



Centre for Criminal Justice Studies, University of Leeds

CRIMINAL JUSTICE REVIEW

2001 - 2002

(Fourteenth Annual Report)

<<http://www.leeds.ac.uk/law/ccjs/homepage.htm>>

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*.

CONTENTS

1. Introduction	2
2. Research Degrees and Teaching Programmes	4
3. Research Projects	7
4. Publications	12
5. Conference and Public Seminar Presentations	16
6. CCJS Public Seminar Programmes 2001 to 2002 (includes Semester 1 2002/3)	18
7. Working Papers by CCJS Members	19
• Policing and Regulation developments in the Night-Time Economy - <i>Stuart Lister</i>	<i>19</i>
• Modern Penality and the Culture of Celebrity - <i>Ruth Penfold</i>	<i>22</i>
• The Implementation of Human Rights Legislation in Scotland and Wales - <i>Clive Walker</i>	<i>26</i>
• Cybercrimes and Criminal Justice - <i>David Wall</i>	<i>33</i>
• Reforming the (Controlling) Mind of the Corporate Killer? - <i>Dave Whyte</i>	<i>36</i>
Appendix 1 Constitution and Membership of the Centre for Criminal Justice Studies	40
Appendix 2 Research Papers published by the CCJS Press	42

1. INTRODUCTION

It gives me great pleasure to present a review of the work, activities and achievements of the members of the Centre for Criminal Justice Studies for the period 1 October 2001 to 30 September 2002. During this period the CCJS has continued to expand in size, to produce quality research, teaching and publications and to receive recognition from the broader academic community as a leading centre of excellence in Criminal Justice, Criminal Law and Criminological studies.

Our teaching and research programmes have grown once again this past year, reflecting highly upon the academic good standing of the CCJS and its members. The BA in Criminal Justice and Criminology recruited just under 50 students in September 2002 and it is anticipated that numbers will increase further in 2003/4 eventually taking the overall number of undergraduates on the BA scheme to over 200. We also introduced an LLM in Criminal Justice and Criminal Law in September 2002 and the MA Criminal Justice programme has continued to recruit well.

The Centre's research profile expanded during the past year with the commencement of a large research programme on Plural Policing run by Prof. Adam Crawford and Stuart Lister and funded by the Joseph Rowntree and the Nuffield Foundations. From July 2002, this project has employed two research officers, Kathryn Munn and Sally Pearson.

In 2001-2 we also warmly welcomed the arrival at Leeds of a number of new colleagues. Dr Dave Whyte, formerly of Manchester Metropolitan University, teaches and conducts research into Criminology, Victimology, Transnational Criminal Justice and Corporate Crime; Prof. David Ormerod, formerly of the University of Hull, teaches and researches Criminal Law and the Law of Evidence and Criminal Procedure. In March 2003 we will be joined by Dr Anthea Hucklesby, also from the University of Hull, who will teach and research Criminal Justice Process, Punishment and Society and also Youth Justice. Finally, in September the CCJS was pleased to welcome Professor Satoshi Mishima from Osaka City University as a visiting scholar researching Policing and Human Rights.

We had two departures this past year. Dr Claire Valier took up a lectureship in the Law Department at the University of Keele and Dr Karen Sharpe moved to NACRO. We wish both the best of luck in their new positions.

Throughout the past year CCJS members have regularly given presentations and plenary speeches at key international conferences, furthermore they have been involved in a wide range of 'third arm' activities. Dr David Wall hosted an ESRC funded colloquium on 'Cybercrimes' in April which was well attended. In September Prof. Clive Walker published his report for the Lord Chancellor's Department on *The Impact on Courts and the Administration of Justice of the Human Rights Act* which attracted much attention. Also in the news was *The Introduction of Referral Orders into the Youth Justice System* (co-authored by Prof. Adam Crawford and Dr Karen Sharpe) following its publication in April by the Home Office on the eve of the national roll out.

Colleagues have also expressed their expertise on local and national media, ranging from appearances on local news programmes to prime-time television. Prof. David Ormerod has made a number of appearances on television talking about various aspects of his research interests and Ben Fitzpatrick advised the BBC drama series 'Casualty' about a crime related story-line. As in previous years the CCJS public seminar programme has continued to flourish as an important vehicle for the dissemination of research findings and to connect the CCJS to the broader community (see section 6). One of the highlights of the programme this year was Adam

Crawford's inaugural lecture on *The Impotency of the Penal Sanction?: Security and Justice in the New Millennium*.

We had three PhD graduations in 2001-2002 and congratulations go out to Drs Ilona Pocsik-Haslewood (Probation in Transition), Huseyin Demir (The role and treatment of political parties) and Yaman Akdeniz (Governance of the Internet). We were joined in the latter part of 2001 by three new research students. Nearchos Nearchou (Virtual Democracy and Virtual Protest) and Ibrahim Al-Haider (Crime Prevention and Community Safety) undertook Masters degrees by research and Ruth Penfold, a former MA Criminal Justice Studies student, began her ESRC funded PhD on the subject of Criminal Celebrity and Celebrity Criminals. We must congratulate Ruth on being awarded the British Society of Criminology prize for best postgraduate paper at the society's 2002 conference at the University of Keele.

Ruth's prize winning paper is reproduced in section 7 along with an interesting selection of short articles and working papers 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.

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2. RESEARCH DEGREES AND TEACHING PROGRAMMES

a) Research Postgraduates

Postgraduate research degree schemes - The Centre for Criminal Justice Studies invites 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, cyber/ computer crime. 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.

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.

The Centre's research postgraduates are located in the Law Graduate Centre where they are provided with access to desk space, a lockable area, a good quality computer with printing facilities and a very convivial and collegial environment in which to conduct their work. The University's (central) Graduate Centre also has further facilities for research postgraduates and provides a range of very useful training courses.

b) Taught Postgraduate Courses

The MA in Criminal Justice Studies has run successfully since 1993. A number of variants have since been introduced and in 2002 an LLM in Criminal Justice and Criminal Law was introduced. Further details of the taught postgraduate programme in criminal justice are as follows.

MA in Criminal Justice Studies (180 credits)

Objectives - To enable students to acquire new theoretical perspectives on, and wider knowledge about, criminal justice systems as well as gain 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 180 credits):

Compulsory courses include:

Criminal Justice Research Methods and Skills (30 credits)

Criminal Justice Process (30 credits)

Criminal Justice Policies and Perspectives (30 credits)

Dissertation of up to 15,000 words (60 credits)

Optional courses include (students must select 30 credits - other modules may also be available)

Policing I & II (15/15 credits)

Theories of Crime and Punishment (15 credits)

Victims and Victimology (15 credits)

Forensic Process (15 credits)
Corporate Crime (15 Credits)
Transnational Criminal Justice (15 Credits)
Cybercrimes: Computers and Crime in the information age (15/30 Credits)
Negotiated Study (15 or 30 credits)

Diploma in Criminal Justice Studies (120 credits)

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 dissertation.

Certificate in Criminal Justice Studies (60 Credits)

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.

LLM in Criminal Justice and Criminal Law (180 credits)

The LLM follows the specification for the MA in Criminal Justice Studies except that a good honours degree in Law is normally required. Students also take a 45 credit module in Criminal Law and a 15 credit legal research methods as core subjects in place of Criminal Justice Research Methods and Criminal Justice Policies and Perspectives. These latter subjects may, however, be taken as optional subjects.

The CCJS also provides teaching in the following areas:

Crime Prevention and Community Safety (Certificate and MA)

Criminal Justice and Policing Studies (Certificate and MA)

Contemporary Issues in Criminal Justice (Certificate and MA)

c) Taught Undergraduate Programmes

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 and criminology" that includes the study of both formal and informal processes of regulation and control. Accordingly, "Criminal Justice and Criminology" at Leeds draws upon a number of disciplines, ranging from legal philosophy through political and social 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.

Potential Career Opportunities: 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.

Further details of the BA (Hons) Criminal Justice and Criminology can be found at <http://www.leeds.ac.uk/law/ccjs/ba.htm>

3. RESEARCH PROJECTS

This section describes the various research projects which are currently being conducted by members of the CCJS. They are organised alphabetically by title.

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.

The Contractual Governance of Social Behaviour

Adam Crawford is exploring the manner in which deviant conduct and disorderly behaviour are governed by new forms of contractual instruments in diverse fields of social life. The research is examining forms of regulation and policing through contracts in housing, education, leisure and lifestyle opportunities, private security and criminal justice. The study draws together empirical research findings from past and ongoing projects and seeks to theorise the connections between these developments in a quest to understand the genesis and future implications of contemporary 'contractual governance'. It is analysing the common patterns regarding ways of controlling behaviour, notions of crime and deviance, as well as conceptions of security and justice. It is seeking to connect these to broader social and cultural trends. Particular focus is being given to the interconnections between formal institutions of control (exercised by the state) and informal and private operations of control within the marketplace and civil society more generally.

Criminological Knowledge and Representations of Corporate and State Crime

David Whyte is currently completing a long-term research project on the construction of criminological knowledge and representations of corporate and state crime, to be published shortly in the form of an edited collection 'Unmasking the Crimes of the Powerful'. In the coming year, work will commence on the analysis of a large set of quantitative HSE data on deaths at work. This data will be used as the basis for a research monograph. A related project on the regulation of death and injuries at work will culminate in the publication of a text 'Safety Crimes' (co-authored by Steve Tombs) by Willan Publishing in late 2003, and the completion of a submission to the forthcoming Home Office consultation on the proposed law on corporate killing.

Cyberscams: Internet related Frauds and Deceptions in the UK

In 2000, David Wall was 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 final report was submitted in early 2002 and further research is in progress.

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 perceived weaknesses. The aim of the research is to examine 'what works' in the efforts to prevent this very specific type of burglary in which the vulnerable are deliberately targeted as victims.

Enforcement of Financial Penalties

This project is funded by the Home Office and Clive Walker is part of a team headed by Professor John Raine from the University of Birmingham. The research covers more than 20 separate projects, and Clive Walker is responsible for evaluating the projects in Grimsby and Teesside. Magistrates' courts rely heavily on imposing financial penalties in sentencing offenders. They generate revenue and do not appear to be any less effective in terms of conviction rates than other sentences. But the use of the fine has been declining for a number of years. One of the purposes of the research was to investigate to what extent the difficulty courts have in enforcing payment is a contributory reason for this decline in use. This report summarises the progress and results of an action-research programme designed to support improvements in the enforcement of financial penalties in magistrates' courts. It involved negotiating and implementing a range of enforcement initiatives in 20 volunteer courts, and monitoring their impact by applying 'before and after' measurement of outputs and outcomes. The research is due to report in late 2002.

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. Stuart Lister was appointed as research officer, 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. A draft final report will be submitted in March 2003.

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

The purpose of this research project was to assess the impacts on courts of the implementation of the Human Rights Act 1998. The research took a three-stage longitudinal approach and examined, first, the planning and preparation work undertaken by courts and related agencies in the period ahead of implementation of the Act, second, the effects immediately after implementation (in October 2000) and, third, the position almost a year later to assess the longer terms impacts. While wide-ranging in its concern with impacts, a particular priority for this research (which was based on fieldwork at three Crown Court, three County Court and three magistrates' courts), was the effect of the legislation on court workloads and in terms of productivity and throughput of cases.

Initially, the fairly widely held (though by no means universal) expectation was that the new Act would have a marked effect on the workload of the courts and on throughput rates because of the additional requirements for compliance (for example, having to give reasons for decisions in magistrates' courts). Also widely expected were human rights challenges from the defence, particularly in criminal litigation, adding to case lengths by creating trials within trials.

However, one year after implementation, the general picture from the research was one of relatively limited impact of the Human Rights Act in terms of challenges and additional workload for the courts, although it had invoked a number of significant and specific policy and practice changes and more generally was felt to be engendering a stronger human rights culture within the courts. The study highlights the comparative success with which the courts managed the implementation process and the ways in which they have adapted their practices to accommodate some potentially significant Human Rights Act issues, most notably the 'giving of reasons' and the 'conduct of means enquiries' in the magistrates' courts.

So far as overall workload implications are concerned, the research noted a modest increase in average case lengths in the magistrates' courts, resulting in particular from the requirement to formulate and articulate reasons for all decisions. In the period under investigation, the average duration of trials increased by

around 15 minutes – an interval which was mostly able to be accommodated within the existing court sitting schedules, rather than requiring additional sessions. At the same time, while the study highlighted indications of growing human rights consciousness within the courts over the eighteen months of investigation, it was also recognised that these would be relatively early days in terms of the potential for such development in criminal and civil justice practice more generally.

A report is available from the Lord Chancellor's Department (**No 9/2002 - The Impact on three Courts and the Administration of Justice of the Human Rights Act 1998**)

<<http://www.lcd.gov.uk/research/2002/9-02es.htm>>

Internet Child Pornography and the Law: National and International Responses

Conducted by Yaman Akdeniz, this project explores the important issue of child pornography law within the context of the Internet. It is anticipated that the research will culminate with an Ashgate monograph in early 2003. To-date, the most prominent concern of governments, regulators and law enforcement bodies in relation to illegal Internet content has been the widespread availability of child pornography. Regularly the subject of media coverage (for example, Lexis holds 726 media stories as of 14 September, 2001) and debate by national and international regulators, the project looks at UK laws, regulations, and case law specifically in relation to Internet child pornography and draws upon research into Internet child pornography since 1995. Comparative research covering the legal situations in North America (US and Canada) in the same field will also be included within this project as will policy initiatives at a supranational level of governance (such as the EU and COE) and international level (UN). The project will also explore the self-regulatory and co-regulatory proposals for fighting Internet child pornography at national, supranational and international levels.

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 and is expected to be published in early 2003.

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.

'Plural Policing' research

The Nuffield Foundation is funding a two year study of the emerging development of local security networks through different forms of reassurance policing both within and beyond the police. Adam Crawford and Stuart Lister were awarded a grant of £103,000. Sally Pearson has been employed as a research officer to work on the project since July 2002.

The research aims to map and analyse the fundamental changes to policing provision, providing an overview of significant developments and initiatives in the provision of reassurance policing within England and Wales and more broadly across different European countries; studying the implementation of plural policing partnerships or networks in a number of case study areas; analysing the dynamic relations and interplay between different plural policing providers within specified contexts; and conceptualising the nature and implications of plural policing relations within specified contexts. It is anticipated that the research findings will have implications for our understanding of the changing nature of the 'extended police family', its regulation and the role of the police therein. The study will seek to meet its aims through both macro and micro studies:

- an overview of national developments in England and Wales;
- a survey of selected developments in a number of European countries; and
- five in-depth local studies of areas involving the interplay between different plural policing initiatives.

Each local study area will examine different types of purchaser/provider arrangements for a visible patrolling presence, providing an understanding of their aims, implementation and community safety impacts. Of particular concern will be the extent to which the various forms of plural policing connect with and impact upon public policing as a common good, and the potential that each has for harnessing public and private institutions in furthering public safety. The following five case studies have been selected as they represent innovative plural policing arrangements and/or interesting combinations of plural policing providers within confined geographic areas:

- MetroCentre, Gateshead – large retail centre with dedicated public police, contracted public police, in-house and external private security and in-store security.
- Liverpool City Centre, Goldzone development – city centre with contracted public police, street wardens, private security and potentially community support officers.
- Trafford Park, Manchester - industrial estate with dedicated public police, street wardens and diverse private security firms.
- The Halton Moor area of Leeds – residential area with public police, neighbourhood wardens and private security.
- Foxwood area of York – residential area with public police and private security.

The research began 1 July 2002. The fieldwork will run for 18 months until the end of December 2003. The research findings will be published in the summer 2004 at which point it is intended that a national conference will be held to disseminate the findings. The team will be supported and overseen by an Advisory Board, the members of which are drawn from key national contributors to policy debates concerning plural policing and the nature and regulation of the 'extended police family'. The Advisory Board will meet at least 3 times throughout the life of the project.

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.

The Production of Criminological Knowledge about Cybercrimes

In this exploratory project David Wall seeks to identify and deconstruct the various means and processes which enable or impede the production of criminological knowledge about cybercrimes.

Referral Orders and Youth Offender Panels

Adam Crawford was part of the research team that conducted the Home Office/Youth Justice Board evaluation of the referral order pilots. The final report of the evaluation was published in April 2002 (Home Office Research Study 242) to coincide with the national roll-out of referral orders to Youth Offending Teams across England and Wales. Together with Professor Tim Newburn (LSE), he is writing a book arising out of and drawing upon the research findings. The book will be published in 2003 by Willan Publishing and will be entitled: *Youth Offending and restorative Justice: Implementing Reform in Youth Justice*.

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 2003.

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.

Visible Patrols in Residential areas in Yorkshire and Humberside

In April 2002 Adam Crawford and Stuart Lister were awarded £46,839 by the Joseph Rowntree Foundation to examine visible patrols within residential areas in the Yorkshire and Humberside region. This project extends and develops out of the New Earswick community policing initiative (see 1 above). Kathryn Munn has been employed to work as researcher on this project for 15 months, commencing in July 2002.

This research intends to provide an overview of the different models of visible patrols in residential areas provided by public, private and municipal sources. In so doing, it will seek to examine and assess their capacity to meet residents' demands for security. The specific aims of this research are:

- to provide an audit of the different types of visible patrolling currently in existence within the region of Yorkshire and Humberside;
- to highlight different models and contractual arrangements of visible patrolling;
- to outline key implementation issues arising from the experiences of visible patrolling arrangements;
- to assess the relative benefits and disadvantages of different arrangements;
- to assess the extent to which different arrangements are capable of meeting the expectations of purchasers and residents; and
- to consider the wider implications of given initiatives for public policing more generally.

The focus of the research will be primarily upon the region of Yorkshire and Humberside. The research will be conducted through:

- a survey or audit of key visible patrolling purchasers and providers and other relevant organisations
- the collection of documentary data related to the implementation of selected initiatives; and
- a number of in-depth interviews with representatives of key stakeholders – purchasers providers and beneficiaries – in selected initiatives.

The project began in July 2002 and a final report is due to be submitted at the end of September 2003.

4. PUBLICATIONS 2001-2002

This section describes a considerable number of publications by the members of the Centre for Criminal Justice Studies during the period covered by this report. In sum these publications represent 7 books, 21 chapters of book, 20 articles in academic journals, 7 research reports and 13 shorter articles or reviews.

Books:

Crawford, A. (ed.) (2002) *Crime and Insecurity: The Governance of Safety in Europe*, Cullompton: Willan, xi + pp324.

Ormerod, D., Bailey, S.H., Gunn, M. J. and Ching, J. (2002) *The Modern English Legal System* (4th ed), London: Sweet and Maxwell, 1380pp.

Ormerod, D., Harris, D.J. and Bailey, S.H. (2001) *Civil Liberties Cases and Materials* (5th ed), London: Butterworths, 1180pp.

Ormerod, D. and Roberts, A.J. *Annotation of the Police Reform Act 2002*, in Current Law Statutes annotated 2002, (220pp).

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

Walker, C. (2002) *The Anti-Terrorism Legislation*, Oxford, Oxford University Press, xxxvi + pp569

Wall, D.S. (ed.) (2001) *Crime and the Internet*, London: Routledge, xi + pp221.

Research Reports:

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

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

Newburn, T., Crawford, A., Earle, R., Goldie, S., Hale, C., Masters, G., Netten, A., Saunders, R., Sharpe, K. and Uglow, S. (2002) *The Introduction of Referral Orders into the Youth Justice System*, Home Office Research Study No. 242, London: Home Office, x + pp76 (Also see Interim reports, Occasional papers 70 & 73).

Walker, C. (2002) Lord Chancellor's Department, *The Impact on Courts and the Administration of Justice of the Human Rights Act 1998* Research Series 9/02, ii + pp95.

Wall, D.S. (2002) *DOT.CONS: Internet Related Frauds and Deceptions upon Individuals within the UK*, Final Report to the Home Office, March.

Whyte, D. (2002), *Crime Control Partnerships on Merseyside*, Centre for Criminal Justice Occasional Paper 1, Liverpool: Liverpool John Moores University.

Whyte, D. (2002), *Contextualising Police Racism: the aftermath of the MacPherson Report and the local response on Merseyside*, Centre for Criminal Justice Occasional Paper 2, Liverpool: Liverpool John Moores University.

Chapters in Books

Akdeniz, Y. (2001) 'Controlling Illegal and Harmful Content on the Internet,' in Wall, D.S. (eds) *Crime and the Internet*, London: Routledge.

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5. CONFERENCE AND PUBLIC SEMINAR PRESENTATIONS

Between 1st October 2001 and 30th September 2002 members of the CCJS gave presentations at 39 conferences and public seminars, just under a third (11) were at international venues. They are listed alphabetically by CCJS member.

Edited Conference Proceedings:

Wall, D.S. (ed) (2002) *Proceedings of Cybercrime: Immaterial Crime and Policing Immateriality Colloquium* (ESRC Immateriality Seminar Series), Leeds, 12th April.

Conference and public seminar presentations:

Akdeniz, Y (2001) *Regulation of child pornography on the Internet*, paper presented, Child Pornography and the Internet conference, 18 September, Barbican Centre, London.

Akdeniz, Y (2002) *Developing an International Legal Framework on Child Pornography on the Internet*, paper presented, COPINE Conference 2002, University of Cork, Ireland, 18-19 April.

Akdeniz, Y (2002) *The Council of Europe Cybercrime Convention and article 8 of the European Convention on Human Rights: A critical assessment*, paper presented at the Democracy, Freedom and the Internet: How Digital Technologies Empower or Undermine Civil Liberties Conference, European Parliament, Brussels, 10 July.

Crawford, A. (2001) Plenary presentation 'The Local Governance of Crime through Partnerships: Joined-Up but Fragmented?', International Colloquium 'L'Action Publique en Matière de Sécurité Intérieure', organised by the Association Française de Science Politique, Paris, 18-19 October

Crawford, A. (2001) Plenary presentation, 'Heresy, Nostalgia and Butterfly Collecting: The State, Community and Restorative Justice', Fifth International Conference on Restorative Justice for Juveniles, Leuven, 16-19 September.

Crawford, A. (2001) *Restorative Justice and Referral Orders*, Criminal Justice Associates *Referral orders: Update on Practice Developments*, London Probation Headquarters, 29 October.

Crawford, A. (2001) *Restorative Justice for Juveniles - Insights from the Implementation of Referral Orders in England and Wales*, University of Liverpool, 31 October.

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Crawford, A. (2002) Invited presentation to Pre-Conference International Workshop on 'Doing Restorative Justice', British Society of Criminology Conference, Keele University, 16 July.

Crawford, A. (2002) Plenary presentation at 'Politiques de prévention et de la sécurité en Europe' Ministère de l'emploi et de la solidarité, Paris, 5 February

Crawford, A. (2002) Plenary presentation *New Actors in the Governance of Urban Safety and the Politics of Insecurity*, to Community Safety Conference organised by the Regione Emilia – Romagna, Bologna, 4-5 April

Crawford, A. (2002) *Realising Partnerships: The Possibilities and Pitfalls of Joined Up Governance of Crime and Disorder*, invited presentation to the Bramshill Police College, 8 July.

Crawford, A. (2002) *Referral Orders: Community Participation and Representation*, British Society of Criminology Conference, Keele University, 17-19 July.

Crawford, A. (2002) *Restorative Youth Justice? Insights from the Implementation of Referral Orders in England and Wales*, Department of Criminology, Keele University, 13 March.

Crawford, A. (2002) *The Impotency of the Penal Sanction?: Security and Justice in the New Millennium*, Inaugural lecture, University of Leeds, 15 October.

Fitzpatrick, B (2002) *Corporate Killing*, Staff seminar at College of Law, York, July 2002

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- Lister, S. (2002) *Purchasing Public Policing some findings from the market place*, paper to the British Society of Criminology Conference, Keele, 2002.
- Ormerod, D. (2002) *Helping the Jury with their Inquiries*, paper to University of Liverpool, International Offender Profiling Conference, January.
- Penfold, R. (2002) *Modern Penalty and the Culture of Celebrity*, paper to British Society of Criminology Conference, July *[Prize for the Best Postgraduate Paper]*
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- Walker, C. (2002) *British anti-terrorism laws and cyberspace*, paper to Southeastern Conference of the American Association of Law Schools, Kiawah Is., South Carolina, July.
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- Whyte, D. (2001) *Human Rights, Corporations and the Globalisation of Resistance*, paper presented to Institute for Global Studies and Women Working Worldwide Seminar, Manchester, 14 March.
- Whyte, D. (2002) *"Behind the Line of Truncheons": The Production of 'Valid' Knowledge in Criminology*, paper presented to the British Society of Criminology Conference, Keele University, 17-20 July.

6. SEMINAR PROGRAMME FOR - 2001/2

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

Wednesday 20th February 2002 - 2.00 p.m.:

*"Political Atrocities and Criminal Justice: From 'Unspeakable Memories' to 'Commensurable
laws'"*
Professor Stanley Cohen, Manheim Centre for Criminology and Criminal Justice and
Department of Sociology, London School of Economics

Tuesday 26th February 2002 - 5.00 p.m.:

"Culture and Violence: A Cross-cultural Analysis of Collectivistic and Individualistic Cultures"
Professor Susanne Karstedt,
Department of Criminology, University of Keele

Tuesday 15th October 2002 - 5.30 p.m.:

"The Impotency of the Penal Sanction?: Security and Justice in the New Millennium"
Professor Adam Crawford, Centre for Criminal Justice Studies, University of Leeds

Wednesday 13th November 2002 - 1.00 p.m.:

"Prosecuting Domestic Violence without Victim Participation"
Dr. Louise Ellison, Law School, University of Manchester

Wednesday 20th November 2002 - 1.00 p.m.:

"The Protection of Suspects' Rights in the Investigation of Crime in France"
Dr. Jacqueline Hodgson, Law School,
University of Warwick

Tuesday 26th November 2002 - 5.00 p.m.:

"Jury Research and Reform in New Zealand"
Dr. Yvette Tinsley, Law Department,
Victoria University of Wellington, New Zealand

7. WORKING PAPERS BY CCJS MEMBERS

The following papers represent aspects of the work of some of the members of the Centre for Criminal Justice Studies during 2001-2002 (see Contents page for complete listing).

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Policing and Regulation developments in the NightTime Economy: corporate hospitality at the disturbed edge of a commercial frontier¹

Stuart Lister

Across the UK the expansion of *night-time* leisure has emerged as a key indicator of post-industrial urban prosperity, attracting investment, creating employment and re-generating city centre spaces. This short paper briefly describes some key aspects of the impact of this economic project upon forms of policing and regulation. In so doing, it highlights the role of the local state, outlining how the ingrained ethos of 'municipal entrepreneurship' forges and constrains the content of deployed strategies of regulation. Thereafter, the paper identifies the extent to which the rapid development of this economy is proceeding to blur the borders between public and private policing spheres. Finally, these developments are drawn together in relation to the future direction of the governance of the night-time economy.

In many towns and cities the development of the night-time economy should be understood as the colonisation of after-dark urban spaces by an alcohol-based, leisure industry. This colonisation represents little less than the progression of a commercial frontier, which has been actively facilitated by recent shifts in the political and economic projects of urban governance, and in particular, the adoption of an entrepreneurial ethic by municipal authorities. Urban or 'municipal entrepreneurship' involves a number of re-imaging and place-marketing strategies, the intention of which is to secure competitive advantage over rival cities by attracting global flows of mobile capital (Harvey, 1994). A central component within this public shift toward commercial sensibilities has increasingly been the embracing of de-regulatory strategies, particularly though not exclusively, in relation to alcohol and entertainment licensing (Hobbs et al., 2000).

Over the last decade the local state's de-regulatory stance has enabled a huge growth in the number of youth-orientated on-licence premises, developed around city centre drinking circuits. These 'liminal' leisure zones are attracting unprecedented numbers of conspicuous consumers, fueling the rising profitability of the night-time leisure industry. In Manchester, for example, weekend evening crowds of over 100,000 descend upon the city centre's pubs, bars and clubs, where they are policed by up to 1000 bouncers and between 30-40 police officers. The sheer weight, not to mention the intoxication levels of these crowds, places enormous stresses upon the systems of social control that function within this economy. In tandem, perhaps inevitably, with the expansion of the night-time economy, alcohol-related crime and disorder has been rising across many UK urban centres. For example, the 240% increase in the capacity of Manchester city centre's licensed premises between 1998-2001, occurred almost concurrently to a 225% increase in the number of city centre assaults (Home Office, 2001a). Such increases in alcohol-related violence, which are usually spatially concentrated in areas with a high density of licensed premises, should be viewed as a by-product of the massive capital investment of the alcohol industry.

This by-product of violence has presented the local state with a dilemma of control – one that exposes some inherent tensions within the mantra of 'municipal entrepreneurship'. The municipal state's enduring courtship of alcohol-driven corporate capital has led to urban centres that are increasingly unsafe for consumers, a development that, to some extent, threatens the profitability of commercial investments. In response to these two interlaced concerns, municipal authorities have widely implemented a range of crime prevention initiatives, which seek to assert a degree of control over the most 'troublesome' of consumers *and* commercial operators. Crucially, these managerial interventions aim to strike a balance between improving public safety and ensuring the sustained inward flow of capital investment. The ensuing forms of regulation are, therefore, largely situational in outlook, which do not impinge overly upon the commercial fertility of

¹ A number of the ideas within this paper were co-generated with Durham University colleagues, Dick Hobbs and Philip Hadfield.

city centre leisure zones.² Examples include Pub and Club Watch schemes, proof of age schemes, 'door supervisor' registration schemes, restrictive bylaws, exclusion orders, public and private CCTV surveillance and radio-link systems, and high profile policing initiatives. Consequently, forms of municipal planning over issues such as outlet proliferation and density are largely conspicuous by their absence.

Given the emphasis upon criminal (as opposed to commercial) 'opportunity-reduction' these regulatory measures may be understood as situational 'support structures', implemented in order to underpin notions of 'safety' within the night-time economy. Viewed from this perspective, the renewed regulatory focus upon licensed premises, their customers and security provision should be understood as a narrow response to the wider processes of de-regulation, which are facilitating and encouraging the expansion of the night-time economy. This apparently contradictory position demonstrates the ironies that emerge when public bodies seek to regulate a political economy that they have cosseted, and upon which they are financially and politically reliant (Manning, 1987). Hence the extant conditions of local municipal regulation have largely been restricted in scope by a functional need not to bite the hand that feeds it. The focus is therefore largely upon symptoms rather than causes, and as a result, the impact upon levels of alcohol-related crime and disorder may be relatively limited.

The impact, however, of this regulatory approach upon the two main policing agencies tasked with policing the night-time economy, is marked. Commentators have observed the manner in which the segregating boundaries between public police and private security providers (the latter in the form of bouncers) are becoming increasingly blurred in relation to the activities and methods of these traditionally dichotomous policing agencies (Chatterton and Hollands, 2002). Examples of this 'blurring' process include process mechanisms that enable inter-agency intelligence flows, such as police and security liaison forums, and radio-link systems. Further, police-run doorstaff training programmes provide guidance on evidence gathering and crime scene preservation, as well as powers and processes of detention. Moreover, state licensure of door security may, over the medium-term, serve to facilitate far closer working practices by formally removing the spatial divide between these two policing agencies, placing them shoulder-to-shoulder on the front-line, as 'partners in order-maintenance' (Shearing and Stenning, 1981: 220).

Introduced gradually over the last decade, this form of occupational licensing is, in a narrow sense, an attempt to insert a degree of public accountability into the discretionary policing role of private actors. In a wider sense, licensing represents a state legitimization exercise that seeks to accommodate and make virtuous this much-maligned trade. Consequently, the bestowal of 'professional' status upon bouncers (now formally trained, vetted and re-named as 'door supervisors') is set to enable the move from pub doorway to pavement, from private to public (Hobbs et al., 2003). This step change is likely to come to pass once local authorities, one or two of which are currently experimenting with paid public policing initiatives, apply fully 'Best Value' protocols to this emerging security market and distribute 'policing' tenders for the weekend zones of night-time leisure consumption (see Home Office 2001b: 83-85). In this manner, traditional policing lines of public and private accountability may become re-orientated by the requirements of specific purchaser/provider policing arrangements. Significantly, the public police are also being increasingly drawn into these unfolding 'marketization' developments, a development to which I now turn.

Across the UK, the public police are forced increasingly to juggle operational resources in an attempt to cope with weekend levels of disorder. For example, many police forces have restructured traditional shift patterns in order to time-match peak (available) resources to peak demand – an organisational change that inevitably requires reactive, overlay shifts to operate on Friday, Saturday and, increasingly, Thursday nights. Thus the order-maintenance demands generated by the economic forces fuelling the night-time economy are currently displacing operational resources from other policing activities, from other places, and from other times of the week (for example, the weekday, residential patrol). One strategy employed as a means to alleviate this drain on police resources is for private or public organisations to contribute financially to the incurred policing costs. Using powers contained in the Police and Magistrates' Courts Act 1994, which permits police authorities to generate income by charging for extra services, a number of police forces have recently introduced innovative schemes in which licensed premise operators 'club together' in order to purchase additional levels of public policing provision. These arrangements, already piloted on a small-scale in

² Although a minority of local authorities, having recognised the nature and extent of the crime and disorder problem, are now seeking to put the 'genie back in the lamp' by stemming the current tide of corporate leisure investment.

Manchester, Leeds and London, received Home Office endorsement in the policing reform White Paper (Home Office, 2001c). Government approval is founded on the belief that such schemes are understood to encourage businesses to take “responsibility themselves for the public order implications of their activities” (ibid: 97). Yet the implementation strategies of ‘paid’ public policing initiatives raise some normative concerns, notably over the extent to which these schemes dovetail with the wider public interest.

Within policing debates the ‘public interest’ is intimately entwined with the concept of security as a ‘social good’ – one which, *inter alia*, maintains an equity of distribution and independence (or impartiality) of service delivery. Yet the danger of such private-finance initiatives is that private mandates, implicit within the concept of commercial accountability, may erode these two cornerstones of the public interest. Drawing reference to the commercial maxim that the ‘customer is always right’, Johnston raises the concern that contracted policing schemes may disturb the public interest equilibrium, as preserved by police managers’ “judicious use of discretion” (1992: 69). Indeed, within the context of the night-time economy, conflict of interest situations may well arise because, plainly, the police retain a (statutorily provided) discretionary role within the court processes of granting, renewing and revoking operational liquor licences. The Government, currently in the process of overhauling the licensing system, might wish to consider this prior to encouraging any wider rollout of the ‘polluter pays’ approach. At the very least it should reflect upon the prompt manner in which participating leisure corporations cite these ‘philanthropic’ financial gestures when making court applications for new liquor licences. On the one hand, such actions speak of the conflation of public and private interests, on the other they may denote a form of ‘regulatory capture’ (Bernstein, 1955), one that blurs not to say distorts the wider public safety issues of the night-time, ‘leisure’ environment.

Doorstaff licensing and (privately) paid public policing initiatives are symptomatic of the state’s ‘responsibilisation’ agenda. This agenda, which seeks to incorporate non-state organisations and actors into informal and formal strategies of social control (Garland, 2001: 124), disperses processes of governance outwards from the centre. An on-going debate surrounds the extent to which the process implicitly involves state relinquishing responsibility. In this respect, this agenda may consolidate further the apparent ascendancy of ‘corporate responsibility’ within the night-time economy. Here, the pervasive concern is that the process may be accompanied by a broad(er) shift in municipal governance, whereby a climate is created in which commerce is able to dictate the agenda and widen the frame of reference for ‘self-regulation’. In this scenario the alcohol industry, rather than the democratically accountable local state, may acquire the ability to define wholly the content and priorities of policing and regulation initiatives at the disturbed edge of this commercial frontier (Hobbs et al., 2003). Given that corporate hospitality extends only to those functions, places and people that ooze with commercial profitability, this may be a relatively bleak prospect.

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Modern Penalty and the Culture of Celebrity

Ruth Penfold

Today we live in a celebrity culture, a culture in which images of people who are famous for being famous are circulated and consumed daily across the world. Thus exploring the significance of the cultural reception of celebrity to modern and late modern penalty is worthy of investigation. An outline of the features of celebrity (an individual) and celebritization (the phenomenon of celebrity) will be made, illustrated through the case of Charles Lindbergh, the American hero-aviator whose infant son was kidnapped and murdered during the inter-war years. This leads to a set of reflections which historicise celebritization, in addressing the contribution of mobility, globalization and consumer modernity to the culture of celebrity. Finally, the notion of what celebrities can contribute to the reassessment of modern penalty will be tackled. This is achieved through a reading of Thomas Mathiesen's (1997) interesting paper on synopticism, a modality of power that arises with modern communication and mass media technologies, in which the many watch the few.

Fame, Celebritization and the Power of the Image

Fame and celebrity have in recent times been used interchangeably. However this is contestable for whilst fame has a long and distinguished history, the defining characteristic of celebritization is that it is essentially a media product and the usage is largely confined to the twentieth century (Giles, 2000: 3). Celebrities, in contrast to those few who are legitimately labeled as famous or heroes, are individuals who exercise limited power through the traditional political, economic or religious arena. However they still arouse a high degree of interest (Alberoni, 1962/1972: 75). Celebrities reveal prestige and approval to be a potent system of social control, succeeding in influencing social behaviour and shaping social life (Goode, 1978: vii). Simply put, a celebrity is an individual who is primarily known for his well-knownness; they are famous for being famous (Boorstin, 1972: 240; Giles, 2000). Celebrity figures embody a publicized version of what the public would like to be; typical enough to be accessible yet unique and interesting (Reeves, 1988: 150). Despite being manufactured and devoid of true achievement we make these celebrities the guiding stars of our interest. We are tempted to believe they are not synthetic at all, that somehow greatness simply abounds in modern times (Boorstin, 1972: 47).

Contemporary society is increasingly embracing the synthetic, dominating us with the process of aestheticization of everyday life. Through this we live mediated lives, in love with the image for as Young writes in *Imagining Crime*, "[w]e are our images" for anything not represented by images is beyond our imagination (Young, 1996: 112,137). Consequently celebrities images come to represent the borders of what can and cannot be imagined, they are inextricably bound up with the power of the image. Roland Barthes (1991: 14) wrote that a star's-image does not simply arise from pictures that illustrate the text written about them but rather, that words become parasitical on the image. This is supported by classic images of Charles Lindbergh who is figured as the 'Lone Eagle', the 'hero aviator' with eyes raised up to the skies that he alone has conquered. In the words of Barthes, (1972: 56) the close up of the celebrity face is intended to plunge the audience into the deepest ecstasy, representing an absolute state of flesh that cannot be reached or renounced. It is the symbolic embodiment of the belief in perfection and beauty (Barthes, 1972: 56). It intensifies the intimacy between the celebrity and the spectator, recruiting the audience to take part in an event, although it does not necessarily promote reflection or understanding of it. (Giles, 2000: 24; Ramonet, 1995: 195)

The role of image is deeply interconnected to the development of the modern mass media, which creates and promotes celebrities by depicting the individual through conventions of glamour. This glamourizing of the banal and the ugly is a modern aesthetic of fashion, style and sensation removed from earlier notions of taste tied to established categories of race, class and gender. From the early twentieth century celebritization has attracted both official and popular concern, as criminals and illegal activity become portrayed as fascinating and thrilling. The glamourized portrayal of organized crime in the cinema has recently been the subject of criticism with the popularity of films like *Snatch* and *Lock, Stock and Two Smoking Barrels*. Both films depict organized crime as an entertaining and humorous pursuit carried out by colourful personalities and loveable rogues, instead of the ruthless, violent individuals, who the director general of the National Criminal Intelligence Service, describes as "leaches on ... society who exploit ... local communities for their

own selfish ends”.³ The significance of the glamourization of crime within the mass media is that it is being absorbed by an increasingly global industry of consumption where the vivid image has come to “overshadow pale reality” (Boorstin, 1972: 13). This leads to the question of what socio-historical factors have allowed this culture of the unreal and celebrity to develop?

Mobility, Globalization and Consumer Modernity

Robertson’s (1992) successive phases of the process of globalization in his book *Globalization* aptly, for this analysis, characterizes the events leading to the establishment of a celebrity culture. During the ‘take-off phase’ between 1870-1930 Robertson argues there was a shift towards four reference points; national societies, generic individuals, a single ‘international society’ and an increasingly singular, but not unified conception of humankind. (1992: 59) This ‘taking off’ coincides with the events which, are suggested here to have established the culture of celebrity. Namely the success of the mass media and transportation machinery to establish themselves, racial and sexual conflict and change, and the global political instability and economic crisis which followed the Wall Street crash of 1929. These circumstances provided fertile ground for mass public rituals able to disseminate new meanings of national belonging and international communication. These were centred upon generic individuals, who became the first mass media celebrities and consequently a metaphor for the world (Ward, 1958: 6-7). Lindbergh became such a metaphor through his trans-Atlantic flight in 1927; he depicted the achievement of a heroic, solitary, unaided individual as well as the triumph of machine, encapsulating the success of an industrial organised society (Ward, 1958: 3).

The cultural reception of generic figure’s such as Lindbergh highlights the important contribution of consumer culture. The emergence of widespread consumption led to important reconfigurations of the established distinction between the public and private sphere. Urry (2001) describes this change as the establishment of an ‘intimate public sphere’ which has arisen from the downfall of a rational, exclusive public sphere of debate into an affective public stage on which intimate details of private lives are displayed and performed. Evidence of this shift is found in the form of nineteenth century ‘yellow journalism’ (or tabloid press) and the sensation novel. He argues that this new public stage highlights images of events, spectacles and personal performances which necessitate ‘personalities’ such as celebrities to be introduced to the public. Combined with the rapidly growing consumer culture, images and signs bound up with celebrityization have become important in enabling people to relate to each socially (Lury, 1996: 1, 51). Consumption of these celebrity figures has been made possible through the mass media which has transformed the nature of visibility.

The visibility of celebrityization reveals itself to have negative connotations. Celebrities rapidly discover, often to their own personal detriment that their ‘private life end[s]...The drama [is] no longer [theirs but].. the public’s’ (Ward, 1958: 5-6). Those celebrities, such as Lindbergh, who affirm that they do not court publicity and try to wrest their private life from the public gaze are naive for failing to realise the balancing act they are required to perform (Rose, 1999: 12). The proliferation of mediated communication forms make it difficult to erect a veil of secrecy around activities, and harder to predict the consequences of unintended and unwanted disclosures. Consequently for public figures and celebrities, greater visibility leads to closer scrutinization and exposure to the risk of public invasion into the private (Thompson, 2000: 260-261). Furthermore celebrityization often stimulates an aggressive voyeuristic attitude in the public. Rose (1999) expands on, arguing that celebrityization is actually a ritual of public punishment, and that there is something potentially murderous in our frenzied desire to know. Thus curiosity does violence to its object (Rose, 1999: 16, 19). This visibility and media attention make it evident that for celebrities who are constantly in the public eye there is no-where to hide, leaving them vulnerable, (Bird, 1997: 100) a spectacle for the public to consume.

Penalty, Celebrityization and Celebrity Victimization

Not since Ancient Rome’s infamous amphitheatres has the notion of ‘viewing a spectacle’ been as celebrated as today. However spectacle has developed beyond the limitations of being simply the witnessing of an action or on a scale that is worth being seen and meant to be seen (Kyle, 1998: 35) by a shift from direct to mediated spectacle. Celebrity bodies themselves are rendered a spectacle, with the public demanding to ‘see’ individuals who are recognised as successful embodying the dreams of the general populace. Michel Foucault (1991/1975) wrote in *Discipline and Punish* of a reversal of the axis of individuation. Biography,

³ <http://news.bbc.co.uk/hi/english/uk/newsid_916000/916477.stm>

which had been a matter of the telling of the lives of the great, became extended to the mass of the population through disciplinary technologies which sought to render the intimate details of the lowliest lives a matter of knowledge and public record. In *The Culture of Control*, David Garland (2001) mused about a further reversal of the axis of individualization in late modernity. This comes about as crime victims become celebrity figures, their lives and sufferings told to all. Garland (2001: 179-180) calls this process 'the new individualization'. Yet it seems that what is missing here is an account of synopticism, celebritization and victimization as an integral part of modern penalty.

The mediated spectacle of celebrity victimization is an integral part of modern penalty in a number of ways. Firstly, campaigns for laws that take the name of the victim such as Megan's law are not unique to late modernity. The crime against Lindbergh and his child led to the passing of the 'Lindbergh law', because kidnapping at the time was not classified as a federal offence. As a result of the Little Eaglet case it was written into federal law, making extradition proceedings no longer necessary for the crime of kidnapping. The Lindbergh law also permitted the death penalty for kidnappers who moved their victims from one state to another and failed to return them unharmed. Congress approved this legislation in June 1932, only to be made harsher the following year by making the sending of kidnapping/ransom notes across state lines a federal offence. Secondly, the ways in which celebrity status develops through popular fascination meant that celebrity victimization made forms of populism a feature within modern criminal justice.

In his article on the 'viewer society', Thomas Mathiesen (1997) advances a theory of synopticism as a modality of power in which the many watch and admire the few, by proposing an 'intensification of spectacle'. Mathiesen rehearses Foucault's argument about the shift to a society in which 'a few could supervise or survey a large number'. He agrees that the panoptical principle is in evidence but emphasizes important developments that coincided with panopticism, namely practices enabling the many to see and contemplate the few through the mass media. According to Mathiesen those in synoptic space are continuously visible and seen as important. They should not be underestimated for they shape and filter information, they produce news and they place and avoid topics on the agenda of society. Although this line of argument is interesting Mathiesen does not connect media personalities to the topic of crime and punishment. He writes that synopticism has allowed the formation of "a new class in the public sphere" in the form of VIP's, stars and reporters (1997: 218-219) but does not mention famous criminals and celebrity victims. However recent research has recently begun to excavate the complex relationships between celebrity, crime and punishment (Valier, 2003). This work includes investigation into the iconicity of notorious offenders and the scandalous crimes attributed to celebrities.

Concluding remarks

This brief paper has sought to clarify the notion of 'celebrity', and in doing so has highlighted the power of celebritization to transform an individual into a celebrity predominantly known for their well-knownness. It has been attempted to demonstrate how this has come about through the elaboration of images of celebrity figures. Stress has been placed upon the public consumption of celebritization, a process tied neatly to Robertson's 'take off' phase, and particularly regarding the generic individual. Alongside this generic individual, the processes of globalized mass media and mobility contributed in setting the stage for the phenomenon of celebrity to flourish. However negative consequences do occur for the celebrity figures who become visible to the public. Finally this paper has endeavoured to emphasize the importance of the contribution of celebrities to the reassessment of modern penalty. This research indicates that despite Foucault's assertion of the end of the spectacle of corporeal torture, the body has not ceased to be an object of public attention, displayed through mass-mediation, and communicating messages about power, crime and punishment. As Mathiesen (1997) suggests, through mass-mediation, the many watch and contemplate the few in a more intense manner than ever before, allowing various forms of victimization of those identified as celebrities or 'stars'.

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The Implementation of Human Rights Legislation in Scotland and Wales

Clive Walker

(extract from Raine, J., and Walker, C., *The Impact on Courts and the Administration of Justice of the Human Rights Act 1998* (Lord Chancellor's Department, Research Paper 09/02, 2002)

Introduction

The European Convention partially came into force in Scotland on 20th May 1999 by virtue of sections 29 and 57 of the Scotland Act 1998.⁴ Section 29 affects the legislative competence of the Scottish Parliament:

'(1) An Act of the Scottish Parliament is not law so far as any provision of the Act is outside the legislative competence of the Parliament.

(2) A provision is outside that competence so far as ... (d) it is incompatible with any of the Convention rights or with Community law...'

Section 57(2) applies to executive competence and is therefore of direct relevance to a range of Scottish court business:

'A member of the Scottish Executive has no power to make any subordinate legislation, or to do any other act, so far as the legislation or act is incompatible with any of the Convention rights or with Community law.'

The effect is that executive officers in Scotland who are transacting business within their devolved competence must comply with the Convention. Given the extensive responsibilities of the chief Scottish law officer, the Lord Advocate, this section allows most aspects of criminal process and law to be challenged (including police practices, prosecutions, justice policy, the constitution of courts, and laws of crime, evidence and procedure).

The entry into force of the Human Rights Act 1998 may diminish the impact of section 57(2). Invocation of the Human Rights Act becomes more straightforward because there is no special procedure, and its impact is applied to public authorities per se and not just to an 'act' of an executive body.⁵

Challenges based on sections 29 or 57 count as 'devolution issues' within Schedule 6, paragraph 1 of the Scotland Act 1998.⁶

General impact

The introduction of the European Convention has had a significant impact since May 1999.⁷ Four court decisions have been especially noteworthy and well-publicised.

One is *Brown v Stott*,⁸ which concerned a challenge to the use of powers under section 172 of the Road Traffic Act 1988 (of equal relevance in England and Wales⁹). The power to obtain the name and address of

⁴ See Himsworth, C.M.G. and Munro, C.R., *Devolution and the Scotland Bill* (W. Green, Edinburgh, 1998); Bogdanor, V., *Devolution In the United Kingdom* (Oxford UP, 1999); Burrows, N., & McAuslan, J.P.W.B. (eds.), *Devolution* (Sweet & Maxwell, London, 2000); Millar, A. (ed.), *Human Rights: A Modern Agenda* (T & T Clark, Edinburgh, 2000); Reed, R. and Murdoch, J., *A Guide to Human Rights Law in Scotland* (Butterworths, Edinburgh, 2001).

⁵ This distinction between the two Acts is doubted in Jamieson, I, 'Relationship between the Scotland Act and the Human Rights Act' 2001 *Scottish Law Times* 43.

⁶ For procedures, see also Act of Sederunt (Devolution Issues) Rules 1999 SI no.1345; Act of Adjournal (Devolution Issues) Rules 1999 SI no.1346; Act of Sederunt (Proceedings for Determination of Devolution Issues) Rules 1999 SI no.1347.

⁷ See Smith, I., 'Human rights: the Scottish experience' (2000) 144 *Solicitors' Journal* 796; Tierney, S., 'Devolution and section 2(1) of the Human Rights Act 1998' [2000] *European Human Rights Law Review* 380; Tierney, S., 'Convention right and the Scotland Act' [2001] *Public Law* 38.

⁸ [2001] 2 WLR 817, as applied in *HM Advocate v McLean* 2001 S.L.T. 189. An unsuccessful challenge to search powers was *Birse v HM Advocate* 2000 S.L.T. 869.

⁹ See *R v Chauhan* (13 July 2000, unreported), Crown Ct at Birmingham.

the driver of a vehicle was held by the Scottish courts to be contrary to the rights against self-incrimination in Article 6(2), a verdict which caused some alarm in police circles as it would render virtually useless the gathering of evidence against speeding motorists by roadside cameras.¹⁰ Offences of strict liability do not violate the presumption of innocence under Article 6(2) provided the prosecution retains the overall burden of proving the commission of the offence, provided the presumption serves a reasonable social purpose and provided it is rebuttable.¹¹ On these grounds, the decision was reversed on appeal to the Judicial Committee of the Privy Council.¹² It seems that arguments about burden and standard of proof will be a fertile area of dispute under the Act in England and Wales; already there have been several challenges, though none has been sustained.¹³

Another important ground for challenge has concerned the independence and impartiality of the decision-maker. The point was most vividly illustrated in *Starrs v. Ruxton*.¹⁴ For the courts, this is a much more troublesome decision and has been disruptive of Scottish court business to a significant extent. In this case, it was held that the terms of appointment of temporary sheriffs meant that they could not act as independent tribunals. This meant in turn that this large cohort of judges had to be stood down, with considerable impact on the transaction of court business. A resolution is now thought to be in sight with the Bail, Judicial Appointments etc. (Scotland) Act 2000, but this Act of the Scottish Parliament has taken some time to be implemented.¹⁵

The reverberations of this decision have also been felt in England and Wales. On 12 April 2000 new terms and conditions of service for part-time judicial office holders were announced.¹⁶ For all part-time appointments in the ordinary courts in England and Wales and the part-time judiciary who sit on tribunals, part-time appointments are henceforth granted for a period of not less than 5 years, with automatic renewal, subject only to limits, akin to those applying to full-time judges, in respect of misbehaviour or incapacity. There are further special grounds for dismissal, namely persistent failure to comply with sitting requirements, failure to comply with training requirements, or forms of redundancy because of a reduction in numbers because of changes in operational requirements or because of a structural change to enable recruitment of new appointees. As a further safeguard, the Lord Chief Justice, following an investigation conducted by a judge nominated by the latter, must concur with the dismissal. Because of these arrangements, the Lord Chancellor also announced that the distinction between Assistant Recordship and Recordship was ended and all appointments are now to Recorder.

Even the senior judiciary have been tackled on ground of bias. In *Hoekstra HM Advocate (no.2)*,¹⁷ there was sustained a successful challenge to the inclusion on an Appeal Court panel, Lord McCluskey, who had expressed views in newspaper critical of the European Convention. The appeal to the Privy Council succeeded on basis that this was not a devolution issue within the Scotland Act 1998,¹⁸ but now that the Human Rights Act is directly applicable in Scotland, this technical dismissal can provide only cold comfort to curmudgeonly judges.

10 There have been cases directly on the point in England: see Dyer, C., 'Ruling exposes loophole for drivers' (2000) *The Guardian* 15 July.

11 *Salabiaku v France* App.no. Ser.A vol.141-A (1988).

12 It likewise reversed the condemnation of the powers of confiscation of property of drug traffickers in *HM Advocate v McIntosh* [2001] 3 WLR 107. See further *HM Advocate v McSalley* 2000 J.C. 485.

13 See *R v Secretary of State for the Home Department, ex parte Kebilene* [1999] 3 WLR 972; *R v Benjafield* [2001] 3 WLR 75; *R v Lambert* [2001] 3 WLR 206; *R v K* (2000) *The Times* 7 November.

14 2000 S.L.T. 42. See also: *Gibbs v Ruxton* 2000 S.L.T. 310; *Lafarge Redland Aggregates v Scottish Ministers* 2000 S.L.T. 1361; *McFarlane v Gilchrist* 2002 S.L.T. 521; *Millar v Dickson* [2002] 1 WLR 1615; O'Neill, A., 'The European Convention and the independence of the judiciary' (2000) 63 *Modern Law Review* 429. In *Stott v Minogue* 2000 S.L.T. (Sh Ct) 25 an argument that there should be a positive declaration by a judge that he was not a Freemason was not sustained as the judicial oath and ethical duties provided sufficient safeguard.

15 The matter was dealt with by administrative changes south of the border: Joint Committee on Human Rights, Implementation of the Human Rights Act 1998 (2000-01 HL 66, HC 332) evidence of Lord Irvine, q.45.

16 Lord Chancellor's Department, Judicial Appointments Annual Report 2000-2001 Cm.5248, London, 2001) Annex C.

17 2000 S.L.T. 602.

18 [2001] 1 AC 216.

Another issue of bias arose in *County Properties v Scottish Ministers*,¹⁹ concerning a challenge to the independent standing of a part-time Reporter who presided over a planning dispute. There has also been some testing of these issues in England and Wales – the point has been taken in *R v Secretary of State for Environment Transport and the Regions, ex parte Alconbury Developments Limited*,²⁰ which questions also the independence of the appeal system (involving the Secretary of State).

The courts have been less sympathetic to the impact of media bias on impartiality.²¹ Furthermore, the role of the clerk/legal assessor in the District Court (akin to a justices' clerk in the magistrates' court) met various challenges in *Clark v Kelly*.²² Not being a member of the decision-making part of the court meant that the accoutrements of independence (such as security of tenure) were less to the fore. It was also deemed proper to give advice in private provided the court ensured that the following matters were raised in open court: (a) the content of any advice on the law given privately by the clerk which he, or the justice, perceives as possibly controversial; (b) any observation by the clerk that some authority has been cited or submission made which is inaccurate; (c) any matter (whether legal or not) which the clerk or the justice perceives could be the object of relevant submission by the defence and/or the prosecution.

Less spectacular has been a series of cases in which the rights of access to solicitors have been strengthened. These did not result in reversals for the Crown on the facts of the case but do have major implications for the criminal justice process and resources. The cases were *H M Advocate v 4*,²³ and *Paton v Ritchie*.²⁴ Both cases concerned the question whether a person detained under section 14 of the Criminal Procedure (Scotland) Act 1995 is entitled to have a solicitor present while he is interviewed. In Robb, Lord Penrose explained the position as follows:

‘The accused person is entitled to a fair and public trial. The court has an obligation to ensure that a trial is fair irrespective of the accused’s Convention rights. .the test of fairness would take account of the fact that the interviewing officers persisted following the clear request by Mr Robb for a lawyer.’

However, the Appeal Court took a conservative line in applying the test of fairness in *Paton v Ritchie*, with little recognition that the Convention case-law has been much more rigorous than Scottish jurisprudence:

‘It is important to bear in mind that in Scotland questions of admissibility are resolved in the course of the trial. It is open to the accused to take objection and to adduce evidence in support of that objection. It is open to the judge and to the jury to consider whether the statement was fairly obtained. .The main question which has to be considered at this stage is whether the appellant has shown that he cannot receive a fair trial. Prior to the advent of devolution, the courts in Scotland required to consider such a question when it was maintained on behalf of an accused that by reason of some factor, such as delay or pre-trial publicity, he could not receive a fair trial and hence it was oppressive for the proceedings to continue. With the coming into operation of section 57(2) of the Scotland Act 1998, the court now has to take into account the various rights which are comprehended in Article 6 of the Convention in deciding that question’.

Given the more open approach of the Police and Criminal Evidence Act 1984 in regard to police interrogation practices in England and Wales, there is less to learn here for English practitioners, especially as rights to solicitors are more or less absolute in law if not practice.²⁵ However, the Scottish cases do re-emphasise the importance of legal advice which is as yet to work through aspects of court based detention in England and Wales.

19 2001 S.L.T. 11252. See also *Clancy v Caird (No.1)* 2000 S.L.T. 546 (failed challenge to a temporary judge); *A (Anderson, Doherty and Reid) v Scottish Ministers* 2001 S.L.T. 1331 (failed challenge to Mental Health (Public Safety and Appeals) (Scotland) Act 1999); *Edward v Scottish Ministers* 2000 G.W.D. 11-403 (objection to planning enforcement notice).

20 [2001] 2 W.L.R. 1389.

21 *Montgomery v HMA* [2001] 2 WLR 779.

22 2000 S.L.T. 1038.

23 2000 J.C. 127.

24 2000 S.L.T. 239.

25 *R v Samuel* [1988] Q.B. 615.

One interesting procedural lesson from Scotland, also from *HM Advocate v Robb*,²⁶ is that any question of admissibility arising from a Devolution issue should be resolved in the course of the trial, thereby avoiding the possibility of trials being adjourned part heard repeatedly.

In terms of overall impact on the courts, the Lord Advocate has reported 969 issue minutes (pleadings) being raised between 20th May 1999 and 29th November 2000 (587 up to 20 May 2000).²⁷ The volume of work has therefore been significant and some difficult outcomes have had to be managed, as noted above, though overall the Crown has scored an overwhelming 'success' rate. Of the just 37 (3.8%) points thus far lost by the Crown, all but one related to delay under Article 6(1). Likewise, most business has related to article 6 (85%). Breaking down the 587 issues on which detailed data is available and which seem to arise overwhelmingly from criminal rather than civil process:²⁸ 81.09% of these raised issues in terms of Article 6 of the Convention. Of these Article 6 issues, admissibility points (other than section 172 points) accounted for 24.59%,²⁹ the lack of independence of temporary sheriffs accounted for 5.11%, delay points accounted for 17.03%,³⁰ legal aid fixed fee challenges accounted for 10.55%³¹ and section 172 issues accounted for 6.47%. By contrast, challenges under other Convention provisions have been far less common: 5.61% of the minutes raised issues in terms of Article 5; 1.53% of the minutes raised issues in terms of Article 7; and 9.02% of the minutes raised issues in terms of Article 8;³² in terms of venue, 11.5% of Devolution issues have been raised in the High Court of Justiciary, while 3.06% of the issues raised were raised at first instance in Appeal Court proceedings. So, most of the Human Rights Act business occurs at a lower level: Sheriff and Jury cases (20.78%), Sheriff Summary (51.95%) and District Court proceedings (9.19%).

In view of the potential for challenge, the Convention Rights (Compliance) (Scotland) Act 2001 was enacted to avert some further problems. It deals with several issues: parole procedures for life prisoners; legal aid; and homosexual offences. In addition, section 12 allows Scottish Ministers to make remedial orders where Scottish Parliament legislation is found to be in breach. Previously, this power (equivalent to section 10 of the Human Rights Act 1998) was exercisable only by United Kingdom Ministers under section 107 of the Scotland Act 1998.

In conclusion, the experience of Scotland is indicative of a number of features which might be compared to the experience of England and Wales unfolds. There are perhaps three features of note to be considered.

26 2000 J.C. 127.

27 Scottish Parliament, Research Paper 01/03: ECHR Incorporation into Domestic Law (http://www.scottish.parliament.uk/whats_happening/research/pdf_res_papers/rp01-03.pdf, 2001). The statistics are based on Crown Office returns.

28 Scottish Parliament, PQ S1W-04775, Lord Advocate.

29 An example is *HM Advocate v Nulty* 2000 S.L.T. 528 where the complainer in a rape had given evidence that was expected by neither the Crown nor the defence. For unconnected reasons, the trial was deserted (discontinued). The case was reindicted but, because the complainer had become mentally unwell, it was proposed to lead as hearsay evidence of what she had said in evidence at the first trial. The hearsay was held to be admissible; Lord Abemethy's approach to section 259 of the Criminal Procedure (Scotland) Act 1995 was influenced by *Doorson v Netherlands*, App. no. 20524/92, Reports 1996-II, (1996) 22 E.H.R.R. 330. See also *McKenna v HM Advocate* 2000 S.L.T. 508; *HM Advocate v Beggs (no.3)* 2002 S.L.T. 153; *HM Advocate v Bain* 2002 S.L.T. 370.

30 Whereas *mora* (delay) as a plea in bar of trial requires the defence to establish prejudice, the Article 6(1) guarantee of trial within a reasonable time does not. The courts have made it clear that they will judge delay according to Scottish standards rather than generally laxer European standards: *Robb v HM Advocate* 2000 S.L.T. 1315. See also *HM Advocate v Little* 1999 S.L.T. 1145; *McNab v HM Advocate* 2000 S.L.T. 99; *Crummock (Scotland) Ltd v HM Advocate* 2000 S.L.T. 677; *HM Advocate v Montgomery* 2000 S.L.T. 122; *McLean v HM Advocate* 2000 J.C. 140; *HM Advocate v Workman* 2000 J.C. 383; *HM Advocate v McGlinchey* 2000 S.L.T. 995; *Doherty v HM Advocate* 2000 S.L.T. 1312; *HM Advocate v H* 2000 S.L.T. 1321; *Reilly v HM Advocate* 2000 S.L.T. 1330; *HM Advocate v Cook* 2001 S.L.T. (Sh. Ct.) 43; *Dyer v HM Advocate* 2001 S.L.T. 751; *HM Advocate v P* 2001 S.L.T. 924; *O'Brien v HM Advocate* 2001 S.L.T. 1101; *K v HM Advocate* 2001 S.L.T. 1261; *Mills v HM Advocate (no.2)* 2001 S.L.T. 1359; *HM Advocate v R* 2001 S.L.T. 1366; *Dyer v Watson* 2002 S.L.T. 229; Ferguson, P.W., 'Trial within a reasonable time' 2001 *Scottish Law Times* 141; Ferguson, P.W., 'Delay in criminal proceedings' 2001 *Scottish Law Times* 305. This spate of cases was to some extent avoided in England and Wales by the ruling in *Attorney General's Reference (No 2 of 2001)* [2001] 1 WLR 1869.

31 See *McLean v Buchanan* [2001] 1 WLR 2425. The lack of legal aid in children's hearings breaches Article 6: *S v Miller (no.2)* 2001 S.L.T. 1304. But a finding of a breach of Article 6 by the European Court of Human Rights for the lack of legal aid in an appeal process was not sufficient for the conviction to be set aside: *Granger, Petitioner* 2001 S.L.T. 1095.

32 See *AG for Scotland v MacDonald* 2001 S.L.T. 819; *Hoekstra v HM Advocate (no.7)* 2002 S.L.T. 599.

One is that, not unexpectedly, most publicity is accorded to cases at the higher court levels; however, most cases actually arise at a lower level.

Next, the vast majority of challenges under the Human Rights Act have failed. One wonders whether, if this outcome continues, it will discourage the rate of challenge in due course. Conversely, it only takes one unexpected success to cause major difficulties - as in the case of the Starrs decision, therefore, it would be very wrong for the courts to become complacent.

Thirdly, most challenges have been in relation to Article 6. There have been more Scottish cases under Article 5³³ than suggested by the experience in England and Wales perhaps because of the ways in which the Police and Criminal Evidence Act 1984 provides for openness and records in the execution of police powers to a far greater extent than in Scotland.³⁴ Conversely, despite its greater reliance upon common law formulations, Scottish criminal law (such as the offence of breach of the peace) has so far not sustained any major challenge.³⁵

The Crown Office

The Crown Office is essentially responsible for prosecutions, but it has a more important role in the criminal justice system than the roughly equivalent Crown Prosecution Service. This centrality arises because of the powers the Crown Office has to direct prosecutions (including investigatory powers and powers to direct the police) and the way in which Devolution issues have been formulated to date (everything the Lord Advocate – or his representatives - does is done as a member of the Scottish Executive and therefore falls within section 57(2): *HM Advocate v Robb*³⁶). So far as general policies and impacts are concerned, a full-time Crown Office Human Rights Working Group, was established in June 1998. The head of the working group was Mr John Watt, now Procurator Fiscal at Kilmarnock. The Group reviewed all of practices and policies in relation to the prosecution of crime and the investigation of sudden deaths against the Convention and its associated case law. By and large, the conclusion was that existing best practice complied with human rights requirements, but there was one significant change in the shape of the introduction of the ‘Custody Statement’.³⁷ It also considered the programme for the training of legally qualified staff and precognition officers in Convention rights law. The Working Group is to become a Standing Group with the Human Rights Act in mind.

Training was also more extensive than for other agencies. In detail,³⁸ between January and June 1999 the Crown Office ran a series of three day training courses which were attended by all procurators fiscal and all procurators fiscal deputies. A series of two day courses was then run for all precognition officers. At the courses, all those attending were issued with substantial written guidance. In the Autumn of 1999 a series of one-day workshops was run, once again attended by all procurators fiscal and their deputies, at which the training and guidance was revisited in the light of experience of the operation of the Scotland Act. Advocate Deputies received such updated training at their annual seminar in March 2000. All procurators fiscal and deputies have been issued with copies of all devolution issues opinions issued by the High Court and with commentary on those opinions and advice on matters arising from them as appropriate. All procurators fiscal

33 See for example *H M Advocate v Robb* 2000 J.C. 127 and *Paton v Ritchie* 2000 S.L.T. 239 (both regarding access to solicitors); *Burn, Petitioner* 2000 S.L.T. 538 (reasons for bail); *A (Anderson, Doherty and Reid) v Scottish Ministers* 2001 S.L.T. 1331 (regarding detention under the Mental Health (Public Safety and Appeals)(Scotland) Act 1999). Mental health detentions have, however, also been litigated in England and Wales: *R (H) v Mental Health Review Tribunal North & East London Region (Secretary of State for Health Intervening)* [2001] 3 WLR 512; *R (on the application for the Secretary of State for the Home Department) v Mental Health Tribunal* [2001] EWHC Admin 849. Likewise, recall from license of life sentence prisoners transcends the two jurisdictions: *Varey v Scottish Ministers* 2000 S.L.T. 1432.

34 See Walker, C.P. and Starmer, K., (eds.), *Miscarriages of Justice* (Blackstone Press, London, 1999) chap.16.

35 *Smith v Donnelly* 2001 S.L.T. 1007.

36 2000 J.C. 127.

37 This was challenged in *Brown (Procurator Fiscal, Hamilton) v Selfridge and another* 1999 SCCR 809, which concerned the custody statement, introduced as a result of the Working Group’s examination of Article 5.4 in the light of *Lamy v Belgium* (1989) 11 EHRR 529. The defence persuaded a sheriff that the inclusion of a custody statement on a petition was prejudicial to the accused and rendered the petition incompetent. The argument was that a sheriff, appraised of the nature and strength of the evidence, might take that into account in deciding whether or not to grant bail. The High Court rejected the contention and passed the Bill.

38 See Scottish Parliament, PQ no.S1W-08787, Lord Advocate.

depute recruited since June 1999 have attended one or two 4 day training courses and have received the written materials. A series of one-day workshops, again for all procurators fiscal and deputes, is in preparation for September 2000.

It has been observed that:³⁹

‘..the Crown are manifestly more at ease with the Convention and its related jurisprudence than either the courts or the lawyers representing the accused. The reasons for this are not hard to discern. The Crown Office has invested heavily in training. Senior members of the prosecution service have been seconded, full time, to the training of members of the Fiscal Service, for more than a year. A very comprehensive training programme has been carried out, backed up by comprehensive and user-friendly guides to Convention case law. This is not to say, it should be emphasised, that the training has, in any sense, been ‘one sided’. Indeed the prosecution service has, if anything, gone further than was perhaps strictly necessary in changing some of its procedures to comply with the Convention. However, it means that in practice the Crown is consistently better placed to present arguments on the interpretation of the Convention’

One other significant aspect of Crown Office work is that it has been able to offer some of its experience to agencies south of the border . There has been attendance at meetings in the Home Office and the Whitehall ECFIR Criminal Issues Group.

The Sheriff Court

As well as this general picture, the research also involved interviews with two Sheriff Principals.

In their views, there had been adequate preparation for the enforcement of the Scotland Act, with a series of one day seminars for sheriffs in five location which were organised by the Director of Judicial Studies. Further training over two days is to be given in September 2000 to deal with the wider impacts of the Human Rights Act, and bailiffs are also to be trained.

As for impact on the business of the courts, the Human Rights Act had been noticed only in criminal business where there was some marked variation between the large urban (where it was described as ‘fairly frequent’) as opposed to more mixed urban/rural area (‘not much experience’), but the nature of the cases demonstrate that the issues being raised are universal and so the concentration in urban areas may reflect more the availability of lawyers with requisite specialisms. It emerged that the Starrs decisions had caused serious disruption to 25-30% of court business. The temporary sheriffs had been stood down, and discussions had taken place with police and prosecution services as to the prioritisation of work. It was expected that, with corrective legislation and the resolution of issues at appeal level, the business level of human rights issues would decrease in time.

In terms of resources, apart from the training input, there have been costs incurred by the provision of library materials. Internet access is also being arranged for all sheriffs. The Judicial Studies Office had provided folders and guidelines as to materials.

The Position in Wales

Section 107 of the Government of Wales Act 1998 inserts an overriding requirement for compliance with the Convention which again came into effect ahead of the Human Rights Act itself:

‘(1) The Assembly has no power-

- (a) to make, confirm or approve any subordinate legislation, or
- (b) to do any other act,

so far as the subordinate legislation or act is incompatible with any of the Convention rights.

(2) Subsection (1) does not enable a person-

- (a) to bring any proceedings in a court or tribunal, or

³⁹ Gane, C., ‘The Human Rights Act and the Scotland Act: Setting the Scene’ (1999) 1 *Human Rights and UK Practice* 5.

(b) to rely on any of the Convention rights in any such proceedings, in respect of an act unless he would be a victim for the purposes of Article 34 of the Convention if proceedings were brought in the European Court of Human Rights in respect of that act.

(4) Subsection (1)-

(a) does not apply to an act which, by virtue of subsection (2) of section 6 of the Human Rights Act 1998, is not unlawful under subsection (1) of that section, and

(b) does not enable a court or tribunal to award in respect of an act any damages which it could not award on finding the act unlawful under that subsection.

(5) In this Act "the Convention rights" has the same meaning as in the Human Rights Act 1998 and in subsection (2) "the Convention" has the same meaning as in that Act.'

In view of these duties, the National Assembly of Wales began in 1999 a basic training programme for both Assembly Members and staff. The staff programme is still on-going, with basic training for new staff, more in-depth training for selected staff, and annual updates on the case-law.⁴⁰ There also occurred two conferences for the public and voluntary sector, in May and Dec. 2000, in Cardiff and Llandudno respectively. Since then, a 'road-show' (in conjunction with the Lord Chancellor's Department) was held in Cardiff (in 2002) and another is planned for North Wales. However, as might be expected in view of the more limited powers which are devolved and because of the integration hitherto of legal systems between Wales and England, there has been much less work and experiences than in Scotland relevant to courts or court business, other than in inputting into the rule changes as to how the Crown should be joined into Human Rights Act proceedings. There have been no Human Rights Act challenges directly to the National Assembly of Wales' legislation or other actions to date, nor have it been joined as a party in any relevant actions.

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Cybercrimes and Criminal Justice

David Wall

Introduction

A decade or so after the term 'cybercrime' was coined it continues to fill precious column inches with tales of the 'Virtual Apocalypse'. However, whilst there is a broadly common agreement that cybercrimes exist, there is little consensus as to what they are. Upon further reflection, many of the concerns about cybercrimes are the product of media sensitisation and do not necessarily have specific reference points in criminal law. Indeed, the term is frequently used to describe harmful behaviours for which the remedy lies in civil law or elsewhere. Consequently, 'cybercrime' is a fairly meaningless descriptor other than it signifies the occurrence of a harmful activity that is somehow related to a networked computer (NCIS, 1999). Yet it has entered the vernacular to symbolize insecurity within cyberspace and has acquired considerable linguistic agency - to the point that cybercrimes are now widely acknowledged as a danger to society and therefore require a criminal justice response (see further Wall, 2001: 2).

This article seeks to clarify what is understood by the term cybercrime, it then goes on to look at what characteristics, if any, make cybercrimes any different to 'traditional' crimes before exploring their peculiar relationship with criminal justice. Can, for example, the existing criminal justice processes actually deal with cybercrimes, or are entirely new types of resolution at an international or even global level required to deal with new forms of criminal disputes?

Types and Impacts of Cybercrime

Much of the contemporary debate about cybercrime, as expressed in discussion and literature, describes with great alacrity and considerable detail, various types of cybercrimes. Usually these are the more sensational crimes - sex crimes - massive frauds, ingenious hackings, cunning crackings etc.. The same sources also analyse the various policy debates which shape and form societal and governmental responses to the harms. Yet, the contemporary literature has three key failings that need to be addressed.

First, it rarely disaggregates harmful behaviours that already exist from those that are entirely new. At one end of the spectrum lie those behaviours which are often called cybercrimes, but are in fact 'traditional' crimes in the commission of which the Internet was used, typically as a method of communication. Towards the middle of the spectrum are 'hybrid' cybercrimes that are 'traditional' crimes for which entirely new opportunities have emerged. At the other end are the 'true' cybercrimes which are the product of opportunities that are created entirely by the Internet and can be perpetrated solely within cyberspace. It is important to draw these distinctions because understandings of 'traditional' crimes and 'hybrid' cybercrimes can be informed by existing literature, law and practice, whereas the 'true' cybercrimes are more likely to be the result of globalised activity and therefore require new bodies of knowledge and experience to be sought. They also suggest that very different responsive and regulative strategies are required.

Second, these same debates over cybercrime rarely draw lines between the substantially different types of harmful behaviour. Elsewhere, I have reduced these to four main groups (Wall, 2001: 3). Cyber-Trespass is the unauthorised access of the boundaries of computer systems into spaces where rights of ownership or title have already been established. Cyber-Pornography/obscenity is the trading of sexually expressive materials within cyberspace. Cyber-Deceptions and thefts are the different types of acquisitive harm that can take place within cyberspace. Cyber-Violence is the violent impact of the actions of one individual or social or political grouping upon another. The responses to each of these different types of criminal behaviour will require different strategic and tactical responses from the law, the investigators, prosecutors and defence.

Third, the current literature and research on cybercrimes lacks an empirically informed sense of proportion in terms of the occurrence of the various types of harmful behaviour involved - rarely occurring behaviours tend to carry the same gravity as those which are more prevalent. The same literature also provides little indication as to the scale of the activity, whether it be local, national, international or global.

Drawing the above distinctions will help to facilitate our understanding and knowledge of harmful behaviours on the Internet. Such an understanding is important for two reasons. Firstly, key players in the Criminal Justice System currently lack the familiar tools that generate 'reliable data' in the form of statistics;

identifiable victims groups; offender profiles; known jurisdictions; shared public values and definitions of crime, which enable them to make, and introduce, informed policy and practice (Wall, 2002: forthcoming). Secondly, an improved knowledge of cybercrimes will help to break the cycle of self-perpetuated myths that currently make them so media-worthy. Myths which shape opinion by generating public concerns about 'Electronic Pearl Harbors' (sudden large scale attacks) or 'Cyber-Tsunamis' (unintended catastrophes) and seek to assault the economic infrastructure (Wall, 2001: 3; Taylor, 2001; 69). Myths which also confuse risk assessments with reality and exaggerate the fears of those who do not tend to use the Internet, and whose concerns are subsequently "exploited both by politicians and by the mass media" (Walker and Akdeniz, 1998: 18).

Clearly, the above matrix of distinctions suggests that the 'reliable data' could actually be generated with regard to the 'traditional', and possibly the 'hybrid' cybercrimes described earlier. But, it also suggests that the likelihood of generating 'reliable' data about 'true' cybercrimes diminishes rapidly as you move away from the 'traditional' crime model because of the increasingly hidden nature of the harmful activity, also because of the fact that the remedies may lie outside the criminal justice system and/ or because of the globalised nature of the problem. Characteristics which cybercrimes share with white-collar crimes.

Cybercrime as a global phenomenon

Maureen Cain (2002) has argued that globalisation, as a concept and a social process, configures, and reconfigures, "relationships between multiple entities - from individuals to international agencies - which are widely distributed in space." These relationships, she observes, are neither innocent nor power free. So, very simple economic drivers can generate criminal opportunities, for example, the prohibition or excessive taxation of goods in one jurisdiction immediately creates criminal business opportunities elsewhere and the Internet provides the global links through which those opportunities can be exploited.

But crime is not just simply about opportunity, it is also about combining imagination, abilities and desires. Add the Internet, a global communication media, to this combination and the result is potent, particularly as value in cyberspace is mainly attached to ideas rather than things. The focus of 'true' cybercrime is therefore upon the ideas to which the values are attached. Therefore cybercrimes are activities that include the illegal acquisition, manipulation or destruction of intellectual property (copyrighted, trademarked or patented materials, information, data). They also include new aspects of pornography, information warfare, economic espionage and many other activities. The 'true' cybercrime is a global phenomenon which transcends cultural, as well as geographical boundaries and it can be committed anywhere on the Internet, from anywhere, at any time.

At some point, however, the 'local' enters into the equation via the offenders' input (commission) and/ or output (gains), the victim, the investigation. But, when formulating a criminal justice response, it is important to note that this is a different 'local' to that found in the analysis of 'traditional' crime because the internal linkage between the local and the global has changed. Cain (2002), draws upon Bauman's (1998) conceptualisation of 'glocalisation' in order to explain that "the intrinsic linkages between these global and local processes" are not "trans, or inter national", rather they are 'glocalised'.

Conclusion

Although concepts like 'globalisation' and 'glocalisation' are highly contestable, they nevertheless flag up the directions of future discourses. One certainty is that cybercrimes will become increasingly more global. Visible examples of this trend are already being found in the criminal opportunities that are emerging from the convergence of information technologies, for example, the convergence of communications technologies with linked databases that contain very private information about ourselves (eg., health and finance), our patterns of consumption and our lifestyles. Alternatively the databases might be intrinsic to a corporate operation. Without a research-led debate about the various levels, types and impacts of cybercrimes then criminal justice systems will be unable to make strategic decisions about whether or not to, how to, or when to engage with new forms of criminality.

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Reforming the (Controlling) Mind of the Corporate Killer?

Dave Whyte

Consider the following scenario, implausible as it may seem. After two election pledges and a long line of ministerial promises, the government is still deliberating over the introduction of a new law for dealing more effectively with homicidal criminals. The Queen's speech is a matter of weeks away, and the Home Office Sentencing and Offences Unit decides to test popular opinion on this long-awaited reform. But after seeking ministerial advice, the Home Office decides not to consult the victims' groups who have been lobbying for more than 10 years for a new law. The government refrains from sounding out a focus group, and declines to discuss the matter at the Labour Party conference, which is due at the end of the month. Instead, it invites the views of a group of the country's most prolific killers and dispatches a rather cordial letter, signed by the Head of Policy on Violent Offences, to those most likely to be affected by the new law. In this letter, the Home Office asks the representatives of those killers how this new law might affect their clients' ability to meet legal costs, how the law might impede their freedom to go about their business and how it might affect their "reputation".

Imagine the seething anger that would greet such a decision. New Labour's historic repositioning as the party of law and order would be chewed to pieces by an angry pack of tabloid sub-editors. Well, in October 2002, precisely this scenario unfolded as a Home Office letter (dated September 10th) identical to that described above was released to the press and greeted with not so much as a whimper of disapproval. But of course, the government's consultation was not directed at the same murderers for whom the Home Secretary has assured us life will mean life (The Guardian, 28 May, 2002). There are no prizes for guessing by now that the homicidal recipients of the Home Office letter were the representatives of private companies, and that the consultation is on the proposed new law of corporate killing.

But before we dismiss this saga as simply another episode in the government's energetic 'business friendliness' (Monbiot, 1999) and the media's waning interest in such matters, let us be reminded of why this law was designed in the first place. In the early days of the first New Labour government, ministers were keen to do something to deliver justice to the families and victims of a series of horrific events, including Piper Alpha, the Herald of Free Enterprise, the Marchioness and a whole string of rail crashes. Moreover, the vociferous and vocal campaigns for justice which sprung up in their aftermath won the support of some prominent Labour figures whilst they were still in opposition. Beyond the high-profile disasters, a small number of victim and family campaigns have emerged around other workplace death cases, the most famous perhaps being the Simon Jones Campaign (www.simonjones.org.uk). Since Labour came to power in 1997, over 1,300 workers have – according to the official HSE figures – been killed at work. It has also been a feature of New Labour's first two governments that the HSE have come in for some criticism for under-enforcement of the law. Indeed, this issue provoked fierce debate in the aftermath of the Paddington rail disaster, and was a central feature of the public inquiry (see Cullen, 2001). Elsewhere evidence of a more sustained regulatory failure is beginning to emerge. One recently published trade union report reveals that only a third of all deaths at work result in prosecution, and that only 1% of reported cases of industrial disease end up in the courts (Centre for Corporate Accountability, 2002). If we consider that at least two-thirds of all deaths at work, as a series of HSE reports have established, are the result of breaches of management responsibilities under the Health and Safety at Work Act, these prosecution rates appear yet more remarkable.

So this is the context for the emergence of the new law. But what will the new law do to redress this type of imbalance of justice? As conceived in the original Law Commission proposals (Home Office, 2000), it is likely that the reforms will create two new offences: 'reckless killing' and 'killing by gross carelessness' which would apply to any individuals who cause death where there is no identifiable intent but evidence of recklessness and negligence. These offences may also apply to corporations through the existing principle of identification. In addition, a new offence of 'corporate killing' is proposed to apply to corporations and all other employing organisations.

The corporate killing law on the face of things, is aimed at tackling the thorny issue of identification. It is this issue which, it is claimed, lies at the root of the difficulties in enforcing existing law against corporations. The principle of identification holds that, for corporations to be culpable of certain criminal

offences, it is necessary to prove the individual offence of manslaughter against a person deemed to be a 'controlling mind' (*mens rea*) of the company. In large organisations this has caused problems, not only in the sense that it is difficult to identify individual culpability in complex organisational structures, but also in the sense that larger companies have considerable financial and legal resources upon which to draw in order to protect themselves and mask the responsibility of particular individuals. There have been only three successful corporate manslaughter convictions in British criminal history, all of them involving very small companies.

The principle of identification is part of a rather contradictory legal fiction which has developed in criminal law, that the company is regarded as a legal person. The same doctrine which has allowed corporations to escape criminal responsibility holds that the corporation can only act through the actions of the individuals. This is not the only place where we can find the 'legal personality' rule in western legal systems. Corporations are treated in a variety of ways just as individuals are. This point is commonplace on commentaries around the problems with holding private police and security services accountable (Shearing and Stenning, 1981). It is also prominent in debates around corporate human rights obligations. Corporate responsibility discourses are becoming welded to human rights discourses with alarming frequency. The UN's Global Compact with Business is but one signpost of this trend (Hilary, 2000). It is alarming, since human rights law, far from imposing obligations on corporations, actually grants them a range of protections as legally constituted persons (Bennett, 2000; Jochnick, 1999). For example, article 1 of the 1st protocol of the European Convention has in the UK been used to oppose planning decisions by local authorities on the grounds that this threatens corporations "peaceful enjoyment of possessions."

A related structural advantage enjoyed by corporations in the criminal process is related to the way in which the aggregation of fault has been interpreted. Perhaps most famously in preliminary hearings for the Herald of Free Enterprise case, it was held the company's guilt could not be established by aggregating the acts and the mental states of a number of individuals with different responsibilities (*R v HM Coroner for East Kent, ex p Spooner* (1989) 88 Cr Ap R 10). The way in which the law on aggregation is framed, then ensures that "the rules work in a way which is more accommodating to corporations than to individuals" (Slapper and Tombs, 1999: 32). Criminal accountability becomes diffused since this interpretation establishes that the identification principle supports a form of vicarious rather than corporate liability (Parkinson, 1993: 351).

Elsewhere in Europe, there are examples of legislative attempts by governments to reshape the legal personality of corporations. In Italy, for example, a new law aimed at tackling bribery and financial corruption has established that (despite the insistence of Article 27 of the Italian constitution that "criminal responsibility is individual") a company can be held criminally responsible if it is "structurally negligent" even if no human perpetrator can be identified (Gobert and Mugnai, 2002). In France, the Nouveau Code Penal, aimed at codifying the plethora of types of corporate crimes that are committed in national and transnational contexts asserts that corporations can be held liable even when criminal responsibility of the individual has not been established, recognises offences committed on behalf of corporations by its agents or by organisational units, and allows the corporation to be charged and tried as a perpetrator and as an accomplice (Gilbert and Russell, 2002).

I am not suggesting that the legal reform models in those very different European contexts can be easily imported to our legal system, but it is notable that in those examples what is happening is an attempt to overcome the obstacles put in place by the identification principle. It is also the case that a range of new punitive remedies proposed in France could easily be imported into our legal system. In this country, however, we are unlikely to see anything approaching the innovation or imagination of such remedies. The proposed new offence of corporate killing does attempt to escape the straitjacket of identification by establishing an important new test of "management failure" to allow corporations to be prosecuted where individual responsibility cannot be identified. But, in terms of the range of punitive remedies it offers its scope is remarkably narrow: it will allow courts to impose unlimited fines, but precious little else. There will be no corporate probation, confiscation of assets or prohibition of the corporation from business activities. There will be no dissolution for particularly serious offences, and no public humiliation by broadcasting public notices detailing offences. All of those can be found in the Nouveau Code Penal.

For the other new offences of reckless killing and killing by gross carelessness, the principle of identification, based upon *mens rea*, will still apply. In this sense, those offences may be somewhat redundant if the CPS fail to prosecute directors or senior managers for manslaughter. Some lawyers such as

Louise Christian, who has represented victims families in the Southall and Paddington train crashes and in the Marchioness case, have publicly argued that the new offence of corporate killing may act as a disincentive for investigating and prosecuting bodies to consider the culpability of company directors, since they would now be able to prosecute the company for corporate killing instead.

Another fundamental, though perhaps less predictable danger that may lie in the introduction of the law as currently proposed is that the precedents set by a series of previous corporate manslaughter cases may be marginalised. The offence of corporate killing in that it establishes a specific corporate offence, may have the effect of marginalising this offence, or distancing it from mainstream criminal justice discourse and public discussion. The problem here is that if those corporate offences are seen as a separate category from “real crimes” in much the same way as regulatory offences are now, then their symbolic importance may be undermined (for a discussion of this position see Berman, 2000).

A further weakness that has been noted in some commentaries (see for example, Slapper, 1999; and Bergman, 2000) is that the new offences relate only to deaths caused by recklessness and carelessness. That these offences do not apply to injuries caused in the same circumstances can be regarded as a remarkable oversight. The irony that the new law ensures that justice arising from the new law will only be available if the victim is dead is a striking one.

We might also ask whether the problem of under-prosecution and under-enforcement will be remedied by the introduction of new laws, rather than new means of making investigation and prosecution effective.

Having said all this, the wider impact of the proposed changes in the law and the creation of the new offences in redirecting the criminal justice process towards corporate criminality should not be underestimated. First of all, although difficult to predict quantitatively, it is likely that the proposals will have a symbolic impact upon how corporate offences are to be defined and dealt with. Not least, it expands the means for labelling corporate crimes as crimes. Secondly, it is the case that these reforms, if they actually appear, will signal a political will to deal with corporate offenders more seriously. It is instructive that since the reforms were first announced after the 1997 general election, there has been a sharp rise in the number of individual directors and businessmen convicted for manslaughter concerning a work-related death. Thus, there have been at least 10 such manslaughter prosecutions completed and 5 ongoing at the time of writing this piece (Corporate Crime Update, no 2, Summer, 2002). This is largely related to new investigation and prosecution procedures adopted by police forces, the Health and Safety Executive and the Crown Prosecution Service, introduced shortly after Labour’s election. The new proposals may well provide the impetus for a new generation of reforms to criminal process procedures and judicial decision making. It is for those reasons that it is of the utmost importance to those who have been campaigning for so long for justice these proposals remain intact are not diluted by any consultation process.

To return, then, to the point at which our narrative started: the Home Office, bizarre as it may sound, has singled out the 8 industries who kill and seriously injure the most workers for to consult over the impact of this law. They have promised to consult other parties, but for the time being, it is only Britain’s worst killers (that is, of the ones we know about) who have the government’s ear. The rationale is exactly that noted above (and is expressed with no irony): the employers in those industries are “the most likely to be affected by the new offence”!⁴¹ In this spirit of open government, industry representatives are invited to estimate the costs and inconveniences that this new law is likely to cause them.

Apart from the mind-numbing sycophancy of its tone, the letter is revealing and includes some more detail suggesting what the law might eventually look like. And there are some further controversial issues. Crown immunity will remain intact, company managers and directors will not be prosecuted for significantly contributing to a corporate killing, and company failures will be measured not by objective standards, or by what the public expect, but by the ‘industry standard’. The latter point in particular may not go down well with workers in the construction industry, where the ‘industry standard’ has ensured death rates are currently at a ten year high.

⁴¹ Full text of the government’s consultation letter can be accessed at <http://www.corporateaccountability.org/pressreleases/01Oct02.htm>

The consultation process therefore gives the representatives of the worst safety offenders something of a head-start in the debate and it is no longer increasingly unlikely that the promised bill will feature in this (November 2002) Queen's speech. But the government's willingness to consult now does suggest that the law may appear at some point in the not too distant future. The Home Office has indicated that it will at some point consult public services and voluntary and charitable activities on its plans for the new law. It goes without saying that if the views of those who represent workers, victims and their families, or indeed the public are sought, then the government might gain a rather different perspective on its plans.

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

a) Constitution

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 ten 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

Centre for Criminal Justice Studies

University of Leeds

Director	Dr David S. Wall
Deputy Director	Professor Adam Crawford
Executive Committee	Dr Yaman Akdeniz Mr Ben Fitzpatrick Dr Jo Goodey Mr Stuart Lister Prof. Juliet Lodge Prof. David Ormerod Mr Peter Seago (Chair of Advisory Panel) Mr Nick Taylor Prof Clive Walker (Head of Dept. Law) Dr David Whyte
Advisory Committee	(Chair) Peter J Seago OBE JP Dr Jan Aldridge (Dept. Psychiatry, Univ. Leeds) Mr Jeremy Barnett, (Barrister) His Honour Judge Ian Dobkin Dr Douglas Duckworth Mr Chris Dunford, Solicitor Ms Jane Gill, Leeds Magistrates' Courts Mr Colin Grimshaw MBE JP (West Yorks Police Authority) Chief Supt. Don Harrington (Director of Training, West Yorks Police) 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) Chief Constable Colin Cramphorn, West Yorkshire Constabulary 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.

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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):

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