



CRIMINAL JUSTICE REVIEW 1999-2001

Centre for Criminal Justice Studies, University of Leeds

(This bi-annual review represents the twelfth and thirteenth annual reports)

The Centre for Criminal Justice Studies (CCJS) was established in 1987 for the pursuit of research and study into all aspects of criminal justice systems. It is governed by an executive committee and its work is supported by an advisory group composed of academics, practitioners and policy makers in relevant fields of experience. The CCJS Constitution and Membership are set out in *Appendix 1*.

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Appendix 1 The Constitution and Membership of the Centre for Criminal Justice Studies

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1. INTRODUCTION

It gives me great pleasure to present this review of the work, activities and achievements of the Centre for Criminal Justice Studies for the period between 1 October 1999 and 30 September 2001.

During the past two years the CCJS has continued to grow both in size and stature. This expansion results from an increase in the overall numbers of research and taught postgraduate students and also its range of teaching programmes to include a new undergraduate BA Honours degree in Criminal Justice Studies and Criminology. This latter scheme ran for the first time in September 2000 and it is proving to be very

popular with applicants for September 2002. An LLM variant of the MA in Criminal Justice Studies was offered from September 2001. The various degree schemes are described in section 2.

This review also covers a period during which the CCJS's research profile was strengthened by a broadening of the range of research projects that members were involved in and also their levels of co-operation with other institutions. Of particular note are the research strengths that the CCJS now possess in the areas of Youth Justice, Community Policing, Internet Related Crime and Crime and the Media. These research projects are described in section 3 and the publications, which have largely arisen from them, in section 4. An important vehicle for the dissemination of research findings has been the continued success of the CCJS public seminar programme through which members and guests are invited to present their research findings (see section 6). Outside the University of Leeds, CCJS members have given a number of high profile plenary speeches at a range of international conferences, from Vancouver to Vienna and from Canberra to California (see section 5). Members have also participated in high profile 'third-arm' activities, some of which have led directly to the shaping of criminal justice policy and legislation. Collectively, these activities have increased the standing of both individual members and also the CCJS as a whole. In the 2001 Research Assessment Exercise, the CCJS as part of the Department of Law, received a 5A rating.

During the past two years there have been a number of important developments within the personnel structure of the CCJS. In November 2000, Prof. Clive Walker ceased to be Director upon his appointment as Head of the Department of Law. An appreciation of Clive's 13 years in post was given by the new director, Dr David Wall, at the meeting of the advisory group in December 2000. Clive, will, of course, continue to contribute to the work of the CCJS as a member of the Executive Committee and also through his research and teaching.

There have been two new additions to the CCJS lecturing staff. In September 2000 Dr Claire Valier moved to Leeds from the University of Lancaster to contribute to the teaching on both the BA and MA in Criminal Justice Studies in the areas of Theories of Crime and Punishment, Research Methods and Criminal Law. Yaman Akdeniz, a former CCJS PhD student, joined the Centre staff in March 2001. Yaman teaches on the Cybercrimes, Cyberlaw and the Criminal Law modules.

There were three additions to the CCJS research staff during the period covered by this report. In May 2000, Dr Karen Sharpe was appointed as research fellow on the Youth Justice Board/ Home Office funded project evaluating Referral Orders and Youth Offender Panel pilots as introduced by the Youth Justice and Criminal Evidence Act 1999 (see section 2 for descriptions of research projects). In June 2000, Dr Jackie Schneider was appointed to work on various Home Office projects relating to policing the internet. Upon the completion of those projects in April 2001 Dr Schneider moved to the University of Portsmouth. In January 2001, Stuart Lister was appointed as a research fellow to work on the Joseph Rowntree Foundation funded evaluation of a community policing project. Stuart had previously been a research fellow at the Universities of Keele and Durham. He also holds the MA in Criminal Justice Studies (with distinction) from Leeds. Stuart's contract has since been

extended so that he can also work on the evaluation of the Home Office Distraction Burglary project.

Finally, Dr Jo Goodey started her Marie Curie Fellowship in February 2000, this grant has enabled her to work with the UN Centre for International Crime Prevention in Vienna to study the trafficking of women across European borders. Congratulations go to Professor Adam Crawford upon his promotion to a Readership and then a personal chair in Criminology and Criminal Justice in June 2000.

The final part of this review (section 7) contains an interesting selection of short articles and working papers that have been written by members of the Centre for Criminal Justice Studies and which represent various aspects of their work conducted during the period covered by this review. The papers by Lister, Sharpe, Taylor and Wall were previously published in *Criminal Justice Matters* and our thanks go to the Centre for Crime and Justice Studies (formerly ISTD) King's College, London for permission to reproduce them here.

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2. Research Degrees and Teaching Programmes

a) Research Postgraduates

i) Research students - The numbers of research postgraduates that are now supervised by members of the CCJS has increased since 1999 by 12 new research students since 1st Oct 1999 (9 PhDs and 3 MA by research). Many of those new research students are conducting research into various aspects of criminal behaviour/ process and the Internet. During the same period there were six graduations, 3 were PhDs (Barton, Demir, Pocsik-Haslewood) and 3 MA by Research (James, Hazlett and Trevino). The CCJS's current research students are listed below.

Current postgraduate research students of the CCJS (with starting dates)

Akdeniz, Yaman, LLB, MA - Governance of the Internet (PhD., January 1997 – awaiting Viva)

Toor, Sunita, B.A., MA - Social and Criminal Justice Responses Towards Female Juvenile Delinquents from Different Ethnic Groups (PhD., October 1997)

Hamin, Zaiton, LLB., LLM – Combating computer-related crimes in Malaysia (PhD, October 1998)

Altiparmak, Kerem, BL., MA – Responsibility for the violation of human rights by non-State armed groups (PhD, February 1999)

Coban, Ali, LLB., MA – Protection of property rights within the European Convention on Human Rights and other international documents (PhD, March 1999)

Kerr, Iain, LLB., MA Legal governance of Internet Commerce in the United Kingdom with reference to the European Union and international organisations (Prov PhD, October 1999)

Diaz Gude, Alejandra, The application of restorative principles to criminal justice (PhD, October 1999)

Christian Buelles, BA, MPhil - Freedom of Religious Expression (PhD, March 2000)

Haitham Haloush, LLB., MA – Online Alternative Dispute Resolution as a Solution to Cross-Border Electronic Commercial Disputes, (PhD, October 2000),

Laurie Lau, LLB., MA - The Impact of Internet Upon the Evidential Requirement in the Investigation and Prosecution of Computer Crime in England and Wales, with Reference to Hong Kong SAR (Prov. PhD, Jan. 2001),

Asim, Quari, LLB, - Taxation and the Internet (MA, March 2001)

Abdul Samad Abdul Ghani, LLB, LLM, - The Governance of Privacy in Cyberspace (Prov. PhD, June 2001)

Sang Hwan Choi BA, MA - (Prov. PhD, Sept. 2001)

Byung-Ho IM, BA - Stop and Search, (Prov. PhD, Sept. 2001)

Nearchos Nearchou, LLB. - Virtual Democracy and Virtual Protest, (MA, Sept. 2001)

Al-Haider, Ibrahim, BSS, - Crime Prevention and Community Safety, (MA, Sept. 2001)

Penfold, Ruth, BA, MA - Criminal Stardom and the War on Crime, (Prov. PhD, Sept. 2001)

PhD degrees awarded to past CCJS supervisees

Ford, Lindy C., MSc, BSc - Homelessness and Persistent Petty Offenders (PhD., 1993)

Laing, Judith, LLB - Mentally Disordered Offenders and their Diversion from the Criminal Justice System (PhD., 1996)

Boland, Faye, BCL - Diminished Responsibility as a Defence in Ireland Having Regard to the Law in England, Wales and Scotland (PhD., 1996)

Wade, Amanda, BA - Children as Witnesses (PhD., 1997)

Ellison, Louise, LLB - A Comparative Study of the Rape Trial within Adversarial and Inquisitorial Criminal Justice Systems (PhD., 1997)

Okoye, Cyril, BA., MPA. - Cross-Cultural Perspectives on the Social Disorganisation of Prisons in Canada and the UK (PhD., 1998)

English, James, LLB - The Rise and Fall of Unit Fines (PhD., 1998)

Palfrey, Terry, BA - The Development of an Inquisitorial System in Fraud Investigation and Prosecution (PhD, 1999)

Gammanpila, Dakshina, LLB, MA - The Police Surgeon: Principles and Practice (PhD, 1999)

McGuinness, Martina, MBA, - Political Violence and Commercial Victims (PhD, 1999)

Mukelabai, Nyambe LLM - The Relationship Between Universal Human Rights Doctrine and Basic Rights and Freedoms in Zambia (PhD, 1999)

Matassa, Mario BA, MA, Dip. Res. Methods - Unravelling Fear of Crime in Northern Ireland (PhD, 1999)

Barton, Patricia LLB, MA - Police Accountability, Consumerism and Commercialism (PhD, 2000)

Demir, Huseyin, The role and treatment of political parties (PhD, 2001 - pending award)

Pocsik-Haslewood, Ilona, LLM - Probation in Transition (PhD, 2001 - pending award)

MA by Research degrees awarded to past CCJS supervisees

Acharya, Neena, LL.B. - The Police and Race Relations (MA, 1993).

Ghosh, Saumya, LL.B. - A Comparative Study of Some Exceptions to the Hearsay Rule with Special Reference to England and India (MA, 1993)

Harrison, Bronwyn, B.A. - The Development of Juvenile Cautioning and its Implications for Police Practice and Procedure (MA, 1993).

Davies, David Ioian, LL.B. - Identification Evidence (MA, 1994)

Moraitou, Areti, LL.B. - The Law and Practice in Relation to Fingerprinting by the Police with Respect to England and Greece (MA, 1994)

Joliffe, Paul, LL.B. - The Use of Interpreters in Magistrates' Courts (MA 1995)

Ogden, Neil, LL.B. - The Private Security Sector (MA, 1995)

Murray, Jade, LL.B. - A Study of Post-Appeal Procedures for Dealing with Miscarriages of Justice (MA, 1996)

Akdeniz, Yaman, LL.B. - The Internet: Legal Implications for Free Speech and Privacy (MA, 1996)

Gagic, Leanne, B.A. - A Study of Young Women Whose Mothers are in Custody (MA, 1997)

Ali, Shaukat, LL.M. - Provocation as a Defence to Murder (MA, 1997)

McCracken, Michael, LL.B., - The Banking Community and Paramilitary Money Laundering (MA, 1999)

Kerr, Iain, LL.B. - Legal Regulation of the Internet (MA, 1999)

James, Annabelle, LL.B. - Post Appeal remedies for Miscarriages of Justice (MA, 2000)

Hazlett, James, LL.B – Law and participation in sport (MA, 2000)

Trevino, Anthony, LL.B – Religious liberty and legal duty (MA, 2001)

ii) Postgraduate research degree schemes - The CCJS welcomes applications from students wishing to pursue research into all aspects of the criminal justice system. This subject may be taken to include, for example, the judiciary, the prosecution system, the police and policing authorities, the prison and probation services, the courts and the judiciary, criminology and penology, criminal law and terrorism, victims and mediation. Any relevant research topic in these or related areas will be considered. A number of possible areas of research have been considered with our Advisers and can be suggested on request, but applicants are not precluded from devising their own proposals. Comparative studies will be considered. The work of students may be assisted by practitioners in our Advisory Committee or by other contacts in the field. Formal instruction in research methodology is provided as a standard training package, and joint supervisions in interdisciplinary subjects can be arranged. Some scholarships are available, and the Centre was recognised as a Mode B institution for the receipt of E.S.R.C. scholarships (re-application pending).

The relevant degree schemes on offer by research and thesis only are as follows:

Master of Arts (M.A.) - one year full-time or two years part-time;

Master of Philosophy (M.Phil.) - two years full-time or three years part-time;

Doctor of Philosophy (Ph.D) - three years full-time or four years part-time.

The entrance requirements common to all three schemes are that applicants must normally possess a good honours degree, but those with professional qualifications or substantial professional experience will be considered. The detailed regulations governing the above degree schemes are available on request from the University's Student Office.

From early 2002, the CCJS's existing two research postgraduate student annexes will move into a purpose built Law Graduate Centre that is situated within the basement of the main law building. This move is part of the reconstruction of the law department, following the incorporation of the special Criminal Justice Studies section, along with Law Library into the Brotherton Library's main collection. Within the Law Graduate Centre, each research postgraduate student will have access to desk space, a lockable area, and a good quality computer with printing facilities. The University's Graduate Centre also has further facilities for research postgraduates and provides a range of very useful training courses.

b) Taught Postgraduate Courses

i) Taught Postgraduate Student Numbers - The CCJS has continued to recruit a fairly constant number of students onto its MA postgraduate programme in Criminal Justice Studies. The number of international students has increased in 2000 and 2001 compared with recent years. It is anticipated that the introduction of the LLM scheme will further increase student numbers.

The annual number of students taking the programme for the past 6 years is shown below:

| | 1996/97 | 1997/98 | 1998/99 | 1999/2000 | 2000/01 | 2001/02 |
|-----------|---------|---------|---------|-----------|---------|---------|
| Full-time | 6 | 12 | 16 | 8 | 14* | 14 |
| Part-time | 7 | 2 | 1 | 3 | 4 | 3 |
| | | | | | | |
| Total | 13 | 14 | 17 | 11 | 18 | 17 |

*Includes one student taking the Diploma in Criminal Justice Studies

During recent years there has been an increase in the number of international students who are joining the course. It is anticipated that the full launch of the LLM in Criminal Justice Studies and Criminal Law in 2002 will attract more international students.

ii) Taught Postgraduate Degree Schemes in Criminal Justice and Related subjects

i) CRIMINAL JUSTICE STUDIES (MA, LLM, Diploma, Certificate)

MA in Criminal Justice Studies

Objectives - To enable students to acquire new theoretical perspectives on, and wider knowledge about, criminal justice systems as well as a grounding in research methodology and the capacity to undertake research projects.

Duration - 12 months full time; 24 months part time. Note that some of the courses offered can be taken as free standing units with later accreditation.

Entry requirements - A good honours degree in law, social sciences or related subjects.

Contents (to amount to 120 credits):

The compulsory courses are:

Criminal Justice Research Methods and Skills (20 credits)

Criminal Justice Process (20 credits)

Criminal Justice Policies and Perspectives (20 credits)

Dissertation of up to 15,000 words (40 credits)

The optional courses (students must select 20 credits): (other modules may also be available)
Policing I (10 credits)

Policing II (10 credits)
Theories of Crime and Punishment (10 credits)
Victims and Victimology (10 credits)

Forensic Process (10 credits)
Gender, Race and Crime (10 Credits)

Negotiated Study (10 or 20 credits)

LLM in Criminal Justice and Criminal Law - as above except that a good honours degree in Law is normally expected and students will take a 30 credit option in Criminal Law as a core subject in place of one of the optional courses and either Research Methods or Criminal Justice Policies and Perspectives.

Diploma in Criminal Justice Studies

Duration - 9 months full time, 18 months part time. Note that some of the courses offered can be taken as free standing units and later accreditation can be granted.

Entry requirements - A good honours degree in law, social sciences or related subjects. Persons without degrees but with professional qualifications or experience will be considered.

Contents - Students select from the courses listed for the MA scheme. There is no compulsory course or dissertation.

Certificate in Criminal Justice Studies

Duration - 9 months part time. Note that some of the courses offered can be taken as free standing units and later accreditation can be granted.

Entry requirements - A good honours degree in law, social sciences or related subjects. Persons without degrees but with professional qualifications or experience will be considered.

Contents - Students select from the courses listed for the MA scheme. There is no compulsory course or dissertation.

ii) CRIME PREVENTION AND COMMUNITY SAFETY (MA, Certificate)

MA in Crime Prevention and Community Safety

Entry requirements - Same as for Criminal Justice Studies programme

Objectives - To enable the student: to analyse critically current debates (such as surrounding the Crime and Disorder Act 1998) relating to crime prevention and community safety; to show an understanding of recent developments in crime prevention; to evaluate the assumptions about the causes of crime and the nature of human behaviour and social relations which infuse crime prevention theories and policies;

to become more aware of the complex relationships between politics, policies and practices within the field; and to examine research issues and to be able to write about them in a structured way.

Content - The compulsory modules are:

- Crime Prevention and Community Safety: This module requires distance learning and attendance at 5 seminars.
 - Negotiated Study in Criminal Justice: There will be supervision for work-based projects which would be negotiated between students and tutors and would normally arise out of their work experiences.
 - Dissertation
- Other modules can be chosen from the Criminal Justice Studies programme (above)

Bar Council and Law Society CPD points available

Certificate in Crime Prevention and Community Safety

Entry requirements - Same as for Criminal Justice Studies programme

Objectives - Same as for above MA.

Content - Crime Prevention and Community Safety; Negotiated Study (see above)

Bar Council and Law Society CPD points available

iii POLICING STUDIES (MA, Certificate)

MA in Criminal Justice and Policing Studies

Entry requirements - Same as for Criminal Justice Studies programme

Objectives

1. To provide a forum for the analysis and discussion of issues in relation to policing and its relation to criminal justice
2. To enable students to develop analytical and research skills in connection with policing issues, including to encourage and enable criminal justice professionals to reflect on problems which they frequently encounter, to research the issues arising from these problems and to write about these issues in a structured way.

Content - The compulsory modules are:

- Policing I and Policing II: This module requires distance learning and attendance at a number of supervision sessions
- Negotiated Study in Criminal Justice: There will be supervision for work-based projects which would be negotiated between students and tutors and would normally arise out of their work experiences.

- Dissertation

Other modules can be chosen from the Criminal Justice Studies programme (above)

Bar Council and Law Society CPD points available

Certificate in Policing Studies

Entry requirements - Same as for Criminal Justice Studies programme

Objectives - Same as for above MA.

Content - Policing I and Policing II; Negotiated Study (see above)

Bar Council and Law Society CPD points available

iv) CONTEMPORARY ISSUES IN CRIMINAL JUSTICE (MA, Certificate)

MA in Contemporary Issues in Criminal Justice

Entry requirements - Same as for Criminal Justice Studies programme

Objectives - To provide a forum for the analysis and discussion of contemporary issues in criminal justice and to enable students to develop analytical and research skills in connection with criminal justice issues, including to encourage and enable practising lawyers to reflect on problems which they frequently encounter, to research the issues arising from these problems and to think and write about these issues in a structured way.

Content - The compulsory modules are:

- Contemporary Issues in Criminal Justice: This module requires distance learning and attendance at 8 seminars throughout the year.
- Negotiated Study in Criminal Justice: There will be supervision for work-based projects which would be negotiated between students and tutors and would normally arise out of their work experiences.
- Dissertation

Other modules can be chosen from the Criminal Justice Studies programme (above)

Bar Council and Law Society CPD points available

Certificate in Contemporary Issues in Criminal Justice

Entry requirements - Same as for Criminal Justice Studies programme

Objectives - Same as for above MA.

Content - Contemporary Issues in Criminal Justice; Negotiated Study (see above)

c) BA (Hons) Criminal Justice and Criminology

This new full-time undergraduate programme in Criminal Justice and Criminology offers students the opportunity to specialise in criminal justice studies within the context of a grounding in Law and Social Policy/ Sociology. This scheme adopts a broad understanding of "criminal justice" that includes the study of both formal and informal processes of regulation and control. Accordingly, "Criminal Justice Studies" draws upon a number of disciplines, ranging from legal philosophy through political sciences to socio-legal studies. It is the interplay between the legal, social and political which gives this scheme a uniquely progressive and flexible profile and special vitality. The BA scheme is an exciting joint inter-disciplinary venture which is built around courses offered by leading academics from two prestigious, research-led, departments of international academic excellence.

The degree has four principle objectives. The first is to familiarise students with the various theories that explain crime, the social reactions to it and also criminal justice. Secondly, the scheme explores the policy debates which emerge as a societal response to crime. Thirdly, students will develop an understanding of the institutional features of, and professions within, the criminal justice processes. Fourthly, and finally, students will come to understand the dynamic processes which shape the outcomes of criminal justice such as cultures and discretion, the impact of social change, and the interaction between criminological research and institutional action.

Entrance Requirements: Normally 3 passes at A level, or two passes at A level and 2 AS levels, or equivalent qualifications. The grade requirements are BBB (including General Studies).

Teaching and assessment: All the taught modules are delivered by way of a mixture of teaching methods – lectures and seminars. Study visits may also be arranged. Assessment is by examination and written work.

Subsequent Careers: The scheme offers a grounding for graduates who wish to work in criminal justice related professions. The Centre for Criminal Justice Studies has links (especially through the Advisers) with a wide range of agencies and practitioners and a very lively programme of conferences and seminars, many involving representatives from those sectors. These links are supplemented by those forged through the Department of Sociology and Social Policy and the Department of Law, which have a variety of other contacts. There are exciting career possibilities for graduates. Criminal justice provides a good academic base for those considering careers in the police, the prison service, the private security sector, probation, social work, community care and law, community safety, as well as regulatory fields. It will also provide a base for further academic study. Many of these career options will require further study and qualifications after graduation. The police, for example, have their own induction courses (including the Police Accelerated Promotion Scheme for Graduates), while the Probation Service requires further professional qualifications. Likewise, the legal professions will require further qualifications, though for the first stage (the Common Professional Examinations), the structure of

the BA allows a student to put together a package of compulsory/option/elective subjects that provide part exemption.

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3. RESEARCH PROJECTS

This section describes the various research projects which are currently being conducted by members of the CCJS. They are organised under three main headings: "Victims, Policing and Community Safety", "Criminal Justice and its Administration"; "Information Technology, Crime and Regulation".

a) Victims, Policing and Community Safety

Comparative European Crime Prevention and Community Safety

Adam Crawford has continued to develop research into recent developments in crime prevention across Europe, through membership of three European networks: the Groupe Européen de Recherche sur les Normativités (GERN) and the European Forum on Urban Safety. The former is a network of leading academics whose collaborative work will result in a collection of essays edited by Duprez, D. and Hebberecht, P. to be published in French in 2001 as 'Les Politiques de Sécurité et de Prévention dans les Années 1990s en Europe', as a special edition of *Déviance et Société*, vol. 25, no. 4. The second network is a large confederation of practitioners (mainly from local authorities) concerned with urban safety, and overseen by a committee of scientific experts of which Adam Crawford is one. This collaboration resulted in a major international conference 'Sécurité et Démocratie', organised by the European Forum for Urban Safety to be held in Naples, 7-9 December 2000 and which will produce a Manifesto for Urban Safety. The third network is organised by the Association Française de Science Politique and resulted in an International Colloquium in Paris, 18-19 October 2001.

Distraction Burglary: an evaluation of the Leeds Distraction Burglary Project

In September 2001, Stuart Lister and David Wall were awarded £60,000 to undertake a 2 year project that will evaluate the impact of the Leeds Distraction Burglary Project. Distraction burglary involves the specific targeting of elderly people, often through deception, and can have horrific results. It differs from most other forms of burglary because the offenders seek to engage directly with the victim and exploit their weaknesses. The aim of the research is to examine 'what works' in the efforts to prevent this very specific type of burglary.

Evaluation of a Local Community Policing Initiative - New Earswick

In July 2000 Adam Crawford was awarded a grant of £42,697, by the Joseph Rowntree Foundation to conduct a three year evaluation of a community policing initiative in York. Clive Walker, David Wall and Tim Newburn (Goldsmiths College, London) will assist on the project. A research officer, Stuart Lister, has been appointed and commenced work in January 2001. This three year study will examine the work and impact of the community policing initiative in New Earswick. The central aims of the research are to assess:

- attitudes towards the community policing role;
- the impact of the community policing role; and
- lessons for policy and practice.

The study will seek to assess the relationship between the introduction and implementation of the local community policing initiative and any resultant change in levels of crime and disorder and community attitudes, perceptions and behaviour. Consideration will also be given to the national implications of the initiative and the resultant findings. Hence, the research will seek to connect the New Earswick experience to wider debates about the deployment of scarce resources and the re-articulation of 'public' policing and the blurring boundaries between public, hybrid and private interests and providers, as well as public expectations about community safety.

Integrating Victims within Criminal Justice

Adam Crawford and Jo Goodey's edited book *Integrating Victims within Criminal Justice* was published by Ashgate in March 2000. The book arose out of a conference held by the CCJS in July 1998 of the same title. Some of the other papers from the conference were also published in 2000 as a special edition of the *International Review of Victimology*, vol. 7, no. 4.

The Nuffield Foundation funded research, into victim contact work in the probation service, was published in the summer of 1999: Crawford, A. and Enterkin, J., *Victim Contact Work and the Probation Service: A Study of Service Delivery and Impact*, Leeds, CCJS Press, 1999 (it is available for purchase through the CCJS - see Appendix 3). The research has also resulted in a number of academic and practitioner-oriented articles. The research influenced and was variously cited in Her Majesty's Inspectorate of Probation's Thematic Inspection Report *The Victim Perspective: Ensuring the Victim Matters* (published in March 2000). The Report inspired legislative changes in the form of Section 69 of the Criminal Justice and Courts Act 2000 and the accompanying Probation Circulars 61/2001 and 62/2001 which have revised victim contact work in the probation service.

People Trafficking, Organised Crime and Criminal Justice: EU Responses

Dr Jo Goodey was awarded a Marie Curie Individual Research Fellowship by the European Commission to undertake research for a two year period from February 2000 on 'People Trafficking, Organised Crime and Criminal Justice: EU Responses'. For the duration of the Fellowship Jo has been based at the United Nations Office for

Drug Control and Crime Prevention in Vienna. The project will now conclude in late 2002.

Regulating Closed Circuit Television Systems

Nick Taylor is currently conducting research into changes in the regulation of Closed Circuit Television Systems. These changes have been brought about by the introduction of internal guidelines and also the Data Protection Act 1998 and Human Rights Act 1998 which have sought to bring about greater transparency in operation and a commitment to the protection of individual privacy. Nick's research involves analysing a number of public, or quasi-public schemes throughout West Yorkshire. It is intended that the results of this research will be available in 2002.

Young Migrants and Crime

In November 1998, Jo Goodey was awarded a European Science Foundation grant for 1999-00 to undertake developmental research with a six-country EU team on 'Young Migrants and Crime'. Dr Goodey is the project leader. To date the team has met in Leeds, Freiburg (Germany) and Malaga (Spain), and is in the process of writing an application for EC Framework V funding to undertake extensive and long-term fieldwork in the six countries from 2002.

b) Criminal Justice and its Administration

Crime and Punishment in Contemporary Culture

Claire Valier completed a project that explored the place of crime control and penal practices in contemporary western cultures. She wrote up her research for a forthcoming publication in Routledge's prestigious 'International Library of Sociology' series, under the title *Crime and Punishment in Contemporary Culture*. The book includes chapters on terror, spectacle and the death penalty, cyberspatial communications and the punitive turn, and foreigners, crime and diaspora.

Enforcement of Financial Penalties

This project is funded by the Home Office and Clive Walker is conducting it with John Raine from the University of Birmingham. The research covers more than 20 separate projects, and Clive Walker is responsible for evaluating three of those projects. The research is due to be completed in early 2002.

Impact on the Courts and the Administration of Justice of the Human Rights Act 1998

This project (funded by the Lord Chancellor's Department) is being conducted jointly by Clive Walker and John Raine from the University of Birmingham over a 24 month period. This research project seeks to assess the workload, case-processing, resource cost and other effects of the Human Rights Act 1998 for courts. It is planned as a 'before and after' study examining the expectations as anticipated ahead of implementation and the actual effects afterwards. The aim is to provide information to

assist Government and the courts as they both prepare for and respond to the introduction of the particular provisions of the Act.

New Public Management and the Administration of Justice in the Magistrates' courts

Funded by the Lord Chancellor's Department, this project addressed the impact of the changes brought about by the Police and Magistrates' Courts Act 1994, particularly in relation to: the alteration of Magistrates' Courts Committee Areas; membership of MCCs and the conduct of their business; the role of the Justices' Chief Executive. More specifically it explored the restructuring of the magistrates' courts in England and Wales and the impact of the role of the Chief Executive of the amalgamated Magistrates' Courts areas. The research team comprised of CCJS members, Ben Fitzpatrick, Peter Seago and David Wall and the final report was submitted to the LCD in 2001.

Notoriety and Punishment

Claire Valier was awarded a grant from the British Academy to support her work on notoriety and punishment. The research focuses on the cases of Myra Hindley, Robert Thompson and Jon Venables, and explores the place of notoriety within the recent punitive turn in British criminal justice. The project involves archival and library research in Australia and Cambridge. Claire has completed an article arising from this research, for publication in a special issue of the journal *Theoretical Criminology* (summer 2002), and has been editing a special issue of the journal *Punishment and Society* on 'Images, Punishment and the Politics of Representation.'

Referral Order and Youth Offender Panel Evaluation Project:

Adam Crawford is part of a multi-university and inter-disciplinary research team, which has been awarded a major contract by the Home Office to evaluate the implementation of Referral Orders and Youth Offender Panels introduced as pilots by the Youth Justice and Criminal Evidence Act 1999. The total award granted in December 1999 is £365,288. The research is being conducted in conjunction with Tim Newburn at Goldsmiths College, London and Chris Hale and Anne Netten at the University of Kent. The Youth Justice and Criminal Evidence Act 1999 introduces a new primary sentencing disposal - the referral order - for 10-17 year olds pleading guilty and convicted for the first time by the courts. The disposal involves referring the young offender to a youth offender panel (YOP). The work of YOPs is to be governed by the principles 'underlying the concept of restorative justice': defined as 'restoration, reintegration and responsibility'. The aims of the research are:

- To identify the most effective ways of implementing referral orders and, in the longer term
- To evaluate the effectiveness of the orders.

The study, which began in March 2000, when the pilot schemes were established, will run until the end of December 2001. It will examine the recruitment and training of youth panel members, and the establishment and implementation of referral order and Youth Offender Panels in the 11 national pilot areas. In addition, through a

comparison of practices and reconviction rates within the 11 pilot areas and 11 specified comparison areas, the study will assess the impact of referral orders on young offenders. Finally, the study will examine the costs of referral orders and will appraise their cost-effectiveness.

Dr Karen Sharpe has been employed as a research officer based at the CCJS, University of Leeds, as part of the study. She began in May 2000 and will work throughout the life of the project. Five other researchers are based in the other participating universities.

The pilots are being overseen by an inter-agency Referral Order Steering Group chaired by the Youth Justice Board and incorporating representation from the Home Office, Youth Justice Board, Lord Chancellor's Department, Department of Education and Employment, Judicial Studies Board, Evaluation Team, Police, YOTs, Victim Support, NACRO and the Restorative Justice Consortium. The first interim report was published in March 2001 and a second interim report was published in September 2001 (both were published by the Home Office as RDS Occasional papers No. 70 and 73, respectively, and can be accessed via the internet at: <http://www.homeoffice.gov.uk/rds/>). The final report will be submitted to the Home Office at the end of December 2001 for publication in March 2002. National roll-out of referral orders will begin in April 2002.

Theories of Crime and Punishment

Claire Valier worked on an appreciation and critique of the principal theories of crime and punishment from the late eighteenth century to the present day. This was based on extensive research into the social and cultural context from which each theory emerged. The project also involved close readings of a number of classic and contemporary texts on crime and punishment, and an assessment of their place within the intellectual development of the discipline of criminology. The research happily culminated in the publication of Claire's first book, *Theories of Crime and Punishment*. (Longman, 2001).

Tolerance, Democracy and Justice

Juliet Lodge (who is also Director of the Jean Monnet Centre) is conducting an EU funded research project into employment, tolerance and democracy. Central to Juliet's research is a transnational study of the various understandings of justice, liberty, freedom and Pillar III.

c) Information Technology, Crime and Regulation

Cyberscams: Internet related Frauds and Deceptions in the UK

In 2000, David Wall (with Jackie Schneider as researcher) were funded by a Home Office Innovative Research award to conduct research into internet related scams. The overall objective of this research was to develop knowledge and gain an understanding of the types of frauds and deceptions (confidence tricks, scams etc) that are taking place via the Internet. The intended outcome of the research is to provide a

body of knowledge about deceptions which will inform the development of intervention programmes and public awareness campaigns to warn users of the Internet of potential victimisation. This knowledge will also assist with the development of policies to police the offenders and to enforce law. It will also inform the academic debates over new dimensions in theft. The research is still in progress and the final report will be submitted in early 2002.

Policing the Virtual Community

This project by David Wall and Jackie Schneider, surveyed existing police and security forces to look at existing strategies for the policing of the internet - the findings will initially be for police use only, although it is anticipated that publication clearance will be given after a period of time has lapsed. In addition to providing a tool which will develop good practice, the broader findings of this work will also act as a pilot project for future research funding that will be sought by a consortium which includes academics and Government agencies from both the UK and also the USA. The final report was submitted in March 2000.

Police National Legal Database Consortium

A team from the West Yorkshire Police has established a wide-ranging database of legal information for police officers. The Centre for Criminal Justice Studies acts as auditors of the data, and Clive Walker is the principal grant holder, the co-ordinator and the primary researcher. The success of our work has encouraged interest from other police forces, and a similar agreement to provide advice was made in late 1995 with the British Transport Police. Income of over £5000 has been generated. A number of academic papers have arisen from the research for the police, for example, "Internal cross-border policing" (1997) 56 *Cambridge Law Journal* 114-146.

Theft of Electronic Services

This "blue skies" research project was conducted by David Wall and it explored the criminological implications of the shift in patterns of electronic goods consumption from the consumer durable towards the concept of electronic service delivery. Particular focus was placed upon the provision of "free kit" to those who undertake a long-term tie-up with the service provider. Although these marketing ideas are not entirely new, the threat lies in the sheer volume and breadth of anticipated electronic services which will greatly proliferate as new information and communications technologies develop. Consequently, they will increasingly become targets for criminals. It is anticipated that the shift in emphasis from the consumer durable to the consumer service itself, will affect both the architecture and also patterns of particular types of theft by creating new patterns of offending and new offender and victim profiles whilst destroying existing ones. The final report was submitted in December 2000 and it was published as an appendix to the DTI report *Turning the Corner*.

CRIMINAL JUSTICE REVIEW 1999-2001

Centre for Criminal Justice Studies, University of Leeds
(This bi-annual review represents the twelfth and thirteenth annual reports)

4. Publications 1999-2001

This section describes a considerable number of publications by the members of the CCJS during the period covered by this report. In sum these publications represent 6 books, 29 chapters of book, 29 articles in academic journals, 11 research reports and 23 shorter articles or reviews. They are organised below under three main headings: a) "Criminology" which includes the study of crime, victims, crime prevention and community safety; b) "Criminal Justice Processes" (inc. Police and Policing, Courts, Sentencing); c) "Information Technology, Crime and Regulation".

a) Victims, Policing and Community Safety

Books

Crawford, A. and Goodey, J. (2000) (eds) *Integrating a Victim Perspective within Criminal Justice*, pp. 318 + xiii, Aldershot: Ashgate.

Valier, C. (2001) *Theories of Crime and Punishment*, Longman: London.

Book Chapters

Crawford, A. (2000) 'Community Safety and the Quest for Security: Holding Back the Dynamics of Social Exclusion', in Hope, T. (ed.) *Perspectives on Crime Reduction*, International Library of Criminology, Aldershot: Ashgate.

Crawford, A. (2000) 'Contrasts in Victim/Offender Mediation and Appeals to Community in France and England', pp. 207-31 in Nelken, D. (ed.) *Contrasting Criminal Justice: Getting from here to there*, Aldershot: Ashgate.

Crawford, A. (2000) 'Introduction', pp. 1-11, in Crawford, A. and Goodey, J. (eds) *Integrating a Victim Perspective within Criminal Justice*, Aldershot: Ashgate.

Crawford, A. (2000) 'Salient Themes Towards a Victim Perspective and the Limitations of Restorative Justice', pp. 285-310, in Crawford, A. and Goodey, J. (eds) *Integrating a Victim Perspective within Criminal Justice*, Aldershot: Ashgate.

Crawford, A. (2000) 'Situational Crime Prevention, Urban Governance and Trust Relations', pp. 193-213, in von Hirsch, A., Garland, D. and Wakefield, A. (eds) (2000) *Ethical and Social Perspectives on Situational Crime Prevention*, Oxford: Hart Publishing.

Crawford, A. (2001) 'Joined-Up but Fragmented: Contradiction, Ambiguity and Ambivalence at the Heart of Labour's "Third Way"', pp. 54-80, in Matthews, R. and Pitts, J. (eds) *Crime, Disorder and Community Safety: A New Agenda?*, London: Routledge.

Crawford, A. (2001) 'La justice de proximité - appels à la "communauté " et stratégies de responsabilisation dans une idéologie managériale: Réflexions à partir d'une perspective anglo-saxonne', pp. 37-63, in Faget, J. and Wyvekens, A. (eds) *La Justice de Proximité*, Saint Agne: Editions Erès.

Crawford, A. (2001) 'The Growth of Crime Prevention in France as Contrasted with the English Experience: Some Thoughts on the Politics of Insecurity', pp. 214-39, in Hughes, G., McLaughlin, E. and Muncie, J. (eds) *Crime Prevention and Community Safety: New Directions*, London: Sage.

Crawford, A. and Clear, T.R. (2001) 'Community Justice: Transforming Communities Through Restorative Justice?', pp. 127-49, in Bazemore, G. and Shiff, M. (eds) *Restorative Community Justice: Repairing Harm and Transforming Communities*, Cincinnati: Anderson Publications.

Goodey, J. (2000) "An overview of key themes", pp. 13-34, in Crawford, A. and Goodey, J. (eds) *Integrating a Victim Perspective within Criminal Justice*, Aldershot: Ashgate.

Sharpe, K. (2000) 'Sad, Bad and (sometimes) "Dangerous to Know: Street Corner Research with Prostitutes, Punters and the Police"', pp. 363-372 in King, R.D. and Wincup, E. (eds) *Doing Research on Crime and Justice*, Oxford: Oxford University Press.

Articles

Crawford, A., (1999) 'Questioning Appeals to Community in Crime Prevention and Control', *European Journal on Criminal Policy and Research*, Special edition on 'Communities and Crime', vol. 7, no. 4, pp. 509-30.

Crawford, A. (2000) 'Justice de Proximité - The Growth of "Houses of Justice" and Victim/Offender Mediation in France: A Very UnFrench Legal Response?', *Social & Legal Studies*, vol. 9, no. 1, pp. 29-53.

Crawford, A. (2000) 'Why British Criminologists Lose Their Critical Faculties upon Crossing the Channel: Some Thoughts on Comparative Criminology from an Empirical Investigation in France and England', *Social Work in Europe*, vol. 7, no. 1, pp. 22-30.

Crawford, A. (2001) 'Vers une Reconfiguration des Pouvoirs? Le Niveau Local et les Perspectives de la Gouvernance', *Déviance et Société*, vol. 25, no. 1, pp. 3-32.

Goodey, J. (2000) 'Biographical Lessons for Criminology', *Theoretical Criminology*, vol. 4, pp. 473-98.

Goodey, J. (2000) 'Non-EU Citizens' Experiences of Offending and Victimisation: The Case for Comparative European Research', *The European Journal of Crime, Criminal Law and Criminal Justice*, vol. 8, pp. 13-34.

Lister, S., Hobbs, D., Hall, S. and Winlow, S., (2000) 'Violence in the Night-Time Economy; Bouncers: The Reporting, Recording and Prosecution of Assaults', *Policing and Society*, vol. 10, no. 4, pp. 383-402.

Valier, C. (1999) "Psychoanalysis and Crime in Britain during the inter-war years" *British Criminology Conferences, Selected Proceedings*, Volume 1.

Valier, C. (2000) "Looking daggers: reading the scene of punishment", *Punishment and Society*, vol. 2, no. 4, pp. 379-394.

Valier, C. (2000) 'Criminology, Critique and the Revival of Ethical Questions', *Theoretical Criminology*, vol. 4, no. 4.

Valier, C. (2001) "Criminal Detection and the Weight of the Past: Critical Notes on Foucault, Subjectivity and Preventative Control", *Theoretical Criminology*. vol. 5, no. 4, pp. 425-43.

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Crawford, A. and Blair, C. (2000) *Community Safety Centre Review and a Strategy for Northern Ireland*, Criminal Justice Review Research Report 7, Belfast: HMSO, pp. 43 + iv.

Crawford, A. and Matassa, M. (2000) *Community Safety Structures: An International Review*, Criminal Justice Review Research Report 8, Belfast: HMSO, pp. 153 + vii.

Crawford, A. (2001) *Public Matters: Reviving Public Participation in Criminal Justice*, pp. 38, London: IPPR.

Maguire, M., Kemshall, H., Noaks, L., Wincup, E. and Sharpe, K. (2001) *Risk Management of Sexual and Violent Offenders: The Work of Public Protection Panels*, Police Research Series No. 139, London: Home Office.

Miers, D., Maguire, M., Goldie, S., Sharpe, K., Hale, C., Uglow, S., Netten, A., Doolin, K., Newburn, T., Enterkin, J. (2001) *An Exploratory Evaluation of Restorative Justice Schemes*, London: Home Office, RDS.

Newburn, T., Crawford, A., Earle, R., Goldie, S., Hale, C., Masters, G., Netten, A., Saunders, R., Sharpe, K. and Uglow, S. (2001) *The Introduction of Referral Orders into the Youth Justice System, First Interim Report*, RDS Occasional Paper No. 70, London: Home Office, p. 78 + viii.

Newburn, T., Crawford, A., Earle, R., Goldie, S., Hale, C., Masters, G., Saunders R., Sharpe, K., Uglow, S. and Campbell, A. (2001) *The Introduction of Referral Orders into the Youth Justice System: Second Interim Report*, RDS Occasional Paper No. 73, London: Home Office.

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Crawford, A. (2000) 'Introduction', Special Issue on Integrating a Victim Perspective within Criminal Justice, *International Review of Victimology*, vol. 7, no. 4, pp. i-ii.

Crawford, A. (2000) 'Review of Ballintyne, Pease and McLaren (eds) "Secure Foundations"', *Criminal Justice*, vol. 1, no. 3.

Crawford, A. and Enterkin, J. (2000) 'The Probation Service, Victims of Crime and the Release of Prisoners', *Criminal Justice Matters*, issue 39, pp. 30-31.

Crawford, A., (2000) 'Review of Mair, G. (ed.) "Evaluating the Effectiveness of Community Penalties"', *International Criminal Justice Review*, vol. 10, pp. 137-139.

Sharpe, K. (2001) 'Community Matters: Making a difference to tackling youth crime', *Criminal Justice Matters*, issue 45, pp. 26-27.

Valier, C. (2000) "Review of 'Crime and the Risk Society' by Pat O'Malley", *Punishment & Society*, Vol. 2, no. 3.

Valier, C. (2000) "Review of 'The Business of Judging' by Thomas Bingham", *Journal of Law and Society*, November.

Valier, C. (2000) "Review of 'Unspeakable Subjects: Feminist Essays in Legal and Social Theory' by Nicola Lacey", *Theoretical Criminology*, vol. 4, no. 4.

b) Criminal Justice and its Administration (inc. Human Rights)

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Rehman, J. (2000) *Weaknesses in the International Protection of Minority Rights*, Hague: Kluwer Law International, 288pp + xiv.

Rehman, J. (2001) (with Shaheen Sardar Ali), *Indigenous Peoples and Ethnic Minorities of Pakistan: Constitutional and Legal Perspectives*, London: Routledge-Curzon Press, 192pp + xiii maps.

Ryan, M., Savage, S. and Wall, D.S. (eds) (2001) *Policy Networks in Criminal Justice*, London: Palgrave, 226pp.

Stallion, M. and Wall, D.S. (1999) *The British Police: Forces and Chief Officers 1829-2000*, London: Police History Society, 269pp+iv.

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Fitzpatrick, B., Seago, P., Walker, C., and Wall, D., (2001) "The Courts: New Court Management and Old Court Ideologies", pp. 98 – 121, in Ryan, M., Savage, S. and Wall, D.S. (eds) (2001) *Policy Networks in Criminal Justice*, London: Palgrave.

Rehman, J. (2000) "Concluding Remarks", pp. 285 – 293.in Tierney, S. (ed), *Accommodating National Identity - New Approaches to International and Domestic Law*, Hague: Kluwer Law International.

Rehman, J. (2000) "The Conception of `Peoples' in International Law with Special Reference to Africa", pp. 270 – 284 in Bakut, S. *et al*, (eds.), *Development in Africa for the 21st Century*, London: Macmillan.

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Fitzpatrick, B. (2001) "Admissibility of Evidence and the Right to a Fair Trial: R. v Shannon (John James), 1 W.L.R. 51", *Journal of Civil Liberties*, pp. 83-93.

Fitzpatrick, B. and Reed, A. (2000) "Provocation: A controlled response" (2000) *The Transnational Lawyer* , vol. 12, pp. 393-402.

Fitzpatrick, B. and Taylor, N. (2001) "Human Rights and the Discretionary Exclusion of Evidence", *Journal of Criminal Law*, vol. 65, pp: 349-359.

Fitzpatrick, B., Seago, P., Walker, C., and Wall, D., (2000) "New courts management and the professionalisation of summary justice in England and Wales", *Criminal Law Forum*, vol. 11, no. 1, pp. 1-11.

Hobbs, D., Lister, S., Hadfield, P., Winlow, S. and Hall, S. (2000) 'Receiving Shadows: Governance and Liminality in the Night-Time Economy', *British Journal of Sociology*, vol. 51, no. 4, pp. 701-17.

James, A., Taylor, N. and Walker, C.P. (2000) "The Criminal Cases Review Commission", *Criminal Law Review*, pp. 140-153.

James, A., Taylor, N. and Walker, C.P. (2000) "The Reform of Double Jeopardy", *Web Journal of Current Legal Issues* (<http://webjcli.ncl.ac.uk/2000/issue5/james5.html>, 13pp)

Rehman, J. (2000) "The Role and Contribution of the World Court in the Progressive Development of International Environmental Law", *Asia Pacific Journal of Environmental Law*, vol. 5, no 4, pp. 3–15.

Rehman, J. (2000) "Accommodating Religious Identities in an Islamic State: International Law, Freedom of Religion and the Rights of Religious Minorities", *International Journal on Minority and Group Rights*, vol. 7, no. 2, pp. 65 – 92.

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Seago, P.J., Walker, C.P. and Wall, D.S., (2000) "The Development of the Professional Magistracy in England and Wales", *Criminal Law Review*, August, pp. 631-651.

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Walker, C.P. (2000) "Briefing on the Terrorism Act 2000", *Terrorism and Political Violence*, vol. 12, pp. 1-36.

Walker, C.P. and Weaver, R. (2000) "The United Kingdom Bill of Rights", *University of Michigan Journal of Law Reform*, vol. 33, pp. 497-560.

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Fitzpatrick, B., Seago, P. and Wall, D.S. (2001) *New Managerialism in the Courts System*, Final report to the Lord Chancellor's Department.

Hobbs, D., Hall, S., Winlow, S., Lister, S. and Hadfield, P. (2000) *Bouncers: The Art and Economics of Intimidation*, Final Report to the ESRC.

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Lister, S., Hatfield, P., Hobbs, D., and Winlow, S. (2001) "'Be nice': The training of bouncers", *Criminal Justice Matters*, no. 45, pp. 20-21.

Seago, P.J., Walker, C.P. and Wall, D.S. (2000) "The Professionalisation of Local Courts' Justice", *Criminal Justice Matters*, no. 38.

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c) Information Technology, Crime and Regulation

Books

Akdeniz, Y. (1999) *Sex on the Net? The Dilemma of Policing Cyberspace*, Reading: South Street Press.

Akdeniz, Y., Walker, C.P. and Wall, D.S. (eds) (2000) *The Internet, Law and Society*, London: Longman, 388pp+xx.

Chapters, Articles and Reports

Akdeniz, Y. (2000) "Child Pornography", pp. 231-249 in Akdeniz, Y., Walker, C. and Wall, D., (eds) *The Internet, Law and Society*, Addison Wesley Longman.

Akdeniz, Y., and Strossen, N. (2000) "Sexually Oriented Expression", pp 207-231 in Akdeniz, Y., Walker, C. and Wall, D., (eds), *The Internet, Law and Society*, Addison Wesley Longman.

Akdeniz, Y. (2000) "Policing the Internet: Regulation and censorship," pp. 169-188 in Gibson, R., and Ward, S., (eds), *Reinvigorating Democracy? British Politics and the Internet*, Aldershot: Ashgate.

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Akdeniz, Y. (1999) "Who Watches the Watchmen: Internet Content Rating Systems, and Privatised Censorship," in eds EPIC, *Filters and Freedom - Free Speech Perspectives on Internet Content Controls*, Washington DC: Electronic Privacy Information Center.

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Wall, D.S. (1999) "Cybercrimes: New wine, no bottles?", pp. 105-139 in Davies, P., Francis, P. and Jupp, V. (eds) (1999) *Invisible Crimes: Their Victims and their Regulation*, London: Macmillan.

Wall, D.S. (2000) "Policing the Internet: maintaining order and law on the cyber-beat", pp. 154-174 , in Akdeniz, Y., Walker, C.P. and Wall. D.S. (eds) *The Internet, Law and Society*, London: Longman

Wall, D.S. (2000) "The New Electric Lawyer and Legal Practice in the Information Age" pp. 109-124 , in Akdeniz, Y., Walker, C.P. and Wall. D.S. (eds) *The Internet, Law and Society*, London: Longman

Articles

Akdeniz, Y. (1999) "The Regulation of Internet Content in Europe: Governmental Control vs. Self-Responsibility", *Swiss Political Science Review*, vol. 5, no. 2, pp. 123-131. At <http://www.ib.ethz.ch/spsr/debates/debat_net/art-2-2.html>.

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Akdeniz, Y. (2001) "Governing pornography and child pornography on the Internet: The UK Approach," in *Cyber-Rights, Protection, and Markets: A Symposium*, *University of West Los Angeles Law Review*, pp. 247-275.

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Akdeniz, Y.; Taylor, N.; Walker, C. (2001) "Regulation of Investigatory Powers Act 2000: Bigbrother.gov.uk: State surveillance in the age of information and rights", *Criminal Law Review*, February, pp. 73-90.

Carey, M. and Wall, D.S. (2001) "MP3: more beats to the byte", *International Review of Law, Computers and Technology*, vol. 15, no. 1, pp. 35-58.

Research Reports

Schneider, J. and Wall, D.S. (2000) "Policing the Internet: A review of UK law enforcement initiatives, policy and practice", Report to the Home Office, March.

Wall, D.S. (2000) 'The Theft of Electronic Services: Telecommunications and Teleservices', London: Office of Science and Technology, December, (Published as an annex to *Turning the Corner*).

Short articles or reviews

Akdeniz, Y. (1999) "Case Analysis: Laurence Godfrey v. Demon Internet Limited", *Journal of Civil Liberties*, vol. 4, no. 2, pp. 260-267.

Akdeniz, Y. (1999) Written submission in relation to the DTI, Promoting Electronic Commerce: Consultation on Draft Legislation and the Government's Response to the Trade and Industry Committee's Report, CM 4477, October 1999.

Akdeniz, Y. (2000) Written submission to the House of Lords Select Committee on the European Union by Sub-Committee B (Energy, Industry and Transport) on e-Commerce: Policy Development and Co-ordination in the European Union, May 2000. This submission was *published* in House of Lords Select Committee on the European Union, Fourteenth Report, E-Commerce: Policy Development and Co-ordination in the EU, HL Paper 95-I, August 2000.

Akdeniz, Y. (2000) "Anonymous Now," The Privacy Issue, *Index on Censorship*, vol. 3, June, pp. 57-62.

Akdeniz, Y. (2001) "Case Review: League Against Racism and Antisemitism (LICRA), French Union of Jewish Students, v Yahoo! Inc. (USA), Yahoo France", *Electronic Business Law Reports*, vol. 1, no. 3, pp. 110-120.

Akdeniz, Y. (2001) Written Statement for the European Parliament, Temporary Committee on the ECHELON interception system, meeting of Thursday, 22 March, 2001, Brussels.

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Wall, D.S. (1999) "Getting to grips with Cybercrime", *Criminal Justice Matters*, no. 36, pp. 17-18.

Wall, D.S. (ed) (1999) "E-commerce" Special Issue of *International Review of Law Computers and Technology*, vol. 13, no. 2. (with editorial).

Wall, D.S. (ed) (2000) "Cybercrimes and Cyberliberties", Special Issue of *International Review of Law Computers and Technology*, vol. 14, no. 1. (with editorial).

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Centre for Criminal Justice Studies, University of Leeds
(This bi-annual review represents the twelfth and thirteenth annual reports)

5. Conference and Public Seminar Presentations

Between 1st October 1999 and 30th September 2001 members of the CCJS gave presentations at 80 conferences and public seminars, over a third (31) were at international venues. They are listed alphabetically by CCJS member.

Akdeniz, Y. (2000) "*Future of Internet Law and Policy in Turkey: Perspectives from Europe and the United States*," paper presented, Internet and the Law Conference, 14 April, 2000, Istanbul, Turkey.

Akdeniz, Y. (2000) "The E-media: an avenue for communication or cyber-crime?" *panelist*, United Nations Symposium for the Media on the Convention against Transnational Organised Crime, 13 December 2000, Palermo, Italy.

Akdeniz, Y. (2000) Conference Chair, *LAWTEL's Data Protection 2000 Conference: A legal and practical guide since the implementation of the Data Protection Act 1998*, 14 June, 2000, London.

Akdeniz, Y. (2000) Conference Chair, *LAWTEL's E-Commerce and E-Tailing Law Conference: Security, Trust and Consumer Confidence in the Information Age*, London, 17 October, 2000.

Akdeniz, Y. (2000) *Cyber-Crimes vs Cyber-Rights: Developing policies in the workplace environment*, paper presented, IQPC Protecting Your Business from Cyber Crime Conference, 28th & 29th September 2000, London.

Akdeniz, Y. (2000) Panelist and organiser, *Beyond Control or Through the Looking Glass? Threats and Liberties in the Electronic Age*, The Oxford Union Debating Chamber, 28 April, 2000 organised by Humanities Computing Unit, University of Oxford.

Akdeniz, Y. (2000) Panelist, *The Internet: Extending Press Freedom? - A Debate to Mark World Press Freedom Day 2000*, Article 19 Event, Wednesday, May 3, 2000, Cyberia Cafe, London.

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Taylor, N (2000) *1999-2000 Surveillance and Society Seminars* – Participation in six bi-monthly ESRC funded seminars at the University of Hull.

Taylor, N (2000) *Double Jeopardy*, The Society of Public Teachers of Law Annual Conference, King's College, London:.

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Valier, C. (2000) 'Cathected Justice', British Criminology Conference, Leicester, July 2000.

- Valier, C. (2000) 'Myra Hindley, Notoriety and Punishment', University of Leeds, Centre for Interdisciplinary Gender Studies seminar series, February 21, 2000.
- Valier, C. (2001) 'Blind Spots: Criminal Detection, Knowledge and Subjectivity' University of Leeds, Centre for Criminal Justice Studies seminar series, March 7, 2001.
- Valier, C. (2001) 'Myra Hindley, Notoriety and Punishment', University of Keele, Department of Criminology seminar series, May 9, 2001.
- Valier, C. (2001) 'Wounding Justice', University of Keele and Theoretical Criminology journal Workshop on Crime and the Emotions, May 10, 2001.
- Valier, C. (2001) 'Myra Hindley, Notoriety and Punishment', Lancaster University, Law Department seminar series, May 30th, 2001.
- Valier, C. (2001) 'Uniquely Notorious' Dangerous Representations Conference 2001, University of Sussex, Brighton, 1 June, 2001.
- Valier, C. (2001) 'Dangerous Representations: Mugshots, Notoriety and Vengeance' Law and Society Association Conference 2001, Budapest, July 5th, 2001.
- Valier, C. (2001) 'Villains, Victims, Notoriety and Punishment' Howard League for Penal Reform Annual Conference New College University of Oxford, September 11, 2001.
- Valier, C. (2001) 'The Bulger killers and the punitive turn', Birkbeck College Law Department, University of London, Plenary address to the 'Crime, Culture, Control' conference, Cumberland Lodge, Great Windsor Park, September 22.
- Walker, C.P. (1999) "Forensic science, miscarriages of justice and constitutional account", International Association of Forensic Sciences 15th Triennial Meeting, University of California, Los Angeles, August 1999
- Walker, C.P. (1999) "Briefing on the Terrorism Bill" (House of Commons, December 1999)
- Walker, C.P. (1999) "Electronic surveillance and the Human Rights Act 1998", Association of Chief Police Officers/ Internet Service Providers Association Forum, London, September 1999
- Walker, C.P. (1999) "Police ethics and the Human Rights Act 1998", Senior Investigators Conference, West Yorkshire Police Training School, Wakefield, September 1999
- Walker, C.P. (1999) "Whisper who dares: encryption, privacy rights and the new world order", Internet Society Conference, INET 99, San Jose, California, June 1999
- Walker, C.P. (2000) "Commercial risk and political violence", Conference on Insecurity and Risk in the New Millennium, University of Leeds, March 2000
- Walker, C.P. (2000) "The Constitutional Governance of Forensic Science", Royal Society of Medicine, London, January 2000
- Walker, C. (2000) "Implications of the Human Rights Act for criminal justice", Human Rights Research Unit and the Centre for Criminal Justice Studies, March 2000
- Walker, C. (2000) "The Youth and Criminal Evidence Act 1999", Criminal Defence Liaison Group, Centre for Criminal Justice Studies, March 2000

- Walker, C., and Akdeniz, Y. (2000) "Encryption and policing in cyberspace" at British Society of Criminology Annual Conference, University of Leicester, July 2000
- Walker, C. (2000) "Constitutional rights to speak wrongs in the English law of libel" at the Southeastern Conference, American Association of Law Schools, Fort Myers, Florida, August 2000
- Walker, C. (2000) "Encryption, individual rights and the information age" at Surveillance and Human Rights, Van Mildert College, University of Durham, December 2000
- Walker, C., and Raine, J. (2001) "The implications of the of the Human Rights Act for the courts" at British Association of Canadian Studies, Canadian Embassy, London, March 2001
- Walker, C. (2001) "Encryption, and the Regulation of Investigatory Powers Act 2000" at British Irish Law and Technology Association, 16th Annual Conference, University of Edinburgh, April 2001
- Walker, C. (2001) "Miscarriages of justice: an inside job?" Annual lecture of the Centre for Criminology and Criminal Justice, University of Hull, May 2001
- Walker, C. (2001) "Crime control, encryption, and the Internet" SE conference of the American Association of Law Schools, Hilton Head Is, South Carolina, July 2001
- Wall, D.S. (1999) "Policing and Society" Panel at the *American Society of Criminology Annual Conference*, Royal York Hotel, Toronto, November 18, 1999.
- Wall, D.S. (1999) "The Problem of, and with, Cybercrimes: Understanding deviant behaviour on the internet" *First Asia-Pacific Conference on Cyberlaw*, Renaissance Palm Garden Hotel, Putrajaya, Malaysia, 8–9 November 8, 1999
- Wall, D.S. (2000) "Can you be sued anywhere", Global Information Wars, School of Journalism, University of Missouri, USA, February 19th (Video output).
- Wall, D.S. (2000) "Cyberpolice in a Cyberspace", University of Portsmouth, March 16th, 2000.
- Wall, D.S. (2000) "Policing the internet", BILETA annual conference, University of Warwick, April 13th 2000
- Wall, D.S. (2000) "Regulating E-Commerce", Global Information Wars, School of Journalism, University of Missouri, USA, February 18th (Video output).
- Wall, D.S. (2000) "An overview of identity theft from ISPs and some of the legal implications for banks", British Banking Association, London Sept. 25 2000
- Wall, D.S. (2000) "Chief Constables: Past and Present, but do they have a future?", Institute of Criminology, University of Cambridge, September 21st 2000.
- Wall, D.S. (2000) "Concluding comments as official moderator", *G8 Conference on developing a dialogue on safety and confidence in cyberspace*, Paris, 15-17 May, 2000.
- Wall, D.S. (2000) "Crooks, Cops, and the Net", British Computer Society, December 4th 2000
- Wall, D.S. (2000) "Cybercrime Streams", British Criminology Conference July 2000
- Wall, D.S. (2000) "Cyber-frauds", Woodhouse Group seminar. University of Leeds, 21st May, 2001. (Contributor to) "ICTs and the Criminal Justice System", Home Office, DTi Future Focus Facility, London, December 11th, 2000.

Wall, D.S. (2000) "Policing E-commerce Related Cyber-Crime", Pacific Rim Money Laundering and Financial Crime Conference, The Society for Study of Criminal Enterprise in the Pacific Rim (Royal Canadian Mounted Police), Vancouver Oct. 2000

Wall, D.S. (2000) "Policing Economic Espionage" American Society of Criminology, San Francisco, November 2000

Wall, D.S. (2000) "Policing The Internet", ACPO Computer Crime Group, Bramshill, July 24th, 2000

Wall, D.S. (2000) "Should the Internet be Proactively Policed?", Police Superintendent's Association, London, Sept. 16th 2000

Wall, D.S. (2000) "The Theft of Electronic Services", ITEC Task Force, Department of Trade and Industry, June 26th, 2000.

Wall, D.S. (2000) "Towards a 21st Cyberjustice" American Society of Criminology, San Francisco, November 2000

Wall, D.S. (2000) respondent, Policing Cyberspace Conference, Executive Plaza Hotel, Richmond, Vancouver, 9-12 April 2000.

Wall, D.S. (2001) "Current Topics in Computers and Crime", Department of Law, Queen's University, Belfast, 6th March, 2001.

Wall, D.S. (2001) "Net Crime: Global problems with local Solutions", Conference on Globalisation and New Forms of Crime, London School of Economics/ Metropolitan Police, (held at the Law Society), 18th May, 2001.

Wall, D.S. (2001) "The Internet and the Criminal Justice Process", Home Office RDS Conference, February 8th.

Wall, D.S. (2001) Introduction to Police Reform (Police Studies, Policing Styles, What is Crime, Cop Cultures), Faculty of Law and Management, University of Mauritius, 27th - 31st August, 2001.

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6. SEMINAR PROGRAMME FOR 1999-01

Wednesday 20 October 1999 - 1.00 p.m.:

*"Family Group Conferencing in New Zealand and Reconvictions:
Findings from a Six Year Follow up Study"*

Professor Allison Morris,
Institute of Criminology, Victoria University of Wellington, New Zealand

Tuesday 2 November 1999 - 5.30 p.m.:

"Police Officers' Lies and Deceptive Tricks"

Jennifer Jackson,
Department of Philosophy, University of Leeds

Wednesday, 10 November 1999 - 2.00 p.m.: The Anne Spencer Memorial Lecture

"The Policing of Domestic Violence"

Maria Wallis,
Ass't Chief Constable of Sussex and ACPO Spokesperson on Domestic Violence

Tuesday 30 November 1999 - 5.30 p.m.:

"Victim Contact Work in the Probation Service: Paradigm Shift or Pandora's Box?"

Dr Adam Crawford, Centre for Criminal Justice Studies and
Dr Jill Enterkin, Goldsmith's College, University of London

Wednesday 26 January 2000 - 1.00 p.m.:

"Policing, Security and the Transformation of Politics "

Professor Neil Walker, Law Department, University of Aberdeen

Wednesday 18th October 2000 - 1.00 p.m.:

"Islamic Law and the Rights of Women"

Professor Ahmad Ali Khan, Dean of the Law College, University of Peshawar

Wednesday 25th October 2000 - 1.00 p.m.:

"A Co-ordinated Criminal Justice Response to Violence Against Women in Relationships"

Inspector Bob Taylor, Vancouver Police Department, Canada

Wednesday 8th November 2000 - 1.00 p.m.:

"Towards a Sociology of Homicide"

Dr. Hazel May, Department of Sociology and Social Policy, University of Leeds

Tuesday 5th December 2000 - 4.00 p.m.:

"Atlantic Crossings: Contemporary Crime Control in America and Britain"

Professor Tim Newburn, Public Policy Research Unit, Goldsmiths College, University of London

Wednesday 7th February 2001 - 1.00 p.m.:

"Hacktivists: Rebels with a Cause?"

Dr. Paul Taylor, Department of Sociology, University of Salford

Wednesday 14th February 2001 - 1.00 p.m.:

"The Relationship of International Human Rights Law and Criminal Justice Systems"

Dr. Javaid Rehman, Law Department, University of Leeds

Tuesday 27th February 2001 - 5.00 p.m.:

"The Ineffectiveness of the Italian Penal/Legal System:

Why the Italian Mafias are Winning"

Dr. Felia Allum, Institute of Politics and International Studies, University of Leeds

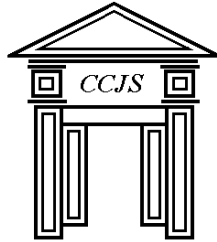
- Wednesday 7th March 2001 - 1.00 p.m.:**
"Blind Spots: Scientific Criminal Detection, Knowledge and Subjectivity"
Dr. Claire Valier, CCJS, University of Leeds
- Wednesday 14th March 2000 - 1.00 p.m.:**
"Restorative Cautioning: How Green were Thames Valley?"
Dr. Carolyn Hoyle and Dr. Richard Young,
Centre for Criminological Research, Oxford University
- Monday 19th March 2001 - 4.00 p.m.:**
"Recent Developments Concerning Complaints Against the Police"
Graham Smith, Nottingham Trent University
- Tuesday 24th April 2001 - 5.00 p.m.:**
"Implementing Referral Orders under the Youth Justice and Criminal Evidence Act 1999: Implications from the Pilots Evaluation"
Professor Adam Crawford and Dr. Karen Sharpe, CCJS,
University of Leeds
- Tuesday 8th May 2001 - 4.00 p.m.:**
"The Geography of Crime: Towards a New Research Agenda"
Dr. Graham Clarke, School of Geography, University of Leeds
- Wednesday 31st October 2001 - 1.00 p.m.:**
"Criminal Justice in the Information Age: The work of IBIS"
Gillian Woolfson, IBIS Unit, Home Office
- Wednesday 7th November 2001 - 1.00 p.m.:**
"What Can the English Legal System Learn from Jury Research?"
Dr. Penny Darbyshire, Law School, Kingston University
- Wednesday 5th December 2001 - 1.00 p.m.:**
"Policy and Practice: The Implementation of the Crime and Disorder Act within Youth Offending Teams"
Professor Simon Holdaway, University of Sheffield
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7. Working Papers by CCJS Members

- "Public Participation in Criminal Justice" - Adam Crawford
- "'Be Nice': The Training of Bouncers" - Stuart Lister
- "Community Matters: Making a Difference to Tackling Youth Crime" - Karen Sharpe
- "Fixing the Price for Spoiled Lives: Compensation for Wrongful Conviction" - Nick Taylor
- "Dangerous Representations: Mugshots, Notoriety and Vengeance" - Claire Valier
- "Miscarriages of justice: An inside job?" - Clive Walker
- "Getting to Grips with Cybercrime" - David Wall



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Public Participation in Criminal Justice

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(Note: This paper draws upon a lengthier report 'Public Matters' published by the Institute for Public Policy Research (ISBN 1-86030-146-0), copies are available from the IPPR. This abridged version was first published in the Relational Justice Bulletin (Issue 12, 2002). The author would like to thank Dr Jonathan Burnside for his editorial assistance. The Relational Justice Bulletin is a quarterly publication by the Relationships Foundation, as part of its Relational Justice initiative. For more information contact: The Relationship Foundation, Jubilee House, 3 Hooper Street, Cambridge CB1 2NZ).

The last twenty years in the UK have witnessed a radical transformation in relations between the public and the state with regard to criminal justice policy and practice. There has been an increasing acknowledgement and recognition of the state's own limitations in its capacity to guarantee and maintain public order. In part, this stems from a series of recent crises in the apparatus of criminal justice established over the preceding 200 years or so, in which the role and involvement of the public have been pivotal sources of concern. This article explores the scope for public involvement and participation in an age of increasing 'punitive populism' and, crucially, the form that this might take.

The current limitations of the state stem from a fourfold crisis of effectiveness, efficiency, cost and confidence in the criminal justice process. Firstly, increased recorded crime rates have placed growing pressure upon criminal justice institutions. This has left them unable to respond in a traditional manner, continually looking for novel ways of managing the mass of cases through efficiency gains (e.g. 'fast-track' prosecution). Secondly, there has been a pervasive sense of failure as to the capacity of formal criminal justice systems to meet their own objectives of crime reduction, leading to what Garland has called, a 'crisis of penal modernism' (Garland 2001). Thirdly, traditional modes of crime control place an increasing financial burden upon the public purse. Fourthly, there has been a simultaneous crisis of confidence, with public attitudes towards the criminal justice system (including the police) becoming apparently more critical and less deferential. Given the crucial role that the public plays within criminal justice, as witnesses and

victims particularly, a loss of confidence can adversely affect the flow of information between public and criminal justice institutions.

'Leave it to the professionals'

Part of the problem has been that, over the last two centuries, the criminal justice apparatus has placed increasing emphasis on bureaucratisation, rationalisation and professional specialism as the pillars of legitimacy and public confidence. During the same period, public involvement has declined. Recent managerialist and modernising agendas have implied a reduction in lay participation in court processes and an increased reliance on paid and legally qualified professionals. In one way and another, the public was left behind. The result is that the state has assumed a monopolistic and paternalistic approach to the public with regard to crime control and prevention. The underlying message was 'leave it to the professionals'.

Victims, in particular, have been marginalised to the point of constituting the 'forgotten party' in criminal justice, whose own conflicts, according to Nils Christie (1977) have been 'stolen' by professionals and experts. The result is 'an outsourcing approach to crime' (Leadbeater 1996: 1), in which the public have come to expect specialist institutions to solve most problems for them. The same trend, of increasing professionalism at the expense of lay involvement, can still be recognised today. The central practices of participatory democracy at the heart of traditional criminal justice have been the institutions of the jury system and the lay magistracy, both of which share the notion of 'judgement by one's peers'. Yet both are currently under threat.

Partners against crime

Of course, the public is involved in different forms of public participation and involvement at the different stages of criminal justice. They are involved, in different capacities and to varying degrees of satisfaction, as victims, as witnesses, as offenders, as active private citizens (in community safety initiatives), as lay volunteers and as a wide variety of community representatives. There are all sorts of practical barriers to voluntary participation (including not having enough time, conflicts with domestic commitments, difficulties getting employers to grant time off from work commitments, and so on) but perhaps the greatest deterrent is that participation itself is perceived to be tokenistic, pointless or a waste of time. Volunteers need to feel, not only supported and valued, but also that their time commitments are meaningful: that they are affecting change. Instead of seeing participation as an add-on to what the criminal justice system already does, we must ask: what is it that lay people can bring to the workings of criminal justice that is of intrinsic social value and in what way can volunteers themselves benefit?

Policy-makers have recently come to realise the fundamental role that the public plays in crime control and prevention, in the provision of information as witnesses or victims, through informal social control – as parents, peers, friends and family, kinship and community members – and in giving legitimacy to the system. As a result, citizens are being reconfigured as 'partners against crime' as governments seek to mitigate and reverse the decline of social capital in civil society (Putnam 1995). Successive governments have sought to increase the level and commitment to 'voluntary activity' on the part of the public. For example, currently one of the Home Office's performance targets is of 'substantial progress by 2004 towards one million more people being actively involved in their communities'.

A mixed message

Yet the rhetoric remains ambiguous. Certainly, it has not filtered down to the level of practice, where public participation in criminal justice remains minimal. It is a 'mixed message' that is undermined in practice by contrary messages. Moreover, despite the fact that

the majority of the public appears to endorse the notion of individual and collective responsibility for crime control and prevention, as the results of a recent ICM poll commissioned for the IPPR suggest, 'few, if any, feel that this responsibility is easy to fulfil' (Edwards 2001: 8). Many people lack the requisite information and assistance, or feel that they are inadequate and inexperienced. Basic initial training is required to show people that they do have skills that can be put to good use and enhanced.

There are a number of important reasons why public involvement matters and why facilitating public participation is an essential government responsibility. Firstly, public involvement can increase public confidence and assuage public fears. This can be achieved through greater information and by moderating public expectations of what criminal justice can deliver. In particular, it can be a means of addressing misperceptions by explaining sentencing policy through information and education. In this way, greater public involvement in criminal justice could be a check against more punitive Government responses and the growing use of imprisonment. Secondly, public participation may help encourage greater synergy and increase the flow of information from the public. However, a genuine 'partnership' of this kind is a two-way relationship which imposes responsibilities upon the criminal justice system. This includes facilitating (and in some cases protecting) people in exercising and maximising their involvement with the criminal justice process.

A relational dynamic

Thirdly, public participation may strengthen and reaffirm communal bonds and encourages a civic responsibility. Fourthly, it allows those involved to develop a keener understanding of the workings, principles and values of the system. This is important because criminal justice is a highly 'public' process in the sense that it occurs in the name of the public, but in practice it is something about which the public remains considerably uninformed. Fifthly, it can help to break down inward-looking cultures and ensures a degree of transparency and accountability. Finally, it assures a relational dynamic. It can help ensure that proceedings which may otherwise be dominated by technical, bureaucratic or managerial demands also accord to the emotional and expressive needs of responses to crime and in a similar vein, ensures fairness.

Contrary to popular belief, public involvement does not necessarily reduce costs. Lay volunteers tend to work at a slower pace than do professional counterparts. Just because a system is based on unpaid volunteers (such as the lay magistracy and youth offender panels), this, of itself, does not mean that it is necessarily cheap. There are significant costs associated with providing training, advice and information for volunteers, as well as other supporting infrastructures which are required simply because volunteers are involved. In any case, to couch public participation in terms of 'value for money' maintains a paternalistic relationship between the public and criminal justice institutions and professionals.

'Citizen action' versus 'vigilantism'

Public involvement can take a number of diverse, and sometimes competing, forms. Clearly, the capacity for public participation is greater at the 'front-end' of the system with regard to policing and community safety than it is in relation to forms of punishment, such as imprisonment. One of the difficulties is that public engagement with criminal justice will, by its very nature, have contrasting interests (crime detection as distinct from throughcare, for example).

Public participation is not a self-evident good (recall the stocks and public executions). Strategies aimed at empowering the public with regard to crime have injected ambiguity

into the power to define and deploy the legitimate use of force. Most notably, this is apparent in struggles over the distinction between appropriate 'citizen action' and 'vigilantism'. There is a need for government and criminal justice authorities to synchronise private and public provision of security services and active citizenry. The question is whether the state (either local or national) can adapt to this new role as 'power container' without slipping back into pretensions of monopolistic authority.

In addition, there are a number of limits to the potential scope of public participation. Public participation is limited by practical difficulties as well as by the potential unintended consequences of participation. For one thing, it is becoming harder to attract lay volunteers. Given the time demands of training, the travel demands (which may require lay people travelling across a county – particularly with the closure of local police stations, courthouses etc) and the difficulties for those in employment of matching voluntary work with their careers, whilst those unemployed may jeopardise their chances of obtaining a job.

Limits to participation

There is not always an unambiguous correspondence between volunteering and representativeness. As a consequence, representatives may poorly represent the diverse publics from which they are drawn, and may be perceived by others to be unrepresentative and, therefore, less legitimate. In addition, lay people drawn into criminal justice may become 'professionalised' and lose the very qualities which made them valuable in the first place. Also, there tends to be an inverse relationship between activity and need. Participation in local crime prevention activities is highest (and success most likely) among people who are moderately concerned about crime but where crime levels are low. High levels of fear of crime can become incapacitating.

Moreover, there are limits to what citizens can accomplish through institutions of civil society alone as well as knock-on consequences (through crime displacement) of private or collective activity for others. One person's (or community's) security may adversely impact upon that of others. Furthermore, we need to be as aware of dangers of 'unsocial capital' as the advantages of 'social capital'. Also, criminal justice, by its nature, is coercive, hence, absolutist notions of voluntariness are unhelpful. In addition, there will be situations – given the nature of the offence or the relationship between the parties – in which participation is undesirable and safety issues may be a particular consideration. Finally, the involvement of lay people within the processes of justice necessitates that due concern is given to any conflict of interests that lay people may bring to their participation, particularly where they are cast in a decision-making role.

Rethinking public participation

Rethinking public participation means moving the debate on from seeing public participation in criminal justice as merely a question of how lay people can act as (cheap) adjuncts to the current justice system. Instead, we need to move on to the point where we begin to rethink the nature and purpose of criminal justice itself and the role of public participation therein. In the quest to professionalise and bureaucratise justice we have tended to lose sight of the important deliberative framework of justice and the involvement of the public in that deliberative process. It is this framework which needs to be revived and within which the public should be accorded a greater participatory role.

We need to develop a language which speaks of active citizenship, community participation in public life, and the stimulation of ethical values as necessary ingredients

in a more socially just public polity. But such a language would not see these as the antithesis, or instead, of 'public' provision. Rather, the state has a fundamental role in seeking to empower and enable individuals, groups and communities to realise their potential and to integrate them within a wider social frame. But in rethinking the role and value of public participation in criminal justice and the precise terms upon which such participation should be organised, we must tread a careful path between two recently fashionable tendencies: the managerialisation of public services and the communitarian appeals to local justice.

Limits of community

On the one hand, there is the managerialist obsession with speed, cost reductions, performance measurement and efficiency gains, which in the field of criminal justice has often led to a move away from 'local justice' – understood as local people contributing to the handling of cases in their own local area – and a professionalisation in which lay members of the public have less involvement. On the other hand, there is the communitarian lobby which calls for communities to take control of their own policing, crime control and dispute processing: the 'policing by communities rather than the policing of communities', such that 'the more viable communities are, the less the need for policing' (Etzioni 1995: ix-x). Despite decades of research to the contrary, this implies, rather simplistically, that more 'community' equals less crime.

The problem with the managerialist impulse is that it allows little space for the human, expressive and emotive aspects of criminal justice. As a consequence, it rides rough-shod over questions of party involvement, fairness, legitimacy and public confidence. It prioritises organisationally defined outputs over social outcomes. By contrast, the communitarian urge over-exaggerates the role that communities can play in responses to, and preventing, crime. It over-idealises as unproblematic the nature of communities' moral orders. 'An assertion of "community" identity at a local level can be beautifully conciliatory, socially nuanced, and constructive but it can also be parochial, intolerant, oppressive, and unjust' (Crawford 1997: 294). Appeals to 'community justice' often fail to address the relations that connect local institutions to the wider civil society of which the locality is a part or the manner in which local justice may impact upon neighbouring areas. The role of community as a force for social cohesion is limited by the current reality of geographic inequality, the spatial concentration of wealth and poverty and increased social polarisation.

Deliberative justice

An alternative to both the technocratic and managerialist notions of bureaucratic justice, on the one hand, and communitarian inspired notions of community justice as parochial and local forms of control, on the other hand, might be a version of deliberative justice. 'Deliberative' justice occurs where people 'deliberate' over the consequences of crimes and how to deal with them and try to prevent their recurrence (Braithwaite 1998). The form of deliberative justice I have in mind is one in which public participation is contained within a framework which accords to standards of procedural fairness and human rights.

Deliberate justice encourages public discussion and emphasises reasoning, debate, communication and normative appeals, offering proposals for how best to solve problems or meet legitimate needs. Deliberation opens up opportunities for changing conditions of injustice and promoting justice. Within this should be embodied elements of both procedural and substantive justice. We need to maximise the opportunities for participation while constructing minimal, yet critical, limitations on the nature and form of participation.

As an element of democratic renewal, public participation in criminal justice implies representation. All of the public cannot (nor will they necessarily want to) participate all of the time. Certain members of the public – through their participation in criminal justice – will need to act as representatives of public interests. As such, they need to be authorised and held to account. This suggests further anticipatory and retrospective discussion as to public participation and representation. Participation should not stand as an opposite to representation but one should require and imply the other. Without citizen participation, the connection between representative and constituents is most liable to break down – potentially turning the representative into a detached élite.

Certainly, there is a need for professionals and procedures to contain and regulate aspects of public participation by mitigating power differentials between the parties, challenging arbitrary outcomes, rendering procedures open, accountable and contestable under the rule of law. However, it is not clear that this cannot occur in interest-based and party-centred negotiations as distinct from rights-based and lawyer-centred proceedings.

Untamed justice

Formal legal rights and due process should act as bounding mechanisms that empower and constitutionalise informal processes. For example, the notion of proportionality – with regard to the relationship between the harm done and the agreed outcome – has a role to play as a principle in deliberative justice. This does not suggest that all outcomes will be the same for the same offence, but that there are accepted boundaries as to both minimum and excessive outcomes. What is not being argued for is the replacement of criminal justice by an untamed form of community justice – as some commentators advocate (Clear and Karp 1999; Nellis 2000) – but that the two be held in a complementary, dynamic tension such as to enhance a form of deliberative justice: reducing but not eradicating the specialist professional management of crime.

'Relational' and 'restorative' justice can be described as forms of 'deliberative' justice. 'Deliberative' justice is facilitated where there are existing relations of care and trust and where a commitment to collective problem-solving is apparent. However, there will be circumstances in which deliberation cannot even begin and individuals who refuse to engage in deliberative processes for a variety of reasons. In these instances, a greater emphasis upon the professional management of cases and problem-solving will be required. Moreover, the role of criminal justice in solving problems remains severely limited. Hence, synergy with other policy arenas – education, health, employment, housing and so on – more able to deliver solutions is paramount. The challenge, here, for criminal justice agencies, local authorities and other relevant organisations is to dissolve the internal compartmentalisation of problems, to connect and collaborate with other – private, public and voluntary sector – organisations and to 'join-up' services around harm reduction.

Communal morality

To sum up, much more can be done to encourage greater public participation in criminal justice and this has the potential to reverse the vicious circle of punitiveness in recent policy-making. As well as considering public participation as an add-on to existing criminal justice institutions, in which the public supplements organisational practices, we need to re-examine the role of the public at the heart of criminal justice. There is

considerable scope for criminal justice to be a more deliberative process which, in drawing upon public participation, strengthens active responsibility and fosters a more civic public polity.

However, at the same time as maximising the opportunities for public participation, we also need to set minimal, yet critical, limitations on the form of that participation. We need a socially inclusive process – particularly with regard to traditionally neglected and suppressed groups – to protect against majoritarian rule and safeguard vulnerable minorities from the coercive and oppressive power of communal morality. We also need procedural mechanisms – particularly with regard to conflict negotiation and communication – to check power differentials and guarantee a minimum respect for the different parties involved. In this way, we can envision a form of public participation that is fair and just, which acts as a check upon state power, but which also maximises its democratic and civic potential.

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'Be Nice': The Training of Bouncers

©Stuart Lister, Philip Hadfield, Dick Hobbs, Simon Winlow 2002

Introduction

The dramatic expansion of the night-time economy has led to a surge in demand for the private policing services of licensed premise security personnel or 'bouncers' (Hobbs et al., forthcoming). Tasked with the 'dirty work' of regulating behaviour within pubs and clubs, bouncers are often accused of being 'a law unto themselves', thus highlighting some inter-related, core criminological issues concerning their occupation. It intimates first, their high level of personal discretion and secondly, the sovereignty of self-serving processes of accountability: processes that are anchored to peer group custom rather than formal or legal mechanisms (Stenning, 1995: 5). Both of these issues enable and oblige bouncers to seek recourse to private rather than public systems of justice. As such, customer and peer disputes are routinely settled informally, too often within the physical realms of 'retributive justice' (Lister et al., 2000). Occupational licensing, externally imposed upon large sections of the industry over the last decade, provides a regulatory mechanism designed to counter this absence of legal accountability and thereby increase public confidence in the trade. There are two end-point requirements of the licensing process: criminal records vetting and training course attendance; this article focuses exclusively upon the latter.

Required Training?

Training arrangements vary significantly across autonomous, municipal licensing districts. Courses must be 'recognised' by local authorities and to this end, some organise their own or out-source to training bodies. Others set up an internal market or 'approval list', mostly comprising of local educational colleges and private companies. The localised structure of training fragments the market's supply side, a situation groomed by the long absence of effective, centralised coordination. Subsequently, costs vary between £5 and £375, dependent upon course option and provider, though the mean is approximately £80. Course duration also fluctuates between five hours and five days, with the majority providing twelve hours, which we argue is particularly insufficient. Such variance leads to wide inconsistencies within the design, delivery and, therefore, quality of courses. Importantly, courses are customarily chosen and paid for by the individual bouncer rather than the employer. Bouncers interviewed during our recent research indicated that formal training does not increase earnings potential and is commonly regarded as an obligatory chore of little direct relevance to their work. Consequently, the least time-consuming and inexpensive training option is usually preferred. This is a telling feature, for it signifies the function of training as a means to an end (i.e. training to obtain a licence), rather than of intrinsic value in itself (i.e. training as investment).

Vested interests within the marketplace ensure that training is packaged and sold as the cornerstone of the drive to professionalise the trade (Lister et al., 2001). Yet, given that complaints surrounding bouncers tend to centre around 'what they do' as opposed to 'what they don't know', it is perhaps surprising that most courses focus almost entirely upon knowledge rather than skill-based learning. Although variance exists, most formats cover fire safety, first-aid, criminal, civil and licensing law and social conduct, and are delivered in a classroom-type environment often without completion assessments. Whilst knowledge of emergency procedures is important, this is generic, baseline information and all rather remote from the main concerns surrounding bouncers' 'problematic' activities. Although the better courses do include more occupation-specific modules on drugs awareness, diffusion of aggression, equal opportunities and search procedures, too many syllabi are indicative of top-down, externally imposed directives that fail to appreciate the inherent dangers of the role and, therefore, the need for intensive risk management tuition. Whilst training allows interest

groups to promote 'their' bouncers as 'fully trained,' realistically, the majority of courses leave them nominally trained.

The big question hanging over training concerns the practical demonstration of control and restraint techniques. Because the vast majority of training is steered, if not delivered, by publicly accountable bodies, courses nearly always shy away from the issue. Understandably, there are real economic and moral concerns over perceptions of sanctioning physical force. The use of legitimate force is indeed a thorny issue, particularly when, within this context, it involves private operatives enforcing non-negotiable, commercial rules of the house. However, within the bouncer's enacted environment, lawful ejection and self-defense are routine activities. We argue there are crime prevention benefits to be gained from attempting to refine and manage the use of such force. This issue cuts to the chase of why security is employed at licensed premises: bouncers may increasingly function as commercial gatekeepers, but ultimately they must be able to ensure the protection of customers.

Whilst the practicality of bouncers' formal training may be questionable, its very existence has considerable rhetorical currency as part of a wider package of 'managerial' initiatives for the night-time city (Hadfield et al., forthcoming). However, like the 'door trade' itself, training provisions are gradually consolidating and quality assurance processes developing. It is hoped that once operational the Security Industry Authority, established by The Private Security Act 2001, will evaluate the current plethora of arrangements, assert uniformity of standards and procedure and consolidate further this fractious industry.

Breaking the Mould of Occupational Culture?

We view bouncer training in a similar light to police training: there exists a profound gap between the trained and lived realities of the role. Training is perceived as highly abstract, and – to all intents and purposes – fails to penetrate the norms and values deeply ingrained by workplace processes of socialisation. Indeed, attempts to challenge occupational culture are a resonant training feature. Thus 'students' are encouraged to engage with the public justice system rather than resolving matters privately (Shearing and Stenning, 1983: 502), an aim implicit in the teaching of criminal law, which includes legal definitions of 'reasonable force' and 'powers of arrest'. The latter instruction is intended to facilitate 'holding' suspects and invoking police intervention – procedures far removed from the traditional, heavy-handed 'back-alley' disposal.

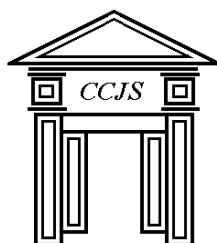
Although there is evidence that some bouncers now work more closely with the public police, the extent to which they can be persuaded to adopt processes of public, rather than private justice remains suspect. Training provides only *guidance* rather than *instruction* and private security in the form of bouncers will always put commercial accountability ahead of legal accountability. Given that the Criminal Justice and Police Act 2001 provides new police powers to order the immediate closure of licensed premises in the event of disorder, strong pressures remain for bouncers to maintain an isolated detachment from formal processes of public law enforcement.

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as bouncers, a number of interviews with bouncers and trainers and a comprehensive survey of available training courses.

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Community Matters:
Making a Difference to Tackling Youth Crime*
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Introduction

In April 2002, the Referral Order - a new primary sentencing disposal for 10-17 year olds pleading guilty and convicted for the first time by the courts – will be introduced nationally throughout England and Wales.¹ The disposal involves the young offender being referred to a youth offender panel (YOP) consisting of one member of the Youth Offending Team (YOT) and (at least) two volunteers, known as 'community panel members' (CPMs), which will then agree a 'contract' with the young offender. Governed by the principles underlying the concept of restorative justice, defined as 'restoration,

* This paper was first published in a special edition of *Criminal Justice Matters* on 'Training'.

¹ Referral Orders are currently being piloted in eleven areas: Blackburn with Darwen, Cardiff, Nottingham City, Nottinghamshire County, Oxfordshire, Swindon, Suffolk, Wiltshire and the West London sites of Hammersmith & Fulham, Kensington & Chelsea and Westminster. The evaluation is being undertaken by a consortium from Goldsmiths College, University of London (Tim Newburn, Arabella Campbell, Rod Earle, Shelagh Goldie, Guy Masters) and the Universities of Leeds (Adam Crawford, Karen Sharpe) and Kent (Chris Hale, Angela Hallam, Ann Netten, Robin Saunders, Steve Uglow).

reintegration and responsibility' (Home Office 1997:31-2), one of the purposes of the YOP is to engage local communities in dealing with young offenders. Responsibility for the recruitment, selection and training of community panel members is the statutory responsibility of the YOT. The draft *Guidance* suggests that panel members should be 'representative' of the local community and that their selection is to be based on personal qualities rather than professional qualifications.² The provision of appropriate training for CPMs forms an 'integral and compulsory part' of the process.

The Training Programme³

The first cohort of CPMs began training in most of the pilot areas in May 2000 in readiness for the introduction of referral orders which was staggered over the summer of 2000. In this first phase, 225 recruits successfully completed the training with 117 of these also undertaking the panel leader training. Based on a training manual called *Panel Matters* that was commissioned by the Home Office and Youth Justice Board, the training of CPMs generally covered six days with the additional training day for those training to be panel leaders. From the outset, the content and framework of *Panel Matters* was used in different ways. Some followed the programme quite rigidly, some were more selective in their use of the material (removing some sections and supplementing others), and some deviated quite significantly from the programme using it only as a guide. Moreover, the material in *Panel Matters* was given to trainees at different stages in the training programme, either immediately prior to the training session, or as background reading or 'homework' in preparation for the next session.

Whilst many trainers felt that *Panel Matters* offered a relatively clear structure to follow, one of the central concerns involved the sheer volume of information that the CPMs were expected to assimilate, and the emphasis on the acquisition of knowledge, much of which appeared to be practitioner based, rather than the practical development of key skills that it was felt were necessary for working as a panel member. These key skills were identified by the trainers as: (1) communication skills (2) mediation and/or negotiation skills (3) listening skills (4) confidence (5) the skills to manage emotion/anger (6) group dynamics (7) how to chair or run a panel meeting. One of the main concerns was that there was insufficient time built in to the schedule for reflection and discussion of some of the main issues. Concern was expressed that an over emphasis on the wider welfare needs of young people was inappropriate as it detracted from the central issue of the offence (response and prevention), and that there was a lack of essential practical information given on some of the issues central to the work of the panels, notably victims' issues, the content of contracts and guidance on proportionality.

The Delivery of the Training

Three different models were identified in the delivery of the training: (1) a '*YOT led*' approach in which the training was organised and delivered primarily by YOT staff with the sporadic contribution of outside speakers for some specialist subjects (2) a '*partnership*'

² A copy of the *Guidance* is available at www.homeoffice.gov.uk/yousys.dgyot.htm.

³ For a more detailed analysis, the first interim report '*The Introduction of Referral Orders into the Youth Justice System*' (2001) is available at <http://www.homeoffice.gov.uk/rds/index.html>. It should be noted that after the first wave of training, in light of comments made by YOT trainers and the evaluation team, the training programme has developed significantly.

approach where the delivery of the training was shared by YOT staff and independent trainers and (3) an '*independent trainer-led*' approach in which the training was delivered by independent trainers though with some support from YOT staff.

In all the models, the roles and responsibilities of the different parties did give rise to some tensions and conflicts over style, approach, methods and values. For example, although the use of independent trainers with experience of training in allied fields, such as restorative justice and mediation, made them particularly well placed to deliver the training to CPMs, many did not always have a comprehensive background knowledge of the youth justice system and thus had difficulty putting the training material into context. Where the YOT staff delivered the training themselves, it allowed them to develop a strong working relationship between themselves and the CPMs and develop a mutual understanding of the respective roles and relationships.

One of the most complex issues involved in the training was that it was simultaneously a process of selection and assessment of volunteers. This potential conflict of interest was recognised by both the trainers and the trainees. Whilst many of the trainers felt that their role in the assessment process could confuse their role as trainer, many of the trainees expressed considerable reservations about the training being delivered by the very people who were assessing them. It was recognised that the blurring of responsibilities could be counterproductive to a healthy training environment, with trainees perhaps being more conscious of the need to try to live up to expectations (that is, to say what they think they are expected to say), rather than to risk making mistakes in the training environment.

Summary

Most of the CPMs recognised that the trainers were working with a new programme and praised the way in which the training had been delivered. In a survey of CPMs conducted almost a year into the pilot when most (if not all) had amassed some experience of working on the panels, 53% of respondents reflected that they felt they were 'reasonably well prepared' by the training and 20% felt that the training had prepared them 'very well'. 88% of respondents felt that the principles behind referral orders were covered 'well' or 'very well'.⁴ The following two comments sum up the views of many CPMs:

"The panel can listen and try to comprehend all the relevant facts, and background causes of the offending behaviour. The offender has to participate and start to take responsibility for their actions, through listening to those who have been affected by their actions"

"I am very positive about the whole scheme. It brings young offenders back into the community to be dealt with in a friendly relaxed atmosphere, and includes victims, parents and other official agencies in a way that helps, not excludes, the young offender"

The successful recruitment and training of such a large number of CPMs represents a considerable achievement on the part of those involved in the training and is reflected in the overwhelming energy and commitment of those CPMS working on the community panels. The involvement of the local community in helping to tackle youth crime is a potentially progressive development in youth justice policy. The personal qualities, skills and diverse

⁴ By April 2001 when the survey was conducted, some pilot areas had recruited and trained more community panel members. The questionnaire was sent to 369 CPMs and was completed by 218, a response rate of 60%. A more detailed analysis of this survey can be found in the second interim report to be published in September 2001.

experiences that volunteers bring to the process, both individually and collectively, is seen as an important factor in engaging young offenders, their families and the victims of crime in the restorative justice process.

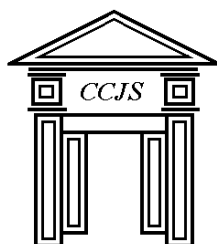
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Fixing the Price for Spoiled Lives: Compensation for Wrongful Conviction.

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The recent spate of well publicised wrongful convictions, such as the Birmingham Six and the Guildford Four, has drawn considerable attention to the ability of the criminal justice system to more quickly recognise and rectify its mistakes. However, for the individuals involved the overturning of a wrongful conviction is often the beginning of a long and arduous struggle to piece their lives back together again. On the one hand, it is recognised that the state's responsibility in relation to wrongful convictions should not, and does not, end with the quashing of such a conviction. But on the other hand such recompense does not arrive quickly and neither can it compensate for the horrors that have been endured by defendants and their families. This article will look at the systems which exist to provide compensation for wrongful conviction.

Currently there are two compensation schemes in operation. The first involves compensation payments wholly within the discretion of the Home Secretary. In certain instances an ex gratia payment will be offered if the case involves negligence on the part of the police or some other public authority. Examples of such awards include £2000 paid to Luke Dougherty in 1973 for eight months spent in prison following a wrongful theft conviction, and Albert Taylor, released in 1979 after serving five years of a life sentence for murder, received £21,000 following the quashing of his conviction.

This discretionary scheme alone, however, failed to meet the UK's international obligations under article 14(6) of the UN International Covenant on Civil and Political Rights in that it has no basis in law. A second scheme was therefore established by the Criminal Justice Act 1988. (The ex gratia scheme continues to operate in those cases which may fall outside the Act.) A positive application for compensation must be made to the Home Office who then consider the question of whether or not there is a right to compensation in a particular case. The Home Office insist that a guiding factor behind state compensation is that it is not a payment in recognition of a miscarriage of justice per se, but is designed to recognise "the hardship caused by the conviction." The Home Office interpretation of their role under the Act is, however, regrettably narrow, failing to recognise that the hardship caused extends beyond the applicant, and further failing to recognise the limitations of financial compensation alone.

Procedure under the Criminal Justice Act 1988

Compensation payments under the statutory scheme are calculated in a way that are the same as the calculation of damages for civil wrongs. Personal financial losses include a calculation of the loss of earnings and the reduction in the applicants future earning capacity. Complex calculations involving such things as loss of pension rights may also mean that securing the services of a forensic accountant could prove invaluable. Other losses that may be compensated include the cost of the applicant's legal assistance and the potentially considerable travel expenses incurred by the family when visiting the applicant over a period of years.

Other non-financial losses may also be claimed although by their very nature they are extremely difficult to quantify, especially those caused by emotional distress. In many miscarriages of justice the victim may very well have been subjected to severe character assassination by prosecuting authorities seeking to justify their actions. A sum to compensate such injuries would obviously be very difficult to ascertain and would be unlikely to reflect the almost irreparable damage caused to a person's reputation by the criminal label. "It was with some irony that on the same day as details of John Preece's ex gratia award were leaked in the press [£77,000 for eight years in prison for a wrongful murder conviction] the newspapers reported that Billy Bremner, the former Leeds United and Scotland footballer, had been awarded libel damages of £100,000 by a jury over allegations that he (sic) offered bribes to influence the results of football matches". (Ingman, 1996: 173)

Statutory compensation payments do not, however, appear to entitle the family of an applicant to claim for their own losses beyond their travel expenses. In many respects the hardship caused to the parents, spouses and children of the applicant can be as grievous as that suffered by the applicant. To ignore their distress fails to satisfy the Home Office's own rationale for compensation.

There have been few full and final settlements to date. Gerard Conlon, one of the Guildford Four, is reported to have settled for a final payment in the region of £400,000. Members of the Birmingham Six, however, were said to be insulted at similar offers following their sixteen years in prison. Such offers do not appear to compare favourably

with the available guidance as to the appropriate level of compensation taken from awards of damages made in cases of false imprisonment.

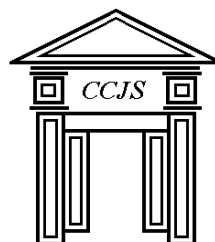
In *Hsu v Commissioner of Police for the Metropolis*, (New Law Journal, 1997: 341) Lord Woolf spoke of guidance to be given to a jury to assist them in assessing the damages to be awarded in cases involving unlawful conduct by the police towards the public. He stated that, "In a straightforward case of wrongful arrest and imprisonment the starting point is likely to be about £500 for the first hour during which the plaintiff has been deprived of his or her liberty. After the first hour an additional sum is to be awarded , but that sum is to be on a reducing scale". Aggravating features could increase the award. Though the Home Office does not accept any liability when making compensation payments a parallel can still be drawn with such cases when seeking an appropriate sum for compensation.

Conclusion

Rather than seeking to achieve the minimum international standards the Home Office ought to attempt to satisfy their own rationale of seeking to compensate for the hardship caused by the wrongful conviction. The current position virtually demands proof of innocence before a claim is successful. This is clearly unfair. Though no-one would wish to see payments made to those who have been cleared purely on legal technicalities, the balance should be in favour of compensating rather than not. The wrongfully convicted continue to carry the burden and stigma of conviction which is no doubt exacerbated but the lack of any form of rehabilitation program. This treatment contrasts with that of prisoners who have rightly served long sentences. They have, for example re-training schemes to help them find employment, somewhere to live and generally re-adjust into society. Without such help the original wrongful conviction can continue to wreck lives no matter how much monetary compensation is provided. Paddy Hill said, following the release of the Bridgewater Three, "There is not a week goes by when I don't wish I was back in prison" (The Times, 1997: 6). Less than two years after being released from a wrongful murder conviction lasting sixteen years Stefan Kiszko died. A family friend commented, "Stefan ... never recovered from what happened ... he could not face the world." (Sanders and Young, 1994: 185) If our criminal justice system is going to be fair, and be seen to be fair, then we will have to openly accept that it can sometimes be wrong and that when it is wrong it should be prepared to repair these spoiled lives as swiftly as possible.

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©Dangerous Representations: Mugshots, Notoriety and Vengeance⁵

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These two boys are commonly described by the global communications industry as 'marked men', and as 'targets' who are 'dead men walking.'⁶ Convicted of the murder of a young child when they were aged ten, their release on licence was announced two weeks ago. There is no precedent for the release of such high-profile offenders, and they have been described as 'dead men walking' in two senses. Firstly, Robert Thompson and Jon Venables no longer officially exist because every record of their former lives has been destroyed, to be replaced by intricate false identities. For some commentators, this makes them sinister 'faceless killers' while others report with concern their terror of being unmasked, and discuss the difficulties of sustaining a clandestine existence. The 'Bulger killers' are also 'dead men walking' because they are believed to be at grave risk of vigilante attack. For the purposes of protection, the courts have made a lifetime anonymity order, which prohibits anyone under the jurisdiction of English law from discussing or publishing information which might make their new identities public knowledge. As stories of mobs hunting them down circulated across the globe, the *News of the World's* front-page headline dramatically announced, 'BULGER KILLER DEAD IN FOUR WEEKS', and described the anonymity order as 'fatally flawed.'⁷

Rather than seeing this dramatic case as an aberrational departure from the normal practices of contemporary penalty, I see it as revelatory of a central element of the new punitiveness. This feature is the increasing prominence of notoriety as an integral part of punishment under the criminal law. To be notorious is to be well-known in respect of some bad or unfavourable quality or deed. In contemporary information societies, meanings of infamy are negotiated through a mediated knowledge in which global flows of images, ideas, and capital are reconstituting social life, politics and individual subjectivities in complex ways (Urry, 2000, Thompson 2000). Images have played a powerful part in the imagination of crime which mobilised the punitive shift. Two key dimensions of these visual practices are:

- (i) The mass circulation of representations of infamous offenders.

⁵ I would like to thank the British Academy and its panel of assessors for awarding me a travel grant in respect of attendance at this conference, as well as a research grant for my project 'Notoriety and Punishment in Contemporary Culture.' The author asserts her intellectual copyright over this paper. A more polished and detailed version of it will be published in the August 2002 edition of *Theoretical Criminology*. This paper was presented at the Law and Society Association Annual Meeting, 2001, Budapest.

⁶ These two poetic appellations do not emanate from the tabloids, but from a broadsheet: 'While liberals worry that the release will make the youths dead men walking, hunted by vengeful attackers, debate still rages...' (*The Times*, 23.6.2001 'Touch and Go: The Start of a High-Risk Experiment in Rehabilitation'). The headline 'MARKED MEN' is from the *Sunday Times* (24.6.2001, p.11).

⁷ *News of the World*, 24.6.2001, p.6 'Can Bulger killers' secret be kept from their future wives, children, bosses...')

(ii) The battle over the public's right to know the identities of serious offenders released into the community.⁸

The case of Thompson and Venables involves both of these elements: villicatory images of 'evil freaks' and demands for a right to know about 'faceless killers.' Today, notorious criminals increasingly lose the power to control use of their own image, as their names, faces and stories become lucrative commodities. In a consumerist culture, villicatory representations of criminals become a saleable commodity, as trade for a powerful media industry, and a source of political profit. Notorious criminals have to wage a battle with the mass media to reassert and defend their image against damage to both their reputation and their life and limb. Damage to reputation through negative or vituperous representations is of great concern when public opinion is referenced in decisions about tariff-setting.⁹ Representations which elicit physical attack and even murderous vigilantism are a chilling reminder that distinctions between retribution and revenge are being redrawn (Sarat, 1994). The 'just deserts' calculus of proportionality here becomes a threat levelled against both individual offenders and the rule of law itself. The formula is: if retribution is insufficient in our eyes, we 'the public' will exact our revenge. In this context, the legal regulation of dangerous representations becomes a site of contestation.

My research on notoriety and punishment challenges the continuing salience of the concepts of 'moral panic' and 'populist punitiveness' (Cohen 1973, Hall et al 1978, Bottoms 1995, Windlesham, 1998). These theories inadequately address the dynamism of the commodification of everyday life, and date from the time of a vastly different media environment. Commodification is the process through which things are transformed into articles of commerce that can be bought and sold for profit by maximising their exchange value. In late modern commodification, global flows of capital are networked with those of images and ideas. My theoretical framework also departs markedly from Foucauldian approaches to punishment and social regulation. Scholarship on consumer culture attributes considerable significance to the role of fantasy. In addition, cultural critics see fantasy as a powerful force in collective political life (Rose, 1995). Questions of fantasy are of course not prominent within Foucauldian work written from the perspectives of governmentality and normalisation. It seems that vicarious pleasure derived from the encounter with representations of crime and punishment combines with the frisson of fear, as representations increasingly tend to depict a universally threatening universe (Presdee, 2000, Reiner et al 2000). The process by which crime and punishment becomes a lucrative entertainment commodity is a complex one, and Acland tells us:

'Sensational crimes are distinguished by the way in which they rework the presumed 'informational' function of the news. Coinciding with the move from event to sensational crime- to murder as entertainment- is an entire industry of cultural production' (Acland, 1995: 47).

⁸ Campaigns and provisions to make the identity and whereabouts of obscure criminals released after serving sentences for serious offences a matter of public knowledge include Megan's Laws (USA), Sarah's Law (UK), and the Voto-Tedesco Community Notification Law (NJ, USA), which would establish notification measures when murderers are released.

⁹ I analyse damage to reputation through villicatory representations of Ian Brady and Myra Hindley, who have both sought censure of newspapers by the PCC and the courts.

It is my belief that jurisprudence and criminological theory must interrogate the economy of cultural production and its concomitant legal regulation. Central to this task, scholars must recognise the power of the image, and engage with the politics of representation in contemporary societies.

I will now move on to a brief reading of visual practices, notoriety and punishment as they pertain to the Bulger case. Robert Thompson and Jon Venables were described several months ago in the High Court as 'uniquely notorious.' In a recent documentary, a journalist described their crime as a 'made-for-TV-murder.'¹⁰ From the outset, the meaning of the Bulger killing was shaped through a well-known and emotive image taken from CCTV footage, which showed the abduction of the victim from a busy shopping mall. This haunting image, shown on the criminal detection programme *Crimewatch UK* and published often in the press, was widely described as threatening and harrowing, as an image before which viewers felt powerless and fearful. A considerable number of eloquent and engaging analyses of this image and the response to it have been published, among which Alison Young's (1996) contribution stands out. During the trial, which has been described as a spectacle and as a national event, the two young defendants were known as Child A and Child B. However, at the culmination of the trial, Morland J took the controversial decision to lift reporting restrictions thus permitting the 'Bulger killers' to be identified. Their names and school-photo images were splashed across newspapers and television screens, accompanied by vilificatory headlines which identified the boys as 'monsters' and 'evil freaks.'¹¹

Today, I will restrict my comments to the significance of the press injunction made for Thompson and Venables earlier this year. Despite the dictum 'there is no confidence in iniquity', this anonymity order for was made under the domestic law of confidence (the closest thing that Britain has to privacy law).¹² The question, as understood by the court, was largely one of balancing the freedom of expression (and the public's right to know) against the right to life protected under article 3. Dame Elizabeth Butler-Sloss stated that sections of the media were inciting people to wreak revenge on Thompson and Venables. Her reasoning in this respect was based on examination of press coverage, which the court took as evidence that:

'Some sections of the press supported this feeling of revulsion and hatred to the degree of encouraging the public to deny anonymity to the claimants. The inevitable conclusion was that sections of the press would support, and might even initiate, efforts to find the claimants and to expose their identity and their addresses in their newspapers.'

The gagging order is an order *contra mundum*, imposed openly against everyone. Despite its literal meaning of 'against the world at large', the *contra mundum* order can only be enforced within the jurisdiction of the law of England and Wales. This limitation to its scope means that news organizations outside this domain will be free to publish the

¹⁰ BBC2 'Eyes of the Detective: The Murder of James Bulger.'

¹¹ On the press coverage of the Bulger case, and its part in the punitive shift in juvenile justice see Franklin and Petley (1996), Kember (1995), Warner (1994), Hay (1996), Mann and Roseneil (1994), James and Jenks (1996), Fionda (1998), Gelsthorpe and Morris (1999) and Bourquin (1994).

¹² *Venables v News Group Newspapers Ltd* [2001] 1 All ER 908. In the *Mary Bell* case, an order was made for the protection of her infant daughter rather than for Mary herself (*X County Council v A* [1985] 1 All ER 53).

information. The *Sunday Express* used the headline 'We'll show Bulger faces' to tell readers that nothing could be done to stop British tourists from bringing magazines back which would 'slap a £50,000 price on their heads.'¹³ Furthermore, the technological revolution in the communications industry means that the reporting injunction may be unenforceable.¹⁴ The Attorney General wrote to internet service providers telling them that they were bound by the injunction. There are James Bulger sites ran from Germany, the USA, Australia and New Zealand with online petitions and newsboards through which contributors from all over the world make a range of violent threats.¹⁵

In the Bulger case, the demand for the right to know these identities and the wish to inflict vengeful attacks privilege the figure of the dead child's mother. This prominent representation of the Bulger family in the world's mass media indexes a battle over locus standi which provides lucrative discourse for the communications industry and the politicians. Politicians and the mass media regularly exploit the victim's experience such that Garland has recently written, 'the sanctified persona of the suffering victim has become a valued commodity in the circuits of political and media exchange' (Garland, 2001: 143). The voice and face of Denise Fergus was widely employed by the mass media to authorise vengefulness and vigilance. She made a statement calling on future girlfriends and colleagues of her son's killers to photograph them at the first opportunity to ensure that their new identities are revealed. She was widely reported as saying 'I know that no matter where they are, someone out there is waiting. There will be no stone unturned', and 'I'm urging people to look out for an 18-year-old moving into the area. If it's Thompson or Venables, I'd say "do what you can to get them out because they're still dangerous".'

Relations between vigilance and vengeance in the Bulger case merit critical scrutiny. The *News of the World* warned, 'we respect the injunction, but we will closely follow this evil pair... we shall do all in our power to watch over them.' Representations of vigilance in this case demonstrate a coupling of vengeful punishment and self-defence. They elide together:

- anticipatory fearful discourses of self-protection
- past-orientated discourses of detection (Valier, 2001) and vengeance.

This watchfulness seeks to make Thompson and Venables 'prisoners of their past.'¹⁶ The Foucauldian study of punishment does not provide appropriate conceptual tools by which the weight of the past can be theorised, as I argue in the next issue of *Theoretical Criminology* (Valier 2001). I submit that in order for scholars to comprehend and

¹³ This frontpage report informed readers that magazines like Spain's *Interviú*, Germany's *Stern* and *Bild*, Italy's *Espresso*, *Gente* and *Oggi* and Japan's *Focus* were offering large sums of money for photographs of Thompson and Venables (24.6.2001 'We'll show Bulger faces').

¹⁴ See Hamelink (2000), Chapter 6, and Akdeniz, Walker and Wall (2000).

¹⁵ <http://www.petitiononline.com/Jamie91/petition.html> is the address of a petition posted by 'Marie Gloria, Florida, USA' which demands for the release and anonymity rulings to be undone. Messages posted by signatories include the following: 'Attack these 2 monsters as soon as their photo is released to the public' (USA), 'Where are they ? Tell Me! I have always wanted to track down and kill a baby murderer' (UK), 'Who cares if they were rehabilitated, kill em anyway... I hope you hunt them down and rape them' (US). Threats are also made against Thompson and Venables family and lawyers as well as Lord Woolf.

¹⁶ This is the title of BBC's Panorama programme of 1.7.2001.

elucidate the full range of representations, practices and institutions that make up the contemporary crime complex, the imbrication of past, present and future temporalities must be recognised and addressed.

The urge and imperative to look out for the criminal is both a pleasurable and fearful one. In his fascinating book *Cultural Criminology and the Carnival of Crime*, Mike Presdee draws our attention to the pleasures of voyeurism:

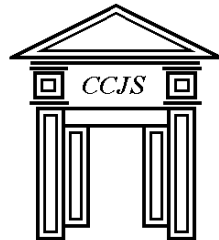
'to be involved in some way in the act of transgression as a voyeur is pleasure enough. To watch, to be there yet absent, is enough... A global multimedia industry enables us to consume many of these forbidden pleasures in the privacy of our own homes... others do our crime for us and the multimedia deliver the pleasures to us via the Internet and a growing "reality" television' (Presdee, 2000: 30).

However, I would also like to point out that there is no safe viewing position from which one can maintain distance from dangerous representations (Valier, 2000). Questions of commodification always include those of costs: costs to the subject as well as to the social order and to the rule of law.

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Miscarriages of justice: An inside job?

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Introduction

The subject of miscarriages of justice is a subject which haunts not only my academic career but also the criminal justice process. I wrote a book on the subject in 1993 and again in 1999 under the title, *Miscarriages of Justice* (Blackstone Press). The book opens with the quote: "...it's true all the stories that you tell come back to haunt you." which could be written with the likes of the Birmingham 6, Stefan Kiszko, Judith Ward, the Maguires and Guildford 4 in mind. So, the background to this paper lies in an enduring interest in the laws regarding terrorism, which was the subject of my PhD and several books. Terrorist cases naturally lead me into the issue of miscarriages of justice in the late 1980s and ever since.

The persistence of miscarriages of justice as an issue is at first sight rather surprising. After all, in the light of the miscarriage cases of a decade ago, considerable efforts were apparently made by the UK State to correct the failings in its criminal justice process. These efforts included, first and foremost, two major inquiries: by Lord Justice May into the Guildford and Maguire cases, and secondly a Royal Commission on Criminal Justice chaired by Lord Runciman and informed by no fewer than 22 research studies. It reported in 1993. Next, that Royal Commission Report was responded to by legislation such as the Criminal Justice and Public Order Act 1994, the Criminal Appeals Act 1995 and the Criminal Investigations and Procedure Act 1996. I emphasise the word "response" rather than "implement" – that is another debate. All that is maintained here that effort was made to take action.

But that there is persistent concern may be evidenced by two factors. The first is the low public confidence in the criminal process. According to recent opinion polls commissioned by the BBC and carried out by ICM Research Ltd using 1,000 respondents, 52% felt a loss of faith because of miscarriages of justice and 67% thought not enough had been done to prevent miscarriages. This survey cannot be easily compared to one of, say, ten years ago, but in absolute terms these figures do not evidence high satisfactions ratings. The second is that the level of applications about alleged miscarriages remains obdurately the same now as it was about a decade ago (around 800 per year). One might again argue about the figures and note that the prison population is now much higher so there is a larger cohort of people sat around with nothing better to do than to try to bicker about the system. But the rate of convictions by the Crown Court has not risen, so it is not obvious that longer sentences are likely *per se* to create more applications.

Agenda

Taking up the theme of miscarriages of justice, I want to tackle this enduring issue by seeking to locate the causes of, and possible remedies for, miscarriages of justice. My task is therefore programmatic as well as descriptive. The organising theme adopted is the notion of "the inside job" – ie internal/external agency both in terms of causation and reform. As I shall explain, this chimes with perspectives adopted by others who have studied either miscarriages of justice in particular or policing and criminal justice in general. I should also as a preliminary issue define miscarriages of justice. I shall define it in wide terms which may in part be controversial. So, it might be said that a miscarriage occurs whenever suspects or defendants or convicts are treated by the State in breach of their rights, whether because of,

- first, deficient processes or, second, the laws which are applied to them or, third, because there is no factual justification for the applied treatment or punishment;
- fourth, whenever suspects or defendants or convicts are treated adversely by the State to a disproportionate extent in comparison with the need to protect the rights of others;
- or, fifth, whenever the rights of others are not effectively or proportionately protected or vindicated by State action against wrongdoers
- or, sixth, by State law itself.
- A seventh, indirect miscarriage affects the community as a whole. A conviction arising from deceit or illegalities is corrosive of the State's claims to legitimacy on the basis of its criminal justice system's values such as respect for individual rights. In this way, the 'moral integrity of the criminal process' suffers harm.

Causation

On the face of it, the issue of causation looks the more straightforward in terms of explanation based on internal/external factors. One is reminded of the anarchist slogan from the 70s – Help the police; beat yourself up! But by and large the causes are internal to actors within the criminal justice process rather than induced by external agency, including the suspect. This is important as it suggests that we must influence practices internal to criminal justice agencies, but we cannot entirely expect initiative for change from the inside (otherwise we wouldn't face these recurrent miscarriages) and must ultimately impose external audit and oversight.

In my own book, I identify some of the following as causes:

- (1) The most obvious danger is the misrepresentation of evidence. The police are in the most powerful position to manipulate evidence, for example by 'verballing' the accused – inventing damning statements or passages within them – and constructing cases to prove guilt. The *Birmingham 6* and *Tottenham 3* cases all involve such behaviour which is no more excusable because, sometimes, it is said to have been committed in a noble cause. Informers are a further source of concern.
- (2) Both the police and lay witnesses may prove to be unreliable when attempting to identify an offender, especially if the sighting was momentary and in a situation of stress. But it is interesting that the prominence of identification evidence in miscarriage cases – the main cause given in the 1970s and still very problematic in the US – seems to have faded in England and Wales.
- (3) The evidential value of expert testimony has also been overestimated in a number of instances only for it later to emerge that the tests being used were inherently unreliable, that the scientists conducting them were inefficient or both. The *Maguire 7*, *Birmingham 6*, *Ward*, and *Kiszko* cases all fit into this category.
- (4) The next common factor concerns unreliable confessions as a result of police pressure, physiological or mental instability or a combination of all – examples include the *Guildford 4*, *Birmingham 6*, and *Ward* cases.
- (5) A further issue may be the non-disclosure of relevant evidence by the police or prosecution to the defence. The investigation of a case is by and large reliant on the police. The defence have neither the financial resources to undertake such work nor the opportunities in terms of access. Yet, several cases – the *Guildford 4*, *Maguire 7*, and *Ward* – demonstrate that the police, forensic scientists and prosecution cannot be relied upon fairly to pass on evidence which might be helpful to the accused in the interests of justice.
- (6) The conduct of the trial may produce miscarriages. For example, judges are sometimes prone to favour the prosecution evidence rather than acting as impartial umpires, as is alleged in connection with the *Birmingham 6*. A failure to appreciate the defence's submissions either in law or fact can result in unfairness in their rulings or directions to the jury, as in the *Maguire 7* case. Equally, defence lawyers are not always beyond reproach. Legal aid funding takes a much smaller proportion of public funds compared to police and prosecution work.

(7) The next problem concerns the presentation of defendants in a prejudicial manner either in court or through media commentaries.

(8) There are the problems associated with appeals and the procedures thereafter. Common difficulties include the lack of access to lawyers and limited legal aid funding, so there has to be reliance on extra-legal campaigns which may or may not be taken up by the media dependent upon factors which have little to do with the strength of the case. The Court of Appeal has made life even more difficult because of its interpretations of the grounds for appeal. Once the courts are exhausted, complainants have, until recently, had to rely upon a ramshackle and secretive review by Home Office officials rather than an independent inquiry.

Putting some figures on these causes, the CCRC recently analysed the 80 cases it had referred to the Court of Appeal and catalogued the causes (some being multiple) as follows (*Third Annual Report 1999-00* (Birmingham, 2000) p.9):

- police/prosecution failings = 27; scientific evidence = 26;
- non-disclosure = 23;
- new evidence = 23;
- defective summing up = 11;
- defective legal arguments = 10;
- false confessions = 6;
- defence lawyer failings = 6.

On this basis it is true that miscarriages of justice are overwhelmingly an inside job, and the extent to which this is the case is reflective of the reality of criminal justice. Whilst the system is presented as adversarial, it is not an equal match and it is the police/prosecution who make the case. This is a disturbing finding in one sense. Public services are expected to perform to the highest standards, and though miscarriages of justice are not a large proportion of criminal cases, the failings in these cases are very serious and often involve repeated and perhaps endemic error. It is also disturbing as it shows how criminal justice is a closed world which has been increasingly professionalised and made bereft of lay involvement or support. At the same time, the location of error also engenders some optimism since it allows for official reaction and reform in the perhaps naïve expectation that the situation can be improved.

I shall turn next to the issues of response and reform.

Response and reform – in principle

Let me first pick up on the accusation that any expectation of official response and reform is naïve. I have accepted this point in part – that we must influence practices internal to criminal justice agencies, but we cannot expect initiative for change from the inside and must ultimately impose external audit and oversight. This observation is in line with constitutional theories of separation of powers as much as more fashionable ideas of audit and consumer satisfaction. But the doubters go further and says even official intervention outside the criminal justice agencies is also doomed.

This is a real concern – after all, I related earlier the tale of the Royal Commission and the legislation which emerged, and yet we still experience miscarriages of justice. The impact of reform within the criminal justice field has recently been questioned by an number of academic commentators. The most lengthy examination within the context of miscarriages has been provided by Richard Nobles and David Schiff in their book *Understanding Miscarriages of Justice* (Clarendon Press, Oxford, 2000).

Broadly speaking, my own approach has been centred around liberal perspectives, which are often moulded by the language of Packer's due process/crime control continuum but which increasingly pay heed to the ethical pull of the notion of rights, as translated by the European Convention on Human Rights and the Human Rights Act 1998. This provides an overarching perspective, since respect for rights is as much in the interests of victims and the community as of suspects and criminals. However, it is a discourse which is categorically rejected by the authors of *Understanding Miscarriages of Justice*. Instead, they strike out in the direction of two alternative theoretical foundations – the notion of "Tragic Choices" and the theory of autopoiesis.

The authors claim that the heuristic device of autopoiesis is "peculiarly apposite" to a study of miscarriages of justice. This involves the claim that there is an "inevitable 'clash of cultures'" of discrete "systems" – in this case, the law and the media – which makes rational reform impossible. On the one side, the law is driven by the determination of the truth but within the institutional contexts of due process and finality, both of which confer authority but at the same time constrain the pursuit of the truth. On the other side, the press is said to be driven exclusively by the information/non-information "binary code" in which due process and finality are unimportant.

My own view is that looking at law, or indeed most social orders, as a system of self-referential communications is hardly likely to explain the complexities of law, politics and culture and how they have impacted upon the criminal justice process during the past decade. Indeed, the arid setting of boundaries between "systems" seems peculiarly inappropriate in this context. Thus, one might ask where the boundaries lie of the "systems" of the law and the media (and politics)? In reality, law is a very open "system" – it is certainly open to political pressure through the mechanism of legislation, and betrays receptivity to less formal political and media influences. Conversely, there is the spectacle of the lawyer turned journalist or politician who advocates change within political or media settings rather than in court, a path even taken by some judges. All these examples suggest a far from rigid or singular binary divide between lawful/unlawful. A further difficulty with the application of autopoiesis to the criminal justice branch of the "system" of law is that some of the ultimate values shaping the criminal justice process, such as individual rights, cannot easily be contained within a distinct "system" called law, since rights draw their normative meaning from other "systems" which interact and coalesce.

Moving on from autopoiesis, the second strand of its foundational theory, "Tragic Choices" represents an idea is taken from the book by Calabresi and Bobbit, in which they examine decisions about life and death, such as the allocation of the life-saving resources, made through different mechanisms. Whatever mechanism is chosen, especially when it is some form of politically driven process, it must disguise the inevitable sacrifice of fundamental value. The link to miscarriages of justice is said to be that there is an analogous trade-off between truth and fairness (and cost) but in a way which equally cloaks "the inevitable sacrifice of those values". But is the analysis of Calabresi and Bobbit directly applicable to criminal trials and appeals? One can comprehend that if a society

allows motor cars to travel at more than ten miles per hour, then terrible accidents will occur after which the victims cannot be brought back to life. Or if a society chooses not to allow organ donation without consent, the saving of the lives of people with heart, kidney or liver failure will not be maximised. But is the allocation of criminal justice such a clean-cut process as the allocation of donor kidneys? Is it possible to predict in actuarial terms, as with deaths related to car accidents and kidney failures, how many people will suffer a miscarriage of justice if, say, the legal aid budget is reduced by five per cent? Unlike donated kidneys, justice is not a finite commodity, so the inevitable and inherently fateful character of "tragedy" is not made out in this context.

I concede that further miscarriages of justice are inevitable, and "progress" cannot be linear. The criminal justice process depends upon human beings who constantly, just like fractious toddlers, discover or invent new fallibilities; and the processes of detection and trial are in a continual state of development which throws up novel problems. But at the same time, the absence of a magic bullet does not vitiate the good sense in taking some shots at reform.

My line is rather more influenced by a son of the Hull school, David Dixon and his book, *Law in Policing* (Oxford University Press, 1997). David outlines three broad relationships between policy in law and implemented of policy

- legalistic-bureaucratic in which law determines policy
- culturalist – in which internal working cultures determine policy
- structural – in which policy is structured by law and culture

In the context of the police, most sensible people see the latter as closest reality, since the inculcation of policy requires internal and external influences – not only legal rules but also other processes and strategies. It implies law can change official practice, even in agencies which can appear impervious to outside influence such as the police (with their strong self-supporting cultures) and the courts (with their explicit claims to independence). But it also recognises that this will not happen simply because a law says it should.

I shall bring this debate to a conclusion. Reform seems a viable possibility, but we must understand that it will be affected by cultures (and also histories, relationships with other policies and agencies, finance and the chance of personality) and that the process of reform must be repeated. Moving on, I want to see how far reform has gone since the Runciman Commission and whether the notion of reform can apply with real impact or whether, as in the Tragic Choices, analysis, it is all about masking the impossibility of the task and soothing concerns with legitimation devices. I shall concentrate on the Criminal Cases Review Commission – the CCRC – as a case-study. I shall look first at design and then performance.

CCRC - design

One expects in a fair and effective criminal justice system that evidence for guilt will be both overwhelming and clearly more convincing than the defendant's claim to innocence. But mistakes are inevitable. So, how far should a criminal justice system remain alive to these possibilities of error, and how should it respond?

The answer to the first question is that the values of liberty and justice demand that a very high priority be given to ensuring that State coercive powers are exercised only in warranted circumstances. The result is that a special premium is placed on the values of liberty and justice – more so than on the righting of a criminal wrong: 'It is better that ten guilty persons escape than that one innocent suffer.'

In answer to the second question, many of the safeguards must reside within the legal rules and the internal working cultures fostered by training and management within institutions such as the police, prosecution, forensic science, judiciary and advocates. Of further relevance are the appeal courts which provide an outlet for certain types of doubt and grievance to be addressed. Yet, no matter what care is expended at each stage of the criminal justice process, the possibility of error remains. So how has 'residual error' been addressed within the criminal justice process in England and Wales?

Prior to the Runciman Report, for an appellant who maintained he or she had been wrongfully convicted but whose appeal under section 1 of the Criminal Appeals Act 1968 had been unsuccessful, the only option available was to lodge a petition with the Home Office. Under section 17 of the Criminal Appeals Act 1968 the Home Secretary was empowered to refer a case back to the Court of Appeal where a person had been convicted on indictment, for a new determination as to conviction or sentence or both, as 'he thought fit'. The fitful scrutiny by the Home Secretary's back-room staff and the politically-charged reluctance to use the referral power under (the now abolished) section 17 of the Criminal Appeal Act 1968 was far from convincing. A model of an independent tribunal eventually came into official favour and was given personal support given by the Home Secretary in reaction to the Second Report of the May Inquiry into the *Guildford* and *Maguire* cases. The *Runciman Report* acceded to these pressures and recommended a replacement for the reviews and referrals through the Home Office. The idea has been implemented after 1 April 1997 in the shape of the Criminal Cases Review Commission (CCRC) by Part II of the Criminal Appeals Act 1995.

The role of the Criminal Cases Review Commission in respect of alleged wrongful convictions is in many ways similar to that previously operated by the Home Office. It has no power to determine the outcome of cases for itself but, if certain criteria are established, can refer a case back to the Court of Appeal. However, there are several critical differences between the old and new procedures, and in all cases the new procedures are to be preferred.

(1) Preparation of the application: In practice, a convicted person had to persuade the Home Secretary to intervene by forwarding a petition to the Home Office. As the Home Office, acting through its C3 department, received around 700-800 such petitions every year, it was vital that an individual petition was clearly written and well drafted if it was to catch the eye of the relevant officials. In some circumstances a prisoner may have been able to persuade a legal advisor to work on their behalf for little or no remuneration, but such occasions were rare. The establishment of the CCRC is designed in part to remove some of these initial practical obstacles from the petitioner. Though in the vast majority of cases an applicant will still have to bring his or her case to the attention of the CCRC, much more has been done to make the application process user-friendly. The CCRC also encourages the use of legal advice, though the rules about public funding have not changed.

(2) Resources: The Commission is far better resourced than C3. In addition to the 14 Commission members, it employs dozens of case-workers. Its annual budget of between £4-£5 million also represents a substantial increase in resources when compared to the estimated £750,000 annual running cost of C3. However, whether even these enhanced resources are adequate can only be determined by experience, and in practice, as shall be described, the CCRC has faced an early financial crisis.

(3) Consideration of the application: A petition before the Home Office was evaluated by civil servants who, operating within strict self-imposed guidelines, would not consider referring cases to the Home Secretary without new evidence or other considerations of substance not available at the original trial. If the petition, however, appeared to provide *prima facie* grounds for re-examining the case, then further investigations could be carried out, but with just 21 officers, C3 was under-staffed and under-resourced for the task. If C3 was of the opinion that a miscarriage of justice might have occurred, the matter would then be passed on to the Home Secretary who held the final decision in regard to a referral to the Court of Appeal. However, as far as the Home Secretary was concerned, the overriding principle governing the use of his discretionary power was the need to avoid the appearance of any executive interference with the role of the judiciary, and so would normally only refer a case if there was 'new' evidence available.

This intractable stance could only be overcome by a body truly independent of the executive and therefore unfettered by the constitutional constraints experienced by successive Home Secretaries. The constitutional independence of the Commission is provided for in section 8(2), whereby it 'shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown...'. The Home Secretary is not involved with the selection procedure, does not set the working structure of the Commission, and crucially, is not involved in its decision-making role. At least one third of the Commission's membership must be legally qualified, and under section 8(6) at least two thirds 'shall be persons who appear to the Prime Minister to have knowledge or experience of any aspect of the criminal justice system...' As established in April 1997 the Commission has 14 members, ten of whom are part-time. They will have fixed terms of five years renewable to a maximum of ten years. The apparent desire to appoint members with wide-ranging legal experience in addition to a perspicacious lay element must also be welcomed when compared to the cohort of civil servants responsible for evaluating petitions in C3 who lacked any formal legal training.

As well as Commissioners, much of sifting work is undertaken by case-workers. Rejections are finally made by a single Commissioner, in consultation with the Case Review Manager. If, on the other hand, the Case Review Manager and Commissioner believe that there may be a possibility of reversal, then the case is presented to a quorum of three Commissioners who take the final decision as to whether to refer. Following a referral to the Court of Appeal, the CCRC's involvement ceases.

(4) Re-investigations: Most applicants will still be faced with the problem of trying to persuade the Commission to use its resources in carrying out further investigations. As the quality of re-investigations under the old reference procedure was heavily criticised, it is vital to the success of the Commission that it is seen to have thorough and, as far as is possible, transparent investigative processes. Accordingly, the CCRC has powers under section 20 analogous to those of the Police Complaints Authority to oversee investigations and, when necessary, appoint investigating officers from a force other than the one which carried out the original investigation. But the government stood fast against giving the Commission an ability to investigate cases with its own staff:

'The Government has no intention of funding a team in the Commission whose job would be to operate as a mini police force, duplicating work which could, and should, be done by the police....We envisage its doing investigative work from time to time but, generally the right people to investigate will be the police... .'

Consequently, there are no CCRC in-house investigative staff. Under section 19 of the 1995 Act the Commission can require the appointment of an investigating officer to carry out inquiries, and can insist that the investigating officer be from a different police force than the one which carried out the original investigation. The Commission can also direct that a particular person shall not be appointed or, should they be dissatisfied with his or her performance, they can require under section 20 that the officer be removed. As one commentator has remarked 'the 1995 Act takes a trusting attitude to the police', and this relationship represents a major concern for the future effectiveness of the CCRC since it represents an undue reliance on internal agency.

(5) Disclosure of evidence: The Commission has a wide power to obtain documents from public bodies under section 17 of the 1995 Act 'where it is reasonable to do so.' The provisions of section 17 do not extend to any information in regard to a Minister's previous consideration of the case, though this limit is of waning concern. As regards disclosure of information to the applicant, in *R v Secretary of State for the Home Department, ex parte Hickey (no. 2)* [1995] 1 WLR 734, Simon Brown LJ ensured through his judgment that when the Home Secretary was minded to reject an applicant's petition on the basis of evidence gathered in any further inquiries, the applicant should be given an opportunity to make representations upon such material before a final decision is made. There is no general duty under the 1995 Act to disclose all the information gathered during any re-investigation, the Government preferring to rely upon the flexible standard of fairness in *ex parte Hickey*.

(6) Referral to the Court of Appeal: In order to refer a case to the Court of Appeal, the CCRC under section 13(1), must 'consider that there is a real possibility that the conviction... would not be upheld were a reference to be made...'. This 'real possibility' can be realised through, 'an argument, or evidence, not raised in the proceedings...'. This is effectively wider than the Home Office review and may ensure the criteria for referrals are more easily satisfied. No longer will there be a need to provide 'new evidence' as interpreted by the Home Office. At the same time, the Act left much to be determined through the interpretations of the CCRC and also the receptivity of the Court of Appeal, which will have to be second-guessed by the CCRC. More radical solutions would have been to give the Commission the power to determine applications or at least to make recommendations to the Court of Appeal either to acquit or to order a retrial, placing the onus on the judges to find reasons to disagree. However, these ideas could be seen as interfering too much with judicial independence and the finality of verdicts.

In terms of design, the CCRC is an important and innovative reform which does recognise the possibility of residual error and places state facilities on call for their correction. However, there are at least two potential design problems. One concerns the level of resources, which is designed to render the CCRC reliant upon the police for investigation and also could leave it struggling to cope with its case-load. The second is that the CCRC's powers ends with a referral, so that it is ultimately dependent on the receptivity and performance of the Court of Appeal, an internal agency for these purposes, which has emerged relatively unscathed from the Runciman reforms. These two concerns could be depicted as an excess of internalism. The third problem is a limited agenda and lack of sense of wider mission – to look further than individual applications at miscarriage prevention (through altering internal processes) rather than miscarriage correction (applied externally).

Performance of the CCRC

The CCRC began work on 1 April 1997 with 270 cases transferred to it from the Home Office and 12 from the Northern Ireland Office. In its first three years of operation, 2,914 new applications have been received.

The CCRC has powers under section 19 to appoint an outside Investigating Officer. By the end of August 1999, Investigating Officer (invariably from the police) had been appointed in 13 cases. The modest use of section 19 reflects the possibility that more limited fact-finding can arise from the commissioning by the case worker (under section 21) of specific independent reports, such as by engineers, forensic scientists and psychiatrists. In addition, the Commission itself has adopted the practice of carrying out for itself as much fieldwork as is practicable (including interviews with witnesses, lawyers and the applicant). But it is a disappointing replication of Home Office practices that police officers have invariably been employed as investigators. It seems that the financial consideration that the police provide their services for free (to the CCRC) will prove weighty both in the short and long term.

By 31 March 2000, 80 cases had been referred to the Court of Appeal. Of these, just 35 had been determined (in 27 of which convictions or sentences were quashed or reduced). This represents a higher rate than the Home Office – one might say that even if miscarriage prevention has not altered, at least the clear-up rate has improved.

The first case to be considered was that of *Mattan* (1998) *The Times* 5 March. It is an encouraging sign that Lord Justice Rose expressly recognised that 'the Criminal Cases Review Commission is a necessary and welcome body, without whose work the injustice in this case might never have been identified.' Similarly, in *R v Criminal Cases Review Commission, ex parte Pearson* [1999] 3 All ER 498, Lord Bingham asserted that, 'It is essential to the health and proper functioning of a modern democracy that the citizen accused of crime should be fairly tried and adequately protected against the risk and consequences of wrongful conviction.' This approbation would have been of little comfort to Mahmood Mattan who was hanged in 1952, but it provided great encouragement to others and gave the CCRC a good start in its relationship with the Court of Appeal.

Of the cases to have reached judgment to date, the case of Derek Bentley (who was also hanged in 1952), decided in July 1998, was perhaps the most remarkable, not only because of its history but also because it gave rise to the alarming implication that older convictions can become vulnerable simply by the application of current standards of due process. The Court of Appeal relied essentially upon the unfair conduct of the trial and directions to the jury by Lord Chief Justice Goddard, an issue which had been ventilated without success in the original appeal. This prospect has become less likely since the decision in *Gerald* [1999] Crim LR 315 in November 1998. The Lord Justice Rose expressed mild annoyance that the referral (concerning a conviction for grievous bodily harm in 1987) had been made at all: '...we venture to express a measure of surprise that, in this case, in which, as will emerge, there is no new evidence and the points which form the substance of the appeal were never canvassed in evidence or argument at trial, the Commission has thought it appropriate to [refer].' A corresponding approach has been established in regard to sentencing referrals in the case of *R v Graham* [1999] Crim LR 677.

Since only a small number of cases have so far been dealt with by the Court of Appeal, it is premature to make a final appraisal as to the success of the scheme under the 1995 Act. Nevertheless, the CCRC has on the whole been well-received by the legal profession and other criminal justice agencies, as shown by the submissions to the House of Commons' Home Affairs Select Committee's survey of 'The Work of the Criminal Cases Review Commission' [1998-99 HC 106]. The Select Committee considers that it has made a 'good start'.

However, this positive picture must be balanced with some difficulties. One problem concerns the meaning of the statutory test for referral. The CCRC's decisions on referral are governed by s.13 of the 1995 Act. This provides that there must be a 'real possibility' that the original conviction, finding or sentence would not be upheld as 'safe' were the conviction to be referred back to the Court of Appeal. In the case of a conviction, the 'real possibility' must be as a result of an argument or evidence not raised in the original proceedings, or of 'exceptional circumstances' such as wholly inadequate defence representation. While 'real possibility' itself is not defined in the Act, early indications suggest that the test prescribed in s.13(1)(a), although imprecise, denotes a contingency which in the Commission's judgment is 'more than an outside chance or a bare possibility, but which may be less than a probability or a likelihood or a racing certainty'. Whether this formula provides a sufficiently clear signal of the external (to criminal justice) determination to avoid miscarriages remains to be seen, and *Gerald* suggests some return to old attitudes.

Next, the backlog of cases before the CCRC causes some anxiety. By the end of August 1999, a total of 2,763 submissions had been received by the CCRC. Of these, 1194 awaited completion, with 445 actively being worked on. In total, 1124 cases have been completed (including those deemed ineligible, 54 referrals, and 142 refusals to refer). The overall daily intake has been around four, while the disposal rate has been around two. Even before the CCRC started work in 1997, concern was voiced that it would be swamped with new applications, especially from applicants who had derived no satisfaction from C3. These fears soon materialised. By 31 March 1998, 1,096 new cases had been received, with an accumulation of 851 cases awaiting review; by 31 March 1999, there was an additional intake of 1034 cases and combined queue of 1105. Recognising the implications of such a backlog, the CCRC made a bid for more money in January 1998 in order to increase the number of Case Review Managers from 27 to 60. This request was refused, but the Home Secretary awarded the CCRC a further £1.28 million in February 1999, enabling it to increase its workspace and to appoint 12 more Case Review Managers (plus four more administrative staff) for the financial year 1999/2000. Concern persisted that the work was still piling up as the CCRC moved into its third year and that this would itself create injustice as well as damaging confidence and demoralising staff. There was also the danger that some of these dissatisfied customers might begin legal action against the CCRC for the injustice of delay.

Taking the case backlog and delay as the most pressing problems, the Select Committee advanced four possible strategies: that the CCRC should reassess its approach to referrals; that it should greatly increase its productivity; that its resources must be significantly increased; or some combination of the foregoing. The issue of increased resources has already been considered, and the Select Committee inquiry itself deserves credit for its part in the pressure which prompted the change of heart in the Home Office. The remainder of this commentary will therefore concentrate on the approach to referrals and productivity.

(1) Approach to referrals: The Select Committee argued that the CCRC could take a changed approach to its investigation of cases in that it could 'prune the amount of detailed work done' but with no loss of effectiveness, describing its investigative processes as 'highly technical and formulaic'. This feature, it is contended, has contributed greatly to the large backlog of cases that has now built up. It could be contended that in looking for a 'real possibility' that a conviction would be reversed by the Court of Appeal, the CCRC should not be second-

guessing the Court of Appeal and only referring those cases which are sure to be overturned – the high success rate in the Court of Appeal combined with the low number of cases referred seems to be indicative of this tendency. However, there are problems with a more cursory review. The risks arise that less obvious grounds for referral will be overlooked so that cases are not referred or referred on weaker grounds than necessary, with no certainty that the necessary investigative work will be undertaken in time by defence lawyers, prosecutors or appellate judges. A major criticism levelled at the Home Office was its inability or reluctance to investigate thoroughly those cases which initially appeared to have little chance of success. If at this early stage in the life of the CCRC the quality of preliminary investigation is reduced, honed down to a mechanical filtration and rejection process with eligibility thresholds being effectively increased, the CCRC will quickly become as discredited as the previous system. There is also the danger of incurring the wrath of the Court of Appeal if a sizeable proportion of referrals fails.

(2) Productivity: As regards improvements to the CCRC's working practices suggested by the Select Committee, the following are the more substantial or more controversial changes advocated.

First, the Select Committee suggested that the CCRC should publicise the availability of legal advice in order that a greater proportion of the applications received meet the eligibility criteria. In this way, private lawyers could act as gatekeepers for the CCRC, saving the time of the Case Review Manager who would otherwise have to check for eligibility (around 25% of applications are ineligible, mainly because of the failure to exhaust appeals). To a certain extent, this goal has been pursued through the production of the CCRC's video, 'Open to Question', which may have contributed in the increase from 10% to 30% in applications prepared with legal assistance from 1997 to the end of March 2000. The utilisation of private lawyers is not, of course, an overall saving to the public purse if their work is paid for from the Legal Aid Fund, but there may be savings in regard to the cost of unjust imprisonment.

The Select Committee also considered various permutations in priorities. In this regard, the CCRC has rightly given little prominence to summary cases (they amount to 7% of the workload) but instead has adopted a system of priority which largely favours in date order of receipt those in custody. But it also gives priority to two more dubious categories. One is the cases falling under the short form of review procedure – in other words, weaker cases are accelerated, which must ameliorate the statistical returns but hardly makes much sense in terms of justice. Secondly, there is priority for those cases transferred from the Home Office and Northern Ireland Office, yet one wonders whether so much effort should be expended on old cases which involve files of gargantuan proportions but no live defendants and arguably no live issues for the contemporary criminal justice process.

Another area (not considered by the Select Committee) where savings could be made concerns the establishment on 1 April 1999 of a separate Scottish CCRC. It is arguable that valuable resources and time are being dissipated through the process of institutional establishment and subsequent maintenance, whereas a unified United Kingdom Commission could have operated earlier and more efficiently and effectively through the dissemination of practices and experiences. Though Scotland has a distinct criminal process, its differences should not be reflected in expensive offices and equipment or the reinvention of working systems. So, the separation is explained by the pandering to historical symbolism rather than a determination to combat miscarriages of justice.

Some of the recommendations of the Select Committee could result in a clearing of the backlog of cases awaiting consideration without being detrimental to those cases. However, the principal tone of its Report is one of bureaucratic efficiency in which standards can be cut. The result would be a confirmation of internal practices, so it is heartening that these have indeed been the responses of the CCRC, which agrees with the Select Committee's combination approach, but focusing on productivity and resources. Conversely, it rightly cautions against a more superficial approach to the examination of applications.

Fortunately, the crisis has now receded somewhat through a combination of factors. One is that extra resources have produced a greater capacity within the CCRC, and further subventions in 1999 have allowed for the number of Case Review Managers to rise to 50. The second is that the flow of applications significantly diminished in 1999-2000 to just 774, taking the level back to the rates pertaining before the CCRC came into existence and perhaps suggesting that the interest it generated amongst existing prisoners has now run its course. Accordingly, by 31 March 2000, the case accumulation had been reduced to 886 and was falling at a modest rate.

Conclusions

The CCRC has started well and has gained widespread support and confidence. There are signs that a combination of reforms in working practices plus further resources are overcoming its early difficulties. But there are shortcomings.

Firstly, there is the ever-present problem of funding. The Police and Criminal Evidence Act was implemented during a decade of unprecedented growth in police budgets, which allowed for new facilities and training without unduly prejudicing other priorities. With a corresponding commitment to funding, the CCRC could (i) afford more legal advice and (ii) set up a system of independent investigation. To oversee the police to a standard which some would view as inadequate has required considerable funding for Her Majesty's Inspectorate of Constabulary, the Police Complaints Authority and Audit Office and even the Association of Chief Police Officers. The corresponding funding for the CCRC is modest, albeit that it is vastly more than the C3 department of the Home Office.

Secondly, an emergent agenda is the compensation of the wrongfully imprisoned and abused. Wider meanings of reparation – rehabilitation, restoration of dignity and reassurance of non-repetition (including through education) - are also not presently considered by the CCRC. It does not engage in this wider debate and instead adopts a form of fire-brigade response to miscarriages. The police have long tried to get away from this tendency and to adopt more proactive, problem solving approaches. I see no signs of a more reflexive engagement with other criminal justice agencies in order to revise working practices, normative standards and internal working cultures. The CCRC is not an agency with targets – it does not have to reduce miscarriages by X% per year – why not? If the audit society applies to arrests and convictions, why not to justice?

Criminal justice systems should be judged, *inter alia*, on the number of injustices produced by them in the first place, and, secondly, on their willingness to recognise and correct those mistakes. The British system could improve on both counts. The institution of the

CCRC is much to its credit, but the failure to reform the Court of Appeal may yet undermine its future.

The criminal justice system produces both justice and justice in error. It is important to consider the likely errors which can arise with each type and to devise structures to minimise the mistakes and to make them detectable. Those structures require external oversight by institutions which display independence and either avoid agency capture or are reconfigured from time to time. But there must also be internal change, either through the prodding of the external agency and/or through internal pressures such as professionalisation which the CCRC could do much more to foster.



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Getting to grips with Cybercrime

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Love or hate it, the internet is here to stay and for better or for worse, it will continue to shape our future, so we must seek to understand it, particularly the "worse" aspect. This article will explore the key issues that currently concern cybercrime and the governance of cyberspace. It will identify the main areas of harmful activity that concern us, it will outline the pluralist/ multi-tiered policing/ governance model that has already developed and it will explore how definitions of cybercrimes are being shaped by the fight for control over the environment of cyberspace.

The internet has had three different levels of impact upon criminal, or harmful activity. Firstly, the internet has become a vehicle for existing patterns of harmful activity, such as hate speech, bomb-talk, stalking and so on. Secondly, it has created an environment which provides new opportunities for harmful activities that are currently covered by existing criminal or civil law, examples would include paedophile activity, but also fraud. Thirdly, the nature of the environment, particularly with regard to way that it distanciates time and space (Giddens, 1990: 6), has engendered entirely new forms of (unbounded) harmful activity such as the unauthorised appropriation of imagery, software tools and music products etc. Each is linked to the increasing commercial potential of cyberspace and in turn, are part and parcel of the emerging political economy of information capital (see later). It is clear that across these three levels of impact lie four

broad areas of harmful activity which are raising concerns. They are cyber-trespass (hacking which ranges from ethical hacking to information warfare), cyber-thefts (fraud, appropriation of intellectual property etc), cyber-obscenities (pornography, sex-trade), and cyber-violence (stalking, hate-speech etc).

As we develop an understanding of the virtual environment of cyberspace, an interesting, but paradoxical situation is emerging. On the one hand, it is now quite clear that in its various capacities, the internet really does have the capability to transcend economic, political, geographical, social and even racial and gendered boundaries that the early commentators had predicted. On the other hand, although the mass medias would have us believe otherwise, the anarchy and widespread criminality that was predicted by those who favoured early regulation has not yet materialised. By comparison, cyberspace is remarkably ordered considering the large numbers of individuals who inhabit it and also the breadth of their involvement(s) with it. However, whilst the dark side of cyberspace is probably not as large as originally anticipated, it is nevertheless formidable and will continue to be explored as a site for opportunities: consequently, the concerns over this dark side are driving the debate over regulation.

So, why is it the case that all netizens have clearly not become pornographers, cyber-terrorists, paedophiles or embezzlers? The answer lies in the propensity for individuals, for the most part, to act responsibly without statutory supervision. Furthermore, it is the case that a system of governance that has already started to develop, which combines this factor with existing legal norms as enshrined in law. Putting aside here concerns about the accountability(ies) of the organisations and groups involved (see Wall, 1998), there are currently, four main levels at which this 'policing' activity takes place within cyberspace to effect governance. Respectively, they are: the internet users themselves, including internet user-groups; the internet service providers; state-funded non-public police organisations; state-funded public police organisations. This development reflects the "organisational bifurcation" (Reiner, 1992) or "spatial polarisation" (Johnston, 1993) that is also taking place within the sphere of terrestrial policing.

Underlying the above is a series of tensions that are actively shaping definitions of (cyber) behaviour, the victims of that behaviour, and also who the perpetrators are. The definitions of acceptable and unacceptable cyber-behaviour are themselves being shaped by the ongoing power play or "intellectual land grab" that is currently taking place for market control (see Boyle, 1996). Of concern is the increasing level of intolerance that is now being demonstrated by the new powerful towards certain "risk groups" that they perceive as a threat to their interests. Such intolerance tends to mould broader definitions of deviance, but they are not so simply one-sided, because definitions of crime and deviance arise, not only from the social activity of élite or power groups, but also from that of "common members" of society and offenders themselves: "the struggle around the definition of crime and deviance is located within the field of action that is constituted by plural and even conflicting efforts at producing control" (Melossi, 1994: 205).

An important (shaping) factor here is the current "media sensitization" towards internet related issues, which has, in turn, heightened their overall newsworthiness, especially with regard to the dark side of the internet. Such sensitisation is gradually moulding the legal and regulatory responses to these harms by inflating public concerns and therefore

providing the regulatory bodies with a (often implied) mandate for taking action. Moreover, public awareness is further heightened by the common failure of journalists, pressure groups, policy makers and others, to discern between "potential" and "actual" harms, an act that is made easy by the virtual impossibility of making any systematic calculation of the extent of cybercrimes.

Two observable cautionary tales exist to demonstrate the need to focus upon actual rather than potential harms. In the mid-1990s, the moral panic over pornography over on the internet was fuelled by bogus empirical research claims (Wallace and Mangan, 1997) and resulted in the US government introducing formal regulation without a complete analysis of problem (since partially overturned by litigation). The other example, again from the USA, relates to the overstating of the extent of cybercrimes in order to secure state funding for security and policing organisations (see Campbell, 1997).

Such fluidity of definition creates a degree of confusion over who are the victims and how they are being victimised. Not only can victims vary from individuals to social groupings, but the harms done to them can range from the actual to the perceived. In cases such as cyberstalking or the theft of cybercash, the victimisation is very much directed towards the individual. However, in other cases the victimisation is more indirect, such as with cases of cyberpiracy or cyberspying/ terrorism. Moreover, as has been found to be the case with the reporting of white-collar crimes, it is likely that many victims of cybercrimes, be they primary or secondary victims, may be unwilling to acknowledge that they have been a victim, or it may take them some time to realise it. Alternatively, where the victimisation has been imputed by a third party upon the basis of an ideological, political, moral, or commercial assessment of risk, the victim or victim group may simply be unaware that they have been victimised or may even believe that they have not, such is the case in some of debates over pornography on the internet. To complicate matters further for the victim, the public nature of the cyberspace medium also provides a constitutional defence (typically in the USA) as freedom of expression which regard to a number of the perceivedly harmful activities.

The issue of cybercrime is creating a series of interesting challenges for Twenty-First Century criminology. Clearly, the early research into the subject is suggesting that the debate over cybercrimes falls outside the realm of traditional criminological understanding with its focus upon the analysis of working class sub-cultures or the underclass. But that same research is also suggesting that it also falls outside much of the literature on white-collar crime as well. So, whilst both bodies of literature inform our understandings of cybercrimes, we have nevertheless got to develop a specific criminological knowledge base relating to the internet.

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APPENDIX 1 - CONSTITUTION AND MEMBERSHIP OF THE CENTRE FOR CRIMINAL JUSTICE STUDIES

a) Constitution (as amended, 1 May 1997)

Object of the Centre

1. The object of the Centre shall be to develop, co-ordinate and pursue research and study into, and the dissemination of knowledge about, all aspects of criminal justice systems.

Membership of the Centre

- 2.1 Any member of the academic staff of the Department of Law may be a full member of the Centre.
- 2.2 Other individuals may be appointed to full membership of the Centre by the University Council on the nomination of the Executive committee. Membership of the University is not a prerequisite of appointment to full membership of the Centre.
- 2.3 Associate members may be appointed by the Director on nomination of the Executive committee for a fixed term of up to three years. Membership of the University is not a prerequisite of appointment to associate membership of the Centre. Associate members shall normally be concerned with the pursuit of a programme of research and shall be provided with suitable facilities by the Centre. Any further rights or duties (such as in relation to teaching) shall be the subject of specific agreement.

Administration of the Centre

- 3.1 The Centre shall be administered by a Director, a Deputy Director and an Executive Committee.
- 3.2 The Director and Deputy Director, who shall be appointed by the Council on the nomination of the Head of the Department of Law after consultation with members of the Centre, shall each normally hold office for a period of five years, and shall be eligible for immediate re-appointment.

Administration of the Centre

3.3 The Director shall be responsible to the Executive Committee for the running of the Centre and the representation of its interests. The Director shall have regard to the views and recommendations of the Executive Committee and the Advisory Committee. The Director shall be assisted by up to two Deputy Directors.

3.4 The Executive Committee shall consist of the Director and the Deputy Director(s) together with the Head of the Department of Law (ex officio), the Chair of the Advisory Committee (ex officio), and up to six others who shall be appointed by the Director, Deputy Director and Head of the Department of Law.

3.5 The Executive Committee shall meet at least twice a year, with the Director acting as convenor. Special meetings may be held at the request of any member of the Executive Committee. All full members shall be entitled to attend meeting of the Executive Committee.

3.6 Minutes of the meetings of the Executive Committee shall be presented by the Director to the following meeting of the Department of Law.

3.7 There shall be an Advisory Committee appointed by the Executive Committee which shall formulate advice and recommendations and which shall consist of:

(i) all members of the Executive Committee;

(ii) up to three persons who shall be members of the teaching staff of the University of Leeds other than the Department of Law whose activities or interests have relevance to criminal justice studies;

(iii) up to twenty persons who shall be practitioners in criminal justice systems (or other appropriate persons).

3.8 The Advisory Committee shall meet once a year, with the Director acting as convenor. Special meetings may be held at the request of the Executive Committee.

Amendment to the constitution

4.1 This constitution may be amended by the Council (or any committee acting with authority delegated by the Council) on the recommendation of the Department of Law and the Executive Committee of the Centre.

b) Membership of the Centre for Criminal Justice Studies

Director Dr David S. Wall

Deputy Director Professor Adam Crawford

Executive Committee

Mr Ben Fitzpatrick

Dr Jo Goodey
Professor Juliet Lodge
Dr Javaid Rehman
Mr Peter J Seago OBE JP
Mr Nick Taylor
Dr Claire Valier
Professor Clive P Walker (Head of Dept. of Law)

Advisory Committee
(Chair) Peter J Seago OBE JP
Dr Jan Aldridge (Dept. Psychiatry, Univ. Leeds)
His Honour Judge Ian Dobkin
Dr Douglas Duckworth
Mr Colin Grimshaw (West Yorks Police Authority)
Mr Keith Hellawell (UK Anti Drugs Co-ordinator)
Ch. Supt. Stuart Hyde (Director of Training, West Yorkshire Police)
Professor Edgar Jenkins (Dept. Education, Univ. Leeds)
Emeritus Professor Norman Jepson
His Honour Judge Geoffrey Kamil
Lord Justice Kennedy
Mr Geoffrey Kenure (Probation Service)
Ms Anne Mace (Kings College London)
Mr Peter McCormick OBE (Solicitor)
Mr Richard Mansell (Barrister)
Mr Andy Mills (Community Safety, Leeds City Council)
Mr Graham Moore (Chief Constable, West Yorkshire Police)
Professor Ken Pease (Applied Criminology, Univ. Huddersfield)
Rt Hon Lord Merlyn Rees
Professor Helen Whitwell (Dept. Pathology, Univ. Sheffield)
Mr Paul Wilson (Chief Probation Officer, West Yorkshire)
Associate Fellow Mr Ian Brownlee (Crown Prosecution Service, formerly Univ. Leeds)

APPENDIX 2 - RESEARCH PAPERS FROM THE CCJS PRESS

Publications also available through the Centre for Criminal Justice Studies:

VICTIM CONTACT WORK AND THE PROBATION SERVICE:

A Study of Service Delivery and Impact

Adam Crawford *and* Jill Enterkin

This book reports upon the findings of an 18 month study of victim contact work in two Probation Services analysing the manner in which the Victim's Charter requirements to contact victims of serious crimes, both post-sentence and pre-release, have been realised in practice. It explores the value and impact of the Victim's Charter

requirements upon the Probation Service. This research is the first major study of this important but controversial service. The study, funded by the Nuffield Foundation, draws upon interviews with victims, service providers, probation officers and service users.

CONTENTS (pp. 102 + iv) - PRICE £10.00- 1999 - ISBN 0-95-110323-7

THE RENEWAL OF CRIMINAL JUSTICE? New Labour's Policies in Perspective

edited by Adam Crawford and Clive Walker

This book contains the proceedings of the Tenth Anniversary Conference of the Centre which was held on the 22 September 1998. With the passage of the Crime and Disorder Act 1998, and the flurry of discussion papers that have emerged, both from the Home Office and from the Lord Chancellor's Department, are we now witnessing the "Renewal of Criminal Justice"? The book brings together contributions from Jack Straw, Geoff Hoon, Rob Allen, John Abbott, David Jessel, Ben Emmerson and Kier Starmer, amongst others. This book explores current developments in criminal justice and seeks to put these New Labour policies in perspective. In particular it focuses upon changes to the courts, policing and community safety.

CONTENTS (pp. 65) - PRICE £8.00 - 1998 - ISBN 0-95-110322-9

THE ROLE AND APPOINTMENT OF Stipendiary MAGISTRATES

Peter Seago, Clive Walker and David Wall

In 1993 the Royal Commission on Criminal Justice recommended that there should be a more systematic approach to the role of Stipendiary Magistrates. In response, the Lord Chancellor announced, in October 1994, the establishment of a Working Party in pursuit of the Commission's recommendations. This research report was commissioned by the Lord Chancellor's Department to inform the deliberations of the Working Party. This research presents an important profile of Stipendiaries and their place in the Magistrates' court.

CONTENTS (pp. 178) - PRICE £10.00 - 1996 - ISBN 0-95-110321-0

CRIME, CRIMINAL JUSTICE AND THE INTERNET: special issue of *Criminal Law Review* Clive Walker (ed)

This collection, originally published as a special issue of *Criminal Law Review* in December 1998 contains a range of interesting articles on crime, criminal justice and the internet by (in order):

- "The Governance of the Internet in Europe with special Reference to Illegal and Harmful Content" - Clive Walker and Yaman Akdeniz
- "Computer Child Pornography" – The Liability of Distributors?
- "Cyberstalking" – Louise Ellison and Yaman Akdeniz
- "Criminal Law and the Internet" – David Davis
- "Digital Footprints: Assessing Computer Evidence" – Peter Sommer

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