves in a dreadful situation where their bereavement is compounded by a whole series of interlocking factors stemming from the process of the murder inquiry itself. These include lack of dignity for the dead, attenuation of grieving rituals and processes, misinformation and lack of information; their status as potential suspects in many cases; invasion of privacy; numerous practical, welfare and financial problems often directly occasioned by the inquiry process, such as sequestering of personal possessions, being made temporarily homeless, inability to pursue inheritance or property/domicile issues, access to assets, and so on. Relationship conflicts and breakdowns across the family may worsen or be caused by the information flows into the family from police and media consequent upon the murder. Even worse, where children and young people are involved, care issues and specialist trauma needs arise. These may relate to perpetrators, witnessing, and sexual and physical abuse uncovered as part of the inquiry process.

Further, there is the unrealistic public stereotype of the murder victim and the homicide-bereaved. Very often, victims are killed by family members, making homicide-bereaved relatives suspects and associates of suspects and perpetrators. Many family members may also have prior contact with criminal justice agencies. This further complicates or blurs the boundaries in their relationships with agencies from which they may need support or information.

Police FLO's in particular find themselves in a complex and contradictory position in relation to homicide victims (and it should be made absolutely clear to families where the police FLO role lies as investigative officer). Victim's vulnerabilities make it likely that they will invest inappropriate hopes in the FLO. The Probation Service also finds itself in

a difficult position regarding victim contact services (Newton 2003). Victim Support's own research, whilst confirming the value of practical and emotional support from the Third Sector to homicide bereaved families, nevertheless acknowledges the complexities of homicide victim issues as exacerbated by the criminal justice system, and the holes that continue to exist in provision despite the Third Sector's best efforts.

A community and social justice perspective on homicide victim support is needed that would acknowledge honestly that victims and secondary victims of homicide may have needs that are complicated by the criminal inquiry itself and provide a framework for appropriate, co-ordinated referral mechanisms within and, outwith the criminal justice system, to ensure more comprehensive 'aftermath' care following any homicide. Political rhetoric around murder victim's rights and justice currently overwhelms the notion of victim welfare.

Rock's 1998 monograph identified most of the basic issues in this paper, which this research now shows have been compounded and rendered more complex by the tightening of the legal-scientific logic in the murder inquiry: yet there have been few policy advances for victims and survivors. Instead the FLO system has been expanded and more clearly focussed as intelligence rather than a welfare support role. As Dunn (2008) suggests, a positive way forward would be more collaborative research between Universities and the Third Sector, since the latter provide most existing services and can more directly influence policy. The iatrogenic effects of murder inquiries should not be brushed aside as necessary evils: they require addressing in equal measure to the pursuit of the successful prosecution.

End Notes

1 Based on live cases, completed cases, and cold case reviews in one large police force area. Cases were selected for a cross-section of features, (type of killing, circumstances of offence, family context, age/gender/ethnicity of victim, etc.) but all included a substantial forensic, scientific analysis, or computer analysis element (including cell phone analysis). All the Inquiries with the exception of the cold case reviews utilised HOLMES 2. The research strategy included 1) qualitative taped interviews with Senior Investigating Officers, Detectives from outside enquiry teams, FLO's, scientific support staff and media handlers; and University-based forensic and other experts; 2) Analysis of media coverage and internet exposure of cases and trials 3) Observation at trial where relevant and possible3) Follow up interviews post-trial in one case 4)Interviews with victim's family post-trial in one case 5) Analysis of official manuals and systems overview of MIR (Major Incident Room) and HOLMES. Fieldwork took place over two years 2003-2004 and follow through analysis 2005-2006. The research focused in detail on eight cases but was not exclusively case-based. Further details from the author subject to confidentiality and ethical agreements.

2 I do not propose here to debate semantics. Throughout this paper both the murdered person and those immanently affected by the death are embraced within the definition of 'victim'. Where necessary, a distinction is made between 'primary' and 'secondary' victims, and sometimes the phrases 'homicide-bereaved' and 'homicide survivors' are used where that seems most appropriate. All terms occur in existing literature, and there is no clear consensus in terminology, but it is clear that those bereaved by murder should be treated as having been directly injured by it and are therefore victims. Also, 'homicide' here should be taken to equate with 'murder' in the sense of the paper as a whole, although that is of course not legally true.

References

Association of Chief Police Officers/Central Police Training and Development Authority (2005) *Major Incident Room Standard Administrative Procedures*. London: ACPO (Association of Chief Police Officers)/CENTREX (Central Police Training and Development Authority)

Brazier, M. (2004) Human Tissue Retention. *Medico-Legal Journal*, 72 (39) [Electronic Journal]

Brookman, F. (2005) *Understanding Homicide*. London: Sage.

Brown, S. (2006) The criminology of hybrids: Rethinking crime and law in technosocial networks. *Theoretical Criminology*, 10(2), pp223-2006.

Department of Health (2000) *Bristol Inquiry Report: Removal and Retention of Human Material*. London: Department of Health.

Douglas, M. (1992) *Risk and Blame: Essays in Cultural Theory*. London: Routledge.

Dunn, P. (2008) Evidence-led or cobbled together? Victim policy and victimological research. *Criminal Justice Matters*, 72(1) pp28-30.

Featherstone, M. (1991) 'The body in consumer culture', p.170-196 in . Featherstone, M. Hepworth and B. Turner (eds) *The Body: Social process and cultural theory*. London: Sage.

Foucault, M. (1977) *Discipline and Punish*. London: Penguin.

Foucault, M. (1980) *Power/Knowledge: Selected interviews and other writing*. London: Harvester.

Foucault, M. (1991) Governmentality, in G. Burchell, C. Gordon, and P. Miller (eds) The Foucault Effect: Studies in Governmentality. London: Harvester Wheatsheaf.

Goodey, J. (2005) *Victims and Victimology: Research, policy and practice*. London: Longman.

Griffith, R. (2004) An introduction to the law of death and the body as property. *British Journal of Community Nursing* 9(12) pp535-539.

Haggerty, K. and Ericson, R.V. (2000) 'The Surveillant Assemblage', *British Journal of Sociology* 51(4) pp607-622.

Hallam, E., Hockey, J. and Howarth, G. (1999) *Beyond the Body: Death and social identity*. London: Routledge.

Heald, M. and Brown, S. (1994) *Care for Bereaved Parents: An Evaluative Study*. Middlesbrough: Research Action.

Herring, H. and Chau, P.-L. (2007) My Body, Your Body and Our Bodies. *Medical Law Review* 15 (34) [Electronic Journal]

Hutton, G., Johnston, D., Sampson, F. (2006) *Blackstone's Police Investigators' Manual*. Oxford: Oxford University Press/Centrex.

Innes, M. (2003) *Investigating Murder: Detective Work and the Police Response to Criminal Homicide*. Oxford: Oxford University Press.

Johnson, P. and Williams, R. (2007) Internationalizing New Technologies of Crime Control: Forensic DNA Databasing and Datasharing in the European Union. *Policing and Society: An International Journal of Research and Policy*, 17(2) pp103-118.

McGuinness, S. (2008) Respecting the Living Means Respecting the Dead Too. *Oxford Journal of Legal Studies* 28(297) 1 June. [Electronic Journal]

Malone, L. (2007) In the aftermath: Listening to people bereaved by homicide, *Probation Journal* 54(4) pp383-393.

Newton, E. (2003) A Study of the Policies and Procedures Implemented by the probation Service with Respect toVictims of Serious Crime. *British Journal of Community Justice*, 2(1) pp25-36.

Rock, P. (1998a) Murderers, Victims and 'Survivors': The Social Construction of Deviance, *British Journal of Criminology* 38(2) pp185-190

Rock, P. (1998b) *After Homicide: practical and political responses to bereavement*. Oxford: Clarendon Press.

Ruback, R. and Thompson, M.P. (2001) *Social and Psychological Consequences of Violent Victimization*. London: Sage.

Turner, B.S. (1996) *The Body and Society*, 2nd. Edition. London: Sage.

Victim Support (2006) In the aftermath: The support needs of people bereaved by homicide: a research report. February 2006. London: Victim Support.

THE PLACE OF SHAME IN RESPONSES TO ANTI-SOCIAL BEHAVIOUR

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Abstract

Government responses to 'anti-social behaviour' have included, amongst others, two trends that employ shame in pursuit of crime prevention: "naming and shaming" of those subject to anti-social behaviour orders (ASBOs) on one hand and restorative justice on the other. This article considers how the Government has made use of each, the dynamics of each shaming process, and the compatibility of these approaches. It argues that they are mutually exclusive, and that restorative justice should be preferred as a potentially more constructive shaming process.

Keywords: ASBO; Restorative Justice; Shaming; Anti-Social Behaviour

Introduction

'Anti-social behaviour' dominates contemporary British political discourse on law and order. The Government's 2003 White Paper Respect and Responsibility: Taking a Stand Against Anti-Social Behaviour stated:

> As a society, our rights as individuals are based on the sense of responsibility we have towards others and to our families and communities. This means respecting each other's property, respecting the streets and public places we share and respecting our neighbours' right to live free from harassment and distress. It is the foundation of a civic society…Our aim is a "something for something" society where we treat one another with respect and where we all share responsibility for taking a stand against what is unacceptable (Home Office, 2003: Ministerial Foreword).

The Government's focus on anti-social behaviour is laudable as part of a broader aim to create a "decent, civil society in which people can shape their own lives and participate fully in their local community." (Home Office, 2003: Ministerial Foreword). The Government's overriding priority, announced in the 2002 Justice for All White Paper, is

to rebalance criminal justice in favour of victims and communities (Home Office, 2002). The centrality of the community and victims in the Government's policy priorities was reflected in the Respect and Responsibility White Paper's emphasis on community involvement in preventing, and responding to, such behaviour:

> Anti-social behaviour is a problem experienced at local level and therefore requires effective action locally. This includes individuals, families, residents' associations, community groups and also the public services. It is vital that the right people have the power, the authority and the support to tackle anti-social behaviour"
> (Home Office, 2003 p51).

Two Government strategies in responding to "anti-social behaviour" appear similar in employing "shame" as a guiding concept. The first, "naming and shaming" of individuals subject to anti-social behaviour orders (ASBOs), focuses on drawing community attention to the identity of offenders ostensibly to inform and reassure the community as well as deter offenders. The second, restorative justice, seeks to confront offenders with the harm caused by their offences, encouraging or requiring them to repair that harm either to victims or the wider community.

This article explores the similarities and differences between these two strategies. First, I consider ways in which the Government is employing them. Second, I highlight their common heritage, both being rooted in a form of expressive justice: both involve shaming processes. Third, I evaluate the possible effects of each process. Finally, I analyse the implications of pursuing both strategies simultaneously.

The Government's Uses of Shame in Responses to Anti-Social Behaviour

Publicising ASBOs: Using "Naming And Shaming"

A civil order, an ASBO prohibits a specified person (aged 10 or over) from doing anything described in it (s. 1(4) Crime and Disorder Act 1998). ASBOs have effect for not less than 2 years (s. 1(7)) and breach of an ASBO is an offence punishable with up to 5 years imprisonment if tried on indictment, six months if tried summarily. They can be applied for by local authorities, police forces (including the British Transport Police), registered social landlords and housing action trusts, but not by members of the public. Court statistics reveal that between 1st April 1999 and 31st December 2005 9853 ASBOs were issued (www.crimereduction.gov.uk/asbos2.htm) and the rate at which ASBOs have been imposed has grown steeply year-on-year.

The Government considers publicity central to the success of ASBOs. The Home Office stated in the 2003 White Paper Respect and Responsibility that for too long a "culture of resignation" has prevailed, with communities lacking the powers and support to respond

effectively to anti-social behaviour (Home Office, 2003: 45). To tackle communities' despairing submission to low-level disorder's inevitability, the Government proposed to:

> take measures to improve community accountability. For example, appropriate publicity of action taken is a key part of any strategy to tackle anti-social behaviour: we will lift automatic reporting restrictions on ASBOs on convictions made in the youth court
> (Home Office, 2003 p12).

In 2005, the Government reversed a presumption in favour of reporting restrictions in criminal proceedings under s. 1(10) of the Crime and Disorder Act 1998 involving children or young persons for breach of ASBOs (the reversal was effected by s. 141 of Serious Organised Crime and Police Act 2005). S. 49 of the Children and Young Persons Act 1933 imposes a blanket ban on any publicity of, inter alia, youth court proceedings, but youth courts do have discretion to allow publicity following conviction if the court "is satisfied that it is in the public interest to do so" (s. 49(4A)). ASBO breach proceedings under s. 1(10) of the Crime and Disorder Act 1998 are no longer covered by s. 49. Instead, s. 45 of Youth Justice and Criminal Evidence Act 1999 now applies: courts have discretion to impose reporting restrictions, but must give reasons if they choose to do so. Under s. 45(6) the court must have regard to the child's welfare in making its decision.

In March 2005 the Government published its document Guidance on Publicising Anti-Social Behaviour Orders (Home Office, 2005), containing strongly-worded encouragement to those empowered to order publication of personal information about offenders (of any age over 10) to do so. The guidance was published in response to the Divisional Court's ruling in R (on application of Stanley, Marshall and Kelly) v Commissioner of Police for the Metropolis and Chief Executive of London Borough of Brent [2004] EWHC 2229 (Admin). The claimants sought judicial review of a decision by a police force and local authority to distribute leaflets and publicise information containing S's photographs, names and ages, and details of anti-social behaviour orders (ASBOs) issued against them. Dismissing the application, Lord Justice Kennedy in Stanley said:

> It is clear to me that whether publicity is intended to inform, to reassure, to assist in enforcing the existing orders by policing, to inhibit the behaviour of those against whom the orders have been made, or to deter others, it is unlikely to be effective unless it includes photographs, names and at least partial addresses. Not only do the readers need to know against whom orders have been made, but those responsible for publicity must leave no room for mis-identification
> (Stanley, 2005 p42-3).

The stated aims of the Government's 2005 Guidance are: to inform those individuals making a decision whether to publicise the personal information of those who are the subject of an ASBO; what medium to consider and what information should be included;

to inform individuals, who might find themselves subject to an ASBO, what they can expect in the way of publicity (Home Office, 2005 p3). The Guidance's central message is that, as Kennedy LJ stated in Stanley, the effectiveness of ASBOs depends on communities knowing that action has been taken, and that consequently "publicity should be expected in most cases" and should be "the norm not the exception" (Home Office, 2005 p4).

The stated benefits of publicity are five-fold (Home Office, 2005 p4-5). First, it assists in enforcing orders: local people "have the information they need to identify and report breaches." Second, publicising those subject to ASBOs provides reassurance to the public about their safety: "victims and witnesses know that action has been taken to protect them, and to protect their human rights in relation to safety and/or quiet enjoyment of their property." Third, publicity promotes "public confidence in local services": local people are reassured that if they report anti-social behaviour, action will be taken by local authorities, the police or other agencies. Fourth, publicity acts as a deterrent to the individual subject to the order: the guidance argues that the "perpetrator is aware that breaches are more likely to be reported because details of the order are in the public domain." Finally, publicising ASBOs acts as a deterrent to other potential miscreants: publicity about ASBOs acts as a warning to others who are causing a nuisance in the community.

The decision whether to restrict publicity thus rests with the courts. The 2005 Guidance outlines key principles that should guide courts' decisions. In particular it asserts that courts must balance the human rights of those individuals subject to ASBOs against those of the community as a whole. The Divisional Court's decision in Stanley held that those seeking to publicise individuals should recognise that publicity might infringe a person's rights under article 8(1) of the European Convention on Human Rights, and should consider whether the publicity was "necessary and proportionate to their legitimate aims." The Guidance states that "There should be a correlation between the purpose of publicity and the necessity test: that is, what is the least interference with privacy that is possible in order to promote the purpose identified" (p. 5). With publicity expected to become the norm not the exception, youth court publicity is entering a new phase. The Government's stated aims are multifarious, but underpinning the impetus for publicity is the desire to "name and shame"; to make the public aware of who offenders are, with shaming and deterrent effects anticipated.

Shaming as an explicit aim or implicit necessity of punishment has a long history (see Braithwaite, 1993). Some penologists have argued that we are witnessing a resurgence of penalties which employ shame at their heart (e.g. Pratt, 2000; Pratt, 1998). The trend is particularly evident in the USA. Kahan delineates different types of shame penalties evident there (Kahan, 1996). The first, "stigmatising publicity", involves offenders having their personal details broadcast on community-access TV channels, billboards, and newspapers (e.g. men convicted of soliciting prostitutes in Kansas City have their names and faces displayed on a TV programme dubbed "John TV" (Garvey, 1998). In England

and Wales, such strategies are evident at localised levels, having been employed by amongst others, Central Trains to name and shame train "fare dodgers" on posters around Birmingham (BBC News Online, 2005a) and Liverpool City Council to name and shame "litter louts" on its website (BBC News Online, 2005b).

Other types of shaming strategies Kahan identifies, literal stigmatization and self-debasement, are less evident in Britain but there are some notorious examples from USA. In Tennessee a burglar was ordered to allow his victim, accompanied by law enforcement personnel, to enter his home unannounced and take something of comparable value to what he stole (Garvey, 1998 p736). Others have been ordered to wear T-shirts emblazoned with details of their offences or display special licence plates on their cars. In the same vein, the Government in England and Wales mooted in 2005 the possibility of young offenders having to wear high-visibility uniforms (dubbed "Jackets of Shame" in the Daily Mail (Slack, 2005 p4)) while undertaking punishment in the community (Hinsliff, 2005). This notion of greater visibility "Community Payback" for adult and young offenders was mooted again in 2008 by some within Government anxious to bolster public trust in the criminal process (Wintour, 2008 p1). Although this has not developed into a national strategy, the Government emphasised in its 2006 Respect Action Plan that the public must have confidence in community sentences and one way that public credibility can be gained is "for any unpaid work ordered by the court to be visible, and for the public to understand what work is carried out in their communities as part of a sentence." (Home Office, 2006 p35).

The Government And Restorative Justice

While ASBOs have attracted many headlines, the Government has been promoting another strategy which appears also to depend on "shame" for effectiveness: restorative justice (RJ).

RJ has been defined by Tony Marshall, in a widely accepted definition, as "a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future." (Marshall, 1999). Van Ness states its principal objective to be the "restoration into safe communities of victims and offenders who have resolved their conflicts" (van Ness, 1993 p257). From the wealth of RJ literature (which seems to grow exponentially: see www.restorativejustice.org) we can distil two central aims of RJ: first, reparation to the victim or community, and second, offender reintegration. RJ proponents argue that the primary aim of criminal justice should be to place the harm resulting from offenders' actions at the heart of the process; victims and community members should be given opportunities to engage with offenders and offenders have the opportunity to apologise and make amends for the offence. Typically RJ processes are dialogic, with offenders and victims actively engaged in resolving the conflict arising from crime. According to its advocates, RJ provides an effective means of both holding offenders accountable for their actions and reintegrating them into the community. Such achievements are thought to be absent from formal court

processes in which the dominance of legalism and lawyers means offenders are not forced to confront the consequences of their actions; the conflict lying at the heart of much crime is, in Nil Christie's oft-quoted metaphor, "stolen" from the real participants (Christie, 1977).

RJ also employs shame as a foundational concept. John Braithwaite's theory of reintegrative shaming is one strand of RJ theory (Braithwaite, 1989). Braithwaite argues that offenders can be reintegrated into the community when their criminal behaviour is condemned by those whom the offender respects, such as friends and family members. Such a condemnatory process should foster in the offender a feeling of shame at his conduct and a desire to repair the harm caused, while the supportive atmosphere in which the condemnation takes place should enable him to re-enter the community which accepts him as a citizen who has repaid his debt to the victim and wider society. I will explore below the extent to which the shaming strategy inherent in RJ is similar to that in "naming and shaming" those subject to ASBOs.

The Government has endorsed RJ as a promising strategy for responding to both adults and young people involved in anti-social behaviour. RJ:

> ensures that punishment for an offence is accountable and responsive to the wider community. This includes working in the community, bringing together the victim and the offender or wider victim support work. It helps offenders understand that their offending behaviour is not just against the law, but also has a damaging effect on their victims, themselves and on their communities (Home Office, 2003: para. 5.32).

There are numerous RJ schemes across the country (see www.restorativejustice.org.uk/; Miers, 2001). Youth Offending Teams (YOTs) have been implementing RJ since 1997, and are required to organise 'Community Payback' to ensure that young people on Reparation Orders and Referral Orders "repay their debt to the community" (Home Office, 2003: para. 5.35). Requiring young people to undertake 'Community Payback' aims to prevent reoffending by bringing home to them the consequences of their behaviour and enabling them to make amends either to their victims or the wider community or to both. Referral Orders involve trained volunteers, members of the public, as "community panel members" who sit on Youth Offender Panels at which young offenders agree to a contract which requires them, along with their parents, to tackle their offending behaviour and make amends to their victim or the wider community. While ASBOs have grabbed the headlines, Referral Orders have become much more significant in terms of sheer numbers and the work of YOTs: there were 28394 such orders imposed in 2005/6 (Youth Justice Board, 2006a). YOTs must now ensure that restorative processes are used in 100% of Referral Orders and at least 75% of other YOT interventions (Home Office, 2003: para. 5.35).

The Government has repeatedly indicated that RJ is a key part of its crime strategy. The 2003 White Paper states that the Government was committed to considering:

> the availability of restorative justice across all age groups and at all stages of the criminal process: pre-crime, especially with juveniles, pre-charge, post conviction/pre sentence, and post sentence…give a high priority to the needs of victims (research suggests that victims who participate in restorative processes find it a positive experience)…[and] seek to maximise the potential of restorative justice to reduce re-offending", "promote consistent, appropriate and effective use of restorative justice techniques (Home Office, 2003: para. 5.34).

In 2006, the YJB published an action plan for developing RJ (Youth Justice Board, 2006b). From April 2008, a new Youth Restorative Justice Disposal (a disposal for "particularly low level, first offences") has been piloted (Children's Plan: Building Brighter Futures (2007 para. 6.75-6.77).

"Naming and shaming" and RJ are just two of a plethora of responses to anti-social behaviour. Observing that the Government is employing a variety of strategies to deal with a particular problem is neither new nor controversial. Eclecticism, collage and pastiche characterise postmodern penality (Pratt, 2000), and it is perhaps naïve to expect conceptual coherence across government policy. However there is an important overlap between the two identified strategies which merits attention. Both focus on preventing reoffending by inducing a feeling of shame in offenders; both strategies' attendant processes involve the community, and both involve victims as part of their underlying rationales, putting them centre-stage.

But whilst the approaches are ostensibly similar they are also fundamentally different. Pursuing both approaches raises two issues. First, they both rely on similar but different expressive shaming processes; how do the dynamics of each shaming process compare? Second and consequently, what are or may be the effects of each process?

The Dynamics of each Shaming Process: What is being Expressed?

Both restorative justice and "naming and shaming" rely on shaming processes with a particular dynamic. The two strategies have normative roots in the literature on punishment's expressive functions, yet ultimately differ because of their individual focus: one on the individual, the other on the individual's conduct.

Advocates of "naming and shaming" as punishment highlight the expressive function and social meaning of punishment, which communicates a clear denunciation of unacceptable behaviour, an expressive force that non-penal sanctions lack. Moral disapproval underpins punishment: it aims at chastening the offender, denting his reputation,

depriving him of dignity and consequently ensuring he avoids behaviour in future which may lead to further disapproval (Kahan, 1996). Punishment is a "special social convention that signifies moral condemnation" (Kahan, 1996: 593). Further, "What punishments say…is an irreducible component of what they do. For this reason, theories of punishment that disregard meaning are certain not to make any sense." (Kahan, 1996 p653).

These justifications for publishing an offender's identity are connected to other texts on punishment's expressive function. James Fitzjames Stephen for example wrote that punishment is the means by which "law gives definite expression and a solemn ratification…to the hatred which is excited by the commission of the offence…" (quoted in Kahan, 1996 p591) Von Hirsch's pioneering work on modern conceptions of retribution, devoid of the obloquy attaching to talionic theories of retribution, places censure at its heart:

> The criminal sanction censures…A sanction that treats the conduct as wrong – that is, not a "neutral" sanction – has two important moral functions that are not reducible to crime prevention. One is to recognise the importance of the rights that have been infringed. The censure in punishment conveys to victims and potential victims the acknowledgment that they are wronged by criminal conduct, that rights to which they properly are entitled have been infringed. The other…role of censure is that of addressing the offender as a moral agent, by appealing to his or her sense of right and wrong
> (Von Hirsch: 1998 p169-70).

Feinberg argues that punishment can have functions that presuppose an expressive function including: "authoritative disavowal" of conduct; "symbolic non-acquiescence"; "vindication of the law"; and "absolution of others" (most importantly accusers, complainants, victims) (Feinberg, 1970 p103-5).

Duff argues, in his communicative theory of punishment, that punishment's justification comes from seeing the hard treatment that punishment necessarily involves as a secular species of penance (Duff, 1998 p164). It is a communicative process addressing the offender as a moral agent and community member, which aims to induce repentance, reform and reconciliation. Duff argues that such a penance serves several purposes: it focuses the wrongdoers attention onto his wrongdoing, forcing him to confront it; it communicates a "symbolic portrayal of the character and implications of that wrong"; it aims to persuade him to accept the judgment of the condemners, to come to recognise and repent the wrong he has done; punishment thus becomes a "vehicle of self-reform", enabling him to "strengthen that penitent understanding of what he has done, to express it to others, and thus to reconcile himself with them" (Duff, 1998 p164-5).

Punishment expresses the community's strong disapproval of and judgement on the offender's conduct, as well as expressing a kind of "vindictive resentment" (Feinberg, 1970 p100). The mere imposition of a sanction does this. It is a fundamental part of the penal process to transform the anger and resentment engendered by crime into a penal sanction, the imposition of which has inherent in it a melding of emotional responses to the conduct.

RJ and the "naming and shaming" of those subject to ASBOs are both expressive processes. But we need to distinguish the verb from the noun. Shame is an emotion experienced by the individual, but what does it mean "to shame"? What is it that is being expressed in each process?

Feinberg's observation that "condemnation (or denunciation) [is a] fusing of resentment and reprobation" (Feinberg, 1970 p101) helps us to explicate the tensions between the two strategies. "Naming and shaming" relies on communicating resentment, hatred and antipathy towards offenders, on expressing condemnation of the individual rather than the act they have committed. In Nussbaum's words, "naming and shaming" strategies are ways of marking a person with "a degraded identity…[and announcing] that spoiled identity to the world" (Nussbaum, 2004 p230). It is a form of inarticulate stigmatising, actively engaging negative emotions of the condemners.

RJ differs in its use of shaming for two reasons. First, RJ focuses on the act rather than the actor; the focus is essentially on "condemning the sin but not the sinner". Shaming is reintegrative, according to Braithwaite, when the offender's actions are subject to scrutiny by those with whom the offender is enmeshed by close ties of love, affection and respect. Condemnation attaches to the conduct, perhaps through expression of disappointment, anger or sadness, while the offender himself is esteemed and brought back within the supportive fold. This emphasis on expressing condemnation of the act and not the actor is not peculiar to RJ; it underpins the expressive function of von Hirsch's censure-based retributive theory, according to which the offender deserves censure in proportion to the seriousness of the offence, hinging principally on the blameworthiness of the individual for that particular act.

Second, RJ processes are inherently dialogic and communicative, rather than merely expressive. Merely expressive processes are essentially one-way, while communicative process are two-way (Duff, 2001p79). Communication requires someone with whom we try to communicate:

> "It aims to engage that person as an active participant in the process who will receive and respond to the communication, and it appeals to the other's reason and understanding – the response it seeks is one that is mediated by the other's rational grasp of its content. Communication thus addresses the other as a rational agent, whereas expression need not" (Duff, 2001 p79-80).

Restorative justice aims to engage the offender in a dialogic process, seeking answers from him about the causes of his offending behaviour, his attitude towards his offence and the victim, as well as giving victims an opportunity to express themselves, to discuss with the offender ways in which the harm can be repaired or compensated, and perhaps to facilitate reconciliation between them. "Naming and shaming" by contrast seeks only to express to the offender condemnation of both his actions and him as a person.

Experiencing the Shaming Process: The Effects

Given the difference in what is being expressed in each process, in what ways might the effects of the two shaming processes differ? How is each process experienced by individuals subject to them? Although both seek to engender psychological effects derived from a loosely-knit family of shame-emotions, it will be argued that the effects of "naming and shaming" are likely to be broadly negative. RJ on the other hand has at least the potential to impact positively on offenders.

Shame, Shamers And The [A]Shamed

In evaluating the impact of shaming strategies on individuals, the lack of a clear, causative relationship between the shamers' intention and the effects of the process on the shamed's experience is problematic. As Maxwell and Morris point out, one can feel ashamed irrespective of the acts of others, and conversely attempts to shame may not have the desired effects: "[T]he intent of the shamer cannot determine the effects on the shamed." (Maxwell & Morris, 2004 p136-7).

Experiencing shame may be largely independent of shaming processes, so while the Government seems to assume that shame will inhere from "naming and shaming" the psychological literature on shame's ecology reveals the complexity of what is, after all, a visceral emotional state. The diversity of perspectives on the aetiology and ecology of shame (e.g. psychoanalytic, psychological, biopsychological, sociological, cultural, literary, philosophical (Pattison, 2000: Chap. 2)) should caution anyone against assuming that 'shame' can be induced it can be easily induced. Once the shamers have acted, once the leaflets have been distributed publicising an individual's identity and antecedents, what happens next may be unpredictable.

The Experiences Of Shame And Being Shamed

It's commonplace to identify shame as a problematic concept. Pattison (2000) for example, describes an unscientific survey of individuals who were asked to explain what they understood by "shame". He found most described it as a negative feeling of unpleasant self-judgment in which one feels "bad" or "uncomfortable" (p70). Beyond that though, subtle differences emerged: some felt it meant feeling "bad" without necessarily knowing why, others felt it related to feeling bad as a result of committing an offence, others felt it captured being exposed in some unwelcome way, and others felt it had something to do with feeling demeaned, diminished, defiled and unwanted. Pattison goes on to argue that shame is "more a family of concepts and usages than a unitary entity with a clear single meaning" (p70). There is a plurality of approaches to shame bound together loosely by some "family resemblance" (p63).

The bundle of such experiences reveals several key points about the experience of shame. Feeling ashamed typically involves feelings of: unwanted exposure to others, a feeling in Kaufman's words of "feel[ing] seen in a painfully diminished sense" (Kaufman, 1993 p17); of embarrassment; and of being objectified. Shame threatens the individual's identity in the world and his trust and security. A person experiencing shame is "internalising a critical gaze" (Pattison, 2000 p72), the experience of the self's scrutiny engendering a sense of heightened, tormented self-consciousness (p73). It can lead to individual feelings of isolation, despair, powerlessness, passivity, a sense of inferiority, uselessness, and self-contempt, but above all of exposure: as Pattison puts it, "The whole self feels as if it is available for global scrutiny" (Pattison, 2000 p73).

Advocates of naming and shaming may argue that these are precisely the effects we should be looking for in offenders. Not only are such effects deserved, but also they will have the desired effects in terms of crime prevention, leading the shamed to desist from anti-social behaviour and criminality. Some psychological studies reveal positive effects on individuals and their relationships; in particular, experiencing shame can lead individuals to adopt strategies of submissive appeasement towards those doing the shaming. Shame can register as a disruption in the interpersonal bridge between the self and others, creating a sense of longing for the bridge to be restored (Pattison, 2000 p79). In addition, shame performs a self-evaluative function, leading individuals to measure themselves against others and against external or internal ideals, providing a "compass for moral behavior" (Scheff, 1995 p1056). This internal policing function can inhibit actions that might violate values, standards and rules recognised as important by the individual.

In evaluating the effects of shame, there are two issues. First, how do those subjected to shaming processes actually experience them? Second, what are the possible negative consequences of experiencing a shaming process?

On the first issue, unfortunately there is limited research on how individuals experience "naming and shaming" processes, although there is more evidence in respect of RJ. "Naming and shaming" has not yet been subject to empirical evaluation. The Government, in its guidance on publicising ASBOs, has made several assumptions: first that publicising an offender's personal details will lead to him experiencing "shame"; that the "shame" he experiences as a consequence will be such as to lead him to reflect on his own behaviour and react submissively and contritely; and that experiencing "shame" will deter him from re-offending.

The anticipated general deterrent effect of "naming and shaming" is supposed to work when individuals see others shamed and fear the consequences of being shamed and suffering a loss of reputation and respect themselves; its advocates perceive it as "…the feared experience which generates…self-control" (Braithwaite, 1993 p5). Does shaming actually deter? The deterrence literature has been discussed at length elsewhere, but the broad conclusions we can draw from it are that increasing severity of punishment is unlikely to have a deterrent effect (outside of extremes), while there is evidence that an

increased likelihood of detection can have a deterrent effect (von Hirsch et al, 1999). The literature has little to say about the effect of a loss of reputation on desistance from offending amongst those likely to be subject to "naming and shaming" under the Government's anti-social behaviour strategy (although there is some evidence that for corporations tempted to commit offences such as environmental pollution, a loss of commercial reputation is a factor that can weigh significantly in the decision to offend (Braithwaite, 2002)).

The posited deterrent effects assume a fear of social disapproval amongst those subject to shaming processes. But being shamed is unlikely to deter if the individual cares little about community disapproval, or the censure of those doing the shaming. Shaming processes for such individuals can result in resentment, bitterness and disdain. Foucault, in Discipline and Punish, described the "spectacle of the scaffold" when during executions:

> which ought to show only the terrorizing power of the prince, there was a whole aspect of the carnival, in which rules were inverted, authority mocked and criminals transformed into heroes. The shame was turned round; the courage, like the tears and the cries of the condemned, caused offence only to the law
> (Foucault, 1977 p61).

What is intended as shaming censure can be experienced by the shamed as risible, provoking only resentment and contempt (e.g. if a teacher tells students that they're lazy, and will fail their exams if they don't work harder).

With no guarantee that "naming and shaming" processes will be experienced as intended by shamers, how are RJ processes experienced? Do they induce the expected or anticipated emotional responses? Researching RJ faces particular methodological problems; there is now a broad range of RJ schemes in England and Wales, with differing conceptions of RJ and how it should be delivered, as well as a plethora of practical differences making comparisons difficult (Miers, 2004 p30). Different schemes employ RJ at different stages of the criminal process. Not all seek to induce the type of shame delineated by Braithwaite; some RJ schemes focus on ensuring reparation is made to victims or the community, with the offender's shamed emotional experience being only a subsidiary aim, if it is an aim at all. Such research as there is has tended to focus on participant satisfaction with restorative processes, finding that many victims and offenders feel positive about the experience of participating in them, with high levels of satisfaction about the processes. There is also evidence that RJ has the potential to achieve mutually satisfactory outcomes for victims and offenders (Miers, 2004 p32).

In terms of instrumental outcomes, some aspects of the RJ research indicates that participation in RJ processes can lead to lower reoffending rates than comparable offenders participating in traditional processes only (Miers, 2004 p33). However there is

little qualitative evidence that participation in RJ leads to behavioural or attitudinal change in offenders, and minimal research which has addressed the experiences of individual offenders to assess whether they experienced "shame" during or after participating in RJ schemes: as Miers' concise summary of British research and methodological issues indicates, "shame" has not yet been a key research issue (Miers, 2004). The best we can say at present is that RJ has the potential to induce attitudinal change, which may be linked to feelings of shame, but we do not yet have a detailed picture of how "naming and shaming" or RJ's reintegrative shaming objectives are experienced by offenders.

The second issue, the possible negative effects of shaming, raises more worrying issues. There are dangers associated with "naming and shaming" which RJ does not pose. Braithwaite's argument for reintegrative shaming posits that there is a crucial distinction which criminal justice systems overlook at their peril: shaming can be destructive or constructive. The former occurs when offenders are shamed and cast out of their communities while the latter occurs when shaming is reintegrative. Reintegrative shaming occurs when the offender is in relationships of "densely enmeshed interdependency, where the interdependencies are characterised by …mutual obligation and trust, and…are interpreted as a matter of group loyalty rather than individual conscience" such as with family, friends, and those he respects (Braithwaite, 1989). When condemnation emanates from these supportive individuals, the individual can experience shame but is brought back "into the fold". The dangers of destructive or disintegrative shaming are that the offender will be humiliated, alienated and may retreat into a stigmatized sub-culture of others who have been similarly cast-out out of the community. Research by Solanki et al found that publicising ASBOs can be counter-productive, leading to ASBOs becoming "badges of honour" and exacerbating problems of social exclusion (Solanki et al, 2006).

This idea of offenders being "cast out" as a consequence of the imposition of criminal sanctions is of course not new: it is central to the work of labelling theorists such as Howard Becker in Outsiders (Becker, 1963), and Lemert in his account of primary and secondary deviance (Lemert, 1967). The key ideas of these theorists, and others such as Matza in Becoming Deviant (1969), are highly pertinent in evaluating "naming and shaming" strategies, particularly with their emphasis on how internalising a label imposed by remote legal authorities can deeply and negatively affect self-perception and lead to further criminal behaviour as a result.

For proponents of "naming and shaming" the policy underpinning such processes may actually be a “policy of casting out” (Braithwaite, 1993 p9), and the posited consequences of secondary deviance merely the conscious choice of individuals incapable of respecting community values. Arguably such processes are not solely or even primarily about inducing shame: "naming and shaming" processes, with their inherent tendency to humiliate and exclude, are actually about bolstering community solidarity against crime. Literary examples illustrate this. In Nathanial Hawthorne's The Scarlet Letter (Hawthorne, 1981) Hester Prynn is cast out by her community for adultery and forced to wear an embroidered red 'A' on her clothing. In Margaret Atwood's The Handmaid’s Tale, the Wall is a place where traitors are hanged and displayed, which serves to make Gilead's citizens feel "hatred and scorn" (Atwood, 1987 p43). The most chilling example is perhaps Orwell's 1984: Winston Smith's participation in the "Two-Minutes Hate", the frenzied community denunciation of the Party's arch-enemy, Emmanuel Goldstein, serving also to bolster adoration of Big Brother (Orwell, 1990).

Does RJ raise the same concerns? If RJ is implemented according to principles of reintegrative shaming, with offenders’ actions (rather than the offenders themselves) shamed by supportive community members, then the outcasting and disintegrative effects can be minimised. However the breadth of RJ schemes and the broad umbrella which the term "restorative justice" covers, means not all RJ schemes have reintegrative shaming as a guiding principle. Most importantly, to ensure that the process is supportive and constructive, those involved in operating RJ schemes must be trained to understand the objectives of reintegrative shaming, and the means by which it can be implemented. There is a danger that some RJ schemes will come to exhibit characteristics of degradation ceremonies (as outlined by Garfinkel, 1955), and thus face the same problems as "naming and shaming" initiatives.

More broadly, as several anthropologists and social psychologists have highlighted, the significance and experience of shame are culturally contingent (e.g. Riezler, 1943). The effects of any shaming process will only be properly understood when we appreciate the cultural nuances of both condemnation’s transmission and the recipient’s experience of it. As Harry Blagg argues, some writings on reintegrative shaming assume inappropriately that different cultures “manifest similar mechanisms for ensuring adherence to accepted standards of behaviour and that all societies maintain a similar balance between social structures and emotions such as shame.” (Blagg, 1997 p487). The notion of shame implies consensus about the boundaries of acceptable behaviour; for those offenders who have never been part of the same community as those who are doing the the shaming, the notion of re-integration in to that community may lack meaning, particularly when those boundaries of acceptability are disputed. For example, Blagg has argued that in “family conferences” in Australia, often cited as leading examples of reintegrative shaming in practice, Aboriginal offenders and non-Aboriginal victims (for example) may not identify with the other, or share expectations of reintegration in to the same community (Blagg, 1997 p489). In addition, persons upon whom the condemnation is being visited may not perceive the process as legitimate or worthy of respect, depending on the cultural differences between them and other partipants. In this respect, claims about the effectiveness of reintegrative shaming need to be tempered with appreciation of the possible cultural sensitivities involved.

The Dangers of Confusing the Two Ideas

The two penal strategies are qualitatively different in aims and methods, but there is a danger of conflating "naming and shaming" and RJ. Above all, the Government needs to ensure it recognises and reinforces the distinction between degrading shaming and constructive or reintegrative shaming. If it fails to do so, problems may arise.

First, the Government is in danger of using the language of "naming and shaming" to promote and implement RJ. The White Paper Respect and Responsibility emphasised the community accountability and reparative aspects of RJ, arguing that offenders can be held to account visibly for their actions while also benefitting victims; the White Paper was silent on the reintegrative shaming possibilities of RJ. It is also possible that organisations and individuals implementing RJ schemes will come to think of RJ as synonymous with "naming and shaming".

Second, with the two strategies in danger of being confused by the Government, new policy initiatives may be the confused progeny of the two ideas. For example, the Government is piloting 'Community Justice Centres' aimed at improving links between the community and the delivery of justice (http://www.communityjustice.gov.uk/). Such centres will:

> be able to deal with all low-level disorder offences, housing related matters, especially those relevant to tackling anti-social behaviour. Those who adjudicate would receive specialist training. The aim would be to facilitate better liaison and communication with the courts, thereby reducing delays in the listing of cases and producing more consistent breach sentencing due to increased awareness of local issues and the impact of the anti-social behaviour
> (Home Office, 2003: para. 5.26).

Such initiatives may involve community-centred expressive processes, and as such need clear principles to guide them. Will they be opportunities for expressions of community resentment and lynch-mob justice, or will they be dialogic processes seeking to engage offenders in constructive resolution of conflicts? Encouragingly, initial findings from evaluations of the Liverpool and Salford Community Justice Centres indicate that constructive problem-solving approaches are being adopted (www.communityjustice.gov.uk).

Third, obfuscating the strategies' differences will impact on those working with offenders. For example, Youth Offending Teams (YOTs) work with young offenders and are guided by the statutory aim of "preventing reoffending" (set out in s. 37 of the Crime and Disorder Act 1998). YOTs may well be working with young offenders who are subject to ASBOs and whose personal details have been publicised in line with the 2005 Guidance. Yet the effectiveness of the work that YOTs can do, including reparative and restorative activities, may be compromised by the harmful consequences of being subject to widespread community opprobrium.

Conclusion

Many commentators have noted that "naming and shaming" may be counter-productive (for discussion see Cobb, 2007). This article's aim has been to explicate some of the subtleties of the meaning of "shame" and the dynamics of shaming processes. The two types of shaming processes discussed here are qualitatively different, and the Government needs to recognise this; there may be dangers of conflating the two approaches, in terms of the aims and outcomes of community-based justice initiatives. To the extent that one type of shaming is to be preferred, RJ is by no means the panacea that some of its more fervent advocates claim. But we should be cautiously optimistic about its capacity to shame in constructive, reintegrative ways, subject to deeper understanding of the implications of culturally-sensitive experiences of shaming processes.

References

Atwood, M. (1987) *The Handmaid's Tale*, London: Virago,

BBC News Online (2005a) "Fare Dodgers Exposed By Campaign" 19th May 2005: http://news.bbc.co.uk/2/hi/uk_news/england/west_midlands/4458711.stm

BBC News Online (2005b) "Culture City Shames Litter Louts" 1st April 2005: http://news.bbc.co.uk/1/hi/england/merseyside/4402673.stm

Becker, H. (1963) *Outsiders* New York: TheFree Press.

Blagg, H. (1997) "A Just Measure of Shame? Aboriginal Youth and Conferencing in Australia" *British Journal of Criminology* 37 pp481-501.

Braithwaite, J. (1989) *Crime, Shame and Reintegration* (Cambridge: Cambridge University Press.

Braithwaite, J. (1993) "Shame and Modernity" *British Journal of Criminology* 33 pp1-18.

Braithwaite, J. (2002) *Restorative Justice and Responsive Regulation*, Oxford: Oxford University Press.

Christie, Nils (1977) "Conflicts as Property" *British Journal of Criminology* 17 pp1-19

Cobb, N. (2007) "Governance through Publicity: Anti-social Behaviour Orders, Young People, and the Problematization of the Right to Anonymity", *Journal of Law and Society*, 34(3) pp342-73.

Duff, R. A. (1998) "Desert and Penance" in A. von Hirsch & A. Ashworth (eds.) *Principled Sentencing: Readings in Theory and Policy* (2nd edition), London: Hart.

Duff, R. A. (2001) *Punishment, Communication, and Community* Oxford: Oxford University Press.

Feinberg, J. (1970) *Doing and Deserving: Essays in the Theory of Responsibility*, Princeton: Princeton University Press.

Foucault, M. (1977) *Discipline and Punish*, Harmondsworth: Penguin.

Garfinkel, H. (1955) "Conditions of Successful Degradation Ceremonies" *American Journal of Sociology*, 61 pp420-424.

Garvey, Stephen (1998) "Can Shaming Punishments Educate?" *University of Chicago Law Review*, 65 pp733-94

Hawthorne, N. (1850) *The Scarlet Letter*, Harmondsworth: Penguin(Modern Library Classics).

Hinsliff, Gaby (2005) "US-Style Uniforms for Yobs in New Disorder Crackdown" *The Observer* May 15th

Home Affairs Select Committee (2005) *Anti-Social Behaviour* (Session 2004-5, Fifth Report http://www.publications.parliament.uk/pa/cm/cmhaff.htm)

Home Office (2002) *Justice for All*, Cmnd. 5563, London:HMSO.

Home Office (2003) *Respect and Responsibility: Taking a Stand Against Anti-Social Behaviour*, Cmnd. 5778, London: HMSO.

Home Office (2005) *Working Together: Guidance on Publicising Anti-Social Behaviour Orders*, London: HMSO.

Home Office (2006) *Respect Action Plan*, , London: HMSO. www.homeoffice.gov.uk/documents/respect-action-plan

Kahan, Dan M. (1996) "What Do Alternative Sanctions Mean?" *University of Chicago Law* Review, 63 pp591-653.
Kaufman, G. (1993) *The Psychology of Shame*, London: Routledge.
Lemert, E. (1967) *Human Deviance*, Social Problems and Social Control, New Jersey: Prentice Hall.
Marshall, T. (1999) *Restorative Justice: An Overview*, London: Home Office Research Development & Statistics Directorate. http://www.homeoffice.gov.uk/rds/pdfs/occ-resjus.pdf
Matza, D. (1969) Becoming Deviant, New Jersey: Prentice Hall.
Maxwell, G. & Morris, A. (2004) "What is the place of shame in restorative justice?" in H. Zehr, & B. Toews, (eds.) *Critical Issues in Restorative Justice*, Cullompton Willan Publishing.
Miers, D. (2001) *An International Review of Restorative Justice* (Crime Reduction Research Series Paper 10), London: Home Office.
Miers, D. (2004) "Situating and researching restorative justice in Great Britain" *Punishment and Society*, 6 pp23-46.
Nussbaum, M. (2004) *Hiding from Humanity: Disgust, Shame and the Law*, Princeton: Princeton University Press.
Orwell, G. (1990) *Nineteen-Eighty Four*, Harmondsworth: Penguin.
Pattison, S. (2000) *Shame: Theory, Therapy, Theology*,(Cambridge: Cambridge University Press.
Pratt, J. (2000) 'Emotive and ostentatious punishment: its decline and resurgence in modern society', *Punishment and Society*, 2 pp417-439.
Pratt, J. (1998) 'Towards the Decivilizing of Punishment', *Social and Legal Studies*, 7 pp487-515.
R (on application of Stanley, Marshall and Kelly) v Commissioner of Police for the Metropolis and Chief Executive of London Borough of Brent [2004] EWHC 2229 (Admin)
Riezler, K. (1943) "Comment on the social psychology of shame" *American Journal of Sociology*, 48 pp457-465.
Scheff, T. (1995) "Shame and related emotions: an overview" *American Behavioral Scientist*, 38 pp1053-9
Slack, J (2005) "U-Turn over Jackets of Shame" *Daily Mail* August 3rd, p4.
Solanki A-R, Bateman T, Boswell G and Hill E (2006) *Antisocial Behaviour Orders for Young People*. London: Youth Justice Board for England and Wales
van Ness, D. (1993) "New Wines and Old Wineskins: Four Challenges of Restorative Justice" *Criminal Law Forum*, 4 p251.
von Hirsch, A. (1998) "Proportionate Sentences: a Desert Perspective" in A. von Hirsch & A. Ashworth (eds.) *Principled Sentencing: Readings in Theory and Policy* (2nd edition), Oxford: Hart.
von Hirsch, A., Bottoms, A., Burney, E. and Wikstrom, P-O. (1999) *Criminal Deterrence and Sentence Severity: An Analysis of Recent Research*, Oxford: Hart.
Wintour, P. (2008) '"Labour Plan to Toughen Up On Offenders" *The Times* June 16th p1.
Youth Justice Board (2006a) *Youth Justice – Annual Statistics 2005/6* http://www.yjb.gov.uk/Publications/Resources/Downloads/Youth%20Justice%20Annual%20Statistics%202005-06.pdf
Youth Justice Board (2006b) *Developing Restorative Justice: A YJB Action Plan*, www.yjb.gov.uk/en-gb/News/RestorativeJusticeStrategyGroup.htm

SUPPORTING YOUNG OFFENDERS THROUGH RESTORATIVE JUSTICE: PARENTS AS (IN)APPROPRIATE ADULTS

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Abstract

Set within the wider context of responsibilising youth justice policies, this article heeds academic calls for further research into parent/child dynamics within restorative justice processes (Prichard, 2002; Bradt et al., 2007), by critically analysing and evaluating the role of parents as supporters of young offenders. The aim is not to call into question the entitlement of parents to be present during restorative processes, but to critically examine their suitability to play the role of designated supporters. Drawing upon the literature as well as empirical work conducted by the first author (Hoyle et al., 2002), it will be argued that many of the moralising and responsibilising messages directed at the offender find currency with parents in a way which makes them feel ashamed, embarrassed and as if they themselves are on trial. Parents react to this discomfort by engaging in apologising, neutralising, dominating and punitive discourses. Their reactions not only cast doubt upon their ability to be composed and supportive of their children, but more importantly might adversely affect the dynamics of the process itself. Parental reactions might thereby deny the young person the opportunity to take responsibility for their actions and to contribute to the discussion on appropriate reparation, which could ultimately thwart the chance for reintegration.

Keywords: Restorative Justice; Parenting; Responsibilisation; Youth Justice

Responsiblising Youth Justice

After decades during which young offenders were subject to repeat cautions (Audit Commission, 1996), the New Labour government of 1997 made clear in its White Paper 'No More Excuses: A New Approach to Tackling Youth Crime in England and Wales' (Home Office, 1997) its commitment to holding offenders to account for their behaviours, primarily, though not exclusively, through the pursuit of restorative justice practices. Restorative ideals were enshrined in the Crime and Disorder Act 1998, which introduced

restorative justice (henceforth RJ) processes in youth justice, with the central aims of 'restoration, reintegration and responsibility' (Home Office, 1997 pp31-32). However, concern has been expressed that '…in the prevailing penal climate, the principles of restorative justice have been narrowly interpreted to give undue weight to the responsibilisation of young offenders' (Gray, 2005 p938). This is partly because alongside restorative measures, the Act also introduced interventions aimed directly at responsibilising not only youths, but also their parents, including pre-emptive interventions such as Parenting Orders and Parenting Contracts:

> The Government is determined to reinforce the responsibility of young offenders – and their parents – for their delinquent behaviour….Parents of young offenders may not directly be to blame for the crimes of their children, but parents have to be responsible for providing their children with proper care and control (Home Office, 1997, s. 4.2-4.6.; see also: Downes and Morgan, 2002; Gray, 2005; Williams, 2004).

Wary of the perils of grafting restorative justice onto a youth justice system that has competing priorities, Brian Williams saw the government's apparent commitment to restorative justice 'as part of a strategy of "responsibilization"' (2004 p5), a strategy criticised by Garland and others for 'devolv[ing] responsibility for crime prevention on to agencies, organizations and individuals which are quite outside the state and to persuade them to act appropriately' (1996 p452).

The Role of Offenders' Parents within Restorative Justice

Although academic interest in RJ is longstanding, the central concern of this article, namely, the dangers of responsibilising parents, and in particular their suitability to play the role of offender supporters in restorative processes, has attracted little attention. Where parental involvement is discussed, it 'is almost automatically assumed to be in the best interest of all the parties' (Bradt et al., 2007 p292). It is now 'time to breach the obviousness with which [parents] are almost automatically involved, regardless of possible pitfalls' (Bradt et al., 2007 p291).

In England and Wales, a juvenile under the age of 17, should be given a reprimand or final warning (previously a caution) in the presence of an 'appropriate adult'[1]. Some parents may feel morally obliged to perform this role, but it is clear that many do so because they do not perceive there to be an alternative. In organising RJ conferences, facilitators rarely explain that another family member, friend, or other 'appropriate adult' could attend to support the young person (Hoyle et al., 2002 p24), partly because the legislation states that the most suitable 'appropriate' adult to act on behalf of juveniles is a parent or guardian[2]. The aim of this article is not to call into question the entitlement of parents to be present during RJ processes, but to critically examine their suitability to perform the role of offender supporters.

The suitability of parents as offender supporters is contingent upon a whole range of variables ranging from the parents' own integration within a law-abiding community down to their relationship with the offender and other significant members of the family. As parents often feel responsible for their children's behaviour, and indeed this is part of the government's intent, we argue that they may not be ideally placed to provide support in what is often an emotionally-charged encounter. Indeed, their responses to the process of responsibilisation, and particularly their own anxieties about being judged, may adversely impact on the dynamics of the restorative process. Of course in some cases there will be positive effects of having parents as witnesses during the process, and these may be critically important to the success and enforceability of any reparative agreements. However, the assumption that parental support of young offenders benefits the offender and the process must be challenged. Furthermore, those tasked with arranging conferences should heed our call for greater inclusion of the offender's wider community of concern; other family members, friends, teachers etc, who are less likely to assume responsibility and feel personal shame for the offender's behaviour, yet be sufficiently close to the offender to offer emotional and practical support, and help in the reintegration of the offender into the law-abiding community.

The Thames Valley Study

This article draws on the findings of a three-year evaluation of the Thames Valley Police initiative in restorative cautioning (Hoyle et al., 2002)[3]. Under the Thames Valley (hereafter TV) programme, cases destined for a caution, rather than for prosecution, would be processed by an RJ co-ordinator who would try to arrange restorative conferences involving offenders, victims and their respective 'supporters'[4]. Heavily influenced by the family conferencing approach to juvenile justice developed in Wagga Wagga, Australia (Moore and Forsythe, 1995), the TV model envisaged that a structured dialogue about the offence and its implications, according to a particular sequence of speakers and issues, would have benefits for all concerned. To achieve this structure and sequence, police facilitators were provided with a 'script' with explanatory statements, questions and prompts, aimed at promoting constructive dialogue between all parties to improve the chances of restorative outcomes.

The research was broken down into distinct phases so that interim findings from each could be used by the police to re-shape aspects of their initiative, with a view to improving practice. This article concentrates on phase 4 (the 'full evaluation') and thus draws upon data acquired once police restorative practices were well established and settled, and therefore should represent RJ in TV at its best. All but one of the conferences observed during this phase were tape recorded and the recording was fully transcribed. The quotations used below are taken from these transcripts and are therefore verbatim. Although the RJ conferences drawn upon below took place seven years ago, the same type of approach is used today in many police-led RJ processes, and the focus on parent-child dynamics remains pertinent to all current RJ activity aimed at responding to criminal offences committed by juveniles.

The main body of this article, which draws both upon the literature and the aforementioned empirical work, is presented in two sections. The first shows that parents in RJ conferences experience feelings of guilt, shame and embarrassment, stemming from their perception of being judged and held responsible for the conduct of their child. Indeed, it makes clear that it is largely the RJ process itself, in particular the focus on shaming the offence and making the offender accountable for his or her actions, which engenders these emotional responses. Section two shows that these emotional responses can result in parents engaging in apologising, neutralising, dominating and punitive discourses, which not only cast doubt upon their ability to be composed and supportive to their child, but might also affect the dynamics of the process itself and the parent's ability to support the process. Much of the literature presents the notion of supporting the child as synonymous with supporting the process, but empirical evidence suggests that oftentimes there is tension between these roles. Parental support for the child, for instance, may lead to parents apologising for or downplaying the offence, which is notably unhelpful in a process which is supposed to hold the offender accountable for their unacceptable behaviour. Alternatively, parents may engage in punitive, rather than reintegrative shaming, or coerce the young person into agreeing to a disproportionate reparation agreement in the misguided hope of bringing restoration to the victim.

The Consequences of Responsibilising Parents through Restorative Justice

Consideration of the parent/child relationship casts doubt upon parents' suitability to play a supportive role within a process which may engender feelings of guilt, shame, embarrassment and being judged. Before considering parents' role in the process, it is therefore crucial to consider why they are almost invariably placed in this challenging position.

Core RJ values usually include consensual, non-coercive participation and decision-making (Hoyle and Young, 2002). For parents of young offenders however, 'actual practice would suggest that it is less than voluntary' (Umbreit, 1999 p217). Parents are not blatantly coerced to attend conferences, and not legally required to perform the role of 'appropriate adult', but do feel both practically and morally obliged to act as supporters. Most parents in the TV study felt that the offender had no choice but to participate and that therefore they themselves had no choice, given that the caution could only take place in the presence of an appropriate adult. This is partly because those tasked with arranging RJ conferences give them little or no choice. Assuming that parents are the most appropriate supporters, facilitators rarely explained that another family member, friend, or other 'appropriate adult' could act as supporter. Parents who perceive themselves to be morally or even legally obliged to attend may feel resentful of the process. Add to this the typical dynamics of the parent/child relationship and there is potentially a toxic mix of self-blame and recrimination, which can render them unsuitable supporters in a process aimed at addressing responsibility, restoration and reintegration.

The very nature of the parent/child relationship means that processes intended to hold young offenders to account (Braithwaite and Daly, 1994) often make parents feel they are also being held to account. Cook recounts instances where offenders' mothers felt that their parenting was being judged: 'I felt like everyone thought I was a bad mother' (2006 p115). Notwithstanding findings of considerable parental support for both referral orders and youth offender panels, parents interviewed by Crawford and Newburn also voiced similar concerns that 'they were made to feel inappropriately "on trial" for their child's behaviour', with some amongst them feeling 'that they were perceived to be "at fault"' (2003 p181-2).

According to Prichard, 'In the eyes of most parents, the criminal behaviour of their child will suggest that, prima facie, they are "not succeeding" as parents.' (2002 p334). Many of the conference transcripts from the TV study show parents, in their role as 'offender supporters', expressing concern that their child's behaviour was a reflection of their parenting:

> This is a small community, where everybody does know you and everything he does reflects on the family….Me as his mother, it will come back on me, you know, you're not doing your job properly, you should know [Case 2016].

> but I just found it totally embarrassing…..I'd feel it was a reflection on [me]…if I'd actually shoplifted, I mean I'm a nurse, and I've got access to money and all sort, you know. I mean they have to trust me, and I just feel a real bad reflection on myself, I'm totally embarrassed by it…. [3006].

Parents also explicitly expressed shame and embarrassment during the restorative sessions:

> I'm extremely embarrassed sitting here having to hear what you've (the victim) had to say about the beatings you've had…. [3004].

> I was quite embarrassed actually by him… [3014].

> … and um it's a shameful thing really for me, because I, I wouldn't like anything like that to happen to anyone……As it has happened, the only thing we can do is, you know, apologise, and I do fully sympathise with the family (of the victim)… [3018].

> ….So I felt extremely let down that he'd brought shame to the family. [3014].

The assumption is made in some of the literature (e.g. Braithwaite, 1989) that parents within these processes are no different to 'relevant others', 'individuals invited to attend conferences other than the offender and victim, such as family members, friends, teachers and professionals' (Bradt et al., 2007 p291). This cannot be true if parents feel coerced to attend an RJ session, and then reveal their own shame, embarrassment and guilt. They are

emotionally involved in the process on a personal level, beyond their ascribed roles as offender supporters. Hence, Prichard (2002 p330) is critical of Braithwaite's (1989) original[5] 'assumption that parents of young offenders are similar to any other participants in the ceremony', arguing that his 'one dimensional and simplistic' conceptualisation fails to take into account that 'the especial depth of parent-child relationships differentiates parents from all other supporters' (Prichard, 2002 p331). To the extent that the parent-child relationship is 'different', because a 'child represents to a large degree the product of his or her parents' genes, parenting skills, lifestyles and values' (Prichard, 2002 p333), parents must be differentiated from other supporters. It is this difference which goes to the very root of parents' unsuitability as offender supporters.

Within a youth justice system intent on pursuing responsiblisationist aims, RJ processes which require young offenders to account for their behaviour may in fact result in parents feeling that they need to account for their own behaviours, leaving them feeling punished for being a 'bad parent'. A process which, indirectly at least, casts them as failures 'works as a stigmatising and potentially criminalising mechanism which may engender feelings of stress, alienation and penalisation.' (Parr, 2006 p7). Prichard (2002) concludes that the manner in which parents act 'could be interpreted as reactions to feeling on trial'[6] and the TV data certainly suggest this is true. Whether adequate parental support can be forthcoming in a situation where the unstated but implicit message is that the parents too are to be held responsible for the behaviour of their children must therefore be critically assessed.

Inappropriate Behaviours from Appropriate Adults

The dynamics of a restorative conference can be significantly affected by both the emotional responses of the parent who feels judged within a process which focuses on accountability, and by the nature of that particular parent/child relationship. Building on the evidence presented above, this section shows that parental feelings of shame and embarrassment, and of being judged, manifest themselves within restorative conferences in inappropriate behaviour, such as parents' apologies, techniques of neutralisation, domination of the process, and punitive discourses. These responses not only cast doubt upon parents' ability to be composed and supportive of their children, but more importantly might affect the dynamics of the process itself and thereby impact adversely on the chances of reintegrating the offender or restoring the victim.

Apologising Behaviour

One of the aims of RJ is for the offender, on hearing about the victim's suffering, to feel accountable for their behaviour and express regret at the harm caused by it. An apology is considered to be evidence of this; indeed, it is often referred to as 'symbolic reparation'. Unlike in a courtroom, where lawyers speak for their clients, it is crucial in RJ that offenders speak for themselves. Hence it may be problematic if someone apologises on their behalf. The transcripts of the TV conferences are replete with examples of parents

apologising to victims, and even to police facilitators, for their children's conduct, as the following excerpts show (all are quotations from offenders' parents):

> Really once again I'm really sorry for what my son has done to you and all that, really sorry and I hope you try and pick up the pieces and um, you know, I'm really sorry…. [3018].
>
> … we feel really, you know, guilty ourselves. …. very sorry. …I apologise myself. [2009].
>
> …I'm sorry if my boys have, er, gone overboard… they all should be sort of like er, ashamed of themselves and I'm really sorry this happened to you mate [looking at V].….But er I do feel sorry for you mate, I feel sorry for your family and er, pretty upset that your family's seen you like that….So while I can apologise to you I'm sorry… [3018].

The last excerpt was that parent's first contribution to the conference. These repeated apologies did not appear to be triggered by anything said immediately prior to this intervention, suggesting that the parent saw his main role as to apologise.

Some parents go beyond simply aligning themselves with the victim and his suffering and appear to try to distance themselves from the offender – the very person the parent is there to support:

> I'd just like to apologise to [the victim] and her parents as well. I've heard what happened and it shouldn't have happened. … I'm not sticking up for [the offender] at all, I never have done since she done it… [2004].

If the parent is adamant that the purpose of the apology is not to 'stick up' for the offender, the rationale for the apology seems to derive from the close parent/child nexus and, in particular, the concern that a child's acts may be perceived to be a reflection of poor parenting. As Prichard argues, parental apologies provide the 'clearest evidence of a sense of personal responsibility', corroborated by the fact that in his study and ours 'no other supporter of a young offender … offered any sort of apology' (2002 p335).

Parents' apologies for the prior conduct of their children provide a clear indication of their feelings of guilt, shame and embarrassment. However, while parental apologies may help to restore some victims, the aim of RJ is for offenders to feel independently accountable for their behaviour and apologise only if they feel the need to express regret at the harm their behaviour has caused. In some cases, parental apologies, especially early on in the process, may adversely impact upon the restorative process by effectively disempowering young offenders, by letting them think their parents can make it right for them, leaving them feeling that they themselves are not expected to apologise or make good the harm done. Restorativists are critical of lawyers speaking on behalf of young offenders in court; it may be considered equally, if not more, unacceptable for parents to be doing just this in a restorative conference.

Neutralising Behaviour

Whilst parental apologies may prevent some young offenders taking responsibility for their behaviours, parents excusing their children's behaviour will surely subvert restorative principles, most notably offenders being held to account for their actions. Prichard (2002 p336) found examples of 'parent defences', what we refer to as 'parental techniques of neutralisation', drawing upon the work of Sykes and Matza (1957). Fully aware that they are being judged, parents may attempt to suggest that the offence is not so serious or, alternatively, that the offender, or indeed themselves, are not to blame. Parental techniques of neutralisation can be seen at two levels, and provide evidence of parents' unsuitability as offender supporters.

Offence-level neutralisation involves the parent downplaying the incident, something likely to frustrate other participants who are keen for the offender to acknowledge their culpability. In case 1020, after insisting that he was a good parent who has tried to teach his son right from wrong, the offender's father goes on to state that he 'can well understand how [his son] committed [the offence] because the blinkers go on and he just wants the excitement of riding his bike'. Harking back to when he first got a bike, he suggested that his son was only in trouble because the law was no longer so permissive: 'safety regulations are tighter than when I first rode a bike as a kid so it's harder for kids these days to stay within the law'. He continued to downplay the significance of the offence, emphasising the 'need to move forwards'. In case 2002 a mother of one of two boys cautioned for burglary of a school similarly tried to downplay the offence and neutralise the boys' guilt by claiming that the school should take some responsibility for leaving the property vulnerable to break in and, further, that 13 year olds will take things left unattended in this way. Adopting a 'boys will be boys' philosophy on youth offending (Klein, 2006) she asserts: 'they were just mucking about like lads do'. This was also apparent in case 2016, where a father of a young offender who had caused criminal damage to a greenhouse commented 'boys are boys, they go out and they mess about, which I can accept …'

There were similar comments made by parents in other conferences, especially on the theme of drug misuse, with some parents making 'neutralising' comments about how 'everyone's taking drugs' [e.g. 2013], but also with reference to shop theft [e.g. 3001]. Furthermore, many parents tried to excuse their children's behaviour by blaming 'peer pressure' [e.g. 3014]. In these examples, it was clear that the parents were trying, in a rather clumsy way, to support their children. By playing down the offence or blaming peers, they were suggesting that the child was not fully culpable for the harm caused. In this sense, their support for their child was clearly at odds with the aims of the restorative process.

The tensions inherent in support for the child and the process were similarly evident in other cases where parents appeared to be unable to disapprove of the child's behaviour, or thought it had all been blown out of proportion. For all the attention devoted in the literature to reintegrative shaming, and in particular the importance of having the

offenders' behaviour disapproved by their 'community of care', the fact remains that parents may not unequivocally disapprove of the behaviour. Parents feeling personally ashamed or embarrassed may find relief in playing down the offence, leaving offenders feeling there is little for them to feel sorry about (see also Bradt et al., 2007 p297).

The second level parental technique involves neutralisation at the personal level, with the parent neutralising their own personal responsibility for the offence in particular, or their child's behaviour more generally. This can be seen when a parent portrays a child as somehow pathologically 'bad', or provides an account of the child's upbringing to suggest that he or she has not been raised to behave badly. For example, in case 3002 a father frequently referred to his son as 'a hopeless case', not to be trusted by his family or friends, and as a person 'always thieving' and 'likely to go on doing so.' There were even more examples of cases where parents spoke at some length about their attempts to teach their children right from wrong, as the following excerpts show:

> We brought our daughters up, or tried to bring them up, with a sense of right and wrong, what they should and shouldn't do…. [3004].

> We haven't brought our children up to be like that so I've got no idea what brought them up to do that. [3018].

> I just feel so disappointed. You know, I mean we, we always brought her up to, to understand, you know, about honesty, you know, shoplifting, I mean we've been over it time and again … She hasn't been brought up like that, to behave like that. It's total…disappointment. [3006].

Parents are not speaking to their children when they make such comments; they are communicating directly with the other adults at the conference, usually with the victim or parents of the victim, or the facilitator. The TV case transcripts suggest that in most cases insistence that the offensive behaviour was an aberration is an attempt to persuade others that they have not been ineffective parents, rather than a plea for those present to understand that their child is not a bad person. As Prichard (2002 p336) argues, such reactions are the most obvious attempts by parents to diminish their own responsibility. This form of neutralisation – which provides clear evidence that parents feel that others are judging them for their child's behaviour - avoids the problem of the young person being denied the opportunity to take full responsibility for their actions, but does not maintain the crucial restorative distinction between act and actor, nor does it result in young offenders feeling supported in the conference. Parents may well be correct in insisting that their parenting skills are not to be blamed for their children's behaviour, but by expressing this in such stringent ways, they are distancing themselves from the very people they should be supporting. Some young offenders will hear these explanations as: you did the crime, now you're on your own - an unfortunate result of parents' attempts to assuage their guilt and shame. Parents' suitability to play the role of offender supporters is certainly undermined by the fact that their defensive comments can leave children exposed and lacking in support.

Dominating Behaviour

Since Braithwaite's (1989) 'reintegrative shaming' thesis was first adopted by those running RJ conferences (Hoyle, 2007), there has been an assumption in the RJ literature that having offender supporters present during restorative sessions will help to shame the inappropriate behaviour whilst ensuring that the offender is then reintegrated into a caring pro-social community, and that offenders' parents are particularly well-suited to the task because of their unconditional love and support. This thesis fails to consider that they are the people most likely to feel judged, ashamed and embarrassed by their child's actions and that this is likely to impede their ability to be supportive. Parents' support should help the young offender to find the courage to speak out about what they did, explain the context without making excuses, and explore how they feel they could put right the harms caused by their actions. However, the aims of empowerment cannot be realised if parents respond to the stress of the encounter by dominating the session. In Karp et al.'s study, 'Both coordinators and panel members reported that parents were frequently very vocal during the meetings, sometimes undermining their child's ability to be an active decision-maker in the process' (2004 p210).

In some TV conferences the contributions of parent supporters account for a large proportion of the number of words spoken during the session. In case 3006, for instance, one mother spoke more than three times as much as her daughter and her co-offender, accounting for 17% of all words spoken in a conference which had six participants (the two young offenders only spoke 5% of the words each). More alarmingly, perhaps, is case 3014, cited below, where one of the young offender's mothers spoke more than a quarter of the total words (27%) in a conference involving six participants and two offenders. Again, the offenders' contributions are extremely limited: one spoke only 2.7% of the words, with the other speaking 4.6%; the other mother spoke almost 20% of the words, with the victim accounting for only 11%. The following excerpt from this case provides evidence that one of the mothers was not only verbose, but that she dominated the process by speaking for her son even when he was being asked fairly innocuous questions. The facilitator (F) was trying to encourage the young offender (O) to empathise with the victim by exploring how he might feel if something of value to him was stolen, but he is given little opportunity to do so, despite repeatedly addressing the questions directly to him:

F: Have you [looking at the offender] ever had anything taken yourself? Has anyone stolen anything from your in the past?

O: Yeah.

F: Well what have they stolen?

Parent: Bike. Mountain bike.

F: Mountain bike. Do you like using your bike?

Parent: He did.

F You used to ride it a lot?

Parent: Yeah, he had it for Christmas.

F: So how did you feel then when that was gone?

Parent: He was gutted.

Young offenders can be reticent when put on the spot by challenging questions; some are monosyllabic. A good facilitator is comfortable with the inevitable pauses in a conference when they have asked a young offender to explain his actions or motivations. Children need time to consider their responses but parents often feel extremely uncomfortable during these silences and, perhaps understandably, fill the gap to release the tension and relieve their child. Case 1019 is a good example of a case which had very many relatively brief pauses following the facilitator addressing the young offender, which are immediately followed with a reply from his father. The more the father interrupted, the quieter the child became.

Notwithstanding the theoretical appeal of empowering the offender, we remain sceptical of the extent to which parental involvement in restorative processes will realistically meet the expectations associated with empowerment: 'empowerment of young people is often not accomplished: the young are often silenced by "a room full of adults"' (Braithwaite, 2002 p153, quoting Haines, 1998 p93). As Bradt et al. point out, 'the fact that relevant others [the parents] are invited to counteract domination [by victims] does not exclude the risk that relevant others can in turn dominate the process in several manners' (2007 p297). That parents might feel the need to speak for their children, and thereby dominate the session, is illustrative of their feeling 'responsibilised' for their child's behaviour. Furthermore, their domination might not always take the form of talking for their children – in the way most parents do to some extent – but may result in them dominating the child in a way that is clearly punitive.

Punitive Behaviour

Punitive parental domination is a far cry from Braithwaite's concept of supportive and reintegrative parents. It is evident when parents take out their frustrations on their child, by demanding that punitive action be taken against them, as in the following case:

Parent: ….he hasn't learned his lesson….

F: Mm.

Parent: Throw the bloody book at him if I was you. [3 second pause] I'm serious. I'm serious….Lock him up and throw the bloody keys away.

He continued with this theme further on in the conference by saying directly to his son:

> I personally feel if you, if you were caught driving it, I don't stand in the way of them [by which he means the police] giving you a beating. Give you a good beating so that you realise you've done wrong. What's happened here [referring to the restorative conference] is nothing! This is nothing. You deserve more than this.

He finished his punitive rant with the 'when I was young we got a smack round the ear and it never done me no harm' theme [3007]. This father was asked by the facilitator at the start of the conference why he had accompanied his son to the conference. He explained his presence by saying 'Well because he's a minor', when prompted further, he also conceded 'I suppose, um, I'm part responsible for what happened. You know, because um y'know maybe if I'd put my foot down a bit more on him…' This comment demonstrates his sense of unease that his own parenting may be partly to blame, which probably fed his punitive, distancing, and generally unsupportive stance.

In another case [1019] a boy is 'supported' by a father, who readily admits that he has assaulted his son ('I socked him round the head, not once but twice or three times' for 'smirking over not doing his homework') and a step-mother who does not have a kind word to say about him. Any reparative attempts made by the boy are dismissed by her as disingenuous. After a lengthy exchange between the parents and the boy, which make clear the low opinion the supporters have of him, and their lack of faith that he can ever make anything decent out of his life, it is left to the facilitator to theme in some of the reintegrative messages that should be central to a restorative approach. This is something supporters should do; it is not the role of a neutral facilitator.

Other parents, whilst not overtly punitive during the conference, are, nonetheless, dismissive of their children or careless about the things they say, even cruel in some instances. For example, in case 2011, a mother refers to her son as a 'hothead' and says to him: 'you must admit you've got a bit of a temper, haven't you?' She continues by comparing him to his (absent) father, who she has already made clear is 'no good'. Another mother calls her son 'brain-dead' during the conference [3002]. Whether attempts to excuse the child's behaviour (he's impulsive, and therefore not fully culpable) or excuse their own parenting (it's genetic, and certainly not from my side), these utterances are not respectful. Furthermore, they create a distance between parent and child and fail to maintain the critical distinction between the act and the actor, apparently in the attempt to minimise the parent's shame.

'I'm Hurting Too': Assaults on Parental Self-Esteem

> I was … really depressed, about the whole thing. … I was really upset you know. I was on holiday, that spoilt the holiday for me, and, em, so, I took it really badly. … it took me about a week to, em, get over the first initial shock [3013].

This quotation from one of the TV transcripts describes the harm caused by crime. However these are not the words of the victim, but the mother of the young offender. The TV restorative conferences, like Prichard's (2002) Tasmanian conferences, provided clear evidence that the restorative process can, and often does, engender in parents feelings of guilt, shame, embarrassment and concerns about being judged. Parents feel that their children's behaviour reflects on their parenting skills. When their children succeed in education or sport, or shine in social situations, they glow with pride, feeling that the success reflects well on them. Conversely, when their child transgresses they feel the pain of being judged to have failed adequately to teach them right from wrong and equip them with the social skills to avoid the transient gratifications of deviance. Because parenting is a socially valued task, highly esteemed by society, to succeed in parenting does wonders for parents' self-perception, but to fail can challenge the self-esteem and self-efficacy of even the most confident parent; it can be devastating for those with already low self-efficacy. Bandura's (1989) concept of self-efficacy, which Prichard draws on, refers to parents' perceptions of their ability to parent well, it is a more task or skill focused concept than the broader notion of esteem. But what is clear from both the Tasmania and the TV data is that these concepts are inextricably linked.

Braithwaite's theory of reintegrative shaming posits that:

> The effectiveness of shaming is often enhanced by shame being directed not only at the individual offender but also at her family….a shamed family … will often transmit the shame to the individual offender in a manner which is reintegrative as possible (Braithwaite, 1989 p83).

However, the proximate nature of the parent/child relationship renders difficult a central tenet of this thesis: the desirability of drawing a distinction between disapproving of the criminal act while treating the actor as essentially good[7], as was clear in case 3002, where the father refocused attention from the act to the offender, dismissing him as a bad person. Prichard considers at length 'the dangers inherent in Braithwaite's assertion that directing shame at parents of young offenders can be conducive to reintegrative shaming.' (2002 p330) He highlights the importance of paying close attention to parental feelings of condemnation and stigmatisation: 'If this feeling is ignored, the conference can stigmatise parents, damage the confidence of already diffident parents or put unnecessary strains on adolescent-parent relationships' (2002 p338).

Parental efficacy - a parent's beliefs in his or her ability to guide their child in the right direction and provide a family life conducive to good behaviour – can be further challenged by the child during the restorative process and by other participants, for example victims. Children may seek to blame their environment for their behaviour. Parents may feel relieved if their children blame their peers, and indeed, as we saw above, they are only too happy to suggest that their child is easily led. But if the child blames his or her home life or a familial influence, the parent will likely feel more uncomfortable and become defensive. Similarly, victims may imply that parents have not done all they could to prevent the offence. Given the strong responsibilisation philosophy behind current youth justice policies, including RJ, this is hardly surprising. The low self-esteem of some parents entering the restorative conference can be further depressed by questioning which, in seeking to understand the offending behaviour, may unearth problems within the family or the parent/child relationship. Hence, we witness a range of behaviours demonstrating the parents' anxiety and desire to shift the focus away from them: apologising, neutralising, dominating, and punitive discourses, which adversely impact upon the dynamics of the restorative process.

Responsibilising parents - who are feeling victimised - for their children's behaviour and then expecting them to act in a supportive manner might well be too much to expect from many parents. The TV data is replete with examples of parents imploring their children to consider how their actions have affected them, as well as the direct victims. This can be used to good effect. It 'may bring it home [to the offender] that it is not only the victim who experiences the bad consequences of his actions, but that something similar applies to his loved ones, the people he cares for and who care for him.' (Wiejers, 2002 p73). As one mother told the other participants in a TV conference:

> I just said you know, you just didn't hit [the Victim], I said, you hit everybody else around you. I said you putting us through … it's embarrassing and, you know, you can't, and I just told her she couldn't do that. You know. It's not fair [2004].

Conceiving of parents as secondary victims, and acknowledging that they are not best placed to support their children, raises three related questions: Who is best placed to support young offenders? Should parents participate in conferences? And, if so, should they be supported by others?

Who Should Support Young Offenders?

Many academics presume that 'parents are … an irreplaceable resource for young offenders' (Bradt et al., 2007: 294); a view apparently shared by practitioners. Appropriate support for young offenders can only be identified from thorough preparation, which was not apparent in most TV cases. Prior to the conference, the majority of offenders in the TV study were not asked who they would like to support them. Research in adjacent fields – such as that produced by the mental health charity 'Young Minds' - shows that when children are anxious about participating in a new or a challenging process they almost

invariably want their parents to be close to them, as their preferred source of support. However, whilst many in the TV study would undoubtedly have chosen their parents as their key supporters, a few were very clear, in interview, that they had not wanted this - for example the boy in case 1019 discussed above, who was berated throughout the conference by his unsupportive dad and antagonistic step-mother.

Those tasked with organising conferences need to talk at length with all the 'stakeholders' to establish who should be invited to attend and who is best placed to support the key participants – victims, offenders and young offenders' parents. Sometimes another family member can perform the role of offender supporter - an aunt or uncle, for example - but sometimes the facilitator will need to look beyond the family to significant others in the offender's life; perhaps an admired football coach or a respected teacher or neighbour; sometimes a family friend. They need to be close enough to the offender to care about them, and to invest in their reintegration, but not so close that they feel the child's bad behaviour reflects badly on themselves. They will need to be interviewed to assess their suitability and prepare them for their role by explaining the purpose of the process and the main RJ values.

If this preparation had taken place in case 3001 the young offender would not have been left with no support. This girl, who was cautioned for shop theft, spent the 90 minutes of the conference with her head down, quietly crying into her collar. She was hardly able to respond to questions and when she did manage to speak was mostly monosyllabic. Indeed our calculations, based on the full transcript, show that she spoke only 0.5% of the words. She was desperately in need of support but her supporters - her mother and aunt - were unable to provide this. They too were so upset and sobbed intermittently during the conference. Again, the mother spoke only three percent of the total words, the aunt just over one per cent. The aunt's only contributions were to make clear how upset and disappointed she was. By way of comparison, case 2016 benefited from the presence of the offender's teacher who was supportive to the offender and made contributions that helped to restore other participants, which the boy's parents, both present, were demonstrably unable to.

Should Parents Participate in Conferences?

If parents are harmed by their children's offending behaviour, and RJ is aimed at restoring the harms caused by offences, parents have a legitimate role to play in restorative conferences, although not as the primary supporters of their children. Furthermore, if most children want their parents with them they must not be excluded.

In a few TV cases parental involvement seems to have brought about a positive shift in the dynamics of a parent/child relationship, even if it hindered the main aspects of the restorative process. One conference [2011] began with the young person and his mother sitting apart without communicating. Their criticisms of each other made clear their individual problems and fundamental difficulties in their relationship. Through effective facilitation they finally broke through an impasse in their relationship. Talking openly for

the first time in years provided some catharsis, with the young person breaking down in tears and pleading with his mother to spend more time with him. There were less dramatic, but nonetheless impressive, results for a few other families. Overall, the follow-up interviews conducted with all conference participants months after the meeting suggested that for 28 per cent of the offenders, where there were reliable data (n=65) on this issue, the restorative process had produced beneficial effects on their relationships with their family or friends, and in none of the cases was a negative effect apparent.

Parents' ongoing relationship with their children provides a further reason for their participation in conferences. The literature makes clear the importance of parental support in securing compliance with reparation agreements, and the shift in the dynamics of the parent-child relationship may bode well for desistance from crime (Weijers, 2002 p73; Karp et al. 2004 p215; Bradt et al, 2007 p295).

However, if parents are to play a role in the conference and not produce the unfortunate dynamics described above, they must be better prepared before they participate. At present, a brief telephone conversation is usually the only contact a facilitator will have with parents before a conference. This may not be adequate to explain the aims of the process. For example, parents need to know before they attend a conference why it is important that the young person be given the space and encouragement to be accountable for their actions and why derogatory statements and bullying can inhibit this process. They also need to be reassured that their parenting or lifestyle is not on trial. In other words, if parents were properly 'briefed' before a conference some of the problems of parental involvement could be avoided.

Should Parents have their own Supporters?

RJ conferences can provide 'the basic ingredients for disintegrative shaming for parents …; shaming, potentially no community of concern with which to maintain "bonds of love or respect" (Braithwaite, 1989 p101), and no formal forgiveness.' (Prichard, 2002 p339). Whilst some parents are so emotionally affected by the offence that they can offer no support to their children, if they feel harmed and shamed by the process there is no justification for denying them a supporter. While parents are defined as 'offender supporters' there appears to be a problem of infinite regression in asking supporters to bring supporters, but if we reconceptualise them as parties affected by the offence, we can encourage them to identify appropriate people to support them. Only a fifth of parents in the TV study recalled being asked if they would like someone to accompany them and so, not surprisingly, only a very few bought anyone with them. However, in interviews after the conference some (especially single parents) said they would have liked to have someone else there to support them.

Conclusion

This article is not intended as a criticism of restorative processes, or parental involvement in them. However, it has shown that the very nature of the parent/child relationship means that the wrongdoings of young offenders are felt to reflect negatively upon their parents, causing them to experience shame, embarrassment, and guilt. As a result of feeling judged and experiencing low self-esteem, parents often engage in apologising, neutralising, dominating, and punitive discourses, which seriously impinge upon the support they provide, and which also inevitably impact upon the dynamics of the process. As active participants in the process, who are being 'responsibilised' for their child's behaviour, they are not ideally placed to be supportive. This is the case for most parents, although we could have provided some examples of supportive parents who managed perfectly the tensions inherent in shaming the act but then reintegrating the child into a safe and loving relationship (e.g., cases 3015 and 3008). However, not all young offenders have ideal family backgrounds. Some have parents who engage in criminal activity, or who fail unequivocally to condemn it. Others' families are so impoverished, both financially and emotionally, that the parents are unable adequately to support their children. Furthermore, when the parent/child relationship has irreparably broken down, parental involvement in the process may, in Weijers' words, 'be pedagogically irresponsible towards the young person' (2002 p79). It is of crucial importance therefore not to uncritically assume that parents are best placed to support their children, but rather to draw upon the offenders' wider 'community of care' to identify people who are concerned about the young person, understand the purpose of RJ, but are not emotionally entangled.

End Notes

1. Crime and Disorder Act 1998, s. 65.

2. Police and Criminal Evidence Act 1984, Code C, para. 1.7.

3. The authors are indebted to Professor Richard Young who worked with the first author for the duration of the Thames Valley project, and to Roderick Hill who assisted Hoyle and Young during the latter phases of the study.

4. Where there was no victim able and willing to meet with the offender (including, of course, cases where there is no identifiable victim) , a 'restorative caution' would take place instead, in which the police officer facilitating the process would 'theme in' any victim's views at the appropriate point. In over half of the 56 restorative meetings observed during the fourth stage of this study there was no victim present at the meeting (Hoyle et al., 2002: 12).

5. Prichard (2002) acknowledges that 'Braithwaite's own position on this matter has changed since the publication of Crime, Shame and Reintegration (see, e.g., Braithwaite and Braithwaite, 2001; Harris, 2001); however, because of the influence of this seminal text, he feels it is important to explore its 'significant weakness'.

6. Prichard argues that this is exemplified in four categories of parent behaviour: '(a) apologies by parents to conference participants, (b) onerous or magnanimous undertakings offered by parents, (c) "defences" to perceived assumptions that they are inadequate parents, or that their child is "bad", and (d) denial of their child's culpability, and, disinterest in the conference' (2002: 335).

7. The theory posits that the best way of controlling crime is to induce a sense of shame in offenders for their actions whilst maintaining respect for them as people (because to condemn them as 'bad people' might push them towards deviant identities, commitments of sub-cultures).

References

Audit Commission (1996) *Misspent Youth: Young People and Crime*, London: Audit Commission.

Bandura, A. (1989) 'Regulation of cognitive processes through perceived self-efficacy', *Developmental Psychologist*, 25 pp729–735.

Bradt, L., Vettenburg, N. and Roose, R. (2007) 'Relevant Others in Restorative Practices for Minors: For What Purposes?' *The Australian and New Zealand Journal of Criminology*, 40(3) pp291-312.

Braithwaite, J. (1989). *Crime, Shame and Reintegration* Cambridge: Cambridge University Press.

Braithwaite, J. (2002) *Restorative Justice and Responsive Regulation* Oxford: Oxford University Press.

Braithwaite, J. and Daly, K (1994) *'Masculinities, Violence and Communitarian Control'*, in Newburn, T. and Stanko, E (eds.) *Just Boys Doing Business? Men Masculinities and Crime*, London and New York: Routledge.

Braithwaite, J., & Braithwaite, V. (2001). 'Shame, shame management and regulation', in E. Ahmed, N. Harris, J. Braithwaite, & V. Braithwaite (eds.), *Shame management through reintegration*. Cambridge: Cambridge University Press.

Cook, K. (2006) 'Doing difference and accountability in restorative justice conferences', *Theoretical Criminology*, 10(1) pp107-124.

Crawford, A. and Newburn, T. (2003) *Youth Offending and Restorative Justice: Implementing reform in youth justice*, Cullompton: Willan.

Downes, D. M. and Morgan, R. F. (2002) 'The British General Election 2001: The centre right consensus', *Punishment and Society*, 4(1) pp81-96.

Garland, D. (1996) 'The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society', *The British Journal of Criminology*, 36(4) pp445-471.

Gray, P. (2005) 'The Politics of Risk and Young Offenders' Experiences of Social Exclusion and Restorative Justice', *British Journal of Criminology*, 45 pp938-957.

Haines, K. (1998) *'Some Principled objections to a Restorative Justice Approach to Working with Juvenile Offenders' in Walgrave*, L. (ed.) Restorative Justice for Juveniles: Potentialities, Risks and Problems for Research, Leuven: Leuven University Press.

Harris, N. (2001) 'Shaming and shame: Regulating drink-driving', in E. Ahmed, N. Harris, J. Braithwaite, & V. Braithwaite (eds.), *Shame management through reintegration*. Cambridge: Cambridge University Press.

Home Office (1997) *No More Excuses – A New Approach to Tackling Youth Crime in England and Wales*, Cm 3809, London: Home Office.

Hoyle, C. (2007) 'Policing and Restorative Justice' in G. Johnston and D. Van Ness (eds) *Handbook of Restorative Justice*, Cullompton: Willan.

Hoyle, C., Young, R. and Hill, R. (2002) *Proceed with Caution: An Evaluation of the Thames Valley Police Initiative in Restorative Cautioning York:* York Publishing Services.

Hoyle, C. and Young, R. (2002) Restorative Justice: Assessing the Prospects and Pitfalls in M McConville and G Wilson (eds.) *The Handbook of the Criminal Justice Process*, Oxford: Oxford University Press.

Karp, D. R., Sweet, M., Kirshenbaum, A. and Bazemore, G. (2004) 'Reluctant Participants in Restorative Justice? Youthful Offenders and Their Parents', *Contemporary Justice Review*, 7(2) pp199-216.

Klein, J. (2006). An invisible problem: Everyday violence against girls in schools
Theoretical Criminology, 5 (10) pp147-177.

Moore, D. and Forsythe, L. (1995) *A New Approach to Juvenile Justice: An Evaluation of Family Conferencing in Wagga Wagga*. Wagga Wagga: Charles Sturt University.

Parr, S. (2006) The Respect Action Plan: A New Approach to the Most Challenging Families? Workshop 15: Welfare Policy, Homelessness and Housing Exclusion. *The European Housing Studies Network*, University of Ljubljana, Slovenia, July 2 - 5.

Prichard, J. (2002) 'Parent -Child Dynamics in Community Conferences - Some Questions for Reintegrative Shaming, Practice and Restorative Justice', *The Australian and New Zealand Journal of Criminology*, 35(3) pp330-346.

Sykes, G.M and Matza, D. (1957) 'Techniques of neutralization: a theory of delinquency', *American Sociological Review*, 22 pp664-70.

Umbreit, M.S. (1999) 'Avoiding the marginalization and "McDonaldization" of victim-offender mediation: A case study in moving toward the mainstream', in G. Bazemore and L. Walgrave (eds.), *Restorative juvenile justice*. Monsey, NY: Criminal Justice Press.

Weijers, I. (2002). 'Restoration and the Family: A Pedagogical Point of View', in, Lode Walgrave, (ed.), *Restorative Justice and the Law*, Cullompton: Willan.

Williams, B. (2004) 'Recent UK legislation on offenders and victims of crime: restorative justice or co-option?' Workshop 16: RJ policy development and legislation. *Restorative Justice in Europe: Where are we heading? Budapest, Hungary*, October14 -16.

THE PROBATION SERVICE REPORTING FOR DUTY: COURT REPORTS AND SOCIAL JUSTICE

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Abstract

The probation service provides criminal courts with information on people who offend, before they are sentenced, by utilising three report formats. Firstly a comprehensively written pre-sentence report can take up to three weeks to prepare. Secondly a briefer document completed within five days, known as the fast delivery report, predominantly relies on a tick box format. The third category is oral feedback. Significantly the criminal justice system is being encouraged to call upon the services of the two briefer formats, primarily because of the time and costs involved in preparing a full report. The central concern of this paper is to explore this shift of emphasis, particularly within magistrates' courts, which militates against the probation service undertaking a detailed analysis of the social circumstances of offenders. This has potentially serious implications for criminal and social justice.

Key words: probation, reports, offenders, social circumstances, efficiency, criminal and social justice

Introduction

The probation service in England and Wales has been providing oral and written reports to criminal courts on people who offend for over a century. Occasionally issues have been raised about the content and quality of reports in that they have not always revealed an anti-punitive perspective; proposals for custody have contributed to an escalating prison population; they have also drawn people into the net of social control by advocating supervisory sentences when a fine or discharge would have been appropriate (Bean, 1976; Cohen, 1985; Box, 1987; Carter, 2007). Concerns have also been raised about the discriminatory nature of reports on ethnic minorities for not containing a sentencing proposal, culminating in punitive outcomes (Haines and Morgan, 2007). Pertinently a number of potential difficulties are beginning to surface around fast delivery and oral reports, in contrast to the standard delivery pre-sentence report, which could restrict the ability of probation to provide a holistic analysis of the circumstances within which offending behaviour occurs. This, in turn, has implications for the understandings,

judgements, and responses of the magistrates' courts particularly in promoting criminal and social justice.

Justice is a complex term to unravel because what is considered to be right and fair can be defined in different ways by those organisations comprising the criminal justice system. For example, justice embraces having regard to an offender's needs, just as much as keeping the law abiding safe and attending to the needs of victims. Moreover justice involves adherence to procedural rules and legal requirements, which expresses the notion of equality before the law, but considerations of social justice are also relevant, which acknowledges differences between people appearing before the courts from diverse social backgrounds. In other words, it can be argued that probation and the courts have a moral obligation to take account of relative deprivation, disadvantage, and inequality, prior to arriving at sentencing decisions. With these preliminary thoughts in mind, the following explores changes in the relationship of the provision of information by the probation service to courts, the type of report format selected, and the implications for justice.

Brief Overview of Reports for Courts

In the first of four papers on the history of ideas in probation, Bill McWilliams (1983) suggests it is difficult to say exactly when the police court missionaries became involved in making enquiries on offenders before sentence. Nevertheless it was probably around the 1887 Probation of First Offenders Act. Subsequently, paragraph 36 of the Departmental Committee on the Probation of Offenders Act 1907 (Home Office, 1909) recorded that the first probation officers were undertaking preliminary enquiries for magistrates. Additionally, it is 'obviously an advantage to the probation officer to know all the circumstances relating to the offence…' (paragraph 37 and italics added). In one of the earliest books written on the inchoate probation system, Cecil Leeson confirmed that probation officers were involved in making enquiries for courts to determine suitable cases for probation supervision (1914, p67). Such enquiries were conducted by taking note of the offender's character, domestic circumstances, education and employment, associates and habits. Arguably this was during a period when offending behaviour was constructed by a narrative of character defects and moral weakness, rather than theorising it could be a response to inequalities generated by the political economy. Furthermore, by the 1930s, comprehensive advice was being provided on the preparation of written reports for the courts (Le Mesurier, 1935).

By the rehabilitative orientated 1950s (Home Office, 1959), the Streatfeild Report (Home Office, 1961), was in part concerned with selecting the most effective form of treatment for offenders. The probation system had by this stage evolved beyond its theological phase (1876-1930s) to a more secular, professional, and 'scientific' expression, associated with a personalised medical-treatment model of corrections. It should also be acknowledged that the Streatfeild Report resulted in a burgeoning of reports for courts (Bottoms and McWilliams, 1986; Bottoms and Stelman, 1988). Moving on, there are copious references to the importance of probation reports in Haxby (1978, p136ff.) and by the 1980s, when

some 200,000 were being prepared annually, the social enquiry report was potentially an instrument for diverting offenders from custody in the post-rehabilitative era (Home Office, 1984). The Criminal Justice Act 1991 transformed the social enquiry report into the pre-sentence report in a more justice than treatment orientated criminal justice system (Whitehead and Statham, 2006). Therefore, notwithstanding the different philosophical contexts within which reports have been prepared since the 1880s – theological, welfare, treatment, rehabilitative, justice, and punishment in the community – they have constituted a central feature of probation practice for over 100 years.

Current Legislative Position

Section 158 of the Criminal Justice Act 2003 (CJA 2003) provides the legal basis and rationale for the preparation of reports. Accordingly, a report is prepared 'with a view to assisting the court in determining the most suitable method of dealing with an offender'. Furthermore, s160 refers to other reports, which means that, in addition to the comprehensively written pre-sentence report, other formats are possible. Several years ago the probation officer working in the courts could be asked by magistrates and judges to deliver a stand-down report if this was appropriate. In such circumstances, a case was stood down by the court (between 30 minutes to 1 hour) to enable probation to conduct a brief interview before delivering verbal feedback to bring matters to an expedited sentencing conclusion. More recently, this practice metamorphosed into the specific sentence report which involved the preparation of a briefly written document, which in turn has been further refined into the fast delivery report. Therefore, it is currently possible for the probation service to be involved in the preparation of three different report formats which can be elucidated as follows.

Firstly, the comprehensively written pre-sentence report, structured by the computerised Offender Assessment System (OASys) and National Standards, is normally prepared within an adjournment period of 15 working days (10 days if the offender is remanded in custody). The adjournment period enables probation to conduct interviews at the office and/or home of the defendant, in addition to making relevant investigations and verifying information. This is a detailed report because it takes cognisance of the following OASys headings: offending information; analysis of the offences; accommodation; education, training and employability; financial management and income; relationships; lifestyle and associates; drug and alcohol issues; emotional wellbeing; thinking and behaviour including the offender's attitudes. Furthermore the author has a duty to consider risk of re-offending and harm prior to making a sentencing proposal for the court to consider.

Secondly, a fast delivery report should ideally be completed on the day requested by the court (certainly no more than five working days). In other words, interviewing and writing-up the document, normally by the court duty officer, should be completed within a couple of hours. This format, unlike the full report, utilises a series of tick boxes to expedite the presentation of collected data. However, scope remains to include explanatory written text to expand upon tick box data if required. This type of report, by definition briefer than the full report, also takes cognisance of the same OASys headings

but without the necessity to undertake a computerised OASys assessment. Rather the Offender Group Reconviction Scale (OGRS) is applied in addition to the OASys risk of harm screening.

Finally it is possible for probation to be invited, or even initiate, the provision of a verbal report (similar to the former stand-down report) to expedite the sentencing function of the court even further.

Further clarification is provided by Probation Circular 12/2007 where it is stated that the standard delivery (full report), fast delivery, and oral reports, are all pre-sentence reports. In fact the three formats are deemed to be of 'equal standing'. It is also made clear that courts 'must be given the information they need in order to reach a sentencing decision' (p2) which begins to raise a number of pertinent issues. One of these, emerging from the CJA 2003 and Circular, concerns who has priority in determining the information needed to facilitate a sentencing decision? For example, is it the probation service or is the decision made after taking soundings from the dramatis personae within the magistrates' court: court clerks as legal advisors, defence solicitors, magistrates themselves? Another related issue touches upon the differential distribution of power within the organisational composition of local criminal justice systems including different ideologies, organisational dynamics, and discrete agendas being pursued. In other words probation officers, clerks, magistrates, and defence solicitors have their own views on offenders and offending which shapes the information considered necessary. There will be those who are motivated by the arguments for efficiency and others who are concerned to promote criminal and social justice without recourse to cost. Accordingly, such issues begin to raise potential difficulties associated with the selection of report formats, what is considered to be relevant information, and evaluations of justice, which will now be explored in more detail.

Some Emerging Challenges

Spend less money on reports

In a speech delivered at Wormwood Scrubbs on 7th November 2006, the then Home Secretary, John Reid, stated that 'too much money is going on report writing and not enough on practical help' (paragraph 14). It may be surmised that one of the reasons underlying this assessment is the introduction of the computerised Offender Assessment System (OASys) in 2001, since which it has been taking longer to prepare a full pre-sentence report, a workload weighting of 6.5 hours (formerly 8), compared to 1.5 for a fast delivery (NAPO, 2008, p10). This is because, in addition to interviewing and writing time, numerous items of collected data must be entered into the computer (Mair et al., 2006; Whitehead, 2007, p28). Having said that, it should be qualified that reports have been declining over recent years: from 185,275 in 2002 to 154,250 in 2006 (-17%: Oldfield, 2008, p14).

The Triple 'S' Agenda

The 'Simple, Speedy, Summary' justice initiative (July 2006) which began to influence the practices of magistrates' courts towards the end of 2007, is an attempt by government to introduce a more efficient modus operandi. In fact this initiative is consistent with the principles of new public management committed to the 3Es (economy, efficiency, and effectiveness) and VfM (value for money) (Whitehead, 2007, p34). This agenda signals a much greater emphasis upon dealing with cases expeditiously, thus reducing the average number of hearings before a case is dealt with from 5/6 to an expectation of 1 in guilty pleas. In pursuing this objective, the logical implication is a preference for fast delivery and oral formats, rather than a full report adjourned for 3 weeks. The triple 'S' agenda may well achieve simple, speedy, and summary justice (whatever this means), but is this the same as social justice for people who offend?

Service Level Agreement (SLA)

As a consequence of the emergence of the National Offender Management Service (NOMS), since 2004 (Carter, 2003) there is a Service Level Agreement (formerly performance target) between the Regional Offender Manager and local area services that 40% of all reports should be fast delivery. Additionally, in a document published by the Ministry of Justice (2008), the 'ratio of fast to standard court reports' should be improved (p7). It can therefore be extrapolated that the preparation of reports is weighted increasingly towards briefer formats. Nevertheless it should be pointed out that, even though there is a predilection for the fast delivery report, in certain circumstances an adjournment for three weeks to prepare a full report could be the judgement of the probation service even when the court has asked for a brief document. This is an important safeguard. Nevertheless it should be noted that the business plan of the Teesside area service, for example, specifies that, for 2008/9, the SLA indicative values are £318 for a full report and £79 for a fast delivery. Therefore on the grounds of business efficiency the latter is a more attractive product than the former.

Offender Management Bill

It is pertinent to allude to the debate in the House of Commons (2007) on the Offender Management Bill. On this occasion it was clarified by the Home Secretary that within the NOMS structure the preparation of reports, in addition to the supervision of offenders and breach proceedings, will remain a probation task within the public sector. However, and tellingly, this state of affairs is guaranteed to last only for 3 years when, because of contestability, the preparation of reports could become the responsibility of another organisation, perhaps in the private sector. If this is a vision of future developments (beyond the next general election in 2010) then the historical association of the probation service providing a range of information to the courts could be coming to an end.

Therefore, questions can be posed, issues raised, and concerns expressed within the operational dynamics of the criminal justice system which are pertinent to the changing

nature of information being provided to sentencers. To reiterate, one of the main areas of concern is the tension between the legitimate goal of ensuring efficiency when allocating tax payers' money to criminal justice and pursuing the ideals of criminal and social justice. Of course these two objectives are not inherently incompatible but in certain circumstances could be (Whitehead, 2007, and views of solicitors). Furthermore even though the Probation Circular states that the three report formats are of equal standing as a basis for justifying sentencing decisions, it is difficult to support the position that they are of equal standing in terms of content. In other words the full standard delivery report provides much more information on offenders' background circumstances, compared to fast delivery and oral reports.

It may be suggested there will be occasions when probation formulates the judgement and advises the court that it is appropriate to prepare a fast delivery or verbal report. Certain cases, of an uncomplicated nature, lend themselves to briefer formats without diluting the pursuit of justice, of doing what is deemed to be right. Nevertheless there will be other occasions when a full report is required in the interests of justice. Consequently the complex task of sentencing arguably involves more than routinely and proportionately matching offence seriousness with sentencing bands contained in the CJA 2003; complying with a SLA to achieve 40% fast delivery reports; and making decisions on the grounds of efficiency. Rather sentencing is a moral issue existing alongside and informing its technical and legal requirements, which means thinking carefully about the right thing to do for each individual having regard to all the circumstances. This, in turn, has implications for the selection of report formats and requisite judgements about an offender's culpability. These issues can be placed within a wider analytical framework but, before proceeding to do so, it is of interest at this point to provide some revealing statistical data.

Table 1: Criminal reports written by the probation service at Magistrates' Courts from Quarter 4, 2006 to Quarter 4, 2007, England and Wales.

	Q4 2006	Q1 2007	Q2 2007	Q3 2007	Q4 2007	Percentage Change Q4 2007
Standard Delivery Reports	24,737	25,618	24,249	23,584	21,787	-12
Fast Delivery	10,833	12,183	12,492	12,957	12,506	15
Oral	2,585	3,278	3,401	4,011	5,197	101

This data from the Ministry of Justice (2007) disclose comparisons between a 12% reduction in the full standard delivery, but 15% increase in fast delivery and 101% increase in oral reports. There is a discernible shift of emphasis emerging in the production of reports.

Reports, Social Circumstances and Justice

The Keynesian post-war settlement enabled the political establishment to intervene in socio-economic matters to mediate between the competing interests of capital and labour, promoting inclusivity and solidarity through a social democratic welfare state (Dignan and Cavadino, 2007; Garland, 2001). When this began to break down under the weight of economic turbulence during the 1970s, the resultant rise of neo-liberalism had implications for criminal justice. Neo-liberalism has reconstructed a grand narrative of individual responsibility, competition, private sector over public sector solutions, coupled with the new public management (Leys, 2001), in addition to explaining offending as rational choice (Harvey, 2005; Garland, 2001; Young, 1999 and 2007; Wacquant, 2008). This narrative competes with an analysis located within the political economy of crime exemplified by Bonger's criminology (1916); and the Chicago School (Smith, 1988), which located problems for people within the social structure. Additionally Taylor, Walton and Young (1973), Hall et al (1978), and Ian Taylor (1997) have argued that capitalism is criminogenic and there is, therefore, a need for a fully social theory of deviance reaching beyond individual culpability and punishment. This holistic sociological analysis, opposed to a reductionism which looks no further than blaming the individual, reveals how macro economic factors are associated with crime 'due to the extent and impact of unemployment, poverty and inequality following the collapse of the post-war Keynesian welfare state compromise, and the social tsunami of neo-liberalism' (Reiner, 2007). Similar points are advanced in Harvey's analysis (2005, p80) and the Cabinet Office (2006) acknowledged the relationship between adverse economic conditions and fluctuations in crime.

This body of theorising is relevant for probation practice because the process of sentencing, to which it contributes, proceeds according to parameters established by legislation and National Standards which take account of numerous variables. Some of these variables, touched upon earlier, draw attention to offence seriousness, previous convictions, aggravating and mitigating factors (Hudson, 1998) incorporated within OASys. It is offender mitigation, specifically, which should draw the courts into reflecting upon the personal histories and wider social circumstances of individuals appearing before them, historically brought to their attention by information contained within a full (social enquiry) probation report. This constitutes a challenge to reach beyond the offence (what has the offender done?), notions of individual responsibility and rational choice, to consider behavioural repertoires associated with, and perhaps a response to, adverse socio-economic factors. On a daily basis the probation service, and other court personnel, are confronted with people from adverse social backgrounds, educational and employment disadvantages, differential life chances, poverty, and associated alcohol and drugs problems. Such matters are well documented in the literature and constitute the staple ingredients of probation practice (Walker and Beaumont, 1981; Stewart and Stewart, 1993; Stewart et al., 1994).

If the principle is reaffirmed that decision making ought to take account of the social circumstances of offenders; that the pursuit of criminal and social justice should be informed by this dynamic; then it is possible to conclude that the weight currently being placed upon fast delivery and oral reports may not always be conducive to just and right outcomes. This is because of the danger of quickly skirting over salient background information which needs to be investigated and brought to the courts' attention by probation within a full report. Complex human behaviours should not be reduced to tick box report formats and completion within a couple of hours by hard pressed probation staff; sometimes the stories of people's lives require careful excavation, analysis and recounting with diligence.

Conclusion

It is being claimed that fast delivery and oral reports rather than the OASys supported full report 'represents a significant step forward' (Haines and Morgan, 2007, p204). I am unable to be as sanguine because the provision of briefer formats could have profound implications for delivering criminal and social justice. Accordingly this article has touched upon several pressing concerns which could affect the ability of probation to provide a holistic, sociological analysis of offending episodes: full reports as too expansive and expensive; the triple 'S' efficiency agenda; a Service Level Agreement that 40% of reports should be fast delivery; the Offender Management Bill debate, NOMS and the likely implications of contestability. But there are other factors at work compounding the current situation: probation staff are becoming office bound and increasingly detached from visiting offenders within the context of their families and local communities; probation training in future could sever those critical educational links with the academic community thus attenuating opportunities to develop a sociological imagination informed by criminological theory; an increasing number of untrained/unqualified staff are involved in writing briefer format reports because 'Qualified probation officers comprise only 47% of probation staff' (Haines and Morgan, 2007, p187); a neo-classical criminological discourse is getting the upper hand over social democratic perspectives (Newburn and Rock, 2006). These gathering concerns are located within a macro political context which has been 'modernising' the probation service since 1997 in tune with neo-liberal themes, new public management, competitive markets, and individual responsibility. In fact 'the fundamental premise of individual responsibility and choice mirrors the larger political environment of neo-liberalism more closely than its sociological predecessors' (Zedner, 2006, p151).

This context, within which fast delivery and oral reports have become significant documents (see Table 1 above), arguably creates problems at a number of interrelated levels. Firstly probation practice and its distinctive contribution to the criminal justice system is called into question because of restricted opportunities to provide detailed analyses and explanations of offenders' social circumstances. Secondly offenders themselves could be denied the right to have their stories recounted which incorporates both their own agency and structural considerations. It should be recalled that 'Men make

their own history, but they do not make it just as they please; they do not make it under circumstances chosen by themselves' (Marx, 1852). Thirdly the criminal justice system itself is undermined because the provision of fast delivery and oral reports could impose limits on its understanding of offenders' circumstances, thus affecting judgements about culpability. Finally the prevailing political dynamic that offending is largely a matter of individual choice perpetuates a punitive response. This approach should be challenged by enabling the probation service to provide all relevant information which could result in supportive community sentences for those 'less blameworthy because of the difficulties they face' (Raynor and Vanstone, 2007, p80). Consequently, the selection of fast delivery and oral rather than full reports, must be handled with great care by central government, probation, court clerks, magistrates, and solicitors. Perhaps one of the functions of Court User Groups comprising representatives from organisations within local criminal justice systems, and located within magistrates' courts, should be to keep the issue of reports and justice under constant review.

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References

Bean, P.T. (1976) *Rehabilitation and Deviance*. London: Routledge and Kegan Paul.

Bonger, W. (1916; re-issued 1969) *Criminality and Economic Conditions*, Bloomington, IN: Indiana University Press.

Bottoms, A.E. and McWilliams, W. (1986) 'Social Enquiry Reports Twenty-Five Years After the Streatfield Report' in: P. Bean and D. Whynes, *Barbara Wootton Social Science and Public Policy*, Essays in Her Honour. London and New York: Tavistock Publications,

Bottoms, A. and Stelman, A. (1988) *Social Inquiry Reports: A Framework for Practice Development*, Community Care Practice Handbooks, Aldershot: Wildwood House.

Box, S. (1987) *Recession, Crime and Punishment*, Basingstoke: Macmillan Education.

Cabinet Office (2006) *Policy Review: Crime, Justice and Cohesion*. London: Prime Minister's Strategy Unit

Carter, P. (2003) *Managing Offenders, Reducing Crime*. A new approach. London: Prime Minister's Strategy Unit

Carter, P. (2007) *Lord Carter's Review of Prisons. Securing the future: Proposals for the efficient and sustainable use of custody in England and Wales*, London: Ministry of Justice.

Dignan, J. and Cavadino, M. (2007) 'Penal policy in comparative perspective', *Criminal Justice Matters*, 70, pp15-16.

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

Haines, K. and Morgan, R. (2007) 'Services before trial and sentence: achievement, decline and potential' in: L. Gelsthorpe and R. Morgan (eds.) *Handbook of Probation*, Cullompton: Willan Publishing.

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

Harvey, D. (2005) *A Brief History of Neoliberalism*, Oxford and New York: Oxford University Press.

Haxby, D. (1978) *Probation: A Changing Service*. London: Constable.

Home Office (1909) *Report of the Departmental Committee on the Probation of Offenders Act 1907*, Cmnd. 5001, London: HMSO.

Home Office (1959) *Penal Practice in a Changing Society: Aspects of Future Development* (England and Wales), Cmnd. 645, London: HMSO.

Home Office (1961) *Report of the Inter-Departmental Committee on the Business of the Criminal Courts* (Streatfeild Report), Cmd. 1289, London: HMSO.

Home Office (1984) *Probation Service in England and Wales*. Statement of National Objectives and Priorities. London: Home Office.

Home Office, Department for Constitutional Affairs, and Attorney General's Office (2006) *Delivering Simple, Speedy, Summary Justice*, London: Home Office, Department for Constitutional Affairs, and Attorney General's Office.

House of Commons (2007) *Parliamentary Debates* (Hansard), Wednesday 28 February 2007.

Hudson, B. (1998) 'Mitigation for Socially Deprived Offenders' in: A. von Hirsch and A. Ashworth (eds.) *Principled Sentencing: Readings on Theory and Policy*, Oxford: Hart Publishing.

Le Mesurier, L. (1935) *A Handbook of Probation and Social Work of the Courts*. London: NAPO.

Leeson, C. (1914) *The Probation System*, London: P. and S. King and Son.

Leys, C. (2001) *Market Driven Politics: Neoliberal Democracy and the Public Interest*, London and New York: Verso.

Mair, G., Burke, L. and Taylor, S. (2006) 'The worst tax form you've ever seen? Probation Officers' views about OASys', *Probation Journal*, 53(1), pp7-24.

McWilliams, W. (1983) 'The Mission to the English Police Courts 1876 – 1936', *Howard Journal of Criminal Justice*, 22, pp129 – 47.

Ministry of Justice (2007) *Probation Statistics Quarterly Brief 2006/07*, London: Ministry of Justice.

Ministry of Justice (2008) *Value for Money Delivery Agreement*. London: Ministry of Justice.

National Association of Probation Officers (2008) NAPO News, 199 (May).

Newburn, T. and Rock, P. (eds.) (2006) *The Politics of Crime Control: Essays in Honour of David Downes, Clarendon Studies in Criminology*. Oxford and New York: Oxford University Press.

Oldfield, M. (2008) Probation Resources, Staffing and Workloads 2001-2008, London: Centre for Crime and Justice Studies, King's College.

Probation Circular 12/2007: *Pre-sentence Reports*, London: National Offender Management Service.

Raynor, P. and Vanstone, M. (2007) 'Towards a Correctional Service' in: L. Gelsthorpe and R. Morgan (eds.) *Handbook of Probation*, Cullompton: Willan Publishing.

Reid, J. (2006) '*Check Against Delivery*'. Speech by the Home Secretary on Offender Management, HMP Wormwood Scrubs, Tuesday 7 November 2006.

Reiner, R. (2007) 'It's the political economy, stupid! A neo-Clintonian criminology, *Criminal Justice Matters*, 70, pp7-8.

Smith, D. (1988) *The Chicago School: A Liberal Critique of Capitalism*, Basingstoke: Macmillan.

Stewart, G., and Stewart, J. (1993) *Social Circumstances of Younger Offenders Under Supervision. A research report for the Association of Chief Officers of Probation*, London: Association of Chief Officers of Probation (ACOP).

Stewart, J., Smith, D., Stewart, G. with Fullwood, C. (1994) *Understanding Offending Behaviour*, Harlow: Longman.

Taylor, I. (1997) 'The Political Economy of Crime' in: M. Maguire, R. Morgan and R. Reiner (eds. second edition) *The Oxford Handbook of Criminology*, Oxford and New York: Oxford University Press.

Taylor, I., Walton, P. and Young, J. (1973) *The New Criminology: for a social theory of deviance*, London: Routledge and Kegan Paul.

Wacquant, L. (2008) *Urban Outcasts: A Comparative Sociology of Advanced Marginality*, Cambridge: Polity Press.

Walker, M. and Beaumont, B. (1981) *Probation Work: Critical Theory and Socialist Practice*, Oxford: Blackwell.

Whitehead, P. (2007) *Modernising Probation and Criminal Justice: getting the measure of cultural change*. Crayford: Shaw and Sons.

Whitehead, P. and Statham, R. (2006) *The history of probation: Politics, Power and Cultural Change 1876-2005*, Crayford: Shaw and Sons.
Young, J. (1999) *The Exclusive Society: Social Exclusion, Crime and Difference in Late Modernity*, London: Sage.
Young, J. (2007) *The Vertigo of Late Modernity*, London: Sage.
Zedner, L. (2006) 'Opportunity Makes the Thief-Taker: The Influence of Economic Analysis on Crime Control' in: T. Newburn, and P. Rock (eds.) *The Politics of Crime Control: Essays in Honour of David Downes*, Oxford and New York: Oxford University Press.

COMMUNITY JUSTICE FILES 18

Edited by Jane Dominey, De Montfort University

Criminal Justice Joint Inspection: The Indeterminate Sentence for Public Protection

A thematic review of the indeterminate sentence for public protection for adults (IPP) and the sentence of detention for public protection (DPP) for children and young people was undertaken by HM Chief Inspector of Prisons and HM Chief Inspector of Probation and published in September 2008.

The report notes that the creation of these sentences has had a considerable impact on the prison system. By the end of 2006, almost 2000 individuals had been sentenced in this way. In addition, indeterminate sentences require more resources than determinate sentences. These prisoners can not be released until they have convinced the parole board that they pose a reduced risk of reoffending and they are then subject to supervision and possible recall to prison for at least 10 years. Indeterminate sentences include a 'tariff', the minimum period that will be served as punishment and deterrent. At first, the average tariff length was 30 months, with some tariffs considerably shorter.

The report describes the implementation of the IPP and DPP as a 'perfect storm'. Prisons already faced problems caused by the increasing population and systems could not cope with more inmates who needed well organised and managed sentence plans. Similarly, the probation service was poorly prepared, resourced and trained for its role. As a consequence, many people remained in prison beyond their tariff, unable to access relevant programmes or interventions.

The Court of Appeal found that the Secretary of State had acted unlawfully and that there had been 'a systemic failure to put in place the resources necessary to implement the scheme of rehabilitation necessary to enable the relevant provisions of the 2003 Act to function as intended'. In rather more colourful language, a prison governor told the Inspectorate that 'it is as though the government went out and did its shopping without first buying a fridge'.

The report makes a number of recommendations. These include:

- The Secretary of State should make a costed assessment of the impact of any new sanction or sentence on the National Offender Management Service.

- There should be sufficient resources for the Parole Board to carry out reviews at the required time.
- Improvements in pre-sentence reports are needed to ensure that they contain a complete and accurate assessment of the risk of serious harm, enabling courts to judge whether an indeterminate sentence is required.
- The National Offender Management Service should make a full assessment of the criminogenic needs of IPP prisoners to ensure that the correct interventions are available in sufficient and appropriate prisons.
- Phase III of the Offender Management Model should be properly implemented to ensure end-to-end management and good quality sentence planning for this group of prisoners.

There are some similar recommendations for the Youth Justice Board (YJB). It is also suggested that the YJB ensure that systems are in place to manage the move of young people from the juvenile estate to prisons for young adults and to the eventual supervision of the probation service.

The authors of the report conclude:

> 'This report should be required reading for all those within the criminal justice system, but particularly those who propose and put in place new sentences or are responsible for implementing them. It is a worked example of how not to do so.'

The full report can be found at
http://inspectorates.homeoffice.gov.uk/hmiprobation/inspect_reports/thematic-inspections1.html/HMIP_IPP_Thematic.pdf?view=Binary

Localism: A Consultation Paper from the Commission on English Prisons Today

The Commission on English Prisons Today is an initiative of the Howard League for Penal Reform seeking, amongst other things, to investigate the purpose and proper extent of the use of prison in the 21st Century. It has published a consultation paper on localism, exploring ways in which a local approach may provide a positive and constructive approach to criminal justice. It also discusses the concept of justice reinvestment, an approach originating in the United States, that seeks to divert money from custodial responses to offenders and spend it in the community on projects intended to reduce crime. The report draws on a number of examples of local criminal justice provision, including the North Liverpool community justice centre.

The report suggests a possible way forward. This includes identifying areas suitable for justice reinvestment approaches and devolving power from central government to local authorities. The report also advocates the creation of more community justice centres. It suggests that these centres would be local authority managed and staffed by the local

authority and probation service. They would act as a neighbourhood centre for drug and alcohol treatment and advice and mediation services. They would respond to issues such as anti-social behaviour and liaise closely with the police and courts.

The report proposes that some of the budget for the prison service would be devolved to local authorities, enabling some prisons to be locally controlled and run. The aim of this development would be to improve resettlement work and enable community organisations to be better represented within prisons. High security prisons would remain nationally managed.

Speaking about the consultation, Frances Crook, director of the Howard League for Penal reform, said:

> 'At the heart of this consultation paper are the questions: how is our money being spent and by whom? We spend more money on law and order as a proportion of our GDP than any other developed country, and have internationally high imprisonment rates, yet fear of crime has arguably never been higher. What if the majority of our prisons and the cost of custody formed part of local government budgets, with local authorities empowered to use that money as they best see fit? Justice Reinvestment involves forging partnerships across the public, private and voluntary sectors to improve troubled communities, using money to invest in local failings in health or housing, in a lack of public spaces or poor provision for education and employment. Superficially unrelated to criminal justice, it is these very areas of social policy that will most likely provide lasting solutions to crime and lead to a greater sense of well being and safety on the streets.'

The consultation paper can be found athttp://www.prisoncommission.org.uk/fileadmin/howard_league/user/pdf/Commission/Commission_Localism_Paper.pdf

Evaluation of the Victims' Advocate Scheme Pilots

The Victims' Advocate Scheme (VAS) aims to support families in murder and manslaughter cases and give them a voice in court. It comprises three elements, enhanced pre-trial support, a family impact statement and legal advice. The pilot ran between April 2006 and April 2008 at courts in Manchester, Birmingham, Cardiff, Winchester and London. The evaluation of the pilots has recently been published.

Pre-trial support involved a meeting between the family and the prosecutor in charge of the case. The evaluation found that, where this meeting took place, it was found by family members to be useful. The take up of pre-trial support varied considerably from court to court. Families that did not want to take this opportunity gave a number of

reasons for this, including having sufficient information from their police family liaison officers and being unclear about the purpose of the meeting and its relevance for them.

The report supports the decision of the Crown Prosecution Service to offer a family meeting with the prosecutor across all Crown Courts from October 2007. This provision for families is also extended to the offences of death by dangerous driving and driving whilst unfit through drink or drugs.

The family impact statement (FIS) provided families with an opportunity to make a formal statement to the court, either orally or in writing, about the impact of the death of their relative. Many families felt that the FIS gave them a chance to inform the court about the character of the victim of the crime, but other families did not want to make a statement, concerned either about the emotional impact of doing this or believing that it would have no impact on the outcome of the court proceedings. Families who made a FIS did suffer further distress in the event of an acquittal or in cases where their statement was not acknowledged during the sentencing process. Some court practitioners were also concerned that, as well as heightening the emotional atmosphere in court, there was unhelpful confusion about the relevance of the FIS to sentencing.

The provision of free legal advice to help family members deal with legal problems arising directly from the sudden death of their relative saw limited take up. The evaluation suggests that this is due to lack of understanding and awareness on the part of all involved in the pilots. Some families did receive advice, which they welcomed, about issues such as the residency of children and arrangements for dealing with the deceased's possessions. The evaluation recommends that additional hours of advice be provided in complex cases and that further consideration be given to involving the voluntary sector in the provision of advice.

The evaluation report is available at
http://www.justice.gov.uk/docs/research-victims-advocates.pdf

Working with the Third Sector to Reduce Reoffending

The Ministry of Justice has set out its plans to involve the voluntary sector in effective partnership work over the period 2008 – 2011. The plan includes a specific commitment to work with faith-based, black and minority ethnic, women's and community groups and acknowledges the difficulties that small organisations can face when seeking to win and then deliver public contracts. It proposes, for example, that smaller community-based organisations may require resources to participate in some schemes and consultations.

The key commitments in the plan include:

- Actively reducing barriers to diverse third sector involvement and creating a 'fairer playing field'.
- Involving all sectors in designing and delivering services.
- Using grant-funding as well as commissioning where appropriate.
- Improve the quality of volunteering and mentoring in criminal justice settings. This might include, for example, reducing the barriers faced by volunteers who have a criminal record and are currently denied access to prisons.

In its response to the paper, the organisation Volunteering England welcomes the encouragement given to the role of volunteering but raises a number of issues that it believes need further clarification. These include the support that will be provided to small organisations involved in the commissioning process and the need for a clearer understanding of the concept of mentoring.

The Ministry of Justice document is available at
http://www.justice.gov.uk/docs/third-sector-effective-partnerships.pdf

Citizens Panels and Unpaid Work

In September 2008, the Justice Minister David Hanson, launched a pilot scheme intended to give local people a greater say in the unpaid work projects undertaken by people subject to community orders. These pilot projects are being run in Greater Manchester, Suffolk, Hampshire, Wiltshire, Leicestershire and North Wales. Through 'citizens' panels' members of the public will be able to work with local authorities and the probation service to identify work that could be done to improve the environment and contribute to public safety.

This initiative builds on existing work intended to raise the profile of community sentencing and build public awareness of the unpaid work completed by offenders. Speaking following the announcement of these pilots, Heather Munro, Chief Executive of the Leicestershire and Rutland Probation Trust said,

'The Leicestershire and Rutland Probation Trust has been running a project with Leicester City Council that enables residents to suggest schemes of work that can be completed by teams of supervised offenders. Since the partnership project began in April 2007, we have undertaken work at 60 different locations in the city. This is making a real and positive impact on community life in Leicester.'

Forthcoming Events

Are There Links Between Drugs, Alcohol and Violent Crime?

The Newport Centre for Criminal and Community Justice is holding this one-day conference on Friday 24th April at the Caerleon Campus, Newport.

Papers and workshops (either or both) are invited from academics, policy makers and practitioners. The organisers will consider theoretical, policy and practice-based contributions in the following areas:

- The extent of possible links between drugs, alcohol and violent crime
- Are these medical, social or criminal problems?
- Policy and practice-based responses
- The range and effectiveness of such approaches
- The role and impact of multi-agency working

Communities and Youth Crime: A New Start?

This one-day conference, supported by the Metropolitan Police, looks at the Government's Youth Crime Action Plan and ahead to the next five years of tackling youth crime and anti-social behaviour. The keynote speaker is Nick Herbert MP, Shadow Secretary of State for Justice. Other speakers include Rose Fitzpatrick from the Metropolitan Police, George Hosking from the Wave Trust and Graham Robb from the Youth Justice Board.

The event will take place at the New Connaught Rooms, London, on Tuesday 9 December.

For further information contact
Sarah Spencer on 020 7324 4359,
e-mail sarah.spencer@neilstewartassociates.co.uk

BOOK REVIEWS

Edited by David Phillips, Sheffield Hallam University

SEXUAL OFFENDING AND MENTAL HEALTH

Houston, J. & Galloway, S. (eds); 2008, Jessica Kingsley. ISBN 978-1-84310-550-3

Sexual Offending and Mental Health has its roots in the work of the Sex Offender Service (SOS) which is part of the Forensic Mental Health Services at South West London and St. Georges Mental Health Trust.

This book is written by current practitioners and began as an idea from a national conference on the multidisciplinary risk management of sex offenders held by the Sex Offender Service in March 2005.

Each chapter is written by practitioners who are acknowledged experts in their respective fields of practice, and it therefore focuses on a multidisciplinary approach to the assessment and treatment of sex offenders and those who have behaved in sexually inappropriate ways. The purpose of the book is to inform readers about the range of theoretical and legal issues relevant to working with sexual offenders but it does much more than that. It is also an informative review of many different aspects of current clinical practice with this diverse client group, covering both those who have been through the legal process and those that have not. Although it primarily deals with community-based adult male offenders who have committed 'contact' offences, many of the frameworks and concepts described are equally applicable to in patients and 'non-contact' offenders (i.e. indecent exposure, child pornography and internet related offences).

I found the structure clear and logical with the first section of the book (chapters one to five) dealing with theoretical perspectives and the second section (chapters six to thirteen) addressing clinical practice issues. Given that the theoretical perspectives informs clinical practice and vice versa, I found myself moving from one section to another seeking links and insights, something which I suspect most practitioners would find particularly helpful. The chapters in section one include an introductory chapter giving a very concise and informative overview of sexual offending, and chapters on risk

assessment, mental disorder and sexual offending, ethnicity, culture and diversity, and the law and sex offending. Whilst it is impossible to provide complete coverage of every aspect related to sexual offending, these theoretical chapters provide an excellent summary which I would recommend to any professional student of the subject. The UK focus of the book is of particular importance because in the past, offerings in this area have often disappointed usually because they emanate from North America and do not contain essential practical detail about UK systems and procedures. As a result, this is essential reading for the full range of disciplines working in the sexual offending and mental health arenas. As a chartered psychologist and an ex-senior probation officer who has experience of working in multidisciplinary teams, this is a book I would have liked to have had alongside me in practice and one which I will now recommend to my students.

The second section deals with the clinical applications of much of the theory presented in section one, and the chapters give a real flavour of the major practices and processes involved in working in a multidisciplinary, and multi-agency, way with people with mental health problems who have committed sexual offences. The first chapter in this section looks at the development and current operation of the Sex Offender Service with the next two chapters focusing specifically on formulation-based assessment and treatment. The difficult to define, and often difficult to work with, topic of personality disorder and sexual offending is dealt with in chapter nine, and some excellent examples of multidisciplinary/multi-agency community case management are given in chapter ten. The latter does not shy away from the realities of the challenges faced by professionals working in this way. The next two chapters look at wider issues related to the offender such as protective partners and systemic work with families of sex offenders. The final chapter should be essential reading for all current and would-be practitioners in this field because it deals with issues that all of us who have experience of working with both sex offenders, and mental health issues, will instantly recognise- the emotional impact of working with sexual offenders on professionals. The only serious criticism I have of this book is the lack of a concluding chapter, which in addition to summarising the main points from each chapter could have usefully reviewed possible future developments in the field of sexual offending and mental health.

The contributors to this book were chosen for their breadth of expertise, their differing clinical perspectives and professional backgrounds. As such, it would have been easy to produce something that felt disjointed and rather unreal, but the editorial team has done an excellent job of providing the most informative text I have read on this topic for a very long time. Sexual Offending and Mental Health represents an intelligent, informative and relevant contribution, which I unreservedly highly recommend. So much so, that having read the book for this review, I immediately telephoned a friend from the mental health field and told him I would send him a copy, knowing he would benefit from it as much as I have!

Dr. Kevin Downing, City University of Hong Kong

UNDERSTANDING MODERNISATION IN CRIMINAL JUSTICE

Senior, P., Crowther-Dowey, C. and Long, M. 2007; Maidenhead: McGraw Hill/Open University Press. 268pp. ISBN 978-0-3352-2065-6

This book is part of the well-established Crime and Justice series, each of whose titles begins with the word 'Understanding ……' and a number of which are staple items on undergraduate criminology reading lists. In this volume, the authors set out to do something which I believe has not been done before in any detail: to assess the meaning and impact of New Labour's mission to 'modernise' public services in the context of the institutions and processes of criminal justice.

This is important as modernisation has been a central element of New Labour's attempt to reform and redefine much of what government does that directly affects people in their everyday lives. It has had huge impact on the way that core welfare services such as education, health and social care are resourced and delivered. It has generated profound changes in the roles, responsibilities and relationships of the professionals involved in planning and delivering services and of service users. Modernisation has been as much about the forging of a new relationship between state and citizen – hence New Labour's constant emphasis on the need for a re-balancing of rights and responsibilities – as it has about improving the efficiency, quality and relevance of public services. Although the criminal justice system stands outside the classic conception of the welfare state, it has also been subjected to processes of modernisation and an examination of what this means and what its effects have been is therefore to be welcomed.

The book is organised in three parts. Part 1 begins with an attempt to analyse and clarify the concept of modernisation and its relationship to the aims and methods of governance. The 'history' of modernisation is then examined, showing how the New Labour programme has its precursors in various developments in the way the welfare state has been organised and managed since its inception, and particularly focusing on the 'managerialisation' of the state and the emergence of New Public Management in the 1980s and 1990s. These trends, coupled with aspects of distinctive New Labour 'Third Way' ideology, are shown to have fed into and shaped the strategy of modernisation that has been pursued since 1997. In Part Two, individual chapters assess how this strategy has impacted on specific institutions and processes of criminal justice: youth justice; the correctional services; community safety; the court system; the police; and the voluntary and community sector. Each chapter follows a similar pattern, centred on a consideration of how the key dimensions of modernisation (development of a mixed economy of provision; contestability; performance management; audit and inspection; pluralization; etc) have been applied to the different domains of criminal justice and how they have

been accepted, adapted or resisted. Finally, Part Three summarises the emerging trends and patterns, explores the potential for future development in criminal justice modernisation and considers the applicability of the analysis in an international comparative context.

There is much here of value. Each of the substantive chapters in Part Two provides a useful account of the key changes and developments within the criminal justice system under New Labour, viewed through the distinctive lens of 'modernisation'. As well as providing a very full description of the ways in which the modernising impetus has been pursued in the context of criminal justice, the authors stress the uncertain and often contradictory impacts of modernisation, emphasising in particular the wide variety of effects across the quite different institutional settings in which various aspects of criminal justice are delivered. This critical account is highly pertinent in helping to explain many of the dilemmas that criminal justice services currently face.

'Modernisation' is, as the authors rightly point out, a complex phenomenon, in part because it signals both a political and a technical (or administrative) process, and I was never wholly convinced by the way the book addresses this tension. Insufficient attention was given to distinguishing changes in the conception of the fundamental aims and purposes of government that are promoted through New Labour modernisation from changes in the techniques of government through which the aims and purposes are to be achieved. It seems to me that much of what the modernisation of criminal justice has tried to do relates to the former, with criminal justice reforms guided by such concepts as responsibility, community, consumerism, social inclusion and risk; while the book does acknowledge the significance of some of these ideas (particularly responsibility and risk), it tends to view them as simply extensions of 'new public management' and to reduce modernisation to a series of managerial innovations.

'Criminal justice' is itself a contested term that is changing partly as a result of the modernisation agenda. The book recognises this in that analysis of the traditional criminal justice institutions of police, courts, prison and probation services is supplemented by the chapters on youth justice and community safety. But both of these are highly complex arenas involving agencies and activities that do not sit easily in conventional understandings of 'criminal justice'. Moreover, services such as housing, education, health and child care have become significant players in the implementation of crime control policy while remaining external to the criminal justice system and they form part of a continuing debate around the scope of the term criminal justice that is little touched on in the book. There is room for further discussion of this aspect of change.

Overall, I think this book is important in drawing attention to the way that criminal justice policies and services in Britain have been influenced and altered by a governmental agenda that does not, in itself, originate in specific concerns about crime.

This marks the book out from much other work by criminologists. Despite its sometimes narrow approach, it will be useful as a resource for students wanting to find out about the way that specific elements of 'modernisation' have been applied to particular parts of the criminal justice system.

David Prior, Institute of Applied Social Studies, University of Birmingham

CRIMINAL IDENTITIES AND CONSUMER CULTURE: CRIME, EXCLUSION AND THE NEW CULTURE OF NARCISSISM

Hall, S., Winlow, S. and Ancrum, C. (2008). Cullompton: Willan. ISBN 978-1-84392-255-1

This pioneering book is a major contribution to criminological scholarship. It possesses many strengths, not least of which is its trenchant theoretical insight into the motivations (conscious and unconscious) underpinning offending behaviour within the context of late capitalist consumer society.

Every criminology student knows that the British Crime Survey and recorded crime figures indicate that crime, overall, is consistently falling. That, however, may not be the whole story of crime in contemporary Britain. Any serious attempt to intervene with offenders who flourish under socially marginalised conditions must address not just the culture of liberal capitalism and the post-political neo-liberal state, but also the egoism and narcissism which suffuses advanced capitalist culture. Current fears of economic recession mean that this book, which outlines the brutality of existence and daily lived realities for those in economically dispossessed communities, is timely.

The data informing this work is rooted in a broad ethnographic study of criminal identities in the north-east of England. What renders this book particularly impressive is the quality of its ethnography, which is reflected in the intensity, persuasiveness and frankness of its interviews. No-one who reads this book will be surprised that Steve Hall lauds his co-authors Simon Winlow and Craig Ancrum as 'two of the best criminal ethnographers in the business'. In documenting 'life on the precipice' and providing a voice to the voiceless, they have performed an inestimable service not just to criminologists but to every criminal and community justice practitioner who seeks to understand their clients.

Those clients appear to constantly fantasise about another big drug deal, another offending opportunity, and wealth and riches which perpetually remain just around the corner, almost within reach. Whilst striving towards this fantasised end, they will engage

in brash, relentless and conspicuous consumption, ensuring that other community members do not fail to notice their 'success'.

In this fractured community, no shame is attached to offending. Life in socially marginalised communities is focused on not just the acquisition but the display of consumer symbolism. A researcher visits the home of a local drug dealer which is replete with expensive consumer items including:

> '... at top of the range racing bike with all the accessories, an expensive crossbow, Xbox 360, Playstation 2, PSP, plasma TVs, home cinema systems, paintball equipment, a laptop computer, a huge Bose music system, a jetski parked in the yard...' (pg 33).

In the all-pervasive ethos of ornamental consumerism, offending is experienced as the product of the desire to be continually immersed in consumer indulgence. Reflecting the anxiety imposed by consumer culture, the dealer aims to convince the researcher that he is not a 'loser'. The only real ignominy and public dishonour for the interviewees is seen as being viewed by others as a 'skip-rat, 'no-mark' or 'Aldi basher'; that is, a member of the disposed urban poor who is so unconcerned with their own social status and sense of identity that they shop at discount stores. Even the everyday act of shopping is loaded with ramifications.

The only real ambition and aspiration for the interviewees was to achieve riches as a criminal, typically as a large-scale drug dealer, who is able to ostentatiously display that wealth to all by purchasing the desired consumer items. Any considerations of ethics, community or social conscience are not just irrelevant but confined to the legions of 'no-marks' and 'mugs' destined never achieve real riches. The interviews unconsciously echo Margaret Thatcher's famous injunction that there is 'There is no such thing as society'[1]. Working class and community roots are something to divest oneself and leave behind, rather than fight to maintain.

The sheer irrelevance of the criminal and community justice system for many of its clients is one of the many insight afforded by this groundbreaking book. Criminal justice intervention into the day to day lives of the interviewees is represented as an inconvenience, while intervention by probation staff appears to be not just irrelevant but mostly invisible. The authors provide a wealth of interview data, some of which is astonishingly frank, on the perceptions and experiences of poorer, socially marginalised offenders. They are portrayed as narcissistic and acquisitive individualists. The seductive attraction, for some, of violent offending and a lifestyle of crime are skilfully and faithfully delineated. It is utterly clear that the daily lived realities for many of those clients render f the intervention offered by the 'What Works' agenda somewhat superfluous. Any practitioner who wants to fully understand the daily experiences of their socially marginalised clients needs to read this book.

Perceptions of intervention by the penal system are also instructive. One offender, discussing his six year prison sentence, views it as impediment to accumulating ever greater wealth in comparison to his peers, rather than an experience which either deters or rehabilitates:

> 'Not that jail bothers me, it's fuck all especially when you've got a few quid behind you, it's the poor divvies with fuck all that jail hurts. I had everything in the jail, loads of phone cards, nice food, radio, little telly, it was sound, but every cunt on the out was raking in the money' (pg 84).

The authors argue that if this is considered to be a one-dimensional portrayal, it is doing no more than accurately reflecting the absence of influential alternative socio-cultural institutions (for example, the educational system, organised religion, and community groups) on the global world view of their interviewees.

It is interesting that not a single one of the interviewees considers themselves to be victims of 'social exclusion', or views themselves as part of a social class which has been subjugated. Rather, they appear subsumed under the symbolism of consumer culture and the values of competitive individualism and entrepreneurialism. They are single-mindedly focused on obtaining symbols which both reflect their fantasised identities and define them as individuals. These symbols include key consumer artefacts (such as training shoes) which separate them from all the 'losers' and 'mugs' who surround them.

This is a challenging and rewarding work, not just because it sidesteps detailed analysis of criminal and community justice interventions to offer a more profound comprehension of how socially marginalised individuals experience life and understand their own offending.

This book is essential reading not just for students and academics but also for community justice practitioners who care about how their clients experience the criminal and community justice systems.

Michael Teague, Senior Lecturer in Criminology, University of Teesside

End Note

1. 1987 Sep 23 Margaret Thatcher: Interview for Woman's Own ("no such thing as society") from http://www.margaretthatcher.org/speeches/displaydocument.asp?docid=106689

RAPE CRISIS: RESPONDING TO SEXUAL VIOLENCE

Jones, H. and Cook, K. Lyme Regis: Rusell House Publishing (2008) pp. 123, ISBN: 978-1-905541-27-0.

After reading this comprehensive and detailed history of the 'enduringly powerful' Rape Crisis movement one is struck by the dedication and commitment of those activists involved in myriad ways in campaigning for and supporting the complex and needs of survivors of rape, most notably their struggle with the often deficient response of the formal criminal justice system over the last three decades. The lack of money and the alternative forms of provision, resulting in fragmentation and some uncertainty amongst those survivors in need of different types of support, as well as those offering it, have threatened the future of the non-hierarchical organisation. It is an important book that should be read by a wide audience, not least those practitioners whose work is affected by the sexual violence of men. Academics teaching and researching in the area of sexual violence should also find this book a very useful resource. Also, the authors are donating the royalties to Rape Crisis, so purchasing this book lends support to the much needed future of this organisation.

The book explores the impact of feminist thought on practice, demonstrating how theory and practice are intricately intertwined.

It succeeds in reinforcing the message that existing statutory arrangements in place for enhancing the health and well being of survivors are deficient and fundamentally flawed, and that without Rape Crisis the suffering and innumerable injustices experienced by many women would be far worse than they are presently. A painful reminder of this is that the attrition rate in rape cases, for example, is the worse it has ever been, and as a national average less than 6% of cases actually results in a successful conviction. Legislators and policy makers have invested intellectual and fiscal resources towards securing improvements to the formal criminal justice response to rape, but the deeply embedded structural causes of this offence and the obstacles prohibiting reform remain, apparently obdurate as ever. Helen Jones and Kate Cook are not directly concerned with these factors yet this contextual information is an important backdrop for appreciating the significance of what has been achieved by Rape Crisis.

The book comprises six chapters, supplemented by a glossary and very informative appendices. Chapter 1 starts in the most logical of places, outlining the origins of the Rape Crisis movement in the United States in 1972. Although acknowledging the variations existing between the American and British experience, principally the professionalism of the movement in the former context, the main focus is on the British

case. Not surprisingly, this part of the story commences in 1976 London, where the influence of second wave radical feminist values on the approach Rape Crisis adopts to its work are described. What is especially remarkable about this history is how the principles defining Rape Crisis have over the year spread outwards in the England and Wales, Scotland and Ireland, inspiring the creation of other bodies in the voluntary (e.g. Fawcett, YWCA, Amnesty, Zero Tolerance) and statutory sectors. According to chapter 5 some of these agencies complement Rape Crisis values whereas others go against their grain. In the statutory sector, for example, the emergence of Sexual Assault Referral Centres (SARCs) has been a particularly important development, because this model is the preferred option for the central government, yet its prioritisation of evidence gathering for criminal justice agencies is potentially restrictive.

Chapters 2 and 3 consider how the growth of Rape Crisis and changes in the wider external environment brought about some redefinition of the politics and ethical governance of the movement. A strength of these chapters is their incorporation of empirical work, drawing on interviews with three groups, to explore the concept of the 'living dynamic' to show the ways in which and how the directions taken by Rape Crisis are changeable and influenced by conflicting experiences and expectations. Despite there being a distinctive set of core values and principles, all directed towards bettering the quality of life of survivors of rape, the women participating in rape crisis are exposed to all kinds of pressures, on some occasions producing discomfort and stress. Added to this, as one would expect, are the pressures of ever dwindling finite resources. A powerful argument that emerges by the end of chapter 2 (and assessed further in chapter 5) is that the SARC model, because of its problematic orientation (mentioned above), makes life difficult for Rape Crisis because it does not adequately respond to the needs of some of the most vulnerable women in society. However, the authors are quite realistic about the position of Rape Crisis in relation to statutory agencies, stating in chapter 4 that to avoid assuming an 'isolationist' stance the movement must work in partnership with the 'mainstream', so long as it retains its own distinctive 'national voice' and 'brand' and is not co-opted. The mainstream does pose a threat to the values of Rape Crisis, yet there are opportunities too, depending on the orientation of the movement. This has been far from straightforward, though, because as Chapter 4 shows a national framework was, problematically, absent before the 1990s yet equally challenging when one was created in the form of the Rape Crisis Federation. When this body was closed in 2003 ideological disputes were still evidenced, but these could actually weaken its viability. There is a clear need for Rape Crisis to respond to local issues although it does need a national identity to ensure funding is secured for future work.

The concluding chapter (6) contemplates the uncertain future of Rape Crisis in England and Wales, not least the fact that there are relatively few groups remaining. One indomitable strength is the politics of the movement and its activist stance in theoretical and practical domains. It is suggested that anti-rape work is a collective activity, which reveals the imbalance of power in wider society, which marginalises concern with the structured nature of male violence against women. One challenge is to ensure Rape Crisis

has a more evenly distributed geographical presence and that it creates more effective coalitions, alliances and networks. Regarding the latter it is necessary to be mindful of the dangers of Rape Crisis values being co-opted or distorted. Unsurprisingly, adequate funding is key, whether these resources are secured from mainstream or independent sources. Rape Crisis needs to be more vocal, using the media and internet to publicise its vital work. What this important book does is make an indispensable contribution towards ensuring that the name Rape Crisis stays 'enduringly powerful' as it campaigns for and protects women from violent men and the ideological and institutionalised failures of criminal justice agencies.

Chris Crowther-Dowey, Senior Lecturer in Criminology, Nottingham Trent University