

Religion, Faith and Crime

Theories, Identities and Issues

EDITED BY

KIM SADIQUE & PERRY STANISLAS



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Kim Sadique • Perry Stanislas
Editors

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*This book is dedicated to Reuben Sadique, Rebecca Stanislas
and in loving memory of Anna Doody.*

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Contents

1	Introduction: Religion, Faith and Crime in Context	1
	Kim Sadique and Perry Stanislas	
Part I Historical and Theoretical Context		19
2	The Effect of Religion on Crime and Deviancy: Hellfire in the Twenty-First Century	21
	Kim Sadique	
3	Is Lex Talionis ‘Caput’ in a Modern CJS?: The Religio-Cultural Context of Punishment	45
	Kim Sadique	
4	Disability and Religious Cosmologies: A New Interpretation of Disabilist Hate	67
	Alan Roulstone	

5	Faith, Mental Health and Deviance: Possession or Illness?	89
	Stephen Handsley	
6	Theorising Religion, Crime and the <i>System</i> of Criminal Justice: A Moral Economy Perspective	113
	Philip Whitehead	
Part II Identities and Issues		135
7	Cultural Beliefs, Witchcraft and Crimes in South Africa	137
	Theodore Petrus	
8	Challenges of Late Modernity, Religion, Homophobia and Crime: Police and Criminal Justice Reform in Jamaica and Uganda	167
	Perry Stanislas	
9	Child Sexual Abuse and the Church	191
	Jodi Death	
10	“Rejected and Dejected”: The Impacts and Contexts of Islamophobic Violence	211
	Barbara Perry	
11	‘If There Is a God I Will Be Allowed to Enter Heaven as All Other Martyrs’: Anders Behring Breivik and Religiously Inspired ‘Righteous Slaughter’	239
	James Treadwell	

12	Polygamy, American Style: Empire, Faith, Law and Bad Public Policy Jacob W. Petterchak	259
13	Power and Citizenship in the Social Media Networks: British Muslims, Crime Prevention and Social Engagement Noureddine Miladi	285
14	Spirituality and the Black Community: Criminality, Victimisation and Well-Being Bertha Ochieng	307
15	Changing Religious Influences, Young People, Crime and Extremism in Nigeria Perry Stanislas and Iyah Iyah	325
16	Faith and Identity in Prison Alison Booker and Helen Dearnley	347
	Index	375

Contributors

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Kim Sadique is Senior Lecturer in Community and Criminal Justice at De Montfort University, Leicester. Over the last 8 years her teaching, research and writing contributions have focused on critical forms of participation and engagement around vulnerable individuals and communities (e.g. radicalisation/extremism and hate crime). She is also interested in the religion–crime nexus in terms of prevention of and responses to crime. She has delivered training as part of the PREVENT Strategy. Her current research projects include work with young Muslims around faith, identity and belonging as well as taking on an advisory role in the National Youth Consultation on Extremism. Sadique is also on the Advisory Board for Tell MAMA (Measuring Anti-Muslim Attacks).

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James Treadwell is Senior Lecturer in Criminology at Birmingham City University. His particular expertise is on topics of professional and organised crime, violent crime and victimisation. He is the author of the revised and updated textbook *Criminology: The Essentials* (2013). He is perhaps best known as an ethnographic researcher and has used this method to study crime and violence in both prison and community settings. His recent work has involved using ethnographic research with rioters and EDL members, which has appeared, for example, in written work authored with Simon Winlow, Steve Hall and Dan Briggs (see *Riots and Political Protest*, 2015). He has recently been using ethnographic methods to conduct a large-scale study of violence and bullying in an English HMYOI prison.

Philip Whitehead is Professor of Criminal and Social Justice, Teesside University. He is also a founder member of the newly-created Teesside Centre for Realist Criminology under whose auspices he is researching moral economy and payment by results, developing a critique of the Big Society, in addition to writing on current transformations in probation and criminal justice. Prior to arriving at Teesside University in 2006–2007 he worked for the Probation Service for 26 years in the North East, and has authored numerous books and articles on probation and criminal justice. His last two books are *Exploring Modern Probation: Social Theory and Organisational Complexity* (2010) and *Organising Neoliberalism: Markets, Privatisation and Justice* (co-edited with P. Crawshaw, 2012). He has also written articles on community chaplaincy and the related fields of religion, crime and criminal justice, the latest being 'Shaking the Foundations: On the Moral Economy of Criminal Justice' with P. Crenshaw for the *British Journal of Criminology* (2013).

List of Table

Table 10.1 Police-reported hate crimes, by detailed motivation,
2010 and 2011

214

1

Introduction: Religion, Faith and Crime in Context

Kim Sadique and Perry Stanislas

This book explores the role of religion and faith in understanding crime and responses to crime. Religion and faith have been instrumental in the defining of individuals as deviants and/or criminals, the creation and development of legal systems, providing a rationale for penal philosophies and justifying mistreatment or violence. The range of actors and agencies involved, both with a religious or (as is often the case) an anti-religious agenda, make this a complex area to consider, but nevertheless, a vital one when examining issues of crime and criminal justice in the twenty-first century. Religion and matters of faith are still as potent a force in shaping social behaviour and interactions in the contemporary world.

Grace Davie (2013) in the second edition of her book, *The Sociology of Religion*, notes that across the social sciences (most of which emerged post-European Enlightenment and therefore should be markedly secular) research and debate around the topic of religion is in the ascendance.

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Davie also supports Habermas's (2006) assertion that all disciplines within the social sciences need to 'rethink [their] foundations ... in order to accommodate fully the implications of religion and religious issues in their analyses of modern societies'; this means 'accepting religion as it is, not as we would like it to be' (Davie 2013, p. xix). While much of ethnocentric Western social science has relegated the issues of religion and faith in society to something which can be viewed as passé and undeserving for ongoing critical inquiry, it has never ceased being important in human society and culture, particularly around issues with implications for criminal justice matters. This is the guiding principle for the contributing chapters which make up this collection. This book interrogates religion as a motivating factor, as well as a means to prevent, reduce and respond to crime and disorder which it explores in a number of ways.

Religion and faith have long been argued to be motivating factors for crime. Historically, debates around this issue have centred on religious oppression, the mistreatment of those who differ or do not comply with the supposed divinely-inspired design and norms. For instance, those with physical or other disabilities have been viewed as a taboo or synonymous with negative forces in Western and other cultures at different points of time, a notion that still informs contemporary thinking on the matter in various ways. In 1999, the England football manager Glenn Hoddle found himself in the centre of a national controversy when he commented during a press conference that disability was often a punishment for sins committed in another life (Arlidge and Wintour 1999). What was particularly surprising about Hoddle's remarks, which reflected his religious convictions, was the disconnect between his comments and how he was widely viewed as a young, very intelligent and forward-thinking individual. The incongruity between the modern and what was viewed as outdated and erroneous notions created a furore which drew government attention and led to Hoddle losing his job.

Religious beliefs have also played an important role in views and responses to matters such as different sexual orientation, and the use of (or delegitimizing of) other non-scientific knowledge systems and paradigms such as witchcraft which is illustrated in the notorious history in Western Christian countries on both sides of the Atlantic. The persecution and injustices done to those accused of practising witchcraft during

the seventeenth century gave rise to individuals such as the much-feared Witchfinder General Matthew Hopkins and similar figures (Gaskill 2006). While witch hunts are well documented in Western history, the attitudes that inform them have also played an important role in the Southern hemisphere where unfounded accusations can result in death through mob violence (Reisman et al. 2013, p. 11). Some of the explanations regarding this social behaviour are explored by Mbiti (1982) in his examination of precolonial African religious systems and the distinction between good and bad magic and societal responses to them.

While in modern and postmodern secular society concepts such as witchcraft are seen as a throwback to an earlier time, it is still a potent force in many countries and regions of the world. For example, in Tanzania the government was forced to intervene in the large-scale abduction and killing of albino children for ritual sacrifice: such lucrative activity often being linked to organised crime involving the rich and powerful (Beaver 2015; Makoye 2015). In Mexico, the cult of Sante Muerte (often viewed as a cult of evil and death) is closely associated with powerful drug cartels requiring spiritual assistance (News.Com 2014). In both instances the benefits believed to be derived from these activities are increase in the luck, protection and prosperity of those who seek to utilise these ancient belief systems. Any assumption that the types of beliefs that inform this worldview are limited to particular parts of the world is challenged by cases in the USA (Shoichet 2015) and Britain (The Guardian 2014) involving suspected witchcraft which have been associated with other crimes in some instances such as ritualistic sexual child abuse.

Perhaps one of the oldest influences of religion and matters of faith which has marked human society, which is critically examined in various chapters in this book, is its role in contributing to wars, serious civil unrest and violence. As in other areas of life, nothing highlights the complexities and subjectivities of matters of religion and faith to inform social behaviour and institutional responses as the ways these beliefs can legitimise violence against the 'unbeliever' or 'heretic'. Such violence has been synonymous with the major religions such as Christianity and Islam during different periods of history both as a rationale in terms of conquest and informing judicial systems established to adjudicate over those who do not share the prescribed worldview. This type of thinking is still a feature of many parts

of the world today in dealing with those defined as deviant as seen by the actions of extremist groups such as ISIL and similar formations.

Matters around faith and religion can also shape other forms of offending in a variety of ways. The research by Topalli et al. (2012) found many hard-core regular street offenders professed religious belief and identified with various Christian denominations and that it was possible for coexistence between belief systems that acknowledged the existence of a supreme-being or God and predatory criminal behaviour. In many ways this finding is not surprising when placed in a broader historical context where religion has been used to legitimise all forms of violence from rape, torture and the acquisition of the property of others by force. More generally religion and faith have been seen as contributing to greater rule compliance and law-abiding behaviour by most scholars on the subject (Grasmick et al. 1991; Matthews et al. 2011; Piazza 2012).

On the other hand, religious beliefs have been important in generating a respect for human life, seen as divinely inspired, and can manifest in a multitude of ways such as promoting attitudes of forgiveness, peace and reconciliation which can be seen in dedicated publications on this area such as the *Journal of Religion, Conflict, and Peace*. Religious influences and institutions have historically played a critical role in advancing charitable attitudes towards the poor, disadvantaged and destitute. This is illustrated in the work of one of the important pioneers of early English policing, magistrate John Fielding, brother of Henry Fielding, and his work with destitute youth and young girls, in particular in the establishment of orphanages and other charitable activities to protect the vulnerable and prevent crime (Downie 2009). What is remarkable about Fielding, who speaks about important issues examined by Alan Roulstone in this collection, is that he was blind, but he did not see this as an impediment to his God-given abilities as a man of faith.

The intersectionalities between religious beliefs and other social aspects of identity, such as race/ethnicity, class and gender, have been potent forces in shaping societies, culture and important aspects of global history and the contemporary world and structuring social and political inequalities, the contesting of power and social change. An undeniable dimension of this is how religious beliefs inform and reinforce notions of gender and masculinity in particular and dominant and competing

definitions of expected behaviour (Connell 1985). The way gender and religion can be interlinked and can manifest in the processes of dominance or resistance is illustrated in the articulation of what can be defined as muscular masculine religious outlooks, in confronting perceived adversaries, and a range of nationalistic or ethnic narratives. Religious worldviews can inform perceived gendered rights, particularly over others (such as women and children) and matters around heteronormativity (Herek 2004), familial systems and the number of wives males believe they have a right to *inter alia*. Religious beliefs can also facilitate forms of abuse and criminal behaviour, ranging from spousal violence to sexual abuse, and, as Petterchak highlights in Chap. 12 on North American polygamy, crimes that can include welfare and other forms of financial fraud. In short, religion and faith are not neutral paradigms and can serve existing power inequalities or serve to challenge them.

Another way matters of faith play a vital role in human affairs is in the lives of the dominated and victimised, who are subject to the superior institutional and social power of dominant groups and whose experiences of normal loss, injury or mishap, as in the death of loved ones, poor treatment at work, job loss and long-term unemployment (Essed 1991), can be compounded by their experiences elsewhere, such as victimisation by the police and criminal justice system. Chapter 14 by Bertha Ochieng explores the importance of matters of faith to specific ethnic minority communities and its critical importance to their individual and collective physical and emotional well-being in their day-to-day lives. A related and potentially troubling dimension of this is how the historical experiences of particular groups and the role of religion have structured those communities in representational terms, which is seen in the experiences of postcolonial south Saharan Africans and their descendants and the very prominent and potentially disproportionate role played by religious leaders and their influence in Africa, the Caribbean, and their diasporas (Haskin and Benson 2008; Hackett and Soares 2015). One of the adverse consequences of this highlighted by Stanislas and Iyah (Chap. 15), is the creation of a potentially predatory and self-interested male religious leadership elite in the Marxian sense, which profits from the misery, financial resources, and not uncommonly the bodies of their followers in terms of sexual or extra-marital relations (Nshe 2011; Marie 2014; Akbar 2015; Atlanta Black Star 2014).

Today, we only need to look at the mainstream media for examples of how religion is linked to concerns around international terrorism, hate crime or child abuse to recognise its potency in informing contemporary debates and its enduring legacy in human civilisation and culture. Religion and faith are important motivators for change 'of the system'. The Quakers (Society of Friends), for example, have a long history of activism in prison reform and development of rehabilitation and therapeutic regimes, as well as 'of the individual' in terms of identity and/or desistance from crime. Underpinning these contributions to criminal justice matters is a view of human potential rooted in faith about the transformative attributes believed to be possessed by most if not all individuals. Even in cases of offenders whose behaviours are viewed as beyond redemption, religious-type discourse has been critical in framing how such individuals are perceived as highlighted through the use of terms such as 'evil' or 'depraved' which can be found in human cultures around the world at different points of time and utilised in a variety of ways (Romig 2012; Russell 2012). These notions and their legacy have left a lasting impact on criminal justice discourse and practice to this day, and as part of our shared and often unrecognised cultural inheritance.

Despite the centrality of religious and related matters to the origins, development and ideas which inform criminal justice systems in both early and contemporary societies, there is a lack of literature, and books in particular, on this important topic. This is particularly striking given how religion and matters of belief impact on every aspect of criminal justice from the motivations and constraints against offending, the response and understanding or sensitivity of the police, courts and their influence on witnesses, and matters of punishment and governmental attitudes. It is the intention of this collection to bring together emerging and established scholars and practitioners to discuss crime and responses to crime through a religious/faith-based lens drawing on experiences across the globe. For example, chapters describe multifaith responses to crime prevention, the role of faith in prison and the influence of morality in the strengthening of social capital and the maintenance of social order.

Of equal importance is how moral-based arguments rooted in religious doctrine inform social policy debates and conflict with new hegemonic orthodoxy, as illuminated by Whitehead in Chap. 6. The book

aims to clearly position religion and faith within ‘mainstream criminological theory’—helping the reader to draw conceptual links, as well as reflect on their own beliefs/identities and how they engage within a multifaith society both domestically and internationally. More practically, the book seeks to contribute to the knowledge base of those engaged in international work or studies where matters around religion and faith are strongly felt and helps to throw light on many of the complexities often involved. For example, religion, ethnicity, regional and tribal affiliation and their intersectionality play an important role in understanding social identity and aspects of behaviour in various parts of the world that have implications for the criminal justice system. This can be seen in crimes committed in the context of civil wars and conflict as well as in specific forms of victimisation in culturally diverse countries such as Nigeria. These tensions underpin regional issues of concern with significant implications for national development and stability and international relations.

Book Structure

The book is divided into two sections. The first section addresses the historical and theoretical context, and chapters within this section look at key criminological theories and discuss the role of religion in the defining and labelling of criminals/deviants and the ideas that inform the development of legal systems and penal philosophies.

Part I opens with Sadique’s review of the literature on the religion–crime nexus. The chapter sets out the key philosophical, sociological and criminological theories regarding religion, faith and crime. It discusses Weber’s ‘Protestant Ethic’, Marx’s view of religion as a social construct that supports and justifies social inequalities, Comte’s belief that religion is the root of social order and Durkheim’s idea of it as an integrating force in society. This chapter explores why religion is important to criminology, as well as setting out the literature to date, and considers some of the problems inherent in answering the question ‘Does religion deter crime?’

Chapter 3 postulates that there are pre-enlightenment influences that have distinctively shaped our penal systems and notions of justice that

are neglected in the criminological literature. These influences are religio-cultural in nature and Sadique argues it is clear to see the significant role they have played in the creation and development of legal language, penal philosophies and justifications for the use of state-controlled penalties. The chapter focuses on religio-cultural cosmologies of ancient Greece, Rome and the Abrahamic faiths and their influence on punishment and notions of justice. It highlights passages from holy texts and philosophical treatises in which the rights of man to administer justice and law on God's behalf are set out and critically examines belief in the 'moral right' to punish. Through the concept of *lex talionis* the chapter explores the development of penal philosophies and practices across these religio-cultural contexts and goes on to suggest that there are commonalities in all three that demonstrate a shift from natural (retaliatory) justice to the cosmologies of power and thence to the technologies of power, so relevant to today's notions of modern penality.

Chapter 4 by Roulstone discusses the links between religious cosmologies and how these have shaped wider social norms regarding disability and in turn underpin aspects of criminal justice response. It notes that throughout history, disabled people have faced ridicule, hate and mistreatment. Whether as changelings, evidence of the fall of Adam in the Garden of Eden, effects of the sins of their forefathers, or more recently as risks to the racial gene pool, the deformed, the obviously different, the frail and learning disabled have come to represent at best an object of pity or potent symbol of 'man's' imperfections in wider social cosmology. This chapter reflects on historical assumptions derived from religion, magical cosmology and 'science' in constructing and reaffirming the otherness of disabled people. It goes on to argue that these deep-rooted ideas continue to limit the response of the CJS to disabled people's concerns, rather placing them within a 'protection' system. Roulstone suggests that such a cordoning off of criminal justice system response reflects the age-old assumption that disabled people (especially those with learning difficulties) need to be protected and live within parallel and special systems—schools and institutions. Even the push to deinstitutionalisation has not exorcised such assumptions. The chapter concludes by noting that in part, religious and cultural archetypes underpin some frames of reference with which to understand and treat disability, whilst making

clear that early religious texts are not to blame for all disablist hate. It also suggests that what many of the religious belief systems would adhere to are notions based on the 'Good Samaritan' and such belief systems can also be of comfort to victims of disablist hate through the concept of forgiveness.

Chapter 5 by Handsley focuses on the relationship and interplay between religion, faith, criminality and mental health. It begins by briefly charting the history of the way that mental disorders have largely been attributed to those who possess some sort of demonic and deviant trait and how lunacy has often been ascribed to particular religious denominations. It then goes on to consider the many multilayered and multidimensional perspectives, some of which suggest how, for example, psychiatry has been used by society to punish and control sufferers of mental illness as a way of suppressing religious deviancy. The chapter draws upon a broad range of influences of religiosity on identity to demonstrate how these serve as social and cultural markers in the production and reproduction of an individual, collective, communal identity as opposed to the organic, predisposed possession of delirious devotion. The chapter also argues that an understanding of concepts of culture, and their respective ontology, is fundamental in the successful development and provision of culturally competent mental health services.

Whitehead's chapter on the moral economy (Chap. 6) ends Part I of the book by exploring a more contemporary view of the role of religious ideas and how they inform attitudes to crime and punishment in neo-liberal thinking. It traces the changes from the rehabilitative ideal that was underpinned by religious morality to more market and performance driven policies, reinforced by government commitment to reduce the number of people incarcerated. He highlights a little known fact that despite its tough stance on many economic and social issues, the Conservative government held a progressive attitude to the issue of punishment.

Whitehead shows how the New Labour government that came into office in the late 1990s departed from the consensus that informed criminal justice matters to embrace a new penal populism. Underpinning this change was a wider economic imperative driven by concerns about efficiency, value for money and other neo-liberal ideological concerns which

had been introduced by the previous Conservative government. Of particular significance are the important inconsistencies around morality found in the behaviour of both the Conservative and Labour administrations and the reasoning that underpinned their policies. The chapter explores the ramifications of government policy and attitude on contemporary criminal justice matters and the new moral climate and its impacts on communities and the population.

The second section of the book contains chapters relating to the role of religion and faith in the construction of personal and group identity in terms of offenders, victims and professionals within the CJS, as well as addressing issues of crime prevention/reduction and responses to crime—often within the context of ‘faith in action’.

We start with a discussion of the interwoven nature of culture and belief systems which inform faith and social behaviour in Chap. 7 by Petrus on witchcraft-related crime which begs the question, how do we define crime and how do we decide who is the criminal? This chapter examines some tough and challenging intellectual and ethical issues about cultural beliefs and perceptions of crime and notions of harm utilising anthropology to explore the issue of witchcraft and criminal justice responses in South Africa. At the heart of this topic are cosmological belief systems and outlooks which inform the everyday social reality of individuals and groups and how that can be reconciled with policing and criminal justice systems underpinned by Western legal rationalism that rely heavily on particular types of reasoning and burden of proof.

Petrus demonstrates that despite efforts of colonial rulers and postapartheid governments to eradicate witchcraft, largely through legal means, it remains a potent force demonstrating the strength of primordial and precolonial beliefs and their clash with modernity. The right of freedom of faith, religious belief and cultural practices is enshrined in the South African constitution and its vision of a plural society. The continuing belief in, and practice of, witchcraft provides a stringent set of tests of these ideals. This along with the practical complexities which the criminal justice system must untangle are explored by Petrus.

In Chap. 8, Stanislas illuminates the paradox of modernity in undermining inclusive and complex attitudes to sexuality, and other issues such as gender, which existed in precolonial African societies and the role

of Christianity as both a modernising force and a source of values and practices which retarded societal and cultural development in colonised countries in sub-Saharan Africa. These matters are brought to the fore in contemporary controversies around homophobia and homophobic crime and highlighted in case studies of the Caribbean countries of Jamaica and Uganda in East Africa.

Stanislas examines the critical role of masculinity and the impact of economic inequalities and lack of opportunities, shaped by macroeconomic factors and the weak economies of postcolonial countries, which have contributed to anxieties around masculinity that have created an environment conducive to popular homophobia, which is intrinsically tied to anti-Western attitudes. Of particular importance is the role of religious beliefs and the Christian Church on both sides of the controversies that reflects debates taking place in Western societies.

Chapter 9 by Jodi Death considers the issue of child sexual abuse within a faith context, focusing on abuse by people with 'religious authority' in the Roman Catholic Church. It draws on examples from the USA, Ireland and Australia, jurisdictions which have seen significant intervention at the State level either through support for civil litigation or through public inquiry and consequent outcomes. Death suggests that such inquiries continue to be extremely significant to discourses of child sexual abuse in religious institutions and have become central to survivors' pursuit of justice. It highlights a number of reports that provide insight into the function of institutional culture and structure within Christian institutions that enable abuse to occur and concludes by suggesting that until there is acceptance of accountability by the 'Church', the traditions, structure and culture of such institutions will not be sufficiently challenged to address the root causes of child sexual abuse in these contexts.

Barbara Perry then provides us with empirical evidence on the issue of Islamophobic hate crime and the impact it has on individuals and communities in Canada. While not as prevalent in Canada as in the USA or UK, Islamophobic violence continues to affect Muslims in this country. The nature of Islamophobic violence, targeting of Muslims and the distrust of the system forms part of the discourse as well as vulnerability and the impact of anti-Muslim violence on victims and non-victims alike: from elevated fear of victimisation, to withdrawal, to behavioural

changes, to disillusionment with Canada. Drawing on a cluster of surveys, interviews and focus groups, this chapter begins to paint a picture of these wide-ranging impacts. The cultural contexts for violence in terms of political rhetoric, the media, public perceptions and ‘othering’ are discussed. The final section of the chapter looks at ‘confronting Islamophobia’ on both an individual and collective level in terms of mobilisation and engagement, education and ‘finding a voice’.

Treadwell’s chapter (Chap. 11) argues that the deterrent effects of religion on criminal conduct have been highlighted by criminological research (see Chap. 2); however, more recent accounts indicate that, paradoxically, religion may have a counterintuitive criminogenic effect in some specific contexts. It has recently been argued that through purposeful distortion or genuine ignorance, some offenders are able to exploit aspects of their interpretation of religious doctrine to neutralise their fear of consequences and justify their offending. Specifically, by examining the case of mass killer Anders Behring Breivik (the perpetrator of the sequential bombing and mass shooting on 2 July 2011 in Norway) via use of his manifesto and biography, this chapter considers the way in which his actions can be read as a particularly pragmatic and religiously inspired form of ‘righteous slaughter’ (Katz 1988). However, confounding Katz’s original use of that term, it suggests that in this context, while similar processes are at play, there are differences in that lethal violence typically occurs with premeditation and in a calculated manner rather than ‘in the moment’. It argues that in order to understand violence of this type, psychosocial understandings of humiliation and rage remain the crux, as they do in many forms of extremist hate violence.

Treadwell contextualises this problem in terms of ‘vicarious religion’ and the notion of belonging without believing, prevalent in the Nordic countries of Europe. Within this the Church is seen as a protected public space that is available to the whole community ‘at the moment of need’ and a place where ‘protest could become explicit’ and Treadwell questions whether Breivik turned to the ‘Church’ (as both a symbol of national identity and of protest) in response to what he saw as his (and his country’s) personal and collective crisis—the religio-cultural annihilation and ‘Islamisation’ of Europe.

Chapter 12 by Petterchak examines the cultural and religious diversity in the USA by focusing on the practice of polygamy; it explores its indig-

enous roots in Native American cultures and also its ancient Western origins prior to being transplanted to North America by immigrants. The chapter explores the tensions between groups of new migrants and their Christian-based beliefs and the emerging legal framework of the new British colony. Petterchak highlights from the inception of British dominance of North America it outlawed bigamy to reinforce monogamy as the only form of recognised and familial arrangement and elaborates the experiences and rationale that brought this about.

This chapter charts how despite laws against polygamy it has been allowed to flourish, being promoted by such religious groups as the Mormons, who rely on extreme interpretations of the religious teachings to support such practices. Further, it is argued that owing to the federal political and legal system and the influence of religious groups at the local political level there has been a reluctance on the part of the police and other state agencies to intervene. These dynamics have contributed to conditions which have protected the historic autonomy of particular religious communities in parts of the USA. Various forms of crimes, such as concerns over child and domestic abuse, have drawn critical attention to polygamous marriage which is examined in the chapter.

The role that religion, ethnicity and regional identities have played in the political instability which characterises postindependence Nigeria is the focus of Stanislas and Iyah's chapter (Chap. 15). Of particular importance is the impact of religion on young people. The chapter outlines the political turbulence and fight for power and representation between the major ethnic and religious communities which has resulted in decades of bloodshed and instability and the history of maladministration, corruption and discrimination that has blighted this resource-rich and promising nation. The chapter focuses on the experiences of young people, the fastest growing section of the Nigerian population, with correspondingly very high levels of unemployment and poverty. It goes on to show how youth poverty is driving the major crime problem which is threatening internal security, national development and Nigeria's international reputation.

The chapter highlights how maladministration and the ineffectiveness of adult political and other significant leaders, including religious leaders in many instances, have a detrimental impact on the confidence of young

people which has weakened their legitimacy. The authors illuminate how regional conflict involving the Muslim population and Federal government has created a national crisis and has spurred a number of extremist radical Islamic groups, with Boko Haram being the best known. The extreme intercommunal violence is detailed, along with the crucial role of young people in this process.

In Chap. 14, Miladi examines how new social media and networks provide vital resource in young Muslims' ability to create space to positively represent themselves and their communities in ways which reflect affirmative identities. The experiences of young Muslims is both similar and significantly different from that of their elders who initially settled in the country. Common to both are experiences of discrimination and hostility highlighted in their misrepresentation, as seen in the increase of Islamophobia which the chapter examines. The chapter charts the similarities between young Muslims and other British ethnic minorities, who have gone through similar experiences and how the process of creating their own safe self-reaffirming social spaces is a vital strategy used by these groups.

At the same time Miladi recognises how such spaces and contemporary technologies have been utilised by extremists contributing to their radicalisation both within sections of the British Muslim communities and white nationalist activists such as Anders Brevik (see Treadwell's chapter). An important feature of the contemporary Muslim world, reflecting globalisation and postmodern society which is explored in the chapter, is how new media in the forms of papers, online forms of communication and interaction, and television stations from around the globe are creating space that provides important benefits for young Muslims and the Muslim world more generally.

How discriminated British ethnic minority communities cope with their experiences and the role of religious belief in that process is explored by Ochieng in Chap. 14. While religious and spiritual beliefs have been noted as being important in individual coping strategies to a range of life matters, the chapter explores its crucial importance to people from African and Caribbean communities, in the maintenance of physical and emotional health and well-being. Of particular relevance is how spiritual belief, which may be viewed as the individual's quest to understand and attribute

the meaning of life in sacred terms, can reflect religious belief as one of the ways used by these communities to negotiate and respond to events in their environment. Specifically, the importance of spiritual values in the maintenance of healthy family life, especially for women, is explored in the chapter.

The chapter is based on empirical research and highlights the impact of faith as a protective factor in the lives of black communities, as illustrated in various ways. Ochieng demonstrates how a religious and spiritual framework provides complex explanations and understandings of the treatment and experiences of black people and non-conflict and holistic resolutions for many individuals. The chapter calls for a greater recognition of the religious and spiritual identities of Black people in areas such as victim support and counselling, with implications for issues such as rehabilitation and for black religious leaders to take a more prominent role in criminal justice and associated matters.

Chapter 16, 'Faith and Identity in Prison', charts the development of Prison Chaplaincy and the increasingly multifaith dimension of such work. Booker and Dearnley (both serving Anglican priests) demonstrate that Christian ministry is theologically underpinned by the concept of 'find[ing] the humanity in each and every person' and within the wider Christian understanding of ministry to those in need, that this defines and gives a mandate for work in prison and with prisoners. The chapter notes that although we have not lost our fascination with prison we appear to have 'lost faith' in it.

The chapter highlights the disproportionately high numbers of prisoners from some minority faiths and addresses questions of disaffected community identity. It goes on to demonstrate the role of faith as a counter to the dehumanising process of prison and the Chaplaincy's role in this. Booker and Dearnley explore the changing nature of identity in prison and put forward a model of how a prisoner's identity is deformed, formed and reformed throughout incarceration and in preparation for release. It suggests the personal experience of becoming a prison chaplain holds within it a reflection of the prisoner experience in relation to identity formation. The chapter asks 'How do we keep faith in the System?' and highlights the need for further structural changes to Prison Chaplaincy in response to the Transforming Rehabilitation agenda.

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Part I

Historical and Theoretical Context

2

The Effect of Religion on Crime and Deviancy: Hellfire in the Twenty-First Century

Kim Sadique

Introduction

Since the early twentieth century there has been a desire to understand the effects of religion on crime and deviancy (Lombroso 1911; Kvaraceus 1944; Schur 1969; Bainbridge 1989); however, definitive evidence of an effect has not been forthcoming. The key question that remains for many scholars is 'Do religious beliefs and behaviours prevent crime and/or deviancy?' The presumption has always been that it does have a preventative effect, but the unequivocal proof and the reasons behind such 'effects' are elusive. Certainly, the common sense view is that 'religion reduces the likelihood of crime', and research in both Britain and the USA suggest that at least one-third of the citizens in these countries believe that religion provides a sociocultural and/or spiritual foundation for preventing criminal behaviour (Banks et al. 1975; Jensen 1981). However,

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it would be remiss not to consider that in the current climate with countless conflicts defined as 'religiously motivated', issues regarding both the sexual abuse of children by 'people of faith' and the increasing number of Islamophobic attacks, some may argue religion causes (rather than prevents) crime and deviance. This is addressed in a number of chapters throughout the book, as is the role of religion in identity formation.

This chapter explores key philosophical, sociological and criminological theories regarding religion, faith and crime. It discusses Weber's 'Protestant Ethic', Marx's view of religion as a social construct that supports and justifies social inequalities, Comte's belief that religion is the root of social order and Durkheim's idea of it as an integrating force in society. This chapter sets out the literature to date and considers some of the problems inherent in answering the question, 'Does religion deter crime?' It concludes by highlighting considerations for future research.

A number of theories and models have been put forward to address the relationship of religion with crime, some mainstream sociological and criminological theories (Social Control 1969; Differential Association 1947; and Rational Choice 1986), social psychological (Cognitive Dissonance 1976 and a range of maladaptive personality theories 1950s–1970s), biological theories (Arousal theory 1964) and others specific to the 'religion/faith' focus (Hellfire Hypothesis 1969; Moral Messages 1982). One of the main problems with studies on religiosity and crime has been a lack of guiding theory, and for those studies theoretically underpinned, the focus has been ill-defined in terms of overly broad theories, poor conceptual frameworks and methodological failings.

Functionalists and conflict theorists have contributed to the debate surrounding religion and social conformity. Functionalist perspectives are founded on the basic assumption that social order is determined by adherence to collectively shared values and beliefs (Parsons 1937, 1951). Individuals are therefore unlikely to consider deviance if they internalise moral commitments based on such shared values. Potential feelings of guilt and/or moral repugnance will curtail such behaviours.

Religion supports the internalisation of shared values through formal and informal control mechanisms (authority, peer and family influence) as well as through applying supernatural sanctions to moral messages which generally correspond to the behavioural norms of wider society

(do not steal, do not kill). Attendance at a place of worship or participating in religious activities reinforces and strengthens internalised moral commitments and therefore should be a predictor of social conformity (at least to those norms that are morally founded). Comte (1830–1842) viewed religion as binding society together through a common set of beliefs. He also believed it was indispensable for legitimising the rule of law and power of government and was at the root of social order.

Weber in *The Protestant Ethic and Spirit of Capitalism* (1976) argued that Protestantism (in general, but more so in specific sects such as the Calvinists) required more from its members than did Catholicism. Protestant 'entrepreneurs' worked 'religiously' to be successful in their 'calling', and being lazy was an affront to God. He suggested that they were continuously striving for a sign that they were one of 'The Elect', chosen by God to receive abundance in Heaven (but also rewarded for their religious commitment to the work ethic in this life). Therefore, differing social status was down to an individual's level of religiosity, the poorest being seen as the least religious and amoral (the deviants, criminals).

Conflict theorists, such as Marx and Engels, generally maintain that religion is a mechanism by which those in power mollify and control those subordinate to them. Seemingly, for those who embrace religion, the promise of supernatural reward in an afterlife (heaven, karma, etc.) or social status being ordained by God will be more accepting of unequal social conditions. The work of Merton (1957), although from a functionalist perspective, often borders on conflict theory in terms of 'dysfunctions' of society. He would argue that if religion is an opiate, it lessens the frustration of striving for unattainable worldly goals by diverting an individual's focus to the rewards promised in the afterlife. As a result, religion facilitates acceptance of inequality and inhibits deviation from society's norms and therefore crime.

Criminological Theories

Social Control Theory (Hirschi 1969; Marcos et al. 1986): Hirschi's control theory argues that there are four key components that are fundamental to decisions regarding our behaviour. *Attachment*, which contains

a moral element, suggests individuals consider the anticipated reaction from those to whom they are attached. Fear of disapproval from family or friends can have an inhibiting effect on behaviour. *Commitment* contains a rational element, where individuals 'weigh up' the cost of losing 'investments in conventional activities' such as gaining a qualification, establishing a good reputation or building a business (Matsueda 1989, p. 430). A cost-benefit analysis takes place, and if the cost of losing the qualification, reputation or business outweighs the benefits of the 'act', the act may be prevented (e.g., plagiarism, fraud, an affair). *Involvement* in such conventional activities, such as being in education or employment, limits the time available to undertake deviant or criminal acts. *Belief* in the moral order (and its legitimacy) is said to reduce the likelihood of immorality and deviancy. Thus, the strength of such attachments, commitments and beliefs as well as the level of involvement should independently and cumulatively suppress deviant activity. For Hirschi, this is a single set of beliefs in society which make up the 'conventional moral order'.

Hirschi, unlike many control theorists, suggests that an appreciation of individuals' attitudes and values is integral to our understanding of criminality in terms of why they choose to conform and any change in such attitudes and values that allow them to deviate. What also sets Hirschi apart from other control theorists is his belief that deviance is innate (rather than being culturally relative as pioneered by Sutherland's Differential Association Theory), that conformity is based on having one or more of the four components and that to deviate from the moral code is due to an 'absence of something' (the necessary conditions). Therefore individuals with strong bonds are less likely to 'succumb to temptation' (note religious language) but an absence of strong bonds leaves a person free to deviate (although they are not encouraged or forced to do so). Hirschi argues that such 'strength of belief in the moral legitimacy of conventional rules' is variable and therefore the resulting deviance or conformity depends on the strength of such belief.

Religious institutions, similar to family and schools, are hypothesised to inculcate normative beliefs and cultivate individual attachment, commitment and involvement to both the community and wider society (Marcos et al. 1986). Although matters of religion were not directly addressed in the original model, Social Control Theory would maintain that through

strengthening an individual's bond to society, religious institutions should prevent crime. But as will be seen from the empirical evidence, some types of deviance are more acceptable than others (by individuals or groups), and what Social Control Theory fails to address is why, when people do commit deviant acts, one particular act is chosen over another. So for control theorists the direction of deviance appears to be beyond social explanation and they can only say why some people choose not to deviate, not why they commit certain acts in particular (Elliott et al. 1979; Hirschi 1969). Gottfredson and Hirschi (1990) clarify this point further by distinguishing between 'criminality'—the relatively stable differences among individuals in their propensity to deviate—and 'crime'—the event of breaking the law (Arneklev et al. 1998). According to Hirschi (1969), social control theory provides a robust explanation of criminality (the tendency to act on short-term impulses rather than long-term planning) but only a partial explanation of specific incidences of crime. Further research is needed to address the process of moral reasoning and moral judgement making, particularly in terms of choice of act. Additionally, sociobiological, rational choice or opportunity theories need to be considered to elucidate type and timing of crime occurrence (Piliavin et al. 1986).

Secular Constraints posits that individual 'religiosity' loses influence when non-religious moral effects from attachment to parents or peers are controlled for. Secular sources of morality therefore appear to attenuate the religion–delinquency relationship (Albrecht et al. 1977; Cochran et al. 1994; Elifson et al. 1983) both through informal social constraints as well as more formal legal deterrents.

Social Ecology theories assert that social context plays a role in religion's effect on crime. Social Integration Theory contends that neighbourhoods provide a community-level reference group where the degree of social integration appears to have an inverse relationship with levels of crime (Shaw and Mackay 1931; Sampson 1985, 1986; Taylor and Covington 1988; Skogan 1990). Sampson (1986, p. 278) suggested that

high levels of family disruption in a community may interfere with individual and collective efforts of families to link youth to the wider society [achieving social integration] through institutional means such as schools, religion & sports.

Family disruption and transient populations create a less stable or ‘socially organised’ community impeding the development of local standards of behaviour and systems of informal/formal social control including churches (Evans et al. 1995).

Differential Association based on the work of Sutherland (1947) and Sutherland and Cressey (1978) emphasises the role of social groups on individual behaviour. It hypothesises that religion deters crime through both social selection and socialisation (Burkett 1993; Wright et al. 1999). In terms of peer selection (particularly in childhood) we choose to associate with those whose beliefs and behaviours are similar to, or compatible with, our own. So if we are law-abiding, we will choose to associate with others who are law-abiding and are therefore less likely to commit crime. If we hold religious beliefs, we will choose peers who share these or similar beliefs. Through socialisation the influence of religious individuals may alter the religious commitment of the group through positive reinforcement, thus further preventing crime (Burkett and Warren 1987).

Rational Choice Theory (Cornish and Clarke 1986; Grasmick et al. 1991a) asserts that people generally ‘weigh up’ costs and benefits of a particular behaviour before acting, including choosing to commit crime (Cornish and Clarke 1986). It could therefore be argued that a belief in ‘eternal punishment for wrongdoing’ (e.g. hell or reincarnation) acts as a further consideration for the religious person, especially for those who believe in a personal, omnipresent, omnipotent God who will see and judge all thoughts and actions. So, rational choice theory argues that people are deterred from committing criminal/deviant acts through perceived certainty and severity of informal punishment (although impact on behaviour may be variable depending on belief in forgiveness). Rational choice would further contend that individuals’ self-imposed sanctions are directly linked to their degree of religious commitment. Those who are strongly religious would experience a stronger emotional response to committing criminal/deviant acts (feelings of shame), whereas the saliently religious would experience a lower level of emotional response (feelings of embarrassment) from similar behaviours (Grasmick et al. 1991a; Baier and Wright 2001).

Reference Group Theory (Merton 1957) posits that the appropriateness of individuals’ behaviours and attitudes are evaluated against reference

groups (collections of people used as a standard comparison for ourselves, whether members of these groups or not). Those who belong to reference groups with whom they tend to share similar backgrounds and beliefs, definitively shape each other's behaviours and attitudes (Bock et al. 1987). Because individuals evaluate and control their own behaviour based on the behaviours and attitudes of those in their reference groups, any rise in morality within such groups will improve the behaviour of all group participants. So if the reference group is, or becomes religiously centred, then religion deters crime through the 'provision and intensification of group-level morality salience' (Baier and Wright 2001, p. 5).

Religion-Specific Theories

Hellfire Hypothesis (Hirschi and Stark 1969; Burkett and White 1974; Higgins and Albrecht 1977; Stark 1996) predicts 'that religion deters individual-level criminal behaviour through threat of supernatural sanctions and promotes normative behaviour through promise of supernatural reward' (Baier and Wright 2001, p. 4). As noted above, this hypothesis is inextricably linked to mainstream criminological theories in that the 'perceived certainty and severity of punishment' for wrongdoing is the overriding deterrent. The point of divergence is that here it is punishment (or reward) in a 'future life' which in Islam and at least in some forms of Christianity is a real and eternal prospect. Many of the 'Eastern religions' share a similar belief that an individual's actions determine what they have in this life and any future life/lives. In Hinduism, living one's life according to Dharma (virtue and morality—both individual and universal) should bring reward in this life and future rebirths (good karma) and failing to live a virtuous, moral life will bring bad karma. This may be for one or more future reincarnations as some Hindus believe in the possibility of 'eternal' salvation (some see this as being akin to the Abrahamic faiths' views on Heaven).

Moral Communities builds on Sutherland's Differential Association and Merton's Reference Group Theory and wider control theories (Stark 1996; Vazsonyi and Jenkins 2010). According to the Moral Communities Model, it is neither the degree of personal religiosity, nor offence type,

nor even religious affiliation that matters so much as community-level religiosity. It suggests that the effect of religion on crime is strongest in areas where there are high levels of aggregate religiosity.

Moral Messages Model proposes that denominational affiliation makes a difference to the religion-crime findings (Bock et al. 1987; Cochran et al. 1998; Hadaway et al. 1984; Nelsen and Rooney 1982). It argues that membership of the more conservative denominations has a strong deterrent effect and suggests that this is because such denominations ‘broadcast’ prescriptive moral messages, instilling members with moral values that inhibit crime (Evans et al. 1995).

The Empirical Evidence

In the last 60 years there have been a significant number of empirical studies looking at the effects of religion on crime/deviancy with an average of two studies a year being conducted between 1969 and 1998 (Tittle and Welch 1983; Sherkat and Ellison 1999), and the findings have ranged from religion having little or no effect on crime/deviancy (Hirschi and Stark 1969; Ellis and Thompson 1989) to religion having a significant effect (Rohrbaugh and Jessor 1975; Chadwick and Top 1993). It is therefore interesting that although such importance is placed on this question, most if not all criminology texts and academic courses completely avoid discussing the effect of religion on crime (Stack and Kanavy 1983; Ellis 1996). Ellis and Peterson (1996) note that this prompted Bainbridge to describe religion as criminology’s ‘forgotten variable’.

However, a small number of research studies continue to demonstrate the importance of understanding the effect of religion on crime, for example, Grasmick et al. (1991a), Ellis and Peterson (1996), and Baier and Wright (2001).

In what has probably been one of the most comprehensive studies to date, Baier and Wright (2001, p. 3) undertook a meta-analysis of 60 previous empirical studies focusing on two key questions:

1. *What is the direction and magnitude of the effect of religion on crime?*
2. *Why have previous studies varied in their estimation of this effect?*

In terms of the direction and magnitude of the effect of religion on crime, Baier and Wright (2001) reported that across all 60 empirical studies, there was no positive effect of religion on crime (it did not cause or support criminal behaviour). In fact, all 60 studies identified that religious behaviours and beliefs exerted a significant but moderate deterrent effect on individuals' criminal behaviour (although the extent to which this 'effect' was seen in individual studies was variable). As Grasmick et al. (1991a, p. 251) note, 'sociologists have concluded that at least some aspects of religion inhibit at least some kinds of illegal behaviour at least under some conditions'. But why is this?

Baier and Wright (2001) argue that there is a number of possible explanations as to why previous studies have differed so much: the moral community hypothesis, the type-of-crime hypothesis (also known as anti-asceticism hypothesis), and methodological differences.

Conceptual Approaches to the Effects of Religion on Crime: Explanations for the Variation in Findings

Moral Community Hypothesis

This model builds on the work of Durkheim and Hirschi in terms of social control and individual conformity (McCullough et al. 2000; Vazsonyi and Jenkins 2010), Sutherland's Differential Association theory (Burkett 1993; Wright et al. 1999) and Merton's Reference Group theory (Bock et al. 1987) by asserting 'that the deterrent effect of religion on crime is greatest in areas characterised by high rates of aggregate religiosity' (Baier and Wright 2001, p. 6). According to the Moral Communities Model it is neither the degree of personal religiosity, nor offence type, nor even religious affiliation that matters so much as community-level religiosity.

In fact, the character of Levin in Tolstoy's Anna Karenina, upon reading the second volume of Khomyakov's theological writings was taken with the idea that 'it is not given to isolated man to attain divine truth, but that it is given to a community united by love—the church' and that the church 'compounds all the beliefs of men, and has God at its head and

is therefore holy and infallible' (Tolstoy 1999, p. 777). For Homyakov, faith, belief and 'the church' are inseparable. The church provides truth, love and a sense of community for its members as well as reinforcing the Bible's 'code of conduct'.

Stark et al. (1982) argue that people are only bound to the moral order (by religion) if its influence permeates both the culture and social interactions of the individuals in question. Thus, clear personal religious effects would not be expected in communities characterised by a low level of religiosity (Stark et al. 1982, p. 7). Stark (1996) further clarifies this by explaining, 'The idea here is that religion is empowered to produce conformity to the norms only as it is sustained through interaction and is accepted by the majority as a valid basis for action' (p. 164).

Type-of-Crime Hypothesis

Ellis and Peterson (1996) found that at the individual level of analysis, evidence has accrued to support the hypothesis that those who are most religious (in terms of church membership/attendance) commit less crime than those who are least religious. They also note that at a societal level, countries that are more religious (religious belief and practice measures) have less crime than those that are less religious, although 'type of crime' has a significant effect on the findings. Burkett and White (1974) and Burkett (1980) claim that religion is a more effective deterrent of non-victim and ascetic crimes (e.g., gambling and drug use) than person or property crimes (e.g., theft and murder). Burkett contends that this relationship is the result of religious institutions acting in relative isolation to deter non-victim crimes, whereas many social institutions, both religious and secular, act in unison to deter person and property crimes (Burkett 1980 as cited in Baier and Wright 2001, p. 6). So, we should expect higher deterrent effects for religion in studies focusing on ascetic/non-victim crimes than those focusing on property and person crimes.

Wells and Rankin (1991) and Baier and Wright (2001) suggested that methodological differences impacted on findings across the available studies, and recent research has added further evidence of such issues. These differences included study design (general index crimes, non-victim

crimes and deviancy, varying/limited measures for religiosity), sampling procedures (non-probability vs. probability) and populations sampled (size of sample; predominantly young people, educationally selected; religiously selected vs. general population).

So we turn now to explore two key issues with the research to date—the almost singular focus on young people and problems with definitional issues as regards religion and religiosity.

Young People in Focus

As noted by Evans et al. (1995) the majority of research conducted up until 1995 had been on young people, with 85 % of studies drawn from high school, college or university. Such educational selectivity fails to include participants who have dropped out of education; those who are suspended, excluded or truants, leading to problems with sample validity and representativeness. This could have a significant impact on findings as those not in (compulsory) education are likely to be those who least conform to social norms. It is not clear whether any of the schools included in the studies were 'Faith Schools'. This may have had an impact on findings where single item measures relating to church attendance/membership were used as a measure of religiosity. Most of the studies did not control for peer/family influences and this may have confounded the results further.

Not only does the work by Evans et al. (1995) raise the issue of educational selectivity and conformity, but it also highlights the fact that most of the research on the religion-crime question was conducted using samples of young people. This is still predominantly the case (Desmond et al. 2013; Vazsonyi and Jenkins 2010) but as Welch et al. (1991) note the findings may not translate to an adult sample as,

Content, intensity and expression of adult religiosity ... are strongly conditioned by the characteristic of the religious community in which an individual functions ... it seems likely that contextual variation in the inhibiting effects of religion may appear in data collected from adult samples, even though it may be absent from samples of youth. (Welch et al. 1991 as cited in Evans et al. 1995, p. 199)

Within the discussion of maturity and religiosity, it is important to consider the work of Allport (1950). He suggested that there were two types of religious behaviour based on those who 'used it' (providing comfort, social recognition and status) and maybe even 'compliance' and those who 'lived it' (personally experienced belief providing motivation and meaning to a person's life). Initially, Allport called these two religious orientations 'immature' and 'mature' but later used the less value-laden terms 'extrinsic' and 'intrinsic' (Allport 1959). It could be argued that the original terms were more suitable, as defining features of the two orientations could be seen to be linked to maturity in terms of cognitive maturity—capacity for moral reasoning and judgement in adults and conformity to parental and peer influences in the young.

Church attendance, for example, may be less than voluntary for young people reflecting parental and peer influences (therefore being an unreliable measure of religiosity—Bock et al. 1987) as a result confounding the religion-deviancy association (Burkett and Warren 1987; Elifson et al. 1983; Tittle and Welch 1983). Therefore it is suggested that 'research on adults potentially more exclusively tests religiosity's effect' (Grasmick et al. 1991a, p. 252). However, few studies address the relationship between religion and adult deviancy and even less deal with adult criminality.

Religion and Religiosity in Focus

To date, much of the literature on religion and crime/deviancy has focused on Christianity (Hirschi and Stark 1969; Rhodes and Reiss 1970; Burkett and White 1974; Higgins and Albrecht 1977; Albrecht et al. 1977; Jensen and Erikson 1979; Hindelang et al. 1981; Stark et al. 1982; Stark and Bainbridge 1985; Cochran and Akers 1989; Welch et al. 1991; Stark 1996). This has shown itself in two ways—first, the questionnaires have framed research questions in such a way that to be of another faith would preclude you from answering many of the items. Also, even where questionnaires have provided the participants with the opportunity to state which faith they belonged to, most respondents provided 'Christian' as their identified faith group. It seems that much of the research on the religion-crime nexus has, like Mr Thwackum in Henry Fielding's (1749)

novel Tom Jones, declared categorically that, 'When I mention religion, I mean the Christian religion; and not only the Christian religion, but the Protestant religion; and not only the Protestant religion, but the Church of England'.

Tittle and Welch (1983) did attempt to separate out religious contexts (affiliations to particular groups), but the five analytical constructs used were Catholic, Jew, Evangelical Protestant, Mainline Protestant and Non-denominational Protestant. It seems that the focus has continued to mainly address the relationship between Christianity and levels of religiosity.

Grasmick et al. (1991b) sought to address gaps in the literature by examining denominational affiliation, personal religiosity and compliance with the law—but again the focus was on Christianity—although they did at least use an adult sample and are clear in their use of 'compliance with the law' rather than less well-defined constructs of crime and/or deviance.

Forty-nine out of the 59 studies on young people found an inverse relationship—so it could be said that 'religion truly does have demonstrable potent effects' (Cochran and Akers 1989, p. 221) on delinquency—but what about adult crime and deviance? They note that although the work of Tittle and Welch (1983) had identified six studies on the relationship between personal religiosity and deviance among adults, only two of these considered acts of deviance that were explicitly illegal (Tittle 1980; Blum et al. 1969).

They argue that proscription/prescription of specific behaviours by religion often overlap with secular laws 'so that sacred teachings reinforce the legal order' (Grasmick et al. 1991b, p. 100). They go further than this by suggesting that not only is it 'religion' (meaning Christianity) that mediates compliance with the law but that denominational affiliation may have an effect. So, more conservative, fundamentalist denominations may have a stronger effect in promoting compliance with the law. Within these denominations, the 'moral message' (Bock et al. 1987) is belief in the Bible as inerrant and that it should be interpreted literally (Boone 1989; Jelen 1989; Smith 1990). Thus those from conservative denominations should be more disposed to compliance with both religious teachings and secular laws. One of the main problems is the categorisation of what

is conservative/fundamentalist. This arises in a number of studies due to measurement issues arising from not using an empirically grounded classification scheme such as that designed by Glock and Stark (1965, 120). This was highlighted as a concern in the studies of denominational affiliation and juvenile delinquency by Jensen and Erikson (1979), McIntosh et al. (1981), Nelsen and Rooney (1982), and Cochran and Akers (1989) as well as the study of denominational affiliation and compliance among adults (Tittle 1980).

The wider socioreligious context needs to be addressed in terms of both conceptual and methodological failure as well as validity/representativeness of the sample. For example, the socioreligious context of geographical location and community/‘state’-level religiosity as discussed by Stark (1996) in his critique of his and Hirschi’s original 1969 study.

Hirschi and Stark (1969) found religion had no effect on crime/delinquency (when commonsense suggests otherwise), but Stark (1996) noted that geographical location may have impacted on this as certain States in the USA are more religious (as a community) than others. He states:

Had we been working with data from East of the Rockies, we would have found that what everyone believed to be true, was in fact true [that religion had a small deterrent effect on crime] But, because we worked with California data, we got what was, for a few years, the most ironic finding about the causes of delinquency. (Stark 1996, p. 172)

Criminological theory has pointed to a number of significant predictors of criminal behaviour, such as alcohol/drug use, weak or insecure family ties, and low-community integration (Braithwaite 1989). The value systems of the Abrahamic faiths have often been associated with a negative view of substance use (especially alcohol), with strong family-based values and a concern for the local community (Argyle and Beit-Hallahmi 1975; Roof 1978; Spilka et al. 1987; Pettersson 1991). Social environments characterised by low alcohol/drug misuse, strong family ties and involvement in the community would consequently be expected to have lower levels of crime. Thus, there is a need for research into the religion–crime relationship at a structural level.

An international comparative study by Ellis and Peterson (1996) surveyed 17,266 adults in 13 industrial nations across Europe, New Zealand and the USA. In contrast to much of the research, its focus was on collective religiosity of the country and the effect of this on crime rates and sought to determine whether countries that were 'more religious' (religious belief and practice measures) had lower crime rates than countries that were 'less religious'. This is of interest to the social sciences as the USA is purported to be one of the most religious countries in the industrialised world (Gallup 1979; Ladd 1986) and yet has the highest crime rate of any industrialised nation (Schur 1969; Tonry 1994). Ellis and Peterson (1996) considered that their findings might run contrary to the individual level findings of previous studies and suggest that at a societal level there might be a positive relationship between religiosity and crime. However, their findings were largely consistent with individual level data, in terms of an inverse relationship which was strongest in relation to church attendance/membership. It also supported some of the previous findings in regards to type of crime (inverse relationship to property crimes). It must be noted that the evidence from previous studies where crimes against the person have been included supports no relationship between religiosity and crime, but Ellis and Peterson's study suggested there may be a slight positive relationship between 'personal-violent offences and certain measures of religiosity' (Ellis and Peterson 1996, p. 765). [It should be noted that the USA drops down the 'crime rate' list when figures for 'reported crime' are broken down from aggregate scores to 'per capita' (UNODC 2002)]. Personal violent offences are often linked to impulsiveness and low self-control.

Desmond et al. (2013) address the issue of self-control in the relationship between religion and substance use. Their findings suggest that overall religious young people display higher levels of self-control. Within the psychological literature self-control is seen to be a significant factor in mediating a variety of behaviours. Gottfredson and Hirschi (1990) argue that criminal and deviant behaviours are the result of low self-control and the opportunity to commit such acts. Self-control is established by parental influence (discipline), can increase with cognitive maturity but is generally stable from the ages of 11–12. However, religion (through both socialisa-

tion and involvement in activities) seems to play an important role in the development of, and increase in, self-control (Laird et al. 2011; McCulloch and Willoughby 2009; Vazsonyi and Jenkins 2010; Walker et al. 2007). A number of scholars has suggested that self-control is not stable at all and that it is conditioned by social environmental factors, such as 'prior self-control depletion, moral beliefs or choices, or community characteristics' (Desmond et al. 2013, p. 385; Arneklev et al. 1998; Muraven et al. 2006; Piquero and Buffard 2007; Tittle et al. 2004). Pratt et al. (2004) argue that community-level control and socialisation are as important as parental influence in developing self-control. Such suggestions could imply that religion may strengthen self-control into and beyond early adolescence. Similar to Arousal theory (Ellis 1987), the argument is that those with low self-control would not be attracted to religion and would find it difficult to participate in most forms of 'religious observance'. Desmond et al. (2013) suggest that the relationship between religion, self-control and substance misuse is as follows: religion affects levels of self-control and self-control partly mediates the effect of religion on substance misuse.

The relationship between self-control and religion is also examined by Vazsonyi and Jenkins (2010) in terms of religiosity and virginity status. Self-control or self-regulation (McCulloch and Willoughby 2009) is linked to conformity and thus positive adjustment of behaviour (Baumeister et al. 1994; Gottfredson and Hirschi 1990) and decreases deviance (Vazsonyi and Huang 2010).

Vazsonyi and Jenkins (2010) found that religiosity and self-control independently and cumulatively function as key social control mechanisms. Individuals internalise religious teachings that emphasise goal setting and delaying personal gratification (see also Durkheim, Engels, Weber above); this then directly affects an individual's level of self-control. Self-control was thought to be fairly stable but was shown to be malleable to a degree in the first decade or so of childhood due to peer influence, teachers, parents and other contextual influences such as membership of a religious organisation. Moreover, Smith (2003) hypothesised that part of the reason why religiosity has a positive effect on adolescent behaviours is because of internalised moral directives, those that promote both self-control and self-virtue. However, it must be noted that these moral directives are not necessarily the sole preserve of religion.

Conclusion

For centuries, criminal behaviour has been linked to 'the erosion of religion' (Pettersson 1991). At an individual level, that a man who is weak-willed allows himself to be open to Satan and his demons and that those who commit deviant or criminal acts are evil or possessed or lacking in moral fortitude (Garland 2002). Even in contemporary society, criminal behaviour is often explained by a lack of true faith (Lilly et al. 1989). Leading a decent moral life is seen by many as an inherently religious quality (Hamberg 1990). At a community or societal level, it has also been argued that the (concurrent) criminalisation and secularisation of society are profoundly related processes (Nagel 1961).

However, religion has the greatest effect on conformity when the following four contextual conditions exist; general normative ambiguity, low social integration, generalised perceptions of low peer conformity and a comparatively high percentage of unchurched (non-religious) people (Tittle and Welch 1983, p. 674).

However, it has been suggested that

the conformity generating features of religion are important influences on individual behaviour, but they are not unique to religion ... Therefore, religiosity can distinctly affect conformity only where the larger environment lacks the mechanisms that normally curtail deviance. (Tittle and Welch 1983, p. 674)

Spilka et al. (1987, p. 286) note that behaviour of religious people 'differs from that of non-religious people (only) when religious norms differ from those of society'.

So we may not yet conclude that the religiously involved commit fewer crimes, or in contrast that 'there are fewer criminals where atheists abound' (Lombroso 1911), without addressing the following research problems.

Most research on religiosity and criminality/deviancy has examined religion's effect on young people, where contextual influences such as those from parents or peers may impact on the findings and therefore, as noted by Welch et al. (1991), such findings are unlikely to 'translate'

to an adult sample. It is therefore crucial for research on religion's effect on crime and/or deviancy to be undertaken using an adult sample as Grasmick et al. (1991a) posit that results on adults may more directly test religiosity's effect.

Only a few studies have been able to control for age, gender, education, place of living and social status, all significant predictors of both criminality and religiosity. These factors need to be considered in any future research.

Most studies have not considered the multidimensionality of deviant behaviour and interchangeably use the terms deviancy, delinquency and crime. There needs to be further work on what it is we want to know regarding religion's effect on behaviour. Are we interested in crime (breaking of the law) or deviancy (not adhering to society's norms) more generally? Any research conducted on delinquency will necessarily have a specific focus on young people—but this should be made clear.

It is important to recognise that the religion–criminality relationship can be differently construed in different socioreligious contexts. The term 'religion' therefore needs to be explicitly defined in research and should be more inclusive of wider religious/spiritual contexts as much of the literature uses the term 'Religion' when they mean 'Christianity' and is produced with a focus on the West. Community and state-level religiosity must also be factored in, as this can have a significant influence on individual levels of religiosity.

The above issues would suggest that any observed association between religiosity and crime might be more complicated than suggested by the extant literature.

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3

Is Lex Talionis 'Caput' in a Modern CJS?: The Religio-Cultural Context of Punishment

Kim Sadique

Listen to right and do not foster violence ... The better path is to go by on the other side towards Justice; for Justice beats Outrage when she comes at length to the end of the race. (Hesiod 2008, Works and Days, 214ff)

Introduction

The tendency of most sociological/criminological studies of punishment (penology) is to argue that penal systems have a 'hidden social rationality' rather than or in addition to a simply penological one, often demonstrating a direct relationship between economic relations or social structure and penal processes. Yet, as Garland (2012, p. 193) notes 'values, sentiments and non-rational commitments form part of these analyses' too

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but rarely are they at the forefront of examination. It is also a tendency of penology (and criminology as a whole) to seldom look beyond the 'Enlightenment' or our own sociocultural contexts, as we accept that those days and those ways were the dark ages—a time before which we were truly 'enlightened'.

Whilst it is accepted that social structural and social change theories with regard to modern society and penality are inextricably intertwined with state formation and 'civilising' processes (Elias 1982), there are pre-enlightenment influences that have distinctively shaped our penal systems and notions of justice that are neglected in the criminological literature (Sadique 2014). These influences are religio-cultural in nature, and one can clearly see the significant role they have played in the creation and development of legal language, penal philosophies and justifications for the use of state-controlled penalties. It is not this chapter's objective to present the history of religion's influence on prison development and reform or the establishment of probation and alternatives to custody; this has already been addressed perfectly well by such scholars as Leeson (1914), Ignatieff (1989), Morris and Rothman (1995), Haxby (1978), Whitehead and Statham (2006), and Mair and Burke (2012). So, this chapter will diverge from the mainstream reformist discourse to focus on religio-cultural cosmologies and their influence on punishment and notions of justice. It will also highlight passages from holy texts and philosophical treatise in which the rights of man to administer justice and law on God's behalf are set out and critically examine belief in the 'moral right' to punish.

The Abrahamic Faiths

The principal source of the history and law of the Hebrew people is the Bible. It is a 'collection of writings' consisting of narratives, laws, poems and songs (Psalms) written by 40 different authors, over approximately 1500 years. It was passed down initially by word of mouth explaining why it took such forms as poetry and song. The core of ancient Hebrew law (and modern Jewish law) is the Torah (in Hebrew meaning 'law', 'wisdom', 'teaching'; in Greek, Pentateuch, the 'fivescrolls' or books of Genesis, Exodus, Leviticus, Numbers and Deuteronomy). At the heart

of the Torah is the covenant between God and Moses on behalf of the entire Hebrew people (Exodus 19–34; Deuteronomy 4–10), expressed in the Ten Commandments (Exodus 20: 1–17, Deuteronomy 5: 6–21) and subsequent legal commands (Peters 1995). These books are attributed to Moses (c. 1500–1300 BCE). The rest of the Bible consists of two other kinds of text, ‘the prophets’ (Old Testament from Joshua to Malachi) and the New Testament (consisting of the Gospels, the letters—many of which are attributed to one man, Paul the Apostle, and the Apocalyptic [revelation]), both of which are also of considerable historical and legal importance. It should be noted that there was a 500-year period in which no books were added to the Bible.¹ This was during the time of Alexander the Great when he conquered much of the region and when Greek (along with Aramaic) replaced the Hebrew language. It coincided with the end of the Old Testament and the beginning of the New Testament, and although the political and cultural shift was significant, it is often overlooked when considering the words of Paul (and others) in the New Testament in their wider religio-cultural context.

The accounts of law and justice in the holy books of the Abrahamic faiths are very much influenced by the rules of conduct laid down in the book of Deuteronomy. This book was written after the Exodus so was given as a ‘comprehensive review’ of the Israelite history but also reiterated the need not to repeat the sins of the past and to abide by God’s laws. Deuteronomy (meaning ‘second law’) reflects the repetition of laws previously laid down as a means to clarify this Covenant. Crime was considered a violation of the Covenant with God, as wilful disobedience to the commandments given to Moses (Mosaic Law).

The religio-cultural context is important here. The Israelites were people descended from Abraham but were not a single nation. The cultural context was a tribal one that was overshadowed by oppression and enslavement in Egypt. They were led to freedom by Moses, in what is commonly referred to as ‘the Exodus’. Because the Covenant established the Israelites (Hebrews) as a community of people, a theocratic nation

¹Apocrypha also known as the inter-testamental writing which is historically placed between OT and NT and is part of the Roman Catholic Canon of Scripture as well as various Orthodox denominations. For the purposes of this chapter the Church of England Canonical scriptures are used as ‘The Bible’.

(ruled by God), the main punishments used were death and exile, both physically removing the transgressor from the community, ‘So shall thou put the evil away from among you’ (Deuteronomy 19: 19, King James Version). The primary aim of removing the offender was to prevent the ‘wrath of God’ being brought down on the whole community. There are similarities here to penal philosophies of both the ancient Greeks and Romans, as well as to modern-day criminal justice, as you will see later in the chapter. It is also ‘inextricably intertwined with state formation (of the Hebrew people) and the civilising process’ (reaffirming God’s laws for a good society) (Elias 1982).

Because the book of Deuteronomy is a restating of the laws, it is a particularly detailed example of law and criminal justice for the Hebrews, addressing issues pertaining to criminal and civil law and to the administration of justice: the ten commandments, appointments of judges and officers of the court, procedures for use of the death penalty, laws relating to witnesses, as well as family law (including divorce).

In setting out such clear procedures, it provides an insight into the philosophies of punishment (many that we recognise today); *lex talionis* (‘equitable’ retributive punishment; proportionality), utilitarianism (greatest happiness of the greatest number) and deterrence (both individual and general).

The earliest account we have for the *lex talionis*, the principle or law of retaliation that a punishment inflicted should correspond in degree and kind to the offence of the wrongdoer, is the ancient Babylonian Code of Hammurabi c. 2000 BCE (earliest ‘complete’ legal code). Hammurabi avowed that this code was intended to eradicate evil and preserve justice so that the strong (rich) did not oppress the weak (poor). In the Bible, it is comprehensively set out in Exodus 21: 23–36 and reaffirmed in Leviticus 24: 20 ‘fracture for fracture, eye for eye, tooth for tooth; whatever injury he has given a person shall be given to him’ (King James Version). Some scholars suggest that the principle of *lex talionis* was ‘adopted’ by the Hebrews from their Egyptian captors and was one of many influences of the Babylonians upon Near Eastern cultures including Egypt, Assyria and Persia (Peters 1995). But for those followers of the Abrahamic faiths, their belief is that along with the Ten Commandments, further laws were given to Moses by God, ‘Now these are the judgements which thou shalt set before them’ (Exodus 21: 1).

Similar accounts are found in The Qur'an, in the book Sūra al Māida:

We ordained therein for them: "Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal". But if any one remits the retaliation by way of charity, it is an act of atonement for himself. And if any fail to judge by (the light of) what Allah [God] hath revealed, they are (no better than) wrong-doers. (5: 45, Yusuf Ali Translation)

Here lies a dilemma for believers, to forgive or punish: it is clear that both the Bible and Qur'an put forward that it is better to forgive, but if one is to punish, then it should be done in the spirit of justice.

There is of course much debate amongst scholars as to whether *lex talionis* should be applied literally. In regard to the Abrahamic faiths, there is an implicit expectation that it would be applied literally (particularly in regard to personal injury or death), but there are alternative 'compensatory' punishments noted, for example, if the injured victim is a slave, he or she shall be set free, so that the offender loses that part of his livelihood rather than his life.

It is unclear if the Code of Hammurabi was ever meant to be used in practice (Jackson 1973), and certainly, much of the literature suggests a non-literal application. It is therefore likely that *lex talionis* in ancient Near Eastern cultures was not actually carried out 'eye for eye' but that monetary compensation on the basis of 'equal damages' was handed down as punishment. It was certainly Hammurabi's intention that punishment administered by the state or impartial individuals (rather than revenge by the injured party) would prevent the cycle of retaliation that caused damage to wider society.

Deuteronomy 19: 16–21 specifically discusses the evil of 'bearing false witness' (wrongful accusation) noting the principle of *lex talionis* be applied, not literally in terms of maiming but whatever the accuser had wanted as punishment for the accused so should be done to him (Selman 2003; Kaiser 1983, 1991; Rashi 1930, 1972).² It goes on to highlight the deterrent effects of such punishments, 'Those which remain will hear, and fear, and shall henceforth commit no more of any such evil among you' (Deuteronomy 19: 20, King James Version), so it is clear that biblical punishment should have a deterrent effect.

²This principle is applied in the book of Esther where Haman is hung on the gallows he prepared for Mordecai (Ester 7: 9–10) and earlier in Esther the same principle is applied not in terms of punishment but reward, the reward Haman puts forward for himself is then given to Mordecai.

The first recorded offence in the Bible was the disobedience of Adam and Eve (Genesis 3: 1–24) and the second, the murder of Abel by his brother Cain (Genesis 4: 1–26). God’s punishment for both of these offences was exile. The punishment came directly from God as there was as yet no earthly representative.

However, both the Bible and the Qur'an also advocate forgiveness and mercy, both by God and by man for those who repent:

In the Bible, Matthew 6:12 part of the Lord’s Prayer: *‘And forgive us our sins, as we have forgiven those who sin against us’* and verse 14 *‘If you forgive those who sin against you, your heavenly Father will forgive you’* (New Living Version) and

Luke 17:3 *Take heed to yourselves: If thy brother trespass against thee, rebuke him; and if he repent, forgive him.* (King James Version)

In the Qur'an, in Sūra al Zumar:

Say: Oh my servants who have transgressed their souls! Despair not of the mercy of God: for God forgives all sins: for He is oft-forgiving, most merciful. Turn ye to your Lord (in repentance) and bow to his (will) before the penalty comes on you: after that ye shall not be helped. (53–54, Yusuf Ali Translation)

But for those who do not repent or adhere to God’s laws, the vivid imagery of hell, ‘the fire that cannot be quenched’ is offered as a deterrent. In studies of the deterrent effect of religion, concepts of supernatural reward and punishment have been at the centre (Hirschi and Stark 1969; Burkett and White 1974; Higgins and Albrecht 1977; Stark 1996) (see Chap. 2).

Further to this, the concept of ‘justice’ (*sadiq* [Hebrew] or *dikaiosunē* [Greek]) is seen as a central tenet of the Abrahamic faiths as well as ancient Greek philosophy (Metzger and Coogan 1993; Petechuk 2008). A number of books of the Old Testament (e.g., Hosea and Amos) discuss the concepts of fairness, right conduct and more specifically social justice. In the New Testament we see Paul discuss justice and ethical conduct, particularly in terms of forgiveness and humanity (see Chap. 6 by Whitehead). Matthew too notes the transition from the retaliatory natural justice of *‘lex talionis’* to forgiveness,

‘Ye have heard that it hath been said, An eye for an eye, and a tooth for a tooth: But I say unto you, That you resist not evil: but whosoever shall smite thee on thy right cheek, turn to him the other also’ (Matthew 5: 38–39).

In terms of the mechanisms for punishment, during the period of the Judges (1300–1100 BCE), the law was administered by village councils (Ruth 4: 2). By the time of King David (1000 BCE), kings had begun to assert their authority throughout the kingdom (accepting appeals from the village courts in a similar manner to cases being referred to the High Court or the Court of Appeal) (Peters 1995). The ‘Divine Right’ of kings had not yet been fully established, although there was evidence in the book of Ezra (7: 26) that the Hebrew people had been commanded to adhere to both God’s law and that of the king.

As we have seen, the Bible describes the religio-cultural and legal context of the Hebrew people, but it also details many aspects of other civilisations in the ancient Near East (e.g., Egypt), including references to crime and punishment. In fact, one of the earliest and most useful accounts of prisons is found in the Book of Genesis (39: 20–40: 5) and describes the concept of prison and its uses in ancient Egypt to confine Joseph (yes, the one with the technicolour dream coat). This prison, *hnrtwr* (the Great Prison) at Thebes, in modern-day Luxor, was used to house foreign prisoners and included forced labour (grinding corn in the granary). The word *hnrt* is derived from the verb *hnrt*, ‘to restrain’; thus *hnri* means ‘one who is restrained’, or ‘prisoner’ (Peters 1995). The practice of imprisonment and forced labour was not confined to Egypt, as is shown in Judges 16: 21, where Samson was captured by the Philistines and taken to Gaza, was shackled and ‘did grind in the prison house’.

The imagery of punishment and God’s mercy (Hellfire and separation from God vs. forgiveness) and more specifically that relating to prisons, for example, Psalm 40: 2 ‘He brought me up out of the horrible pit, out of the miry clay, and set my feet upon a rock, and established my goings’ (King James Version), are quite clearly religious rather than philosophical ones. They do not require consideration; they are merely directives—this is what will happen depending on whether you ‘declare thine iniquities’ and ‘repent’.

The Bible had a far-reaching influence, much wider than the philosophical treatise of either Plato or Hesiod (or any of the Greek poets and orators). Those hearing (and later reading) about the nature of human weakness in relation to temptation, freedom through God’s love and mercy, particularly as for many their history was one of slavery or oppression, meant that such emotive images of captivity and release, refuge and

sanctuary and of exile and return were concepts that they could relate to. Of course, the holy scriptures of the Abrahamic faiths now have a more universal influence and the beginnings of such can be seen in the religio-cultural context of ancient Rome later in the chapter.

Ancient Greece

Hesiod

Philosophical consideration was first given to crime and punishment by Hesiod and other Greek philosophers, poets and dramatists. Hesiod, writing around 700 BCE, asserted that humans were unique in their capacity to comprehend and live according to law and justice:

Here is the law, as Zeus established it for human beings; as for fish, and wild animals, and the flying birds, they feed on each other, since there is no idea of justice among them; but to men he gave justice, and she in the end is proved the best thing they have.

For Hesiod, justice meant a set of laws and procedures that diminished the inequalities of wealth, power, or status between opponents which allowed for a 'just' outcome based exclusively on the matter in dispute (Peters 1995).

If we consider the work of Hesiod further we get a clearer understanding of the ancient Greek religio-cultural underpinning for the notion of justice and the role of the gods.

Listen to right and do not foster violence ... The better path is to go by on the other side towards Justice; for Justice beats Outrage when she comes at length to the end of the race. (Hesiod 2008, Works and Days, 214ff)

Although this poem was written as an advisory letter to his brother, it is clear that Hesiod is more generally concerned with denouncing revenge and retribution as justifiable responses to being aggrieved. This passage demonstrates Hesiod's view that outrage leads to violence and that it is important not to retaliate but to seek justice. Hesiod is not a believer in

lex talionis: retribution achieves little. There is a further poignant issue addressed by Hesiod when we consider the final line of 214ff—‘Justice beats Outrage when she comes at length to the end of the race’, suggesting that, similar to Hammurabi’s view, justice is preferable to outrage (and revenge).

Plato

In works like *Gorgias*, *Protagoras* and *Nomoi* (‘Laws’), Plato explores penal theory in great detail, addressing the purpose of punishment, its ability to accomplish its professed purpose and the extent to which that purpose is in accord with the values of society (Bauman 2012).

Plato’s most notable contribution to penal theory is the corrective function of punishment (although it is most concisely stated, not in legal literature but in the dialogue, *The Gorgias*). The transgressor plagued by his criminal propensities derives a certain benefit from punishment in the form of rehabilitation. But if he fails to respond to corrective/remedial treatment (in the forms of whipping, imprisonment or fines), he should be exiled or put to death; thus the idea of an increased penalty for a second conviction takes shape. The other important purpose is deterrence. The wrongdoer should be deterred from repeating his crime, and the penalties should be severe enough to discourage others. But Plato (like Hesiod) rejects the notion of retribution as a legitimate response; it merely inflicts suffering without reforming or deterring the wrongdoer. Plato has Socrates observe,

Now the proper office of all punishment is twofold: he who is rightly punished ought either to become better and profit by it, or he ought to be made an example to his fellows, that they might see what he suffers, and fear to suffer the like, and become better. Those who are improved when they are punished by gods and men, are those whose sins are curable; and they are improved, as in this world so also in another, by pain and suffering; for there is no other way in which they can be delivered from their evil. But they who have been guilty of the worst crimes, and are incurable by reason of their crimes, are made examples; as they are incurable, they get no good themselves, but others get good when they

behold them enduring forever the most terrible and painful and fearful sufferings as the penalty of their sins – there they are, hanging up in the prison-house of the world below just as examples, a spectacle and warning to all unrighteous men who come thither. Plato 1987, *The Gorgias* (525A-B)

So most importantly, the concept of exemplary deterrence became a commonplace justification for punishment that is still seen today.

Although such philosophical consideration had been given to punishment, there were no written laws in ancient Greece until around 621 BCE, when Draco had the existing oral laws written down. Similar to early punishments of the Babylonians and later the Romans, the Greek's predominant method of punishment was the death penalty (for most crimes), and exile from Athens was made a potential punishment for Athenians who had committed murder. Part of the reason for such severe punishments (for even minor crimes) was the religio-cultural context of ancient Greece: violation of the law was a crime that could bring the wrath of the gods/goddesses down on the whole community or even nation (Peteckuk 2008). From the works of Hesiod and Plato, it is clear that the ancient Greeks developed a clear understanding of the function punishment should perform in society, changing from a retributive focus (or appeasing of the gods) to a deterrent and corrective one.

Ancient Rome

The period we are talking about when we consider Roman society is around 1000 years from c. 509 BCE to c. 476 CE encompassing the Roman Republic, the Principate and the Empire. Roman paganism was an eclectic religion, accepting gods/goddesses from all the nations it conquered (and its neighbours) into its Pantheon. Most Greek deities were accepted as well as Egypt's Isis and Osiris and Persia's Mithra. Although it was a more pragmatic religion than its Greek or Egyptian counterparts, it was heavily rooted in ritual and ceremony. So, the religio-cultural context of ancient Rome was one based on conquest but embracing and incorporating the beliefs of all of its citizens.

Roman religion was functional and based on the contractual principle of *do ut des*, 'I give that you might give' (Lovano 2015, p. 709) and was seen by many, including Cicero, as a source of social order (Rüpke 2007). Although being a state religion (and therefore practical and contractual), it was also very much based on ritual and ceremony. Punishment in ancient Rome was no exception, and the public sacrifice of offenders was commonplace. It was a ceremonial spectacle and an exemplary deterrent, a message to others of what would happen to transgressors as well as demonstrating both the right and power of the state to punish. The work of Foucault supports the point that public punishment should 'be understood not only as a judicial, but also a political 'ritual''. It belongs, even in minor cases, to the ceremonies by which power is manifested' (Foucault 1991, p. 47), and this was clearly the case in the developing Rome. Its leadership was further legitimised and bolstered by religion: via the fates, fortunes and auspices. For example, Julius Caesar was Pontifex Maximus (Chief Priest or Pope) although the literal translation 'Chief Bridge-builder' is more useful in terms of understanding how he wished to be seen (as one building a bridge between the gods and man) (see Chap. 16 by Booker and Dearnley). Being Pontifex Maximus and later Consul demonstrated that he had both political and supernatural support for his leadership (until the Senate and the auspices no longer favoured him and he was assassinated). So already we can see the consideration of 'legitimacy' and 'hegemony' coming into play, further sustained by religion.

It Is All in the Name ... Transmission of Legal Language

Terms such as justice, punishment, discipline and retribution all have their roots in the names of Roman (or those 'incorporated') gods, goddesses and spirits; *Justitia* (Goddess of Justice), *Poinē/Pœna* (Spirit or Goddess of Punishment), *Disciplina* (Goddess of Discipline) and *Nemesis* (Goddess of Retribution). It is not too much of a stretch of the imagination to see that *Pœna* becomes Penal (System) and *Justicia*, Justice.

Off with Their Head ... the Meaning of Caput

The contemporary understanding of capital punishment refers to the death penalty but can clearly be seen to be derived from the Roman term 'caput' which has a much wider definition in terms of both capital and non-capital offences and the punishment itself.

Caput, Moyle's suggests, means 'the rights a man enjoys in virtue of being free, or a Civis, or a member of a family' (cited in Marshall 1897). Therefore, the guilty were said to suffer capital punishment where they lost their life, liberty, or where they ceased to be a citizen of Rome. Although the strict translation from Latin suggests that caput means 'head' and could therefore be seen to be solely related to decapitation, if we consider the forms of capital punishment described above, this appears to contradict the notion of 'relating to head' in terms of its removal (as in the death penalty). It seems more appropriate to understand the concept of caput in terms of contemporary common usage—as something being ended or over, as in all cases of capital punishment (through any of the three forms mentioned above) the citizen's life was seen to be over or 'caput'. In fact, for many, losing one's right to be a citizen of Rome was considered worse than the death penalty!

Types of Offence/Punishment

Other lesser known terms from ancient Rome have also influenced the categories of offence (capital and non-capital), the function and form of punishments (multae—fines), the types of legal representatives (jurists), 'præsides' (presiding judges or magistrates) and the structure of our court system (with a lower court for minor offences and higher court for more serious ones). It has been noted that capital cases were withdrawn from the courts of præsides, so they appear to have functioned in a similar fashion to our magistrates' courts. Roman legal literature includes discussion regarding jurisprudents, legal experts who subjected written laws, rules and institutions to intellectual scrutiny in order to extract from them the fundamental legal principles they contained and then tested those principles on hypothetical cases in order to then apply them to

new legislation—the beginnings of jurisprudence. Ancient Rome is also responsible for the implementation of trial by jury, judicial discretion and fixed penalties (Bauman 2012).

Cicero

Although Cicero wrote extensively about Roman concepts of law and justice, we know a lot less regarding Roman criminal law than that of the Greeks for two reasons: the private law was of more importance than the criminal law and Cicero himself was a politician and barrister, as well as a philosopher—these roles not always harmonious in practice. Yet, the work of Cicero has provided some evidence of the philosophical dialogue occurring as well as of the practicalities of penalty during the Roman era. One thing is clear: what ancient Rome achieved that neither the ancient Greeks nor the Hebrews were able to is a more ‘scientific’ jurisprudence to underpin the written law.

In *De legibus* (On the Laws) and *De officiis* Cicero puts forward some of his long-held notions regarding philosophies of punishment, in what he hoped would be a naturalisation of Platonic and Stoic ideas. In *De officiis* in particular Cicero addresses a number of key issues regarding equity (*Aequitas*), the public interest (*rei publicae utilitas*), non-discretionary punishment (*poena legis*), mildness and clemency (*mansuetudo atque clementia*) and severity of punishment (*severitas*). Although Cicero raises some key considerations regarding levels of punishment, he quite clearly supports severe punishment when it is in the public interest to do so, arguing that this maintains social order. Indeed *rei publicae utilitas* should be the paramount consideration when inflicting punishment (Bauman 2012).

Although much of the above seems to have little to do with religious principles, Cicero clearly demonstrates the influence of the Roman religio-cultural context in his discussions of the following: suffering as an element of punishment, fear of punishment and the role of the augurs.

Suffering could be seen in terms of death, pain or mental anguish (temporal punishments) as well as being tormented by the Furies through the anguish of remorse (divine punishment). With regard to the fear of pun-

ishment (*poenae metus*) and its deterrent effect, Cicero again distinguishes between divine and temporal punishment: 'on the temporal scene the deterrent effect is dissipated once the fear is removed; only on the divine scene is the effect always there, since the god's punishment cannot be evaded' (Bauman 2012, p. 37). But Cicero is fully aware that the fear of punishment itself (divine or otherwise) is the secret behind punishment's efficacy.

Although Cicero was a sceptic, he understood that Rome's political power and therefore its stability was reliant on religion. Many Senators (including Cicero) were also augurs (those who read the will of the gods) which is why in *De legisbus* Cicero decrees that the pronouncements of the augurs should be obeyed on pain of a capital penalty (*Leg* 2.21). Cicero goes on to describe the augurs as the most important priests and praises their ability to keep power in the correct hands by controlling the auspices—thus reinforcing the moral right of Consuls or Emperors to rule and punish. 'The preservation of stability is one of the purposes of punishment' (ibid.) and the country's reliance on the advice and authority of the Optimates (the 'best men' in the Senate, usually augurs) is what holds the country together; in fact in his treatise *On The Republic* Cicero blames the contemporary decline of Rome on the 'neglect of custom and the lack of worthy men' (Bauman 2012, p. 38).

His most important statement, however, when discussing the *poena legis* (fixed, non-discretionary penalties) is that although the primary function of punishment is to serve the public good, he declares *cavendum est ... ne maior poena quam culpa sit* (*De Officiis* 1.89); it should be written in statute that the punishment should not be greater than the crime, similar to the principle of 'parsimony' as propounded by Bentham, contemporarily understood as proportionality—so maybe Cicero was the first utilitarian?

Divine Right or the Legacy of an Unholy Compromise?

Traditionally, theories of punishment have been concerned with the moral right to punish rather than the power to punish, although it may be argued that power convinces its holder that they have such

rights. The meting out of punishment has enduringly been seen as integral to social stability, and its justification, 'first by faith and then by right' (Carlen 1983, p. 203), has been seen as an essential prerequisite. Philosophies of punishment have depended for their logic on the juxtaposition of an individual either to god(s) and/or goddesses, the sovereign or to society.

As we have seen, the legitimacy of early Greco-Roman political power was founded on the religious principle of support from the fates, fortunes or auspices and secured through the will of the gods—although this support was precarious—quite literally in the lap of the gods.

However, by the time of the Empire, Rome's leadership had established itself as divine (with the Emperor being almost a god himself) and therefore above the law, but to its increasing Christian population the power of imperial Rome was regarded as evil. As an institution, the Church found worldly authority anathema but was forced to accept the cultural and political structures/beliefs of Rome and an unholy compromise came in the form of Pauline theology, in which the legitimacy of power was secured 'by the grace of God'. Pauline theology provided support for the notion that secular power was a derivation of divine power and that God bestowed his authority on secular rulers—they were therefore God's representatives on earth. It should be pointed out that in both Mark's and John's Gospels Jesus discusses the authority of Rome's leadership, first in terms of God's requirement of Christians that they 'Render unto Caesar what is Caesars' through paying taxes—a clear directive not to break man's laws (Mark 12: 13–17) and later regarding Jesus' conversation with Pilate where Jesus reminds him that "You would have no power over me if it were not given to you from above" (John 19: 11), demonstrating that authority and the power to punish come from God alone. For Rome's Christians, such authority should have served nothing more than an executive function (doing God's will) particularly in 'rooting out evil', but for Romans this notion of the Emperor being God's representative greatly enhanced his symbolic power, leading to tensions between the development of Caesaro-papism (the Emperor having supreme authority over both Church and State) and Pauline concepts of God's grace (Turner 1999).

But a Sword in the Hand: Secular Power and the Moral Right to Punish

The right to punish has historically been rooted in divine support for, or divinity of, secular leaders. This deist theory of punishment, with the gods and goddesses of the Greco-Roman period or the God of the Abrahamic faiths, has played a significant role in establishing the moral right to punish for State authorities. It is abundantly clear that in each of the religio-cultural contexts discussed there has been a change in penal response from individual retaliation to a more deist system (punishment by god(s) and goddesses) to punishment by the State. In the move from a deist system to one of State authority (with the power and right to punish) we can see a requirement to adhere to the laws of wider society, in both the philosophical treatise and in the holy texts.

In ancient Greece, in his treatise 'Works and Days', Hesiod writes, 'Here is the law, as Zeus established it for human beings ... but to men he gave justice, and she in the end is proved the best thing they have', clearly demonstrating support for man to administer God's laws. Later in ancient Rome, Cicero discusses divine punishment (by the Furies) and the role of the augurs in maintaining power in the correct hands (through the auspices) implying divine support for the Senate and therefore their laws (Bauman 2012).

If we look to the Bible we see support for this in both the Old and New Testaments: Ezra (7: 26) states, 'And whosoever will not do the law of thy God, and the law of the king, let judgement be executed speedily upon him, whether it be unto death, or to banishment, or to confiscation of goods, or to imprisonment' (King James Version). This Old Testament command suggests a separation of God's laws and man-made laws but that believers should follow both. By the time we get to the New Testament letters attributed to Paul we see a cultural shift to divine support for secular leaders,

'For the one in authority is God's servant for your good. But if you do wrong, be afraid, for rulers do not bear the sword for no reason. They are God's servants, agents of wrath to bring punishment on the wrongdoer' (Romans 13: 4, New International Version).

We have already looked at the role of 'God's grace' within Pauline theology and its providing support for secular authority through establishing the Emperor as God's representative on earth. As already mentioned, how this was perceived varied depending on whether you were a Roman or a Christian, but nevertheless, there is a clear move to legitimising secular authority.

Dominant contemporary assumptions about the right of the State to punish stem from the contract theories of such scholars as Thomas Hobbes (1588–1679) and John Locke (1632–1704). In Contract theory, the State's right to punish is based on an assumption that the State is founded upon a citizen's consensual agreement to surrender individual powers of punishment to the State's agencies in return for protection of life and property. But it has already been set in place in the above religio-cultural contexts by the entrusting of God's authority to secular authority—making it easier to accept the power of the State if it appears ordained by God.

Penal Evolution

Each of these religio-cultural contexts has not only demonstrated a transitioning in 'system modalities' but shows a similar shift in the philosophies of punishment too—from *lex talionis*: individual retribution (often leading to a cycle of retaliation) to a more utilitarian response based on 'just deserts' and proportionality, one that provides 'the greatest happiness for the greatest number' (Bentham in Cavadino et al. 2013, p. 50), no longer based on natural rights and justice as in primitive societies but on laws which are necessary to maintain order in society.

Durkheim, in the first of his 'two laws of penal evolution', presented in *L'Année Sociologique* (1899–1900), establishes a general schema concerning historical changes in penology, in terms of both type and quantity of punishments and what he describes as the absolute nature of government (Tiryakian 2013). In regard to the absolute nature of government, he argues this means a unilateral relationship between the State and the individual with the individual being the 'property' of the State. But of course, its absolute nature is mediated by the numbers of individuals or agencies

involved in the administration of government—so power concentrated in one or a few hands has a more absolute nature than a more diffuse system of power.

In terms of penal evolution, Durkheim argues that as societies modernise, punishment becomes less intense for a number of reasons. First, because crime is now seen as secular (not against god(s) or goddesses), punishment is less retributive; second, there is a gradual humanisation in the forms punishment takes (although this is disputed) and because society is democratic, punishment becomes more utilitarian. Further, imprisonment becomes the main sanction, replacing death and torture because it is more in line with notions of mercy and leniency and is able to symbolise the expressive disapproval of society rather than act solely as a deterrent. Durkheim argues that in early societies, prison is mainly for detention, although as discussed earlier, ancient Egyptian and Babylonian kingdoms used prisons not only to detain/restrain, but also to punish through forced labour. Tiryakian (2013) notes that Durkheim goes on to state that ancient Egyptian penology was carried out through 'expressive' mutilations and that although ancient Israel was no more advanced, the intensity and frequency of punishment was greatly reduced, and according to Durkheim, this is because the Hebrews were essentially a democratic people who never developed an absolute form of government, unlike their Egyptian captors whose theocracy centred on the divinity of the Pharaoh. Of course, those who are followers of the Abrahamic faiths would challenge Durkheim on the basis that their laws, as set out in the Torah (or Pentateuch), were divinely revealed to Moses and that it is God's mercy and his clear directives for the Hebrews (and later Christians and Muslims) to forgive or at least be just in their response to those who commit offences against them.

Punishment in the Roman Republic was less severe and the number of capital offences was significantly less than in the city-state of Athens; however, as discussed above, the central government of the Roman Empire became more absolute with the introduction of the role of Emperor (and further bolstered by the notion of being 'God's representative') (Turner 1999), and this was reflected in the increasing severity of punishment during that period. So maybe the important factor is whether the power and right to punish was 'handed over' to, or 'bestowed upon', a secular leader.

Omnipresent to 'Omnifuture'

As part of penal evolution we have seen a change from punishment *ex post facto* to a more deterrence-based surveillance model—first by the omnipresent and omniscient (or panoptic) god(s) or goddesses of the above religio-cultural contexts and then to surveillance by the State, for example, through such technologies of power as the establishment of the police (the original human 'Watchmen') and Bentham's (1787) design of the Panopticon, a prison with an unseen observer with the uncertainty in the prisoner of being observed. For Foucault, the Panopticon is a representative model of the move from the 'culture of spectacle' (public, physical punishment) to the 'carceral culture' (culture of control), noting that power is not simply exerted by the State over others through punishment, it is crystallised in all state institutions and used in a variety of ways, for instance, through 'surveillance' and 'knowledge'. Discipline is the key characteristic of social control in modern societies (Foucault 1991). Both Foucault and Bentham would argue that the focus of punishment has therefore been transferred from the body to the soul (or constitution) of the offender, internalising discipline and control, where the individual 'becomes the principle of his own subjection' (Foucault 1991). Elias (1982) would of course argue that the notion of increased psychological control of individuals is part of the civilising process. In late-modern society, this has evolved into a more technologically driven surveillance system with the use of CCTV, electronic monitoring, identity cards and phone entry systems.

Conclusion: The Relgio-Cultural Legacy

'Throughout the history of penal practice religion has been a major force in shaping the ways in which offenders are dealt with' (Garland 2012, p. 203).

The influence of gods and goddesses of ancient Greece and Rome on terms we use today in legal and criminal justice fields—justice, punishment, retribution and so on—can be clearly seen, but the exact level of influence on our penal system goes beyond the mere transmission of legal language to a world of myth and legend, ritual and religious sacrifice as well as types and philosophies of punishment and justifying man's 'moral right

to punish'. Its contribution can be seen in the ancient works of Hesiod, Plato and Cicero; the holy texts of the Abrahamic faiths; as well as those of French and German sociologists and philosophers such as Durkheim, Foucault and Elias. Its legacy, however, is even greater than the handing down of either language or ritual; it is one of control and discipline, inextricably intertwined with the formation of states, power and legitimacy.

The moral right to punish was established and demonstrated in each of the religio-cultural contexts above. In each case the 'State' had been given the authority to punish—either from God (in Ezra; the Gospels and in Romans), by the god(s) (in Hesiod, Plato, Cicero) or by the people (through expressing collective sentiments or because of a social contract). Whether through the establishment of the Hebrew nation following the exodus, the formation of ancient Greek society or the development of the Roman Empire, it is inextricably intertwined with state formation and the civilising process (Elias 1982) and the modernising of societies (Durkheim - see Tiryakian, 2013) and yet each of these examples is long before the *ancien régime*, the Enlightenment or the creation of modern (or late-to-post-modern) society.

Although it is argued that the shift to increased psychological control of individuals (by the State) is part of such civilising processes (Elias 1982) within post-enlightenment societies, it could be argued that this was initiated by the creation of religious cosmologies of the ancient Greeks and Romans as well as of followers of the Abrahamic faiths. The concept of surveillance by God(s) the omnipresent and omniscient force has been replaced with 'Surveillance by the State' (and its agencies). The Police, initially known as the 'Watchmen', could be argued to be the human substitute for the gods, and in a late-to-post-modern world, maybe CCTV has become the new watchman: a clear transitioning from the cosmologies of power to the technologies of power.

Lex Talionis is not 'caput' in a modern criminal justice system: it has been reinterpreted to mean 'just deserts' and proportionality in sentencing more generally, no longer literally. We have lost the need for ritual display: move from punishment as spectacle to punishment in private and from body to soul. Old Testament-style biblical literalism has been replaced by a more New Testament 'forgiveness' model where punishment should be the minimum possible but within this should be room for reform of the offender.

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4

Disability and Religious Cosmologies: A New Interpretation of Disablist Hate

Alan Roulstone

Introduction

Disabled people have faced ridicule, hate, existential loathing and mistreatment throughout recorded history (Hughes 2009; Shildrick 2001; Stiker 1999). Whether constructed as changelings, evidence of the ‘fall of Adam/Eve’, effects of the sins of their forefathers or as risks to the racial gene pool, earlier constructions have ensured negative connotations continue to attach to disability. The deformed, the obviously different, the frail and learning disabled have come to represent at best an object of pity, a potent symbol of ‘man’s’ imperfections and at worst a risk to non-disabled cosmologies. Until recently, such maltreatment, although viewed as abhorrent by many, was explicable in terms of the difference inhering in the disabled victim. Not surprisingly then, most statutory and charitable responses to disablist hate have been framed in a way that draw on the very constructions that *other* and isolate disabled people (Roulstone and Sadique 2012).

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Of note, even when negative treatment is meted out to disabled people the language of *abuse* is used rather than the mainstream language of *violence* (Roulstone and Mason-Bish 2012). Disabled people facing hate and harassment continue to be dealt with by 'specialist' public protection units (PPUs), ones which bring together the cognate protection issues of child protection and elder abuse. Even a cursory analysis of the treatment of disabled people suggests that such a cordoning off of criminal justice system response reflects the long-held assumption that disabled people, especially those with learning difficulties, need to be protected and live within parallel and special institutions. The impetus to deinstitutionalisation has not, however, exorcised assumptions that disabled people are somehow a 'special case', that they may have been 'asking for it', are not reliable witnesses or that some are as much a forensic risk to others as non-disabled people are to them (Quarmby 2013a).

The question of criminal justice response and construction of disablist hate crimes is now well considered (Chakraborti et al. 2011). However, discussion with professionals working in this field will often begin with hate acts, or assume prejudice as an *a priori* phenomenon. They will often acknowledge bafflement at the deeper causes and constructions that underpin such attitudes towards disabled people, often falling back on helpful but limited ideas of power relations (Perry 2001), opportunism, psychological flaws (Bushman and Baumeister 1998) or the upholding of the sanctity of normate values (Reeve 2015). This chapter aims to respond to that deficiency by drawing out the lens to take in broader cosmologies or mental systems. By so doing it will argue that *archetypes* rather than *stereotypes* undergird disablist cosmologies. A key focus will be the pre-scientific cosmologies that arguably continue to underpin social belief systems even in a supposedly secular and scientific age. Religion, folk wisdom and cultural transmissions continue arguably to perpetuate notions of disability as threat, aberration, oddity and vulnerability. It will not be argued that religion and folk wisdom always construct disability in a negative way; indeed, key texts, especially from the Abrahamic faiths, provide a palette of ideas around disability that range from notions of risk, contagion, contrition, pity, rescue and good Samaritanism. We begin then by exploring early Abrahamic cosmologies as evidenced in Christianity, Judaism and Islam—their similarities and differences in constructions of

disability and difference. The chapter will explore the links between religious cosmologies and how these have inadvertently shaped wider social norms that in turn underpin aspects of criminal justice system response.

Disability and Textual Exegesis

Judaism, Islam and Christianity, at least in their early forms, each owed their theological premises to Abrahamic beliefs (Massignon 1949). Although each has since developed significant divergences from their roots and seven centuries separate their fullest origins, the lineages are clear, most especially in the development of Christianity as an offshoot of Judaism. Monotheism, the revelation of God to Abraham, the anthropocentric and ordered cosmology of nature-man-deity with a supra-natural God-like figure are each common to the three early religious cosmologies. Some scholars point out that the similarities can be outweighed by differences, with Judaism rejecting a Messianic, prophetic tradition, while Islam staunchly rejects the key tenets of Christianity—the Holy Trinity, the Incarnation and Reincarnation (Dodds 2009). The Jewish Torah and Talmud and the Islamic Qur'an are as much codes for living and observance as they are theological exposition. Beyond that textual exegesis becomes an ambitious exercise, with much evidence that the Torah, Qur'an and the Bible being accretions of many hands and over many years. It is not surprising therefore that scholars' counsel caution against sweeping statements about any one of these key religious texts. What is more important for our purposes are the role each plays in reaffirming social values, norms and behaviours. The French sociologist Émile Durkheim was helpful in seeing religions as much as faith in a given social order as a supra-social code derived from a higher source: 'Religious representations are collective representations which express collective realities' (Durkheim 1915, p. 10). This is important given the risk of a hierarchy of credibility being attached to say religion over magic or folk wisdom or political ideology. Each in their way aims to reflect and reaffirm social mores and expectations over conformity and normalcy. Certainly we know that religion, superstition and modern systems are often not a 'clean-break' with the past, but accretions and transmissions of cultural history (Thomas 1991).

Religion and Disability

It could be asserted quite reasonably that in an age of science and rationality most of our views of disability and crime are undergirded by sound and equitable judgements on each. Rationalism, the Enlightenment and legal-rational codifications must surely have superseded pre-scientific cosmologies (Weber 1978). However, even a cursory glance at the experience and case details of alleged disabled hate crime suggests the continued presence of religious, superstitious and supernatural views as dominant narratives.

The following aims to explore the origins of religious, folk and superstitious views of disability to better contextualise the nature and response to disabled hate crime. There are clear narratives of disability in Abrahamic cosmology as a metaphor for sin, being out of a ‘state of grace’, spiritual failings and malign interventions external to the individual. Despite their differences, the Bible and the Torah make clear links between bodily and spiritual abnormality. Such abnormality is often narrated as the result of sin, as Schumm and Stoltfus note in their classic work:

There is a persistent tendency to associate disability with individual sin. Well-meaning people from multiple religious traditions often struggle to offer religious explanations and religious solutions to the “problem”. (Schumm and Stoltfus 2011, p. 10)

Thus disability, its character, causation and cessation are the concern of these key religious texts. Perhaps the best-known overview of disability and religious constructions is that of Barnes’ appraisal of attitudes towards disability as part of his critique of wider social barriers to disabled people’s rights (Barnes 1991). Barnes notes that the multiple references in the Bible to disability are largely negative and associate disability with threat, isolation and the failure to conform to pervasive standards of normality. He notes that the Old Testament and especially Leviticus and Deuteronomy are culturally powerful statements that link negative symbolism with disability; disability being comprehended as a lapse, fall or result of misdemeanour:

In the Old Testament much of Leviticus is devoted to a reiteration of the physical and mental perfections deemed necessary for all aspects of religious ritual. (Lev. 21: 16–20) (Barnes 1991, p. 12)

Barnes is by no means a detailed or authoritative biblical exegesis; indeed some more positive or at least ‘special’ constructions of disability and deformity are absent from his selective analyses. He is right however to claim that overall, the imagery and wording that constructs disability in the Bible are largely othering and binary constructions of differences from the normal healthy spiritual self. For more detailed exegetical analyses, we need to turn to Eiesland who (1994, pp. 73–74) identifies three theological constructions (what she calls themes) of disability and bodily difference. First, Eiesland identifies close links between disability, sin and transgression. An outer difference is indicative of an inner spiritual failing or ‘fall from grace’. This is largely congruent with an Augustinian construction of deformity: *Behold you were within me, while I was outside: it was there that I sought you, and a deformed creature, rushed headlong upon these things of beauty* (De Rosset 2007, p. 15).

Here St Augustine paints deformity as an external threat and an unpredictable force, which, in some ways, is derived from earlier Pagan association of deformity with overtly and pervasively threatening qualities. St Augustine was, we should remember, a convert from Paganism to Christianity. Indeed the notion of say rescuing the leprous and deformed would have made no sense in ancient Greece say compared to the Christianised Numidia. Of note, Augustine also uses the term deformity to describe the physical agony and effect of the Messiah crucified. Whether one takes this to suggest that deformity can be a human product rather than a spiritually endogenous idea is a moot point. Additionally, the deformation of Christ can be viewed as a symbol of imposed bad will which does nothing to dilute the notions of deformity and the ‘fall’. Of course, the exact construction of disability and deformity depended upon the nature of impairment and age of onset. For example, the renaissance Swiss-German writer Paracelsus in his 1530 work *De Generatione Stultorum* (On the Begetting of Fools) makes clear allusions to congenital deformity being the result of Adam and Eve’s original sin in the Garden

of Eden (Cranefield and Federn [translation] 1967). For a clear example of the embodied outcome of sin, we can turn to Deuteronomy:

The Lord will inflict you with madness, blindness and confusion of the mind. At midday, you will grope about like a blind man in the dark. You will be unsuccessful in everything that you do, day after day you will be oppressed and robbed, with no one to rescue you. (Deuteronomy 28: 28–29)

This seems to be a fate devoid of redemption or consolation and a bleak manifestation of smiting in Judaeo-Christian cosmology. The end result of such embodied punishment, one not easily associable with a loving and forgiving deity is clear in Leviticus:

Speak to Aaron, saying, none of your offspring throughout their generation who has a blemish may approach to offer the bread of his God. For no one who has a blemish shall draw near, a man blind or lame, or one who has a mutilated face or a limb too long, or a man who has an injured foot or an injured hand, or a hunchback or a dwarf or a man with a defect in his sight, or an itching disease or scabs or crushed testicles. (Leviticus 21: 16–23)

Perhaps a more recognisably ‘modern’ theme for Eiesland is that of deformity or difference as a form of suffering or penance. This is best seen as a purification process and can be traced through to wider notions of self-inflicted privations, unction and self-correction in the Christian tradition (Clark 1958). The extent to which purification ever qualifies a person for acceptance is open to question; however, links can be posited here between suffering and stigma which link the suffering of Christ to personal devotional suffering. This adds another layer of complexity to the unravelling of Judaeo-Christian constructions of disability and difference as causation may be derived from highly disparate sources. Creamer asserts that punishment is not an absolute finality and is more akin to suffering and transience, noting,

Disability is interpreted as punishment ... a test of faith, an opportunity to build character or to inspire others, an occasion for the power of God to be made manifest, a sign that one lacks faith, or simply a mysterious result of God’s will. (Creamer 2009, p. 50)

This then suggests some agency in transcending disability, but only by the process of spiritual cleansing—a rather circular cosmology perhaps?

The third theme identified by Eiesland is that of disability as synonymous with charity, and one might add rescue. For Eiesland, no obvious champion of charity, such ideas seem superficially to denote care and support for disabled people. However she is also clear that charity has been the cognitive foundation on which pity, protection and notions of rescue are based. Bringing such debates up to date, Eiesland is clear in seeing charity as the basis of physical segregation and also a “disabling theology” (Eiesland 1994 cited in Otieno 2009). The New Testament is, she argues, the commonest loci of rescue, and it supported transcendence of embodied and wider social predicaments. The book of Matthew is replete with the laying on of the Messiah’s hands to relieve limb paralysis, palsy and leprosy (Matthew 9–11). The curing of the blind is evident in the book of Mark (Mark 3: 4–12). Barnes asserts that New Testament cosmology exhibits shifts towards greater sensibilities deriving from Judaic proscriptions, for example, in prohibiting child murder due to perceived deformity. In turn these proscriptions permeated Islam and Christianity (itself a sect of Judaism) (Barnes in Barton and Oliver 1997). Miles’s (2001) authoritative account of Martin Luther’s revivalist thinking notes that constructions of illness, disability and ‘just treatments’ are complex and should be treated with cautious analyses. He cites directly from Luther’s 1532 manuscript ‘Table Talk’:

In all grave illnesses the devil is present as the author and cause. First, he is the author of death. Second, Peter says in Acts that those who were oppressed by the devil were healed by Christ (cf. Acts 10: 38). Moreover, Christ cured not only the oppressed but also the paralytics, the blind etc (cf. Mark 3: 4–12; 8: 22–25). Generally speaking, therefore, I think that all dangerous diseases are blows of the devil. For this, however, he employs the instruments of nature. (Cited in Miles 2001, p. 10)

This then suggests that any clear and binary assumptions of eternal punishment or guaranteed rescue are each unhelpful. At the same time, the texts of Christian and Jewish scripture provide evidence of a wide range of constructions. There is evidence of both clear links between sin, spirit

and bodily distortion, but also with closer inspection, as Luther notes of disabled children, there were both embodied sin and their subsequent cure and rescue. Indeed these very ambiguities arguably support rather than weaken religious observances, with doubt and uncertainty underpinning key behavioural responses to religious doctrine. Perhaps the most ambiguous in this sense is Judaism. Whilst it did prompt a shift from Pagan constructions of disability and evil, the continued segregation of disabled people in Jewish society would suggest a mismatch between religious cosmology and practice. Shatz and Wolowelsky's detailed account makes clear the weight of historical barriers facing disabled people in Jewish communities:

While many Jewish communities have progressed and moved towards an attitude of 'acceptance' and 'tolerance' for people with disabilities out of religious obligation, it is often a practice without the spiritual ethical governing force and guiding principles of respect, equality, and human rights. (Shatz and Wolowelsky 2004)

The Torah demands that difference is overridden by the rights of all to respect, compassion and acceptance, with Siegel noting 'The Lord God created Adam from the dust of the earth. He blew into his nostrils the breath of life, and man became a living being [...]. In the image of God He created him' (Genesis 02: 07) (Siegel 2001). In this sense all life is derived from Adam and while there is a risk that this could return us to a 'fall of Adam' thesis, it does not explain why all are not afflicted and lends weight to the view that in theological terms Judaism is in principle progressive on disability. Recent work by Kalfa on disability and the barriers to forming relationships in Jewish communities notes:

However, when it comes to dating, the most pivotal system of Jewish life, one aimed at helping people achieve the highest and most ultimate value of Judaism (Yevamot 60b; Shulchan Aruth Ibn Haezer 1:1), political correctness is stripped away and the real communal values emerge. Although this system has been compared with as great a miracle as the splitting of the sea and is aimed at achieving a unity that is comparable with the binding relationship between God and the Jewish people

(Genesis 1:2), solidifying the unity between the Jewish people (Taanit 26b), it is through this very system that deep discrimination and unchallenged beliefs and stereotypes become legitimized, valued, and celebrated. (Kalfa 2014, p. 653)

For Kalfa, unity is not that of celebrating diversity, but sameness and being in the image of God and the healthy propagation of the Jewish people. Kalfa goes on to say how Shidduch (Hebrew for matchmaking) is based on what she calls élite processing of bodily and spiritual matches, which one assumes does not valorise say two disabled people being married.

I learned that shidduch (matchmaking) system is an elite selection process whereby community appointed gatekeepers determine and program the next generation of people, characteristics, looks, and abilities. Never are community values ever so clear and exposed. I came to understand that in this process people are assigned to the right or the left – worthy or unworthy, in or out. And through this seemingly neutral process, I came to understand just where people with disabilities fit into the Jewish future, where they are wanted. (Ibid. 653)

Abrams' major history of the Jewish faith makes plain the assumption of spiritual (priestly) perfection being coterminous with bodily perfection. To be deformed, blind, lame, deaf or sick is to fail to live up to priestly virtues and a bifurcation of spiritual and bodily belonging to Jewish identity. Although attitude change and the civilising process have led to a dilution of this association, Abrams is clear the vestiges of such paramount constructions cast very long and powerful shadows even today (Abrams 1998).

Perhaps the most apparently disembodied and thus potentially positive construction of disability lies within the formal teachings of Islam. Islam, although an Abrahamic faith, also has Eastern cosmological allusions which downplay the physical and material world in favour of piety, requiring both a spiritual and practical adherence to the word of Allah and the text of the Qur'an. As with the Talmud and Torah, the Qur'an is both a spiritual guide and a handbook on living a devotional and 'good life'.

As the scholars Bazna and Hatab (2005) suggest, Islam is on paper an inclusive faith, and the Prophet Muhammad was said to have an express role in ensuring sick and disabled people had a full part in the Islamic world:

In Islam, a person's worth is based not on any physical or material characteristics but on piety. Piety includes both faith in the tenets of Islam and a genuine attempt to adhere to Islam's obligations to the best of one's ability. For example, Muslims say that the Prophet Muhammad, the messenger of Islam, took special care to ensure that people with disabilities were able to come to prayers. (Bazna and Hatab 2005)

A more critical unearthing of Islamic precepts suggests that such openness to aid disabled people's access to prayer may overstate any wider support to live a full and accepted life. (Hasnain et al. 2008). As Rispler-Chaim suggests, the failure to be able to pray and to reach purity through ablutions would signal an unclean distance from Allah and the prophet. The inability to undertake *Wudu* (hand-washing) and *Niya* (the intention to purify) disqualifies an individual. Thus a person who was too physically disabled or mentally ill to be able to commit to one or both of these commitments would risk social ostracisation or at least negative categorical treatment (Rispler-Chaim 2007, p. 20). There are a number of recorded proscriptions on disabled people in certain Islamic sects, especially those who are blind or epileptic completing certain rituals and taking the role of an Imam. Again this is closely linked to earlier constructions of purity, piety and the ease of ablutory duties. It would certainly be wrong to associate impairment with wholesale exclusion from the spiritual life and an active religious function in Islamic teaching. For example, Abdullah ibn Umm Maktoum, although blind was viewed by Allah as being spiritually closer and more worthy of attention than non-disabled people with no belief. Indeed legend has it that Abdullah acted as governor of Medina. Ataa' ibn Abi Rabah although paralysed and blind became the Mufti of Mecca. These roles were associated with two cities of deep spiritual as well as military significance in Islamic history. This assumes an in-principle acceptance in Islamic textual exegesis of the possibility of combining a profound impairment with the spiritual and observant life of a follower (Qur'an 80: 1–10).

The above has explored a range of ideas about disability that have emerged in early and revised texts of the Abrahamic faiths. They do

not argue that all imagery in the written and pictorial forms of disability is negative. They do, however, most especially in Judaeo-Christian cosmology, point to frequent negative constructions and cultural responses. Although acceptance despite difference is evident in some Islamic sources, even the less negative images in the Judaeo-Christian canon are of sick, deformed or disabled people in need of rescue or undergoing a form of spiritual 'testing', at worst these images portray a situation without hope or consolation, where disability equates to sin and a fall from grace. That gross difference may in turn evoke culturally sanctioned negativity including rejection, abandonment and segregation. We now turn to the question of the legacy of such archetypical ideas in more recent history and culture.

Disability, Culture and Contemporary Treatment of Disabled People

The recent historical record makes plain that negative attitudes and abuse have been features of the institutional abuse of disabled people, from the Ely Hospital Enquiry Report of 1967, the investigation of the North Lakeland Health and Social Care Trust in 2000, through to the Serious Case Review of Winterbourne View in 2011. The evidence of domestic abuse of disabled people by their formal and informal (family) carers challenges ideas that a disabled person's home is their castle (Thiara and Hague 2012 in Roulstone and Mason-Bish 2012). While street and 'estate' crimes as exemplified in the cases of Francecca Hardwicke, Brent Martin and Christine Lakinski make plain, negative attitudes do continue to translate into often hideously violent treatment. The following aims to draw out the continued link between long-held Western constructions of disability which defy modernisation.

Hate, Hostility and Lives Unworthy

A careful reading of the case reports and serious case reviews that accompanied the above offences suggests that views equating learning difficulty and mental health problems with subhuman status and 'lives not worth living'

were evident in each case. One of the assailants of Brent Martin, a learning disabled adult with mental health issues, was clear in his statement that although he was prepared to go to prison for a non-disabled victim, he also added: 'I am not going down for a muppet'. The incremental murder of Brent Martin was a ritualised and calculated form of humiliation and degradation; what the sociologist Erving Goffman (1961) termed the 'mortification' or stripping away of the remaining symbols of humanity of a stigmatised individual. Although there are different known precipitants of unprovoked violence such as early developmental disruption, the more useful background factor here is arguably wider ritual itself, either cultural or subcultural (Jenness and Grattet 2001). Whether we take the era of the Third Reich and its societal-wide generation of loathing and planned extermination of certain out-groups (Burleigh 1994), or if we take the subcultural cultivation of out-groups in contemporary gang conflict (Schwandner-Sievers 2001), we can see that the project is one of building new images and cultural references that foster social distance between the othered and 'in' groups. This is then followed by the ritualised violence itself. From this point we might stop our analyses and say that state responses to violence are based on immediate cultural and economic ideas. However, even a cursory analysis of disabled hate crime suggests the need to acknowledge the deeper religious and superstitious foundations of human thought that underlie ableism, hate *and* criminal justice response.

The same reconstruction of disability has arguably underpinned acts of hate, jeopardy and hostility. Disabled people, especially wheelchair users and people with visible learning difficulties, report being asked, 'What did you do to be like that?' or even 'I don't know why/how you can carry on'. Writing in 1969 the scientist Ashley Montagu noted:

If life is sacred ... then it is about time we begin treating it as such, instead of continuing to commit the frightful tragedies we do in permitting individuals to be brought into the world who will suffer all the days of their lives from serious disabling defects.... The initial basic right of the individual should be to be born without handicap. Anyone who, in the light of the facts, assists in bringing a seriously handicapped child into the world in my view commits a crime against humanity. Abortion could prevent that crime. (Montagu 1969)

This could be viewed as an a historic relic of the past. However, writing 30 years later, the ethicist Peter Singer notes:

If life with quadriplegia is as good as life without it, there is no health benefit to be gained by curing it. That implication, no doubt, would have been vigorously rejected by someone like Christopher Reeve, who, after being paralyzed in an accident, campaigned for more research into ways of overcoming spinal-cord injuries. Disability advocates, it seems, are forced to choose between insisting that extending their lives is just as important as extending the lives of people without disabilities, and seeking public support for research into a cure for their condition. (Singer 2009)

We can see from the most serious case details of disabledist hate crime that motivations revolve around the perceived subhumanity of the victim. Dissonance at the effects of violence against disabled people is arguably reduced by constructing victims as not fully human, thus not victims. Mark Sherry, an important North American writer on disabledist hate crime, picks up the story.

On January 30, 1999, Eric Krochmaluk, a cognitively disabled man from Middletown NJ, was kidnapped, choked, beaten, burned with cigarettes, taped to a chair, his eyebrows were shaved, and he was then abandoned in a forest. Eight people were subsequently indicted for this hate crime in what was the first prosecution of a disability hate crime in America. Similar attacks had occurred on two previous occasions. (Sherry 2001, p. 5)

In the UK, more than ten deaths have been attributable to disabledist hate crime, many have been characterised as being extraordinarily sadistic, cruel and prolonged in nature as was the case with Ben Dean, Keian Heap and Jack Clark, who targeted disabled young people, first with dehumanising names: 'Mong', 'Muppet', 'Schizo', and over time this became physical violence on a young man with bipolar disorder, described as a 'merciless, sadistic and bloodthirsty attack'. The same gang had already been convicted of attacking a young man with Asperger Syndrome. Other serious cases relate to the keeping of people with learning difficulties or mental

health problems in near slave-like conditions. Once again the assumption of inferiority, untouchability, contagion and subhumanity seem to underpin assumptions that these actions are acceptable. In one case Craig Kinsella, a 34-year-old with a learning difficulty was kept under lock and key in a small businessman's garage, slept in a rolled up discarded carpet and relied on scavenged food waste to eat. He was led to believe that if he left this incarceration he would be hunted down and punished. Physical and psychological abuse went hand in hand. Eventually discovered, he was 'emaciated, had a broken arm, fractured ribs, lumps on his head and was covered in deep bruises' (Foundation for People with Learning Disabilities 2014).

Returning to our religious origins above, it is quite common for disabled people who say act or look different to be seen as a sex offender. The link between bodily, behavioural difference and assumed moral or spiritual threat remains very real. The cases of Sean Miles, Steven Hoskin and Bijan Ebrahimi each had in common a false belief that the disabled victim was a sexual deviant, offender or predator, despite the absence of evidence. Quarmby, a key writer on disabled hate crimes states

It may be that perceptions of both disabled people and paedophiles as 'different', leads to disabled people being falsely labelled as sexual offenders. It also seems that some people in the community may maliciously accuse a disabled person of being a paedophile to excuse their hostility to them and justify violence. (Quarmby 2013b, p. 1)

The link between disability, sin and risk are each very clear in all three cases mentioned above. In an age of reason and evidence, the power of pre-scientific constructions and cosmologies remains powerfully evident in the construction of disabled people as risk, threat and at worst abominations.

Pity, Vulnerability and Rescue

The other key strand of hangover of religious cosmology that needs restating as underpinning contemporary hate crime are the continued power of notions of pity, vulnerability and rescue. Whilst not arguing that the

impact of disabled hate cannot be pitiable, nor that disabled people are not in any way vulnerable, it will be argued that the default assumption in hate crime response has been to see disabled people as an object of pity, as vulnerable to excessive hate and thus in need of rescue. All of these sentiments underpinned schooling and welfare provision for certain groups of disabled people from the early modern period of British history (Borsay 2005). As we noted in the exegesis above, rescue is a common response to disability. Although some constructions, such as the blind man in Deuteronomy being framed as beyond rescue, elsewhere, the Bible is littered with the rescue of people with withered limbs, blindness and lameness. An alternative way to view hate and hate crime is to focus on the perpetrator, to explore how people are made 'vulnerable' and to unpack how the criminal justice response may inadvertently increase exposure to hate crime. A cursory glance at the earliest provisions to reduce risk to disabled people makes clear the language was of 'vulnerable adults' and or protections. These terms arguably represent a hangover from the days of pervasive institutions where a key function was to protect vulnerable adults (and children) from the rigours of mainstream life. Now, as can be imagined, the effect of incarceration or segregation (day centres, special transport, for example) was to deny disabled people the very skills and insights needed to survive in mainstream life, what Swain popularised as 'learned helplessness' (Swain 1989).

So, what then were the main planks of protective activity and the constructions used? The Protection of Vulnerable Adults Scheme 2004 (POVA) was borne out of section 7 of the UK Care Standards Act which acceded to statute in 2000 (HM Government 2000). The Act is linked to the important Guidance 'No Secrets' (Department of Health 2000) which although based on notions of vulnerability did helpfully profess the need to bring abuse out into the open. The language is very clear however as to who is a threat to whom. A 'vulnerable adult' in No Secrets is a person who 'by reason of disability, age, illness and who... may be unable to protect him or herself against significant harm or exploitation' (Department of Health 2000).

The UK Department of Health's (DoH) 'Safeguarding Adults with Learning Disabilities: Information for Partnership Boards' provides a practical interpretation of the 2000 Act to advise Learning Disability

Partnership Boards (LDPBs) in their reduction of disabled hate crime through judicious adult protection (Department of Health 2007). Now these might be viewed as necessary protections where disabled adults are seen as largely exposed to the threat of non-disabled violence; they do however risk two key unplanned consequences. Not only might they perpetuate the view that the problem of disabled hate crime risk lies in the individual, their vulnerability, but they also run the risk of marginalising disabled people yet further if they are taken into protective contexts too readily. Evidence from Balderston and Morgan's important study of disabled hate crime, for example (2009), points to Safeguarding Boards' continued assumptions that disabled people need blanket protection to reduce hate crimes. This form of latter-day biblical rescue in turn may both increase the social distance between disabled and non-disabled people, but also fail to deal with the underlying constructions of the 'hate crime problem'. It does of course mean that disabled people are denied forms of risk-taking and education in identifying the risk of hate, grooming and false befriending. Similarly, evidence from the Office for Public Management (OPM) pointed to concerns that hate crime safeguarding could lead to narrowed social options and be at odds with pervasive notions of independent living which wider social policy is keen to foster (DoH 2007; Sin et al, 2009). What then of the term vulnerable? As a term, 'vulnerable' has clear connotations of weakness and is generally applied by members of a powerful majority to oppressed groups. The term seems to be rooted in a more paternalist era of disability policy, one where charity and ministering to the needy were rooted in religious constructs (Roulstone and Mason-Bish 2012).

So, what of the implications of assumed vulnerability? The Crown Prosecution Service (CPS) in formulating an early Code of Practice in prosecuting disability hate crime adopted the following logic: 'Some crimes are committed because the offender regards the disabled person as being vulnerable' (CPS 2007). Here vulnerability is the quality of the individual. If a blind person walks into a subway with shopping bags, they leave themselves open to risk of theft. If a young adult with a learning difficulty asks a stranger for directions, then they risk exposure as both disabled and in need. Rebecca Hough has been helpful in challenging notions of vulnerability which have proven unhelpful in the wider criminal justice system when applied in a blanket and essentialist way:

'Innate' vulnerability is oppressive ... if risk is assumed to be part of who someone is, nothing can be done to alter the characteristic and the goal becomes protection. (Hough 2012)

If we begin to construct the problem as relational and adopt a perpetrator-led focus, we can begin to see how the criminal justice system could be more nuanced, less biblical in its response to hate crimes. Indeed progress is beginning to be made as the following attests:

The label vulnerable was being applied to disabled people as ... an innate, unchanging and unchangeable characteristic of disabled people. We are one step away from making the assumption that disabled people should expect to be attacked because of who they are. (CPS 2010)

While the CPS themselves, bowing to pressure from disabled people's organisations, adopted the following amended definition:

The vulnerable situation, within which a disabled person may find themselves, can provide the opportunity for an offender to demonstrate their hostility based on disability. (CPS 2010)

Conclusion

Alongside the reframing of vulnerability, modernised anti-hate responses include education, training programmes, harsher sentencing and a reduced emphasis on rescue from the perils of a non-disabled society. However, lurking just beneath the surface of both attitudes to disability and to the appropriate system response are deeply rooted views of disability as a metaphor for spiritual differences. This in turn presents a continued risk that the criminal justice system may lose sight of the deeper rooted causes of hate crime in exhorting disabled people to foster greater resilience in the face of abuse. The above has attempted to challenge contemporary assumptions that disability and hate are recent phenomena. By tracing the roots of assumptions on disability we can see how immediate community and psychological constructs arguably stem from key cultural and historical transmissions. Whatever value one puts

on the validity of religious texts as reflecting realities, more important for social scientists are the functions served by religious texts. As noted above, much of the literature on hate crime stems from studies of stereotypes. The above analyses have made a plea that we look at cultural and historical archetypes.

The above argues that in part archetypes of religious and social thought underpin some fundamental frames of reference with which to understand and treat disability. Only by drawing back the lens of history and culture can we really explain the extraordinary inhumanity at the heart of certain acts of disabled hate. This is not to argue that early religious texts are to blame for all disabled hate, or indeed that they hold no succour for disabled people. Indeed a wider reading of say the Bible would also provide a behavioural palate of forgiveness and most notably the Good Samaritan. So while there is no common law imperative to aid another in distress, many of us do reach out to help those in need (Brandon et al. 2012 in Roulstone and Mason-Bish 2012). However, these are general exhortations. In the case of Christine Lakinski, no one came to her aid while she was dying. This suggests that certain imperatives may be weighed against other cultural archetypes, in this case disability and spiritual abandonment. The above is a controversial thesis, one which is designed to stimulate further debate. Only by examining disabled hate crime from a variety of angles can we really understand the range of factors that embolden hate perpetrators to continue to engage in acts of barbarity towards a person simply because of the social and spiritual category they 'represent'.

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5

Faith, Mental Health and Deviance: Possession or Illness?

Stephen Handsley

Introduction

The claim by some that culture is causative of mental disorders has become something of a clichéd conceptualisation; a widely exaggerated misnomer which has, in many cases, resulted in those affected becoming labelled as either mad, bad or deviant (Scheff 1974). However, this (mis)association between what might be described as essentialist aetiology and evolutionary characteristics, in which cultural identity is portrayed as both natural and *predisposed*, and as a manifestation of mental disorder and deviancy, whilst continuing to command conclusive currency in many circles, can in fact be traced back to the preindustrial era which saw those possessed by 'demons' either exorcised or burnt or starved to death (Foucault 1977).

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Likewise, during the eighteenth and nineteenth century, mental illness was seen as being *caused* by evil spirits or religious beliefs which, in turn, led to such punitive measures as imprisonment or institutionalisation under the lunacy laws (Shorter 1997). More recently, a clinical cocktail of pharmacological remedies and recovery, incarceration and inquisition have, in some quarters, become a byword for the ‘treatment’ of mental disorders. Moreover, in what some see as an attempt to ‘distinguish a different species’, genetic factors have been cited as determinants of mental illness with some claiming that genetic mediation, moderation or modification of defective genes serve as a cure for depression and psychosis (Phelan et al. 2002; Uher and McGuffin 2008).

In contrast, the anti-psychiatrist movement has, however, challenged such taken-for-granted ideas, arguing instead that the personalisation, criminalisation, demonisation and stigmatisation of those experiencing mental disorders is simply part of societies attempt to apportion blame, for what it perceives as different, deviant and devilish behaviour, associated with those from particular cultural backgrounds (Szasz 1974). This, coupled with the fanciful notion that religious sentiments are innate, serves to throw a spotlight on whether or not contemporary society sees mental disorders as examples of either/or both possession, illness or non-conformism. As Berger notes:

To go against the order of society as religiously legitimised ... is to make a compact with the primeval forces of darkness. (Berger 1967, p. 39)

Thus, for many, mental illness continues to represent some form of possession by which I mean a ‘phenomenon which occurs as a state of dissociation’ (Swartz 2014), and is perceived by society as bedevilled and disconnected from normality and reality.

This chapter focuses on the relationship and interplay between religion, faith and criminality and mental health. It begins by briefly charting the history of the way that mental disorders have largely been attributed to those who possess some sort of demonic and deviant trait, and how lunacy has often been ascribed to particular religious denominations.

Loewenthal and Cinnirella (1999), for example, reported how 'beliefs about causal factors on psychiatric illness (schizophrenia and depression) among non-clinical groups of Christians, Hindu, Jewish and Muslim women in the UK are commonplace' (Loewenthal 2007, p. 24).

It then goes on to consider the many multilayered and multidimensional perspectives, some of which suggest how, for example, psychiatrists as agents of the state, have been used by society to punish and control sufferers of mental illness as a way of suppressing religious deviancy. The chapter also draws upon a broad range of influences of religiosity on identity to demonstrate how these serve as social and cultural markers in the production and reproduction of an individual, collective, communal identity as opposed to the organic, predisposed possession of delirious devotion. The chapter will also argue that an understanding of concepts of culture—and their respective ontology—is fundamental in the successful development and provision of culturally competent mental health and criminal justice services.

The Connection and Context of Religion and Mental Disorders

Whilst society, for some, serves as a harmonious, cohesive, collective space for social interaction and integration, for others it often represents a site of loneliness, detachment and alienation. The role of religion as a social, moral and spiritual resource—one which provides the social glue on which healthy relationships, it is claimed—helps broker a person's relationship with society, either positively, by providing a safe and sacred sanctuary, or negatively, by stigmatising and excluding those who fail to conform. For example, celebrating its positive features, Emile Durkheim claimed religion consists of 'beliefs and practices which unite into one single moral community... all those who adhere to them'. Religion is thus, 'an eminently collective thing' (Durkheim 1915, p. 47). Similarly, for many, religion 'promise[s] relief from the spectrum of [a range of] human ills' (Kwilecki 2004, p. 477) and that it is often a resource to which 'people and their loved ones

turn to when faced with serious illness' (Pargament and Lomax 2013, p. 26). Whilst for Ellison and Levin:

Religious involvement, especially participation in religious communities, may promote mental and physical well-being by regulating health-related conduct in ways that decrease the risk of disease. (Ellison and Levin 1998, p. 700)

However, despite such optimism surrounding religions' potential, both to connect communities and solve life's ills, Durkheim also highlighted its pejorative and paradoxical nature in that it often serves to exclude those bereft of a moral compass—persons who perhaps inhabit a more individualistic, insecure world in which they lack attachment and who fail to conform to collective social norms, in short, those who fail to fulfil society's moral quest for inclusivity, integration and institutionalism. As Stark and Bainbridge suggest:

Persons will conform to the norms to the extent that they are attached to others who accept the legitimacy of the norms. Conversely, people will deviate from the norms to the extent they lack attachments. [Whilst] at the group level, deviance rates will be higher in groups having a lower mean level of attachments ... people deficient in attachments are effectively alone all the time and therefore are free to deviate, since they have no attachments at risk. (Stark and Bainbridge 1996, p. 5)

Given that many associate detachment with deviance and disruption, perhaps it should come as no surprise that they also, similarly, postulate some sort of paradoxical connection between madness and badness—and the search for a spiritual and religious respite—to help reduce the severity of their symptoms.

Whilst evidence of the relationship between mental ill health and religion has emerged dating back to the fifth-century BCE, considerable controversy has surrounded this connection (Shorter 1997). Whereas, for some, mental disorders are symptomatic of internal biological or psychological malfunctions, for others, they serve as sociologically constructed phenomena which may not be divorced from their social surroundings (Hackney and Sanders 2003). Conceptualising mental ill health has therefore proven problematic, in terms of both its causes and its connection to religion.

Since time immemorial, mental ill health has been seen as synonymous, not only with madness and deviancy, but also accompanied by devilish discourses which helped construct sufferers as crazed, criminal and demonic figures possessed by an invisible and innate predisposition to evilness; a form of plague which needed to be cast out (Foucault 1972). In ancient Greece, attitudes towards mental illness were fuelled by mythical tales of sufferers being driven mad by what they perceived as possession and the ‘punishment of God’. Padel (1992, p. 45), for example, provides a useful insight into how ‘Greek tragic madness struck later ages, and how these other ages (especially the Renaissance and the nineteenth century) changed the Greek picture’.

Early Indian texts contained references to insanity as being largely associated with Ayurvedic medicine, the use of which contributed to mental illness (Haldipur 1984). At the same time, the connection between religion and mental disorders, similarly, forms part of the philosophy of Christianity (Williams and Faulconer 1999). Biblical narratives, for example, have illustrated how the concept of madness is closely linked to evil and social exclusion and alienation. In particular, in the field of Old Testament studies, much emphasis has been placed on the relationship between madness and Jewish medicine.

During the early fourteenth century, bizarre behaviour was adjudged to be in the realm of the supernatural and superstition. Individuals ‘possessed’ by devilish demons were seen as cursed and subjected to persecution and in some cases exorcism. Whilst Boddy (1988, p. 12) has noted the connection between spirit possession and the mind in which she refers to ‘the condition of being affected by forces or entities that are normally invisible and external to humans’.

Within this framework, the first comprehensive study was *Preuss's Biblische und Talmudische Medizin* (1911), which uses the cases of Saul and Nebuchadnezzar, to suggest that the former suffered from ‘melancholia in its “psychiatric sense” and “epileptic seizures” whereas the latter showed signs of “lycanthropy”’ (Vartejanu-Joubert 2000, p. 176). The parables of Jesus, likewise, have been viewed simply as the rantings of a deranged and delusional fanatic.

Such conceptual connections can be found in the work of Freud, particularly, in his 1907 paper 'Obsessive Acts and Religious Practices' in which he draws attention to the parallels between the repetitive, compulsive nature of neurotic behaviour and certain features of religious ritual. This, according to Hull (1991)

leads [Freud] to suggest that neurosis is a sort of 'private religious system' while 'religion is a universal obsessional neurosis' [in which] religious ritual represents a sacrifice made to the deity of the free expression of human desire. Religion is necessary to our culture just as the symptoms of neurotic illness are necessary in the personality structure of the neurotic, deceitful and illusory though they may be ... No more than the neurotic patient does the religious believer realise the true origin of the compulsion and the guilt which drive forward the repetitive ritual practices. (Hull 1991, p. 347)

Whilst Freud and others focus on the psychological dimensions of madness and religion, Foucault (1970), on the other hand, using a historical analysis, reveals how socially and culturally constructed discourses surrounding religion and madness 'come to be accepted as true [in which] certain practices [come] to be accepted as normal, how a certain understanding of the world came to be accepted as common sense' (Bracken and Thomas 2010, p. 223). For Foucault, such discourses demonstrate the power of social norms and cultural narratives to deposit a 'deterministic doctrine' into the psyche of a society as to the 'true' causes of mental disorders and their association with religiosity. Moreover, such cultural dialogues and moral directives ultimately serve to silence, shape, control and regulate the religious subject by suggesting their deranged denunciations are simply no longer a part of civilised, rationalised and secularised society; one which deems them mentally unstable and out of touch with reality.

Indeed, the psychiatric 'industry' continues to peddle the notion that mental disorders are a direct outcome of religiosity. Sica et al. (2002, p. 820), for example, claim religion as a contributory factor to the development of obsessive-compulsive disorder (OCD) suggesting that 'there is a strong argument in favour of religion influencing OCD symptomatology'.

Others claim a similar negative association between extrinsic religiousness and psychological functioning (Pargament 1997) with the

‘interpretation of negative events [seen] as punishments from God [which are thought to be] related to negative mood and negative assessments of how well the events have been resolved’ (Bartz et al. 2010, p. 684).

However, on a more positive note, Ellison and Levin (1998) argue that

Religious involvement may promote better health by enhancing feelings of self-esteem, or the sense of intrinsic moral self-worth, and feelings of efficacy, or perceptions that one can master or have control over one’s personal affairs. (Ellison and Levin 1998, p. 56)

Whilst for Park et al. (2012), depressive episodes often lead to a search for spirituality and religion may be helpful in overcoming depression or becoming less vulnerable to relapse.

Punishment or Paternalism: The Medicalisation and (De)Institutionalisation of Madness and Deviance

As outlined above, efforts to control and conceal those who fail to fit into a functionalist framework of conventionality have been around for centuries. So too have humanitarian approaches to madness, many of which have advocated a reformative shift towards what Pinel (1809) refers to as a *‘traitement moral’*. As Foucault notes:

The asylum of the positivist age, which Pinel is credited with having founded, is not a free domain of observation, diagnosis and therapeutics; it is a judicial space where people are accused, judged, and sentenced, from which they can only be freed by [...] repentance. Madness was to be punished in the asylums, even if its innocence was proclaimed outside. For a long time to come, and at least until today, it was imprisoned in a moral world. (Foucault 2006, p. 503)

However, despite this moral maze of madness, during the seventeenth, eighteenth and early nineteenth centuries, people with mental illness were—and many would argue still are—either consistently cast out from society, left to their own devices as being biologically or genetically

dysfunctional, or alternatively, institutionally incarcerated into asylums in which people were systematically subjugated and stripped of any semblance of their sense of self. Indeed, much of the historical landscape surrounding mental illness is littered with largely misguided attempts by the medical profession to paternalistically pathologise and pigeon-hole, what many see as normal behaviours, into categories which refer to sufferers as either mad, bad, manic or melancholic, from which it is necessary to undergo cathartic medical or punitive treatment, and to either catalyse crisis or expel crisis and psychosis from the individual.

From around the mid-seventeenth to the early eighteenth century in France and elsewhere in Europe, in what Foucault calls ‘the Great Confinement’, the mad, the old, sick, unemployed, prostitutes and vagabonds were all incarcerated by a legislative shift towards a centralised administrative State (absolutism)—one which witnessed the expansion of both the number and size of insane asylums—and the notion of economic needs of this State; a bureaucratic, efficiently productive State machine whose primary focus was on social control, surveillance and punishment ‘in order to deprive the individual of a liberty that is regarded both as a right and as a property’ (Foucault 1977, p. 11).

As can be seen, there was little room here for sentiment towards those who, in many cases, simply lacked the social support of relatives or neighbours which were often combined with inadequate housing or insufficient local authority services in what Shorter (1997) refers to as ‘an authoritarian intolerance of behaviour that did not conform to rigidly drawn norms’ and what Foucault (1977) suggested were ‘aspects of evil that have such a power of contagion … that any publicity multiplies them’; in other words madness was a plague which needed containing before man’s rationality was corrupted.

In the eighteenth century, madness became identified with the ‘*negativity of unreason*’ (Schillmeier 2014, p. 17). Largely associated with the Enlightenment, this is based upon the premise that those who lack a sense of ‘scientific’ reason—conceived of as a legitimating and normalising force for good—are in some way possessed, that is, mad or inhuman. This absence of reason makes them feral-like in character, and they should thus be treated as animals. As Schillmeier (2014, p. 16) suggests, ‘Madness [became]…the blank presence of the most radical difference to anything rational, reasonable and socially acceptable’.

Irrationality has, thus, long been attributed to demonic possession, religion, witchcraft and mental disorder. Indeed, according to Stark and Bainbridge (1996, p. 129), 'from the start, social scientists have interpreted religion as essentially irrational, rooted in hallucinations ... and neurosis'. For example, antagonism towards religious practices by physicians and psychotherapists alike has often centred on what they claim are simply symptomatic signs and primal, neurotic, pathological and illogical 'babblings' of the demented and deluded. Likewise, many psychiatrists claim to have identified a correlation between religious belief, rituals and practices and depression and psychosis, much of which they see as illogical, outdated and dependency forming; this, despite the fact that it is claimed religious institutions during the nineteenth century played a part in providing a 'sacred canopy' to the mentally ill.

As we approach the nineteenth century, however, madness became medicalised and biologised under the scrutiny of members of the medical profession who became fascinated by the diagnostic, clinical, therapeutic and legal aspects of the case of the insane (Bewley 2008). There was a growth in medically run asylums, a development in medical literature on the subject, and medico-legal involvement in court cases. The recognition that the mind is a function of the brain enhanced this process so that it became increasingly accepted by doctors and to a lesser extent by the public, that mental illness was in fact a disease and thus fell within the province of the medical profession.

Hand in hand with the 'medicalisation of madness' emerged the biopolitical belief that the institutionalisation of those suffering mental illness would result in a more 'malleable', 'modified' and 'normalised' subject, under the care of what Goffman (1961) termed 'Total Institutions'. Here patients are reduced to inmates with a 'presenting culture' which requires some sort of social adaptation and cultural conversion. Attributing this to a form of institutionalised indoctrination, Goffman explains how:

The low position of inmates relative to their station on the outside, established initially through the stripping processes, creates a milieu of personal failure in which one's fall from grace is continuously pressed home. (Goffman 1961, p. 66)

For Foucault (1977), this process of personal and public humiliation seeks to neutralise and render compliant those who are adjudged to have transgressed. Consequently, for Goffman (1961, p. 48) and others, the world of the inmate is one in which ‘He [or she]... is considered to be of insufficient ritual status to be given even minor greetings, let alone listened to’.

In contrast, the twentieth century has witnessed a shift towards deinstitutionalisation and what has been termed the ‘anti-psychiatry movement’ (Bracken and Thomas 2010). This attempt at demystifying and demythologising psychiatric and institutional practices saw, for example, a ‘shift in practice of caring for individuals with mental illness from institutional environments to the community’ (Shen and Snowden 2014, p. 1). Whilst this neo-liberal mandate resulted in the wholesale closure of large state-run institutions, much of this occurred before the development of alternative residential opportunities; the outcome of which saw the ‘dehumanisation’ and ‘stigmatisation’ of the mentally ill with many chronic patients becoming drifters, and the shunting of many into the criminal justice system.

Later, during the 1990s there were attempts to create community alternatives expanding the range of services and supports for those now in the community, in recognition that medical treatment was insufficient to ensure community tenure. Nonetheless, despite the political and cultural clamour in favour of deinstitutionalisation—along with a wealth of evidence demonstrating the effectiveness of community-based models in reducing relapses and hospital admissions—by the early twenty-first century, there were signs that this process had failed. Indeed, institutionalists claim that such ‘practices are adopted solely for symbolic reasons’ as a way of appeasing and balancing ‘public fears and misperceptions that mental illnesses are linked to violence, [crime], [deviancy] and the growth in homelessness, with the need to provide shelter and treatment to people with mental illnesses while maintaining their civil liberties’ (Morrow et al. 2008, p. 1).

In some cases, this has led to what has become known as ‘Revolving Door Syndrome’, in which a proportion of, supposed, chronically mentally ill patients are frequently readmitted to psychiatric institutions, often as a result of socially determined phenomena (as opposed to biomedically constructed explanations of mental illness) such as welfare state reform, homelessness, social exclusion and alienation. Indeed, in

what is a frightening throwback to the seventeenth- and eighteenth-century ‘confinement’ period is the call from the ‘neo-liberalist’ camp for re-institutionalisation policies which support the incarceration ideology of imposing control on people with mental health challenges; a punitive and delusional process which helps maintain and perpetuate the myth that mental disorders equal madness and badness.

In contrast, a key understanding in ‘anti-psychiatry’ was that mental illness *per se* does not exist and is, therefore, a myth (Szasz 1974). This argument is based on the belief that illness is a physical concept and therefore cannot be applied to psychological disorder, in the absence of a physical pathology. However, the ‘anti-psychiatry’ movement includes critics with a variety of views, and as a result, the essence of its argument is not always clear (Gijswijt-Hofstra and Porter 1998).

Conceptualising Mental Disorders, Crime and Deviancy

Dispelling the many myths surrounding the connection between religion, mental disorders, crime and deviancy, without first presenting the polarised theoretical perspectives, is always likely to fall foul of a neo-liberalist narrative which seeks to position mental ill health as a cost burden (Robertson and Walter 2014). Indeed, academic and professional rivalries between neurologists, psychiatrists, psychologists, sociologists, criminologists and ‘perspectivism’, often hinders our understanding of the true cause and nature of mental disorders. As Busfield (1996) notes:

Mental disorder stands in a difficult, precarious position between bodily illness and social deviance, and there has been ongoing struggle between various professionals, social theorists and others as to where its boundaries should be set and whether it can, or should be demarcated from its neighbours. (Busfield 1996, p. 53)

For some, crime, deviance and mental illness often go hand in hand. For them, while not all deviants are considered mentally ill, almost all mentally ill persons are considered deviant (since mental illness is not

considered 'normal'). Those who study criminality and deviance also often study mental illness from which three main approaches have developed.

Biological determinism suggests that biological or even genetic factors are the main or even the sole cause of important behavioural differences between people, even when those behavioural differences involve complex behaviour-environment interactions. Using a biological or essentialist approach would, therefore, argue that determinants of mental illness have a basis in biological abnormality. For example, damage or destruction of brain tissue or dysfunctional brain chemistry may produce a variety of behavioural symptoms.

From a psychological perspective, excessive neural activity such as attention deficit hyperactivity disorder (ADHD), a common childhood neurodevelopmental disorder characterised by difficulties with attention, motor overactivity and impulsivity that interfere with normal functioning in various settings, has, similarly, been cited as an example of a predisposition to mental illness (Cao et al. 2006). However, as Freud and others have argued, psychological illness can be explained by a number of unconscious mechanisms usually related to internal and external childhood events and traumas.

The main sociological theoretical frameworks regarding mental illness, whilst each acknowledges its external nature, all look to the social systems in which mental illness is defined, identified and treated. Functionalists, for example, believe that by recognising mental illness, society upholds the norms and values about conforming behaviour; the idea being that this ensures the smooth running of society (Busfield 2001). This perspective views illness as being psychosomatic because an individual either consciously or unconsciously makes a decision to be ill, because they can no longer meet the demands that society is placing on them; the individual assumes what Parsons (1951) calls the 'sick role'. In doing this the individual is removed from their responsibility to contribute towards society, the individual cannot wish themselves better and the individual must agree to take the role of a patient, accepting that medical intervention of some sort is required to make them better so that they can then reassume their responsibilities within society. For Parsons (1951), crime and illness were designations for deviant behaviour. Likewise, he conceptualised illness as deviance primarily because of its threat to the stability of a social system.

Symbolic interactionists, on the other hand, are concerned with examining the interaction between different role players in the health and illness drama. For them, such phenomena as mental disorders are not innate or a product of one's biological or physiological malfunction but are, instead, socially constructed. As Busfield (2001) notes, this perspective can be taken to incorporate an ontological claim that mental disorder is only a 'reified' category and does not refer to any objective reality; one that focuses on how mental illness and the subjective experience of being sick are constructed through the processes of negotiation based upon the way in which society classifies and categorises what is or is not 'acceptable' or 'desirable' behaviour (Conrad and Barker 2010). However, such socially defined categories serve as pejorative terms reflecting a mark of shame or degradation which are used to stigmatise mental disorders and deviancy. Goffman (1961), for example, notes how the damaging effects of stigma reduce the bearer from a whole person to one that is irredeemably tainted. He also argues that such ideologies are a legacy of the social organisation and legitimisation of psychiatric practices which are created to control or constrain those whose 'presentation of self' constitutes a potential threat to everyday life.

As discussed earlier, for Goffman (1956) and others, stigma and embarrassment are systematically used as personal, political and pejorative weapons to contrive, construct and legitimise public conduct and are perceived of as incompatible with prevailing norms. As a result, those 'suffering with mental disorders' are presented as emotionally disturbed, incoherent and lacking composure. Indeed, such people are often regarded as requiring institutional regulation (treatment) and correctional conditioning (therapy) before they are returned to society as a fully functioning citizen. As noted above, such branding, or what Scheff (1966) refers to as labelling, of those perceived of as socially inferior reduces the bearer from a whole person to one that is irredeemably tainted.

More recently, postmodernist theorists have focused on the, largely linguistic, analysis of cultural texts and social narratives as a way of illustrating how long-standing medical and psychological vocabularies and deterministic discourses serve to reshape and (re)create societies' understanding of reality, particularly around perceptions of mental illness. As these scholars point out, such reified categories (e.g., mental illness, schizophrenia, bipolar

disorder) are simply loosely formed abstractions defined by clusters of what society calls 'symptoms' (Walker 2006), each of which help perpetuate the professional culture of treatment and one which exists and persists through consensus and convention; in short, a linguistic paradigm which labels and pathologises what are often merely social and cultural differences. An example of such linguistic licence comes from Kate Loewenthal, a Professor of Psychology who, during a discussion of Schizophrenia in her book, *Religion, Culture and Mental Health* (2007), notes that

Religious delusions and experiences are not in themselves inherently psychotic, but when they do appear in people suffering from psychotic illness, they have a more frightening and uncontrollable quality than the experiences of non-psychotic individuals. (Loewenthal 2007, p. 21)

Given that those who are 'diagnosed' with psychological and psychopathic disorders receive their 'treatment' from 'psychiatrists who subscribe to the theory that schizophrenia and other psychotic disorders are caused by diseases of the brain' (Williams 2012, p. 21), perhaps we shouldn't be surprised when the negative metaphorical meanings of mental illness narratives used by society mirror those of academics and health professionals (Sontag 1978); in short, that mental disorders are synonymous with difference, diversity and danger.

The Intersectionality of Faith, Criminality and Mental Health: What's Identity and Culture Got to Do with It?

Whilst clinical experiences continually emphasise the connection between demonic possession and mental illness, there is a long-held view by some that society 'constructs' such behaviours based upon social and cultural differences, as measured against social norms and societal values (Conrad and Barker 2010). For these scholars, mental illness is conceptualised and influenced by attitudes, opinions and beliefs which are socially constructed both by society and societal expectations. So, what might be seen by some as an abnormal psychotic episode, or perhaps a personality disorder could,

from a constructionist standpoint, simply represent the expression and embodiment of cultural flamboyance; one which uses visual performance and narratives of identity to establish a social and cultural presence.

Thus, cultural comparisons are often used to designate differences in our understanding of mental illness. However, rather than assuming that concepts of mental illness are culturally constituted as concrete and analogous, it must be stressed that, on the contrary, there are marked cultural differences in the perception and social meaning of 'mental illness'. Indeed, as Dilworth-Anderson and Gibson note:

Evidence shows that one's broader cultural norms, values, and cultural frame, give meaning to and provide definitions of illnesses stemming from diseases such as Alzheimer. (Dilworth-Anderson and Gibson 2002, p. 56)

However, as Geertz (1993, p. 89) notes, collectively, it is the power of social and cultural systems—along with the 'sacred symbols [which] synthesize a people's ethos'—which strengthen such meanings by 'inducing, defining and [depositing] dispositions', that serve as a 'blueprint or template in terms of which processes external to themselves can be given a definite form' (Geertz 1993, p. 92).

For example, as noted above, whilst in the West, the propensity for deviant or abnormal behaviour to be categorised or diagnosed as illness, using a medical model, continues to hold sway, for others, such conduct can be conceptualised as a cultural catalogue of expressionism and existential embodiment. Thus, for some cultures and social groups, the explanation and causes of mental illness revolve around religiosity and belief systems, whereas for others folklore, superstition and witchcraft serve as cultural markers as to what reflects and represents abnormal or deviant behaviour. Indeed, many religions, including Islam, actively advocate witchcraft and spirit possession—all of which are thought to influence the behaviour of a person so as to resemble that of a mentally ill individual (Ally and Laher 2008, p. 45).

For instance, in Haiti, the practice of Vodou (Voodoo) is widespread, including Haitians who identify as Catholics and, to a lesser extent, Protestants (Métraux 1958). The name 'Vodou' stems from the Fon word meaning spirit which serves both as a therapeutic source of sustenance

and a healthcare system, which includes healing practices, health promotion and prevention of illness and promotion of personhood.

A first level of interpretation of illness in Vodou is based on the need to establish a harmonious relationship with the spirit world of the ancestors. A second level deals with the role of magic or sorcery attacks in which the afflicted person is the victim of a spell. According to the causal explanations of Vodou the health and illness of a particular person depend on his or her connection to tradition and place in the social and moral order and in a wider universe of being that includes the ancestors and the gods. (World Health Organisation 2010, p. 7)

Demonic possessions, and the existence of evil spirits, similarly form part of the culture of Islam in which ‘the word “majnoon” i.e., mad is originally derived from the word “jinn” (spirit) which in Arabic overlaps with different connotations and can refer to a shelter, screen, shield, paradise, embryo and madness’ (Okasha and Okasha 2012, p. 74). Likewise, when it comes to the explanation of mental illness, supernatural beliefs are sometimes ascribed to ethnic Chinese—for example, spirit possession, the effects of past lives or divine punishment due to failure to comply with rituals of ancestor worship (Liu et al. 2013). *Curanderismo* is a diverse folk healing system practised by many Mexican Americans, a main tenet of which is that illness is caused by natural forces, supernatural forces or a combination of the two (Guarnaccia et al. 1992).

This contrast between the supposed sophistication of Western concepts of mental illness and the perceived inferiority of less enlightened cultures has led to claims of inherent inferior intellect and, as previously discussed, biologically determined deviancy and psychological abnormalities. Such damaging, derogatory and stereotypical ideas not only categorise cultures as one-dimensional, lacking any sense of variation and individualism, they also, by default, presume a person’s predisposition to mental illness. Moreover, such *culture-bound syndromes*, described as ‘clinical manifestations found in particular societies or cultural areas’ (Rubel 1984 cited in Rubel et al. 1984, p. 2), and the associated negative connotations, simply serve to demonise further those groups who chose to promote difference and diversity in which they celebrate, embrace and embody particularistic cultural identities.

Similarly, if as many claim, mental illness is 'at the root of ... current social problems' (Hubbard and Wald 1999), then should we not be surprised by society's long-held perception that, as noted above, mental disorders are synonymous with deviance and criminality. Such attitudes are often fuelled by sensationalised headlines about appalling criminal acts being perpetrated by the mentally ill, based upon the premise that this too is biologically and genetically predetermined. Indeed, despite these misconceptions, several authors have argued that there is a genetic basis for criminality.

Silver et al. (2008), for example, in a Survey of Inmates in State and Federal Correctional Facilities claim to have found that a history of mental health treatment is more strongly associated with assaultive violence and sexual offences than with other types of crimes. From this they subsequently generated a deviance hypothesis: offenders with mental health problems tend to engage in more deviant types of criminal acts than those without such problems.

For me, this attempt to connect criminality with mental disorders is consistent with the very same essentialist epistemology, as discussed above, which attempts to anchor faith and spiritual possession to madness and badness; much of which is a legacy of Western-centred biomedical and scientific conservatism.

Perhaps the West has much to learn from these cross-cultural concepts and perspectives of mental illness, and rather than viewing possession as some form of illness, why not applaud its creative and invigorating qualities since, for some, it serves as a 'reservoir of [cultural] collective [values and] understandings, an imaginative system or thought, and a means of tracing human connection, as well as a therapeutic practice and a religious and philosophical tenet'.

This more enlightened and positive appraisal of possession is also welcomed by Rasmussen (2012, p. 187) who suggests that it

constitutes a system of empathy, a walking on a 'tightrope' of power often vacillating ambivalently between outright resistance and outright accommodation, it entails careful weighing of alternative paths in a cosmos where the boundaries between the person and the physical, social and superhuman worlds are permeable and negotiable.

In short, spiritual possession when seen as thus is categorically not illness but rather a cultural conduit for the negotiation, expression, embodiment, recognition, and social acceptance of non-conformist behaviours. To criminalise, classify and pathologise such person-centred ontologies as the manifestation of mental disorder is to confuse and caricature cultural meanings embedded in illness. Indeed, ignoring contextual variables, denying even that there might be a variation of the cultural constructions of mental illness, runs the risk of demonising and socially excluding significant sections of society.

Adopting a more enlightened approach to spiritual possession and mental health is fundamental in the successful development and provision of culturally competent criminal justice and mental health services. For example, it is essential that those working within these areas recognise the extent to which these cultural meanings impact on the way the illness is experienced, how the illness is depicted, the social response to the illness, and the type of policies which are created concerning the illness. In their study of the US mental health services and cultural competence in the criminal justice system, Primm et al. (2005, p. 698) noted how knowledge, cultural awareness and a 'greater understanding of how social and environmental factors ... contribute to the risk of marginalised populations becoming involved with the justice system' led to improved outcomes.

Finally, noting the impact of cultural competence in a psychiatric setting, Whitely (2012) points out that

Cultural competence by definition includes religious competence, as individual religious orientation infuses patients' beliefs, values, attitudes, and conventions. Not only does religion (or lack thereof) determine patients' psychological and existential frameworks; it can also play a key role in determining behavioral variables (which, in turn, influence physiological variables) that have a direct bearing on mental health. (Whitely 2012, p. 250)

Conclusion

In this chapter, I argue that the distinction between possession and mental illness is often insufficiently recognised, conceptualised nor understood, both by society in general and those working within the criminal justice and mental health system. Much of the fault lies with historical revelations

and reifications of mental illness—in which people have been labelled as mad, bad or deviant—supposedly caused, either, by sinful spirits or ‘irrational’ religious beliefs or genetically/biologically predetermined and evolutionary characteristics. Such misguided, yet entrenched, views have continued to inform contemporary conceptions of perceived mental disorders, particularly, when viewed through a Western-centred lens.

However, cross-cultural concepts and perspectives have proved particularly productive, and indeed, influential in constructing counter-narratives which reclassify both mental illness and religious and spiritual possession in terms of their therapeutic capacity and capability; a healing process which recognises and values flamboyance and cultural performance as an outlet for distress and the expression of an exaggerated and ebullient sense of self, as opposed to a ‘symptom’ of personality syndrome. Indeed, devout intrinsic religiousness has consistently been shown to be associated with better psychological functioning; so why not foster a form of folk religiosity which offers ‘possession’ as an ‘opportunity’ rather as a non-normative psychopathological trait? As Heinze (1982, p. 28) notes, ‘A dissociative state of mind does not necessarily qualify an individual for being put into a straight-jacket’.

In recognising and embracing such perceptions, criminal justice and mental health services need to develop ‘culturally proficient [services] in which institutions and individuals hold cultural differences in high esteem and continually modify their approaches based on current cultural knowledge’ (Primm et al. 2005, p. 566). Indeed, such an approach can be employed in mutually reinforcing ways to enhance recovery and rehabilitation. In this era of client-centred care and recovery-oriented practice, we should expect that both religious and cultural competence is a fundamental component of such services.

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6

Theorising Religion, Crime and the *System* of Criminal Justice: A Moral Economy Perspective

Philip Whitehead

Introduction

Most academic work in the related domains of religion, faith and crime theorise the religion-crime nexus to facilitate social conformity. Additionally, empirical research attends to the efficacy of religion to reduce or prevent crime in the community, during and following release from custody. In other words, the orthodox theoretical and empirical enterprise is largely directed towards individual offenders and instrumental reductions in offending behaviour. Contrastingly, the purpose and scope of this chapter proceed beyond a narrowly constructed theoretical and empirical individual metanoia (change of heart and mind) to the *system* of criminal justice itself. This more unorthodox approach *from the other end* is pursued by directing attention towards the complex and contested conceptual lens of moral economy (Whitehead 2015a) in its

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relevance for, and application to, the functioning of the criminal justice system primarily in England and Wales.

Beginning in the 1980s, followed by New Labour administrations after 1997, and the Transforming Rehabilitation agenda of 2010–2015, the system of criminal justice has repeatedly been thrown into the grip of the technical requirements of economy and efficiency, value for money (VfM), measurable targeted outcomes, expressive retributive punishment, expanding prison regimes, and bureaucratic rationality. These features have gathered pace during the last three decades to impose a paradigm shift in governmental policies and organisational practices, most notably illustrated by radical transformations in probation work (Whitehead 2016 *forthcoming*). Furthermore, technical, administrative, and penological transformations, imposed by government fiat, raise profound questions on the nature of justice and morality which are germane to maintaining the legitimacy of the system.

The vital and timely contribution of this chapter advances the argument that this paradigm shift has delivered a serious blow to the ethical and cultural foundation of system functioning and, in turn, the fundamental determinants of thinking about doing justice. Accordingly, the conceptual device of moral economy constitutes a point of rupture to criminal justice orthodoxy dominated by theoretical and empirical individualism. The significance of a moral economy approach puts people before profit and investment opportunities, human interest before the expanding materialism of Payment by Results (Whitehead 2015b) by accentuating the demands of ethics and justice. Specifically, moral economy appertains to the state of a country's ethical and cultural conventions (or symbolic order), the mechanisms of moral production and reproduction, and the circuits of ethicocultural contestation. Accordingly, it poses critical questions of political economy, the way that a society is ordered and the fashioning of human subjectivity (Hall 2012). Moral economy, as theoretical framework and conceptual device applied to criminal justice, formerly assimilated the ethically-driven probation ideal and rehabilitative ethic. Furthermore, and this is important, it is informed by numerous intellectual disciplines including religion that can be applied to the system to excavate and critically analyse a series of intellectual and moral disturbances. The same resources can also establish the platform on which to reanimate the moral interest, which is of fundamental and foundational significance.

Prior to striking beyond introductory comments to the substantive core of this chapter, an additional elucidatory comment is required on some of the disparate intellectual resources that inform moral economy. First, the discipline of philosophy reaches back to classical Greece. Socrates debated the nature of human virtue (*aretē*); Plato, the concept of justice (1974 *dikaiosunē*) and Aristotle, *Ethics* (2000) *eudaimonia*. In fact, for Plato and Aristotle, justice is the supreme virtue. Subsequently, Renaissance and Enlightenment philosophy engaged with contributions to the subject by, for example, Hutcheson, Smith, Kant and Hegel (see Eagleton 2009; Schweitzer 1929 for an extended discussion). Next, there are theistic and atheistic forms of personalism (Mounier 1952), in addition to Symbolic ethics associated with Lacan and Žižek (see Winlow and Hall 2013). Pertinently, though, and consistent with the central theme of this chapter, religion, or more precisely theology and Christology, can be isolated as a significant source for engaging with, and theorising, moral economy.

I proceed as follows. First, a brief note is required on the God problematic that strays into the relationship between metaphysics and *metanoia*. Second, it is necessary to allude, albeit briefly, to theory and research on the *individualistic* approach to the subject under discussion that I want to move beyond. Next, I turn to a *system* perspective. When doing so it is imperative to return to the 1980s which provide evidence of moral erosion to which the conceptual device of moral economy is allowed to respond. This response is informed by religious and Platonic philosophical references to justice (*dikaiosunē*) that is relevant for the criminal justice domain.

The God Problematic: Metaphysics and *Metanoia*

On Being A Christian (Küng 1977) is an academic though accessible text on theology and Christology with implications for theorising the moral. Küng's God (*Θεός Theos*) is not an object amongst other objects in the world that can be known, empirically verified or accessible to pure

reason. Instead, God is a proposition of faith, presupposed if human beings want to live a meaningful moral life. To construct a language that makes it possible to talk about God (the primary task of theology), in conjunction with morality, crime and criminal justice, is ontologically and epistemologically complex. This was not always the case because from the life of the early church, into the mediaeval era, the world view was shaped by the tripartite structure of God-soul-world (Cassirer 1951). Moreover, the scientists and philosophers of the Renaissance and Age of Reason 'would never have thought of forthrightly denying any dimension beyond that of mathematical-natural scientific reason' (Küng 1977, p. 86).

By contrast, the nineteenth and twentieth centuries were disruptive for the claims of metaphysics and religion because they fell under the spell cast by the *masters of suspicion*. Feuerbach (1841) asserted that God-talk is nothing more than talk about human beings. In other words, God was an anthropological projection. Freud advanced the view that God is an infantile illusion, and Nietzsche alarmingly proclaimed the 'death of god' that later resonated during the 1960s that caused much consternation (Ogletree 1966). We know that Darwin dealt a heavy evolutionary blow to religious creationist explanations that has contemporary relevance in the contrasting positions of *The God Delusion* (Dawkins 2006) and *The Case for God* (Armstrong 2009). Finally, and sociologically, according to Durkheim (1912/2001, p. 171) God was nothing more than the symbolic expression of society. Put simply, God is another name for the social and has no independent metaphysical reality beyond this. Marx reinterpreted religion as an ideological drug swallowed to make life bearable under industrial capitalism. So philosophical, sociological, even theological concepts, in addition to ontological, epistemological and linguistic complexities provoke issues and questions relevant to the substance of this chapter. Despite these intellectual provocations, it is claimed that the intervention of God can have a positive impact on deviant behaviour because the metaphysical dimension is associated with a radical change of heart, mind and consequently behaviour. Let us explore this in more detail.

Individual Perspective on *Metanoia*

During the 1930s, Kvaraceus (1944) examined the relationship between religious training, beliefs and individual behaviour. His study in the USA featured 761 delinquents, most of whom claimed affiliation with a church, but only 54 % attended regularly. Therefore, with half the delinquents the church could not be expected to have much impact. This research concluded that there may well be a 'lack of any positive relationship between religious knowledge or attitudes and moral behaviour' (1944, p. 286), which is an inauspicious beginning. Two decades later Travis Hirschi (1969) theorised that young people do not offend because they have something to lose, because of socialisation into the normative values of society which facilitates effective mechanisms of control. The salient factor for Hirschi's control theory is attachment and commitment to, and belief in, the conventional moral order established through the family, school, peer groups and the workplace. Importantly, comments Tierney, 'By asking the question, "Why do we not break the law?", control theory is suggesting that something special happens to prevent people acting out whatever impulses they may possess' (2006, p. 205). This *something special* incorporates religious attitudes and influences, the activity of a spiritual dimension, or perhaps church attendance which engenders conformity to moral and legal codes. Even though the viability of this thesis was questioned by Kvaraceus, perhaps Hirschi would lend it support.

Towards the end of the 1960s Hirschi and Stark (1969) wrote *Hellfire and Delinquency*. The empirical question was: can the prospect of hellfire for those guilty of falling short of acceptable legal and moral norms serve as a deterrent? The authors obtained data from 4077 students during autumn 1964 by utilising a questionnaire which included measures of delinquency and religiosity. Even though previous studies revealed a weak relationship between church attendance and non-delinquent behaviours, Hirschi and Stark boldly stated that religion does not deter (1969, p. 205). This thesis received support from Burkett and White (1974); refutation (Albrecht et al. 1977) and conflicting findings emerged (Higgins and Albrecht 1977). Nevertheless, Jensen and Erickson (1979) indicated that church attendance had some impact upon delinquency. Other studies

suggested that being involved in religious activities was associated with not engaging in offending behaviour. Travers and Davies (1961) concluded that delinquents were much less orientated towards religion than their delinquent-free counterparts. This finding received support from Rhodes and Reiss (1970) who claimed that delinquency varies with religious orientation and church attendance, but that their study supported 'the notion that there is a "religious factor" in delinquent and truant behaviour' (1970, p. 98). For a comprehensive review of the literature between 1913 and 1970, see Knudten and Knudten (1971) and Baier and Wright (2001) on the literature between 1969 and 1998. Johnson (2011) produced a systematic review of articles published between 1944 and 2010.

Rodney Stark (1996) returned to the aforementioned *Hellfire and Delinquency* article he wrote with Hirschi nearly 30 years previously. The original article undermined the theological assumption, combined with control theory, that there is a relationship between religion, church attendance and delinquency prevention. However, by the 1990s Stark modified his position when clarifying that earlier conclusions were misleading because social and moral contexts differ between geographical locations. This insight allowed Stark to advance a more sociological than psychological explanation of how religion facilitates individual conformity. In other words, conformity occurs if one conceives of religion as a social structure, or group property, rather than an individual psychological trait. The modified thesis asserted that 'Religious individuals will be less likely than those who are not religious to commit delinquent acts, but only in communities where the majority of people are actively religious' (Stark 1996, p. 163).

Johnson (2004) differentiates between two approaches which facilitate the transition from religious influences and affiliations to faith-based interventions. First *organic religion* directs attention to the impact of religious sensibilities on behaviour and asserts that 'consistent and growing evidence makes it increasingly obvious that religious commitment and involvement help protect youth from delinquent behaviour and deviant activities' (2004, p. 331). Second, Johnson refers to *intentional or programmatic religion* where interventions are designed to address behavioural problems, such as addictive behaviours in prison settings.

Johnson clarifies that there are more organic compared to faith-based intervention studies, and the latter may have an advantage over secular programmes (2004, p. 333). Furthermore, there are studies from the USA on the benefits of religion and faith-based programmes to reduce infractions during imprisonment. Clear and Myhre (1995) found that prisoner involvement in religious activities assisted psychological adjustment, and Clear et al. (2000) concluded that religious influences prevent dehumanisation. Therefore the benefit of religion should not solely be judged by its rehabilitative efficacy.

When turning from the benefits of religion within prison to the impact of faith-based interventions beyond release, O'Connor and Duncan (2008) consider faith-based interventions in conjunction with 'What Works' by citing Aos et al. (2006) who reviewed the evidence on 'What Works' from 291 evaluations in the USA and other English-speaking countries over a 35-year period. This review constitutes 'the most succinct and methodologically sound summary of the research to date' (O'Connor and Duncan 2008, p. 88). Pertinently, it includes six evaluations of faith-based interventions, five of which were grouped together because they promoted Christianity amongst prisoners to reduce recidivism beyond the prison walls. Aos et al. (2006) concluded that four out of five studies did not have a programme effect. By contrast the Wilson et al. (2005) study did find a programme effect. It is also important to refer to Johnson (2011, p. 73) who produced a comprehensive review of 272 studies on the religion and crime literature between 1944 and 2010. He found that 90 % of these studies (247 out of 272) claimed an inverse or beneficial relationship between religion and crime. In other words, as religion increased, crime and delinquency decreased. Even though most of the studies he cites were conducted in the USA, he draws attention to a handful of studies conducted within the UK which produced beneficial findings.

Therefore, although the accumulated evidence demands cautious evaluation, the relationship between religion and offending is not irrelevant for the academic community. Notwithstanding the critical questions raised by Aos et al. (2006), religion has value within prison (O'Connor and Perreyclear 2002); faith-based interventions can conduce to rehabilitation if coupled with substance abuse treatment, educational and

employment services (McKean and Ransford 2004) and the principles of 'What Works' (O'Connor et al. 2006). There is evidence that prison chaplains positively influence postrelease outcomes (Sundt et al. 2002, p. 61), and religiously inspired community-oriented Circles of Support and Accountability (COSA) benefit sex offenders after release from prison (Wilson et al. 2009). Theory and research directed towards individual transformation deserves serious but cautious evaluation. However, my main concern is the system of criminal justice. First, we need to clarify the problem under investigation that demands an intellectual and moral response. This we can refer to as the *system problematic*.

From Individual to *System* Functioning

Clarifying the Problem from the 1980s

It is necessary to exercise caution when evaluating the nature and scope of criminal justice system developments following the election of a Conservative government in 1979. There was no penetrative drone strike in the direction of the *great moving right show* (Hall 1983; Farrall and Hay 2014) as there were those who surmised that the 1980s constituted an Indian summer of liberal consensus towards criminal justice (see Faulkner 2014). Undoubtedly, there is evidence of seeping governmental interference, a more energetic political interest in performance and efficiency, the spreading attraction of market discipline and a growing disenchantment with rehabilitation and treatment. Although Mrs. Thatcher, as prime minister, positioned herself to the right of her first Home Secretary, Mr. Whitelaw, it is often overlooked that Conservative governments throughout the 1980s remained committed to reducing imprisonment (Faulkner 2014, p. 139). Arguably, there was more continuity with the previous Labour government's *Review* (Home Office 1977) than what transpired in the 1990s with the outbreak of retributive punishment and prison expansion. Probation was repositioned towards the end of the 1980s as a *punishment in the community*, a strategic tactic to curb the use of prison. Nevertheless, change in the 1980s was more fiscal than a right-leaning flare-up of retributive

penality. When excavating this decade it is of intellectual and moral relevance to advance a quartet of analytical categories that acquired greater significance later, with implications for morality:

1. Legislative developments—CJA 1982, Police and Criminal Evidence Act 1984, Public Order Act 1986, CJA 1987 and 1988, and CJA 1991. This is legislatively modest compared to what happened after 1997.
2. Administrative, managerial and bureaucratic expansion to refine and enhance the mechanisms of central fiscal control over organisations in the form of cash limits, Financial Management Initiatives, 3Es of economy, efficiency and effectiveness, and Value for Money (Audit Commission Report 1989).
3. Restructuring the nexus of state, public sector, private interests, fiscal demands and political control through the New Public Management (NPM).
4. The platform of political, social and economic transformations, from the post-war Keynesian social democratic consensus from the 1950s to the 1970s, displaced by neoliberal and neoconservative principles.

1992–1997 Turn of Moral Significance

The conditions of existence for the development of criminal justice, probation, penal policy and practice that posed serious moral questions quickened during these 5 years. In October 1993, Michael Howard announced his 27-point plan on law and order. This transformation began to carve out a radical break with the aforementioned liberal consensual past. It is possible to indicate a politics of populist criminalisation, the deeper penetration of punishment and prison in the criminal justice consciousness, the emergence of different moral conventions towards offenders contingent upon the decline of the professions. This approach began to open up a moral void from within the system, indexed most clearly in a set of changing attitudes towards probation. Populist punitive expressivism, managerial and bureaucratic aggrandisement, political opportunism, and the closer alignment of criminal justice with electoral politics proceeded beyond preoccupations with the moral interest and its capacity for system

mediation. This was a defining period in the recent history of criminal justice when the structure of moral regulation was subjected to the politics of disavowal and contingency—imposed from without and above, not organically from within.

1997–2010 New Labour's Dispensation

Students of historical and contemporary criminal justice quickly learn that it is a field replete with paradox and confusion. When New Labour came to power, they gave intellectual assent to the empirical linkage between adverse socioeconomic conditions and crime. But, at the same time, they did not abandon the salience attached to punishment and prison under the previous Conservative transformative dispensation. Helena Kennedy stated, 'That Labour took the decision to continue Michael Howard's incarceration binge is one of the blackest marks against the government's record on social justice' (2005, p. 283). Tonry (2004) accused Labour of knowingly adopting policies that were demonstrably ineffective, exposing the fault line running through the demand for penological effectiveness and the politics of useful appearances in the art of tactical and strategic governance. There was no let up on New Public Management (Faulkner and Burnett 2012, p. 168) and encroachment of privatisation, and probation was more out of step with a modernising agenda that displaced old Labour values of social work, personal social services and welfare. There was to be no retreat to the policies and practices of the 1977 *Review*. Significantly, there was no re-evaluation of the shifting intellectual and moral landscape, or implications, of the penetrative legislative, administrative-bureaucratic, politico-economic and ideological-material priorities shaping the system. Instead, the politics of power and control were manifested in the formation of the National Probation Service (NPS) in 2001, followed by the National Offender Management Service (NOMS) in 2003/2004 (Carter 2003). The rationale for bringing prisons and probation together in NOMS was to improve end-to-end management, enhance performance and effectiveness, continue the 3Es and establish a platform of contestability to open up criminal justice services to a mixed economy of public, private and voluntary enterprises.

Reference has already been made to the early stages of privatisation in the 1980s, but NOMS constituted a decisive move in this direction, consolidated in the *Offender Management Act 2007*. Further reforms to NOMS were initiated during 2008–2009 (Carter 2007) to coordinate and commission all probation and prison services from the public, private and voluntary sectors.

Moral erosion within the system is not only evidenced by the problematic of punishment, prison and bureaucracy, but also enforcement and the benefit sanction. The withdrawal of State benefit from offenders between the ages of 18 and 59 subject to a community order and prosecuted for non-compliance, under s62-66 of the Child Support, Pensions and Social Security Act 2000. The rationale was to ensure compliance to a community order by the punitive threat of withdrawal of all or part of benefit for up to 4 weeks. Helena Kennedy (2005, p. 245) evaluated that the cost of processing each benefit sanction case through the magistrates' court was £730, but the amount saved by activating the sanction was £132 per case. She proceeded to state that 'Inventing new ways to punish the poor is a disgraceful activity for a Labour government'. There was a lack of democratic debate and public reasoning on the constitutive elements of justice in the system. More recently, *Prisons With A Purpose* (Conservative Party 2008) threatened benefit withdrawal for non-compliance with community sentences, a policy previously introduced and then abandoned by New Labour (Whitehead 2010, p. 116).

2010–2015 Coalition Government

Content analysis of relevant documents beginning with *Prisons With A Purpose* (Conservative Party 2008), and culminating in the announcement of 21 Community Rehabilitation Companies on the 29 October 2014 that privatised the bulk of probation work, reveal a significant turn of events in the ongoing intellectual, amoral and material reconstruction of the system. All relevant documents (see Whitehead 2015a) refer to Payment by Results and the transference of fiscal risk from taxpayers to the new providers through a process of competition by public, private and the voluntary sectors. The emerging system is designed to address the prison population that

has doubled since 1993, retributive punishment displaced rehabilitation, reconviction rates are too high and costly, and there was too much legislation under New Labour. The principles of the Rehabilitation Revolution are public protection, punishment and rehabilitation, transparency and accountability, and decentralisation of services (Ministry of Justice 2010). The reform of public services and realignment of the public and private sphere are constructed as a key modernising and progressive cause, pursued by competition and privatisation. Financial rationalisation, Value for Money, outcomes not outputs, target achievement, risk and reward, business models and commercial practices fashion the contours of the new system—the functional contours of neoliberal ideological and material values. The system is unrecognisable compared to the *Review* (Home Office 1977) and a different system from that of the 1980s. The past was a different place, intellectually and morally, compared to system developments from 1992, then after 1997, and now 2010–2015.

Modernising and revolutionary reforms take precedence over foundational moral questions, and restructuring and rebalancing have unbalanced the dialectics of justice by eroding historical, cultural and ethical traditions. There is an absence of reasoned debate on what should be the moral foundations of criminal justice to guide the system in its judgements and decisions (Sen 2009). This is a serious omission of the reforms. Unless the system has clear moral foundations, it is in constant danger of being abandoned to the politics of contingency and crude calculations of electoral politics. The Ministry of Justice (2013) consulted on 19 questions, but not one addressed foundational questions of ethics and justice. Furthermore, proposals for reform were scrutinised by the House of Commons Justice Committee (2014). Evidence presented to the Committee during 2013 consolidated that Transforming Rehabilitation has four elements:

- Extend statutory rehabilitation to those sentenced to less than 12 months—an extra 50,000 offenders
- Open-up rehabilitation services to a diverse market of providers and new payment mechanisms
- Create a new National Probation Service primarily involved in public protection
- Reorganise the prison estate

The *Conclusions and Recommendations* from the Committee are enumerated as follows:

- Extending statutory supervision for offenders sentenced to 12 months' imprisonment or less is a positive reform
- There remain serious questions about the evidence-base for reform—ironic given the emphasis on 'What Works' since 1992
- Witnesses expressed apprehension at the pace, scale, architecture, detail, and likely consequences of reform
- Risks to the system and costs
- Retention of skills and the development of staff in the 21 CRCs
- Payment by Results: is the principle of reward for success and punishment for failure morally acceptable?

Not even the Justice Committee rigorously reflected on the moral question of justice. On Wednesday, 29 October 2014, Chris Grayling, Justice Secretary, announced the decision on the successful bidders for the 21 Community Rehabilitation Companies: Sodexo Justice Services in partnership with NACRO (six areas), ARCC (1), Purple Futures (5), The Reducing Reoffending Partnership (2), Working Links (3), Geo Mercia Willowdene (1), MTCNovo (2) and Seetec (1).

These are the contours of the system since the 1980s. The reconfigured system provokes intellectual and moral questions that urgently require an intellectual and moral response. There was an evidentially significant turn of events in 1992/1993, little respite after 1997 and now the revolutionary enterprise of 2010–2015 clamours for attention. There are accumulating deposits of concern to pose serious questions of a moral nature, indexed most clearly in the *probation question* and its decline as a source of ethical-cultural contestation. This is fundamentally a moral problem, peculiarly troublesome in a people-facing organisation. Equally, though, a case can be advanced to reanimate questions and issues appertaining to the moral. I propose to do this through the conceptual lens of moral economy, introduced above, to alter the terms of debate and the ground on which it is conducted in order to wrest it back from the modernisers and re-balancers who prosecute their case with revolutionary zeal. This moral economy approach is enriched by a number of intellectual

resources (Whitehead 2015a), but I draw attention specifically to religion and the central concept of *dikaiosunē* (justice).

Moral Economy, Religion and Dikaiosunē

Metzger and Coogan (1993, p. 655) and Richardson (1957, p. 202) explain that the Hebrew *sadiq*, or *tsedeq* and *tsedaqah*, are translated into English as righteousness and/or justice (*dikaiosunē* in Greek). Richardson's exegesis incorporates conformity to a norm which was the character of Yahweh, conveying ethical relevance. Amos, Hosea, Isaiah and Micah were numbered among Old Testament ethical prophets preoccupied with right and fair dealings between human beings. Specifically, Amos, during the eighth century BCE in the Northern Kingdom of Israel, is concerned with social justice in what had become an urban society. A wealthy merchant class had emerged that secured its economic position at the expense of the poor. The burden of complaint was a lack of moral leadership, the law courts served the vested interest of a commercial class, economic plenty for the few existed alongside poverty, inequality and injustice. These were the features that produced moral atrophy, assimilated adduced by Bright (1972, p. 257) as evidence of a 'radical change of character' in the socio-moral structure of Israel. That is from a Yahweh-driven theological-ethical covenant as the basis for social arrangements and human relations, to a centralised monarchy and social division under urban conditions. The monarchy centralised power, re-organised social relations that damaged reciprocal obligation, weakened social and tribal ties and was contingent on the rise of a privileged class that prioritised the status symbols of economic advancement over the ethic of covenant responsibilities. The result was religious, social and moral decay that formed the burden of prophetic vituperation—social evil, dishonesty, heartlessness of the rich, indifference to the poor, an affront to Israel's history, tradition and culture that was damaging the national character. The only hope was to practise justice, but religious leaders were indifferent to its moral demands.

Several centuries later the *Septuagint* (translation of the Hebrew Bible into Greek by 70 scholars in Alexandria around 285–246 BC) rendered the derivatives of the Hebrew root *sdq* by the Greek *dikaiosunē*

(from Hebrew *sdq*, to Greek *dikaiosunē*, and later English justice). Richardson (1957) explains that Paul used the term in an ethical sense, in New Testament epistolary sources, to convey ethical conduct—turn the other cheek, go the extra mile, and care of the poor. Paul ‘consistently used “justify” for the restoration and maintenance of the relationship with God and “righteousness” for the consequent life as his people, with both justification and righteousness being by faith’ (Metzger and Coogan 1993, p. 656). Accordingly, from the prophetic literature on social justice (Jones 1968), the theological-ethical injunction to individual and community responsibility and the resolution of disputes contained in the Hebrew literature, to the new covenant of neighbourliness and love extended even to enemies (see Metzger and Coogan 1993, p. 201), the Old and New Testaments, Judaeo-Christian ethics, provide significant resources to explore morality and justice. We should comment further on the Pauline inheritance.

Paul was a man of his own day, whose framing of Christianity reflected his Greek, Roman and Jewish cultural inheritance. Pauline theology articulates the contours of a new humanity that, in turn, constitutes a new ethical community that requires explanation. When doing so it is necessary to allude to a considerable work of scholarship (Blumenfeld 2001) that grounds Pauline theology and Christology within the intellectual parameters of Platonic and Aristotelian politics, and the literature known as the Pythagorean pseudepigrapha. The importance of Blumenfeld’s scholarship is that it draws attention to the neglected political dynamic in Paul’s letters. It is far from straightforward to produce a summation of this comprehensive and sometimes complex text, but it demonstrates how Paul, in the style of Aristotelian *Ethics* (2000), moves from the individual to the *polis* (city state), ethics to politics. Like Aristotle ‘Paul connects one’s proper end with the collective end, the good of one with that of the many, ethics with politics’ (Blumenfeld 2001, p. 382). What is good or moral is rooted in the concept of *dikaiosunē* (justice), the opposite of *adikia* (injustice); it eschews evil, considers others, and is universal in scope. It supports the Aristotelian virtues of wisdom, prudence and justice. The conception of the new political and ethical order eradicates the socially constructed binaries between Jew and Greek, Greek and barbarian, free and slave, wealthy and poor and ruler and ruled within the transformed

society which is good news for all. Furthermore, 'Paul engages in political metaphysics. It is because *dikaiosunē* is the essence of God and of God's office that the world is possible, that a universal society can be built and can endure ... If in Plato *dikaiosunē* makes the individual one and the polis possible, in Paul *dikaiosunē* makes humanity equal and the whole world one, a metaphysical but also a political understanding' (Blumenfeld 2001, p. 416). Reference to Plato provides the invitation to comment further on the classical Greek inheritance on the meaning of justice.

If Socrates debated the nature of virtue, Plato (1974) expanded on *dikaiosunē* that is rendered justice in English. However, in classical Greek, the word conveyed a more moral than legal meaning. Parts I and V of Plato's *Republic* are concerned with ethics and the concept of *dikaiosunē* precipitated philosophical reflection. An explanatory note in the *Republic* confirms that the 'ancient Greek view was that the law of the State is the source of all standards of human life, and that the virtue of the individual is the same as the virtue of the citizen' (1974, p. 32). Specifically, *dikaiosunē* has a much wider meaning than the English translation, because its subject is individual *and* social morality which forges an indissoluble association between ethics and politics. Consequently, *dikaiosunē* has a 'less legal and more moral meaning than justice. It is the Greek word for morality, personal quality, and right action' (1974, p. 65). Moreover, *dikaiosunē*, or justice, involves striking a balance between the tripartite structure of the soul—reason, desire and motive—so that the good life consists in the balance between physical desire, ambition and intellect. The political question is the ethical question and vice versa, and the criminal justice system must reflect the demands of politics and ethics. In other words, the system should be as concerned with what is right and just as efficient.

The reason this excursion matters into Hebrew sadiq, Greek *dikaiosunē* and English justice, informed by Old and New Testament literature and classical Greek philosophy, is that it provides intellectual resources for theorising moral economy that can be put to work to critique the criminal justice system. The system problematic accumulating since the 1980s can be scrutinised by noting the expansion of legislation, particularly under New Labour. This was accompanied by administrative, managerial and bureaucratic incursions attendant upon the New Public Management

with its private sector managerial model grafted onto public sector organisations that altered the character of the system (Whitehead [in press](#)). Targeted outcomes displaced the inherent value of public service outputs and, increasingly, salience ascribed to competition, contracts, commercial business transactions, markets and risk management, rather than understanding offenders which is a moral enterprise. These features have restructured the state-public-private nexus, pushed forward by ideological and material forces that have damaged the moral platform of the system.

Significantly, system transformations have been energised by the circuits of neoliberal capitalism (Whitehead and Crawshaw [2012](#)) whose features include a strong State, the rule of law (excessively so between 1997 and 2010), fiscal discipline, marketisation, the control of public expenditure and lower taxation. Moreover, the neoliberal capitalist order is structured by the privatisation of State assets and new relations between the public, private and voluntary sectors (Crouch [2011](#)). Lest we forget, prior to the 1980s the criminal justice system, with a probation service central to its functioning, was embedded within, and regulated by, Keynesian social democracy. It was characterised by social-welfare, the Personal Social Services and a social work rationality that provided help and support to people who offend. However, this has been eroded by a political economy largely dominated by material interests, exemplified in criminal justice through Payment by Results (Whitehead [2015b](#)) which prioritises the material before the moral. In fact, neoliberal capitalism has systematically hollowed out the moral interest and, in doing so, separated ethics from politics. The system currently reflects and reproduces hegemonic neoliberal politico-economic preoccupations, which undermine the intellectual and moral foundations of criminal justice.

The criminal justice system, to claim intellectual and moral legitimacy, must be established upon discernible ethical foundations. In a people-facing institutional system it has a foundational responsibility to codify a set of moral principles that guide its judgements and inform system decisions and responses to people who offend. Accordingly, the system must persistently wrestle with the basic concepts of what is good, right, fair and just that, in turn, question punitive excess, the necessity of prison expansion, the demise of probation services and the implications of this for the legitimacy of what is referred to as the criminal *justice* system.

If not, then the system is superficially reduced to politically imposed policies and practices manipulated by a politics of contingency and disavowal, the demands of the electoral cycle, and the repeated incursions of revolutionary modernisers. Periodic bouts of modernisation, rebalancing, and revolutionary activity, since the 1980s, have demoralised the system which must be re-energised by a vigorous moral economy informed through engaging with the intellectual and moral resources of religion, specifically *dikaiosunē*. This is urgently required because during the last three decades, the criminal justice system has seen its character eroded and its moral core diluted. Accordingly, theological and Christological resources have a critical role to play in re-energising the moral foundation of the criminal justice system, which is the burden of my argument in this chapter.

There may well be a theoretical and empirical connection between religion, crime and individual *metanoia*, as we saw earlier. However, my central assertion is that the system of criminal justice must engage with, and debate, moral issues that are foundational for our understanding and construction of criminal and social justice. In fact, there is still time to engage with this debate, even after the impositions of the Rehabilitation Revolution between 2010 and 2015. What is more, and notwithstanding the serious difficulty this presents, there is the opportunity during a time of flux to stimulate thinking on ethics with what remains of probation (responsible for approximately 40,000 high-risk offenders), the 21 Community Rehabilitation Companies and the public, private and voluntary sectors. This is an urgent matter for all those concerned about the morality of doing justice. The intellectual and moral resources exist to promote the interest of the moral and *dikaiosunē* is a good place to start to re-engage with this quest.

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Part II

Identities and Issues

7

Cultural Beliefs, Witchcraft and Crimes in South Africa

Theodore Petrus

Introduction

Generally, crime has often been understood and explained in relation to the dynamics within societies. These dynamics may include political, economic and social dimensions. However, in some cases, acts that may be defined as criminal might also be linked to specific cultural beliefs, which lead to complexities in the clear articulation of such acts as crimes. The relationship between certain acts perceived as crimes, and the cultural beliefs that inform them, or that serve as possible motives for them, illustrates the difficulty in applying a generalised understanding of crime across all social or cultural contexts.

This chapter focuses specifically on the above issue, with reference to witchcraft-related crime in the South African context. The chapter is divided into several sections. The next section provides a broad understanding of the main concepts to be discussed. The third section focuses

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on witchcraft-related crime in South Africa and emphasises the contextual factors and dynamics that influence this type of crime. Throughout the chapter the relationship between cultural belief and the specific type of crime discussed will be emphasised.

Understanding the Key Concepts

In order to understand the nature and scope of the relationship between crime and cultural beliefs, it is necessary to first identify and understand the critical concepts that underpin this relationship. Hence, the three key concepts of *culture*, *belief* and *crime* are defined and explained. Each of these concepts has a variety of meanings, often depending on what perspective one uses to make sense of them. This is a critical point because, as is illustrated throughout the chapter, different cultural contexts create different meanings in terms of how people within those contexts understand and make sense of both natural and social phenomena. It follows thus that the most useful approach to use when defining the identified key concepts is an anthropological approach. In short, anthropology is the holistic study of humankind and includes

the analysis of biological, environmental, psychological, economic, historical, social and cultural conditions of humanity.... Through collaborative studies among the various specialists in [its] four subfields [Physical Anthropology, Archaeology, Linguistic Anthropology and Cultural Anthropology (Ethnology)], anthropologists can ask broadly framed questions about humanity. (Scupin and DeCorse 2012, p. 11)

The holistic approach of anthropology provides the discipline with two very important characteristics, namely *cross-cultural comparison* and *contextualising* sociocultural phenomena. The importance of these characteristics is reflected in the subsequent sections. Cross-cultural comparison generally refers to the significance that anthropologists attach to comparing information and knowledge about different cultures. Typically, anthropologists study various cultures in different temporal and spatial locations for the purpose of generating comparative data which enable the broadness of understanding that is sought. In most cases, cross-cultural

comparisons are aimed at identifying and explaining possible similarities and differences between cultures in an effort to better understand specific social or cultural phenomena or aspects of human behaviour.

Linked to cross-cultural comparison, context refers to the anthropological notion that sociocultural phenomena, for example, beliefs, practices or certain customs and traditions, need to be understood within the specific cultural contexts within which they are practised or applied. The idea here is that because no two cultures are identical they may not be evaluated or judged according to a common set of criteria. This is why anthropologists take issue with assumptions that certain cultures or societies are 'better' or 'more advanced' than others. Since different cultures exist in different contexts they may not be placed in hierarchical relationships to each other.

As is shown in the subsequent sections of the chapter, it is precisely the implications of the above that make dealing with crimes linked to specific cultural beliefs complex and that complicate the task of governments or authorities to deal with such crimes.

What Is *Culture*?

In everyday usage, the term culture is most commonly understood as aesthetic, tangible or directly observable traits that include artistic works (paintings, sculptures, music), dress or even certain foods, all of which form part of what can be called 'high culture' (Scupin and DeCorse 2012, p. 212). While culture might include these aspects, the popular view of the term is often overly simplistic and overlooks the complex nature of culture. The anthropological definition of culture provides a more holistic understanding of the term that encompasses the complexity of the concept. Most anthropological understandings of culture are based on the first workable definition of the concept, proposed by the nineteenth-century British anthropologist Edward Tylor, who stated that

Culture ... is that complex whole which includes knowledge, belief, arts, morals, law, custom, and any other capabilities and habits acquired by man as a member of society. (Tylor 1871, p. 1 quoted in Scupin and DeCorse 2012, p. 212)

The notion of culture as a *complex whole* suggests that what we call culture is often made up of various integrated traits or aspects that function symbiotically and synergistically in order to maintain the cultural system as a whole. All human cultures have political systems, economic systems, religious belief systems, judicial systems, language, knowledge systems and so on. Although each of these systems can function independently, and indeed does as each has its specific and crucial function, there is also a vital interdependence and cooperation between these individual systems. Without this interdependence, a cultural system would not function adequately and would not succeed in meeting its primary objective, namely to ensure the survival and adaptability of the people who form part of that culture. All human cultures serve the purpose of assisting human societies to successfully adapt and survive within their complex environments, which include natural/physical, social and spiritual environments. Since the environment within which the human animal exists is complex, the primary means that the human animal has evolved to adapt to this complex environment, namely culture, is itself complex. As human societies have transformed over time in response to their environments, so too have human cultures transformed and adapted. Some cultures have become even more complex (e.g., highly industrialised societies), others have struggled to maintain their traditional ways of life (hunter-gatherer and agricultural societies), while still others have suffered cultural extinction or ethnocide. Consequently, despite the obvious differences between human cultures, all humans have some form of culture, hence culture can be considered universal.

Another point emanating from Tylor's definition is that culture is much more than the tangible or directly observable traits of a society. Culture includes the tangible and intangible, the observable and unobservable, the concrete and the abstract, the material and nonmaterial. Culture functions similarly to a filter which humans use to make sense of their realities, experiences and world views. Hence, the tangible and observable aspects of a culture are often the expression of the abstract observations and sense-making processes of a people. This is why we have such a vast array of cultural expressions across the world as they represent vastly differing interpretations of the world we live in and how to make sense of it. An important part of this sense-making process involves the element of *belief*.

What Is *Belief*?

Belief can be understood as one of the essential and fundamental abstract aspects of culture. According to Scupin and DeCorse (2012, p. 218), 'Beliefs are cultural conventions that concern true or false assumptions, specific descriptions of the nature of the universe and humanity's place in it.' The notion of beliefs as cultural conventions suggests that they generally tend to be widely held and accepted by most, if not all, of the members of a group, culture or society. If we think, for example, of religious beliefs, we find that groups or societies that subscribe to particular religious beliefs tend to share these beliefs and typically agree on the assumptions that underpin them. However, it should also be pointed out that beliefs may not always be shared by everyone within a culture, as anthropological evidence suggests that within any society there may be much variation regarding cultural beliefs (Scupin and DeCorse 2012, p. 218).

Linked to the concept of belief is the concept of *worldview*. According to Scupin and DeCorse (2012, p. 218),

A *worldview* was believed to consist of various beliefs about the nature of reality that provided a people with a more or less consistent orientation toward the world. Worldviews were viewed as guides to help people interpret and understand the reality surrounding them.

The above correlates with the point made earlier about how culture, or more specifically, cultural belief, acts as a filter through which humans attempt to make sense of their lifeworlds. Most human societies have created systematic frameworks for these cultural beliefs which are called *cosmologies*.

African Cosmologies

There are various ways to define cosmology. Karp and Bird (1980, p. 1), for example, stated that 'Cosmology embodies the systemic aspects of belief; its description leads to an understanding of world view and the more speculative aspects of the conceptual systems of

a culture.' Bowie (2000, p. 119) viewed cosmology as 'a theory or conception of the nature of the universe and its workings, and of the place of human beings and other creatures within that order' (cited in Petrus 2009, p. 51).

Notwithstanding the various definitions or understandings of the concept, in the African context, cosmology can be understood as a mechanism for establishing order. African cosmology has been defined by Crafford (1996, p. 9) as

a unity, harmony and totality made up of the supreme being, the spirits, people, animals, vegetation and inanimate objects. The supreme being is the origin of life-force, and the spiritual realm its mediators, making it available in a limited way to people, animals, plants and objects. Life-force can be enhanced or diminished by magical activities. (quoted in Petrus 2009, p. 51)

In his ethnographic study of the Kgaga, Hammond-Tooke (1981, p. 12) interpreted this society's understanding of cosmology as 'the picture they have developed about the world they live in and the way they conceptualize the existential problems of their daily life' (quoted in Petrus 2009, p. 50). Hammond-Tooke further argued that although the concepts of *worldview* and *cosmology* are often linked to a third concept, namely *religion*, in his view cosmology is much wider than merely religion (1981, p. 13).

In the African context, humans are understood in a three-dimensional sense, that is, they are physical, social and spiritual beings. Consequently, humans exist in a three-dimensional physical, social and spiritual environment. There are no boundaries separating the three dimensions, meaning that ordinary people each dimension exists in a symbiotic relationship with the others. Each can influence and is indeed influenced by the others (Petrus and Bogopa 2007). Within this cosmological framework, the distinction between natural and supernatural is blurred, and it is thus here where beliefs in witchcraft may have a direct and very real influence on the behaviours of people or societies who subscribe to these beliefs.

However, while these beliefs may seem inherently common-sensical to those who hold them, to those from outside these cosmological frameworks, these beliefs may seem completely irrational.

African Cosmology and Rationalism

African cosmology posits the belief in magic as an alternative theory to the causes of evil, illness and misfortune. Consequently, for many African cultures, it is not only not strange, but completely rational and common-sensical to believe that magic, traditionally thought to belong to the supernatural realm, can cause and influence events in the natural or social worlds of humans. Mbiti (1969, pp. 198–199) has stated that in African cosmology, magic is believed to exist in two forms, namely 'good magic' (accepted by society and practised by various categories of traditional healers such as diviners and medicine men) and 'black or evil magic that ... involves the belief in and practice of tapping and using this power to do harm to human beings or their property'. It is here where the belief in witchcraft is to be found. This form of magic may be psychic, that is, the ability to manipulate spiritual agents (familiars) to harm others, or may include the use of medicines to cause harm (Petrus 2009, pp. 53–54). Magic in and of itself is believed to be inherently neutral. However, it is the intention or motive that informs its use that determines whether it is used to benefit people or the community (as in the case of traditional healers) or whether it is used for nefarious purposes (as in witchcraft and sorcery). The neutrality of magic makes it highly ambivalent, meaning that ordinary people can rarely be completely certain that it is used for beneficial purposes. As is shown later, this ambivalence is most pronounced in instances where traditional healers themselves may be implicated in witchcraft-related offences.

In order to illustrate the rationality underpinning witchcraft belief as a theory of causation, the excerpt below from the anthropologist Evans-Pritchard's (1937) study of witchcraft among the Azande of Sudan provides a very good example. According to Azande belief

As a natural philosophy it [witchcraft] reveals a theory of causation. Misfortune is due to witchcraft co-operating with natural forces. If a buffalo gores a man, or the supports of a granary are undermined by termites so that it falls on his head, or he is infected with cerebrospinal meningitis, Azande say that the buffalo, the granary and the disease, are causes which combine with witchcraft to kill a man. Witchcraft does not create the buffalo and the granary and the disease for these exist in their own right, but it is responsible for the particular situation in which they are brought into lethal relations with a particular man ... Of these causes, the only one which permits intervention is witchcraft ... The buffalo and the granary do not allow of intervention and are, therefore, whilst recognized as causes, not considered the socially relevant ones. (Evans-Pritchard 1937, pp. 418–419)

The above example illustrates not only that African cosmological systems are able to distinguish between natural and supernatural causes of misfortune, but that African cultural beliefs are based on their own form of rationality that aids people in making sense of the world around them.

Witchcraft Beliefs and Cosmology Among the Xhosa-Speaking People of South Africa

The Xhosa-speaking people are an African group that are found predominantly in the Eastern Cape Province of South Africa. They are made up of a number of subgroupings or ‘tribes’.

Although each subgroup regards itself as distinct, they all share the common cultural traits characteristic of the Xhosa-speaking group as a whole, and which distinguish them from the other major African groups in South Africa, such as the *amaZulu*, the Sotho-speaking groups and the *vhaVenda*.

The cosmology of the Xhosa-speaking people provides a framework based on typical African cultural beliefs regarding the world and how it is ordered. Life-force is believed to originate from the Supreme Being (*uThixo*) who corresponds most closely to the Judaeo-Christian concept of God (Hunter 1961; Hammond-Tooke 1962; Pauw 1975, p. 63; Olivier 1981; Pauw 1994, p. 118; Osei 2003, p. 87; Petrus 2009, p. 55). While

the Supreme Being shares certain traits with God, a crucial difference is that unlike God, *uThixo* is believed to have very little interest in the affairs of humans, so little in fact that he is conceived as being aloof and disinterested in life on Earth (Olivier 1981, p. 11; Osei 2003, p. 87). However, despite this aloofness, the Supreme Being is not only acknowledged as the creator of the cosmos (Olivier 1981, pp. 10–12), but he is also believed to be ‘responsible for the social order and the habits and customs’ of the Xhosa-speaking people (Pauw 1994, p. 118). Being the creator and protector of order, the Supreme Being is often attributed with benevolence and is not blamed for misfortune or evil that can afflict humans, crops or livestock.

Following the Supreme Being in rank and significance are the ancestral spirits (*amathongo* or *izinyanya*). These beings are regarded as so important that ‘The belief in and worship of the ancestor spirits form the central part of the religion [of the Xhosa-speaking people]’ (Pauw 1994, p. 119). Many of the customs practised in Xhosa-speaking communities honour and acknowledge the role of the ancestors who are more directly involved in human affairs than the Supreme Being (Wilson 1951; Hammond-Tooke 1962; Hammond-Tooke 1974). The ancestral spirits are believed to be able to communicate with the living through dreams, animals, natural disasters and through divination (Olivier 1981, pp. 22–25). Ancestral spirits are connected to their kinship and descent groups such as lineages or families (Osei 2003, p. 203), further emphasising their importance because of the central role that kinship plays in the traditional social structure and cosmology of the group. The ancestral spirits therefore typically are the spirits of deceased family members, mostly senior males, who have undergone the rituals of transition from life on Earth to the afterlife as an ancestral spirit (Petrus 2009, p. 57). Honouring the ancestors is a crucial part of the customs of Xhosa-speaking people because it is believed that the ancestors protect their descendants against supernatural harm and misfortune.

When people fail to honour the ancestors, there is a risk that they will withdraw their protection, thereby exposing humans to misfortune and the afflictions of witchcraft. When this happens, it is necessary for humans to have some form of recourse in order to address the problems.

Since misfortunes are believed to be of a supernatural nature, they require supernatural intervention. Enter the traditional healers, who are believed to possess supernatural powers that are linked to the ancestral spirits and Supreme Being. Their primary function is to help ordinary people affected by misfortune (West 1975; Ngubane 1977; Cheetham and Griffiths 1986). Since they use their powers for the benefit of the community, traditional healers are believed to practise white magic (see the previous discussion on the distinction between white and black magic). These healers can be classified into different types, namely, traditional doctors (*iinyanga*), diviners (*amaggirha* or *izangoma*), and herbalists (*amaxhwele*). Although these three types can be identified, often a healer can have the skills and knowledge of all three (Pauw 1994; Petrus 2009, p. 58). It is believed that the diviner is able to access special knowledge through dreams and visions, given to him/her by the ancestors (Pauw 1975, p. 60). When divining, the healer is guided by the ancestors as to the cause of a particular patient's misfortune. Through the use of various divination methods, including the common practice of throwing of bones, the diviner can determine whether misfortune has been caused by neglect of ancestor veneration or witchcraft. By contrast, the herbalist does not depend on the ancestors but utilises a specialised knowledge of medicines (called *imithi* among the Xhosa-speaking groups, but popularly referred to as *muti* throughout South Africa) and their properties to manipulate magical powers (Pauw 1994, p. 126; see also Olivier 1981, p. 54). Despite the belief that diviners and herbalists use their abilities for the benefit of people, the herbalist particularly occupies an ambiguous position, since he/she may also use their knowledge of medicines to cause harm (Olivier 1981, p. 84). According to Pauw (1994, p. 128), a herbalist can use black magic when he/she provides medicine to a client who wishes to harm someone else, or when the herbalist himself wishes to inflict harm or even death on an enemy. When this occurs then the herbalist ceases to be a benefit to the community but instead becomes a practitioner of witchcraft. While the herbalist may use his medicines to harm, he is not usually regarded as a witch because, unlike the witch, he does not possess an inherent inclination for evil (Pauw 1994, p. 128).

In direct opposition to the Supreme Being, the ancestral spirits, the traditional healers and the human community stand those individuals

believed to practise witchcraft. As alluded to above, a witch (*igqwirha* or *umthakhathbi*) is believed to possess an inherent inclination to cause harm to others. Witches may be male or female, but in most cases they are believed to be female. Among the Xhosa-speaking people, the typical witch is believed to have several characteristics: she is an elderly female, is physically ugly, is prone to emotional outbursts that may frequently be interpreted as curses, harbours jealousy towards the youth and may be widowed and childless (Petrus 2010, p. 63). The witch may use two methods of causing harm, misfortune or death. In the first instance, she may employ psychic witchcraft or witchcraft with familiars. Familiars are believed to be invisible spiritual agents, often in the form of animals, that the witch may 'send' to a victim to attack him/her (Petrus 2009, p. 62). There are several such familiars that a witch may use to do her bidding. These include the lightning bird, thikoloshe, the snake, the baboon and the living dead (Petrus 2009, pp. 64–67).

The second method that a witch may use is witchcraft with medicines. Like the herbalist, a witch who uses medicines may have specialised knowledge of their properties and ingredients and uses this knowledge to make potions that may harm or kill a victim. Witchcraft with medicines is called *idliso* or *ukudliswa*, which literally means 'to give [someone] something to drink' (Petrus 2009, p. 68). This illustrates the most common way in which this type of witchcraft is carried out. Often an unsuspecting victim will be given something to drink which may have the medicine in it. In other cases, the witch may place the medicine in the food of a victim who will ingest it and suffer the effects. However, a third way in which medicine may be used is called *umeqo*, in which case a witch buries the medicine in the ground along a path that the victim will take. Once he/she steps over the place where the medicine is buried, it will take effect and the victim will suffer the effects (Petrus 2009, p. 68; Pauw 1975, pp. 233–235; Olivier 1981, p. 92). A fourth method, called *ukuthathela*, involves the use of materials that a victim has been in contact with, which may include bodily exuviae such as hair, nails or excreta, as well as clothing or soil from the footprint of the victim (Petrus 2009, p. 69; Hunter 1961, p. 290; Hammond-Tooke 1962, p. 289; Pauw 1975, p. 235; Olivier 1981, p. 93). This method is based on sympathetic magic, the belief that 'objects sharing a cosmic causal interactive relationship can affect and be affected by each

other' (Petrus 2009, p. 69). Another slightly different method compared to the others mentioned is called *ukuphosela* and refers to the use of medicines in 'love-magic' (Hunter 1961, p. 311; Pauw 1975, p. 235). Most often a man may use this medicine to increase his favour with a woman. While this may not appear to be witchcraft *per se*, it may be regarded as a form of manipulation and hence may have a harmful impact on the female victim. This type of medicine has been believed to cause symptoms such as anxiety, hysteria and mental derangement that manifest in behaviour that is believed to be similar to demonic possession (Pauw 1975, p. 235; Olivier 1981, p. 93; Osei 2003, p. 139; Petrus 2009, p. 69).

The most sinister form of witchcraft with medicine involves the practice of what is popularly called *muti* (medicine) murder. This practice is not unique to the Xhosa-speaking people but is found among other African communities as well. It is also not limited to being practised in the rural areas, as reports of *muti* murder have also surfaced in urban areas, specifically in African townships (informal settlements). While it is generally believed that herbalists and witches may predominantly use medicines made from plant and animal materials, in some cases, witches, and even herbalists, have been found to use medicines made from human body parts (Petrus 2009, p. 94; Petrus 2011, p. 5). In essence, medicine murder typically involves the attacking of specifically chosen victims, usually women and children, who have certain body parts or organs removed (harvested) while they are still alive. These body parts are then believed to be used in the manufacturing of powerful medicines that are considered to be more potent than those made from plant or animal materials. Often the victims are left to bleed to death after their organs have been removed by their attackers. This practice is discussed in more detail later in the chapter, where specific examples of medicine murder are analysed and discussed.

Although the Xhosa-speaking people distinguish between the two forms of witchcraft in theory, in practice they believe that witches may use both types interchangeably.

The purpose of this outline of the beliefs of the Xhosa-speaking people was to provide a context within which to understand the significance of cultural beliefs. Later, this will be applied within the context of witchcraft-related crime in order to illustrate how these beliefs have a direct impact on this specific form of crime.

What Is *Crime* in Cross-Cultural Perspective?

The concept of crime is inherently complex since its meaning(s) depend on a variety of perspectives that may be contradictory. At the beginning of her contributory chapter in Parnell and Kane (2003) *Crime's Power: Anthropologists and the Ethnography of Crime*, Laura Nader (2003, p. 55) cites a quotation from anthropologist Edmund Leach (1968, p. 27) in which he stated, 'It is a crime to kill a neighbour, an act of heroism to kill an enemy, but who is an enemy and who is a neighbour is purely a matter of social definition.' This quote sums up the complexity inherent in the definition of crime. The distinction between killing a neighbour as opposed to killing an enemy marks the difference between whether the act of killing is defined as a crime or not. The question of who decides what is a crime and what is not brings into focus the anthropological perspective of crime as a cultural and social construct, and the necessity of understanding what is crime from a cross-cultural perspective.

In the introduction to Nader (2003) chapter, she cites the question posed by Chambliss (1982, p. 230), in which he pondered, 'Why are some acts defined by law as criminal while others are not?' Chambliss partly answered this question by suggesting that 'what is criminal changes over time and that the political and economic forces behind the creation of criminal law is [sic] revealed in history' (Nader 2003, p. 55). There are two critical points here. First, what may be defined as criminal is often linked to a particular context, and often this context changes over time, thereby affecting how the definition of crime changes. Second, political and economic forces might have a direct influence on how the criminal category is constructed. These two points are interlinked because who is a criminal and what is defined as crime are contextually determined and are determined by those who have power in a society.

The cross-cultural perspective on defining crime exposes the problem of applying Western concepts of criminality to non-Western contexts. Nader (2003, p. 58) argues that the emergence of 'the two powerful categories of Western law—"civil" and "criminal"', was linked to the development of nation-states, and their resultant need to 'justify control and power over ... citizens'. However, anthropologists who have studied non-Western cultures may out simply apply these concepts within these contexts.

Examples of societies lacking centralised authority or courts, such as those studied by anthropologists Malinowski (1926) and Radcliffe-Brown (1933), led these scholars to define crimes 'as acts that cause the entire community to react in anger engendering a collective feeling of moral indignation' (Nader 2003, p. 59). In other words, what constitutes crime in these types of societies is collectively or culturally constructed (Nader and Parnell 1983, p. 207), rather than being the result of a complex juris-prudential history or system. Hence, 'The [Western] concept of crime ... becomes problematic when applied cross-culturally in societies with little or no "government"', which further implies then that 'Although crimes, from the Western perspective, are violations of the law, violations of the law from the cross-cultural perspective are not necessarily crimes' (Nader 2003, p. 59). Consequently, it must be recognised that different cultural contexts have 'different systems of right and wrong and different ideas about how to treat wrongdoers' (Nader 2003, p. 59). This point is reflected in the subsequent discussion on witchcraft-related crime in South Africa as an example of the contradiction between Western- and non-Western-defined criminality and how this tension can have multiple repercussions in a multicultural society.

Witchcraft-Related Crimes in South Africa and Africa

Witchcraft Beliefs in a Global Context

Beliefs in witchcraft are not only confined to South Africa. These beliefs are found almost everywhere on the African continent, particularly in those regions south of the Sahara (see, for example, Middleton and Winter 1963; Comaroff and Comaroff 1993; Geschiere 1997; Bond and Ciekawy 2001; Devisch 2001). Beliefs and practices associated with witchcraft are, in fact, global phenomena and, as anthropologists have found, can be located in societies of the past and present (Leymann and Myers 1985; Stein and Stein 2011).

Despite the prevalence of witchcraft beliefs and practices worldwide, it must be acknowledged that cross-cultural differences reflect different

understandings of witchcraft, as well as reactions to these beliefs. To mention one example, witchcraft as understood within the Euro-American context of Wicca differs from how it is understood within the African context. Wicca is recognised as a neo-pagan polytheistic religion that includes only white or good magic. Its central focus is nature worship (Stein and Stein 2011, p. 242). It can be seen as a fringe religion as it is not practised by the majority of people in European or North American society. By contrast, African witchcraft forms a crucial part in the overarching cosmological belief system of entire communities and societies. It symbolises the quintessential manifestation of evil and is thus not considered 'good' magic. African witchcraft is not based on a theistic model but is believed to originate from the inherent jealousy of a person who seeks the destruction of life or property for his/her own gain. While most Europeans or Americans would not be fearful of Wiccans (those who practise Wicca), in the African context witches are very much feared, so much so that people take specific steps to protect themselves from becoming targets of witches. In extreme cases, the fear of witchcraft is so strong that it may drive entire communities, or groups within communities, to physically exterminate those believed to use witchcraft against them. It is this centrality of witchcraft belief within the African psyche, and the extreme reaction to this belief, that forms the core of witchcraft-related crime.

Understanding Witchcraft-Related Crime in South Africa

Post-1994 South Africa is a country of contradictions. In many cases, these contradictions are the result of two fundamental philosophies that seem to be in constant tension. On the one hand is the philosophy of modernity that underpins the liberal democratic society that South Africa became following the transition to a democratic dispensation in 1994. It is this philosophy that forms the basis of the country's liberal Constitution, hailed by many as one of the most progressive constitutions in the world. The South African Constitution (Act 108 of 1996) aims to redress the injustices of the apartheid past by prioritising the protection of individual human rights and dignity by advocating, among

other things, no discrimination on the basis of race, culture, creed, gender or sexual orientation (Constitution of the Republic of South Africa and Act No. 108 of 1996). On the other hand, the country also acknowledges the philosophy of traditionalism which, in many aspects, contradicts modernity. Traditionalism is usually advocated by indigenous groups who tend to be more conservative, especially when they perceive modernity as a threat to their traditional ways of life or cultures. While the South African Constitution protects individual rights and freedoms, it also aims to protect the rights of cultural groups, *as long as these do not infringe on the rights of individuals*. It is here where the contradiction and tension between modernity and traditionalism begin to surface.

Witchcraft-related crime is a complex matter not only because the practice is ongoing but also because state agencies do not know how to completely eradicate it. Part of the problem is found in the complicated answer to the question of 'who is the victim?' In a case where an alleged witch has been killed by someone or a group believing themselves to be bewitched, it is often the case that the killers regard their actions as being justifiable, due to a genuine belief that their lives were being threatened. This is even more obvious when the community residents actually support the killers and hail them as heroes and protectors of the community. In other words, the killers would consider themselves the victims who acted out of self-defence. However, the law would argue differently, as it perceives the victim to be the alleged witch who had been murdered. The other part of the problem is to be found in the historical context of witchcraft-related crime and its relationship to state efforts to curb it.

The Influence of South African Witchcraft Legislation

South Africa only has one piece of legislation that governs witchcraft-related offences. The Witchcraft Suppression Act (No. 3 of 1957) can be seen as an extension of colonial era anti-witchcraft laws that served the specific purpose of eradicating the traditional belief in witchcraft and its related practices. By the time the European colonists arrived in South Africa, the Enlightenment had changed their previously held superstitious beliefs, which included witchcraft. Hence, the colonists in Africa

and South Africa attempted to introduce modernisation and rationality that contradicted the indigenous beliefs of the people. Being met with resistance, the colonial authorities took various measures to suppress traditional beliefs, which included those to do with witchcraft.

The Witchcraft Suppression Act (No. 3 of 1957) was influenced to a great extent by colonial era laws in other territories, such as Northern Rhodesia. A comparison of the stipulations in the Witchcraft Suppression Act (No. 3 of 1957) and the Northern Rhodesian Witchcraft Ordinance (No. 31 of 1952) shows much similarity between these laws (see Petrus 2009, p. 132; Reynolds 1963). However, the similarities shared between these pieces of legislation also contributed to the problems that they created in their respective areas of jurisdiction, as both contained various flaws that not only encouraged witchcraft beliefs but, as was the case in South Africa, exacerbated witchcraft-related crime.

Various scholars have criticised the Witchcraft Suppression Act (No. 3 of 1957) for ignoring the ontological status of witchcraft in the African cosmological system (Mavhungu 2000; Niehaus 2003a; Harnischfeger 2003). Throughout the stipulations, the legislation frequently uses the term 'pretends' when referring to practices linked to the control of supernatural powers (Witchcraft Suppression Act, No. 3 of 1957). Note that this does not refer only to witchcraft but also includes the practice of traditional healing (divination). The implication is that the legislation does not recognise witchcraft as a reality for African communities, but rather as irrational superstition. Scholars such as Hund (2003) argued that this ethnocentric spirit of the legislation has contributed to the continuation of witchcraft-related violence. Furthermore, the legislation also by implication criminalised the consultation with traditional healers, thereby cutting off a crucial recourse for people who felt themselves under threat. The result was the proliferation of informal or 'kangaroo courts' where people decided to deal with witches in their own way (Mavhungu 2000; Petrus 2009, p. 134).

During the transitional period of South Africa in the 1990s, the period when the African National Congress (ANC) was in the process of assuming power, the country was in much turmoil, characterised by violence. This period also saw an increase in witchcraft-related violence across the country, but specifically in the Northern Provinces. Scholars

have suggested that the increase in witch killings during this period was an attempt to re-establish the recognition of witchcraft as an important marker of African identity (Harnischfeger 2003; Niehaus 2003a). In addition, eliminating witches from communities was also a ritual of cleansing as vigilantes and others responsible for killing witches aimed to prepare their communities for the coming ‘utopia’ of the post-apartheid period (Niehaus 2003b). However, for many the utopia never arrived, even after the ANC took over government. Instead, the instability in various communities continued. This instability was not only due to the political tensions at the time, but also reflected the insecurities of the communities. Consequently, witchcraft violence not only continued but skyrocketed to such an extent that the new ANC government had no choice but to intervene.

The Ralushai Commission, 1995–1996

In the 1980s and 1990s, specifically the period just before and just after transition, South Africa experienced a spike in witchcraft-related violence, which amounted to more than 389 deaths (Niehaus 2003a, p. 93). At this point the newly-elected ANC government decided to intervene and established the Commission of Inquiry into Witchcraft Violence and Ritual Murders in the Northern Province in 1995. The commission was composed of several members and was headed by Professor Victor Ralushai. In the media the commission became known as the Ralushai Commission (Ralushai et al. 1996; Ralushai 2003, p. 124). The commission was tasked to investigate witchcraft-related crime, and after a year since its establishment it published its findings in a report in 1996.

The Ralushai Commission’s report is a 288-page document that outlined the investigations, findings and recommendations of the commission during its year-long investigation into witch killings and *muti* murders in the former Northern Province (now Limpopo Province). The report was divided into two sections. The first contained information about the purpose and terms of reference of the commission, its members, the methodology used, the findings, and lastly the recommendations. The second section contains four appendices outlining the literature con-

sulted, the court cases analysed, graphic photographs of victims and lastly maps of the areas visited by the commission (Ralushai et al. 1996).

Following the publication of the Ralushai report, various scholars criticised it on various levels ranging from its scientific merit to its content (Petrus 2009; Dederen 1996). Despite the criticisms, the value of the Ralushai Commission's work was that it was the first serious attempt by the national government to address witchcraft-related crime. Secondly, within a very limited timeframe, the commission attempted to provide 'as comprehensive a perspective as possible on the nature and extent of witch killings and *muti* murders in the former Northern Province' (Petrus 2009, p. 44). However, ultimately the commission's report proved ineffective for various reasons. The most important were, first, that the report failed to provide an adequate definition for witchcraft-related crime. Despite the commission's recommendation that the Witchcraft Suppression Act (No. 3 of 1957) be repealed, not least because of its erroneous conflation of witchcraft and traditional healing as being one and the same, the commission did not provide an alternative definition that addressed the shortcomings in the legislation. Second, although the commission acknowledged the legislation as a major cause for the continuation of witchcraft-related violence, it lacked clarity in its recommendation for an alternative form of legislation. The report recommended the introduction of a Witchcraft Control Act 'to provide for the control of the practice of witchcraft and similar practices' (Ralushai et al. 1996, p. 54). In terms of this proposed Act, 'Any person who (d) does any act which creates a reasonable suspicion that he is engaged in the practice of witchcraft; shall be guilty of an offense' (Ralushai et al. 1996, pp. 54–55). However, the proposed legislation did not define what was meant by 'reasonable suspicion', especially since the commission itself admitted that 'the activities of a witch cannot be observed with the naked eyes' (Ralushai et al. 1996, p. 57). Third, the report made the same mistake as that found in the Witchcraft Suppression Act (No. 3 of 1957), namely the problematic use of the ambiguous terms 'witch-doctor' and 'witch-finder'. These terms refer to the activities of diviners and herbalists who, as mentioned in previous sections, possess powers and knowledge to counter the effects of witchcraft. However, in reality, the activities of traditional healers are not confined solely to witchcraft-related matters. Further, terms such as witch-doctor and witch-finder create the impression that

traditional healers and witches are one and the same, despite the fact that a distinction is made between them on the basis of how the healer or the witch uses their magical powers or knowledge (Petrus 2009, p. 37).

Despite the weaknesses in its report, the Ralushai Commission did make some useful recommendations based on its findings. First, the commission was correct in its recommendation that the Witchcraft Suppression Act (No. 3 of 1957) be repealed and replaced by more appropriate legislation. Second, several recommendations regarding improving the effectiveness of law enforcement in investigating witchcraft-related crimes were a step in the right direction (Ralushai et al. 1996, pp. 30, 62–63). However, very few of these recommendations were given any serious attention by the government. In fact, some scholars have questioned the motive behind the establishment of the Ralushai Commission:

The fact that the Commission was only given a year within which to complete its task arouses a question as to how seriously the government actually took this issue. Was the Commission appointed as a genuine attempt ... to try to curb the killings, or was it merely a smokescreen to make it seem as if the State was doing something about the problem ... The latter seems to be suggested, given the almost rushed fashion within which the Commission was expected to conduct its investigation. (Petrus 2009, p. 47)

Despite these suspicions, following the publishing of the Ralushai Commission's findings, the Limpopo Province organised a National Conference on Witchcraft Violence, which aimed, among other things, to 'Review and make recommendations regarding the legislation governing witchcraft-related violence, and the handling of such cases by the police and the courts' (Mavhungu 2000, p. 120). Subsequent to the adoption of a National Plan of Action for the Eradication of Witchcraft Violence, the conference called on the government to introduce reformatory measures to address the shortcomings in the current witchcraft legislation. These measures included,

- Legislation that would clearly distinguish between those engaged in harmful practices of witchcraft and those who are falsely accused.
- A paradigm shift from the current anti-witchcraft legislation which denies belief in witchcraft.

- Clear definitions of concepts such as 'witch' and 'witchcraft'.
- Introduction of structures to deal with certain witchcraft-related complaints by means of mediation.
- Legislation to control the practice of traditional healing, which should be accompanied by a code of conduct to separate the practice of traditional medicine from sinister practices. (Mavhungu 2000, p. 120)

Very few of these reformatory measures have been introduced. Also, much of the focus was placed solely on the Northern Province, since the commission's investigation focused exclusively on this region. Other regions, such as the Eastern Cape, were thus ignored despite witchcraft-related crime being a serious issue there as well.

Witchcraft-Related Crime in the Eastern Cape: An Ethnographic Example

The cultural context informing witchcraft beliefs and practices among the Xhosa-speaking people of the Eastern Cape has been extensively discussed in a previous section. This section will thus concentrate exclusively on witchcraft-related crime. The first part provides a definition of witchcraft-related crime based on ethnographic findings from a rural area in the Eastern Cape called Mpondoland. The second part discusses a few examples of witchcraft-related cases.

Understanding Witchcraft-Related Crime in the Eastern Cape Context

Since at least the early 2000s, the Eastern Cape Province has had numerous reported cases of witchcraft-related crime, especially in the Mpondoland region of the former Transkei (Petrus 2011, p. 1). All of these cases have involved either the execution of elderly women suspected of practising witchcraft, or victims who had died after having their bodily organs removed for the manufacture of traditional medicine. Witchcraft-related cases have proven to be exasperating for law enforcement for various reasons, the most

significant of which is the lack of a clear definition of what constitutes witchcraft-related crime. The problem of definition in witchcraft legislation has already been discussed. In addition to the legislative issues, there is also the practical problem of establishing exactly who the 'victim' is. The distinction between perpetrator and victim is directly influenced by how these types of crime are defined. Petrus (2011, p. 3) alludes to this problem as follows:

In some cases, a client [of a diviner/herbalist] who considers himself/herself to be a victim of witchcraft may request a diviner or herbalist to perform protective magic to counter the witch's power. If the alleged witch falls ill or dies as a result, it is possible that the [alleged] witch's kin may accuse the traditional healer, as well as the client, of witchcraft. This could result in a possible retaliation by the alleged witch's kin who may consult their own traditional healer to counter the "witchcraft" of the original client.

From his ethnographic research among the Xhosa-speaking people of Mpondoland, Petrus (2011, p. 3) found that factions involved in retaliatory violence such as that described above was a common occurrence in the 1990s. Often this factional violence was linked to witchcraft accusa-

The Witch of Magcikini Village, Port St Johns

In 2008, while undertaking research in the Port St Johns area, Petrus came across the case of an elderly woman from the village of Magcikini who had been killed in July on suspicion of being a witch. In fact, to the locals it was more than a suspicion as many of them claimed that the woman had confessed to causing the deaths of several youths in the village.

Before her death the woman had been going around the village claiming to have used magic to infect the youths with HIV, through a witchcraft technique called *ukuthwебula*. This technique involved the ability to magically extract a person's life force or blood. The woman had further strengthened suspicions when she accurately predicted

the deaths of the youths, as well as how long each would live after becoming infected (she predicted a period of 3 months). Village residents confirmed that several young people all died within 3 months after showing symptoms similar to those caused by HIV infection.

Of particular interest was that the villagers claimed that the woman admitted responsibility for these deaths apparently without any coercion or being threatened to do so.

Following the woman's execution, the police became involved and opened a murder investigation, not against the several youths who had died, but against the "murderers" of the alleged witch, since, as far as the police were concerned, she was the actual victim and not the perpetrator.

Source: Petrus (2011, p. 3).

tions and counter-accusations. Determining who are actually the perpetrators and the victims becomes complicated since the factions involved would each feel themselves to be the victims, while accusing each other of being the perpetrators.

The above problem also manifests in the dynamics between communities and the police, and it is here where the tensions of modernity versus traditionalism are most explicitly illustrated, and consequently where the complex nature of dealing with witchcraft-related cases is revealed. The following example serves to illustrate.

Given the seriousness with which witchcraft is treated in communities such as Magcikini, it would not be far-fetched to assume that the woman in question was killed possibly by relatives of the deceased youths. Her open admission to the 'crimes', her admission to using witchcraft to commit the crimes, as well as the confirmation of the cultural belief in witchcraft shared by the villagers, all combined to possibly lead to the woman's death. In the minds of the villagers, why would she have voluntarily confessed to killing the youths if she had not in fact done it? This confession was thus taken as a clear admission of guilt, hence that she had admitted

to being a criminal who was a threat to the community. The police, however, saw the situation very differently.

The above example shows that, on the surface, there appears to be one dimension to crimes that could be considered witchcraft-related. This dimension, reflected by the attitude of the police investigating the case, is that witchcraft-related crime involves the assaulting or killing of persons accused of witchcraft. Petrus (2011, p. 4) found that members of the police service used existing legislation to guide their definition of witchcraft-related crime, and thus acted accordingly. The police indicated that they 'could only charge someone who had accused another person of practising witchcraft', which is a crime under the Witchcraft Suppression Act (No. 3 of 1957). However, they could do nothing about people who complained that they were being bewitched, since the police 'did not investigate witchcraft per se but only criminal acts defined by South African law' (Petrus 2011, p. 4). Hence, those who accused others of witchcraft, and who acted on those accusations by assaulting or killing the accused, were more likely to be arrested and prosecuted rather than those suspected of being witches. The police's position served to irritate communities because, according to them, 'the police did not believe in witchcraft and therefore, by arresting the accusers, they were, in fact, protecting witches' (Petrus 2011, p. 4). This was readily given as a reason why some people took to punishing alleged witches themselves, rather than reporting such issues to the police.

The above foregrounds another neglected dimension to defining witchcraft-related crime, namely the bewitchment of others which, as the above example illustrates, is often the catalyst for retaliation against the alleged witch. While the community may believe in bewitchment, it is very difficult for this to be proven in a court of law. Consequently, as already mentioned, the police do not investigate bewitchment. The question that this raises is: does witchcraft or bewitchment not exist because it cannot be proven in a Western sense? This illustrates the complexity involved in addressing witchcraft-related cases within the Western-oriented law enforcement system in South Africa. It has already been

shown that in most cases the police only investigate crimes linked to witchcraft beliefs, which mostly involve crimes against alleged witches.

A third dimension to understanding witchcraft-related crime is the act of *muti* murder. In his study in Mpondoland, Petrus (2011, pp. 4–5) found that there was uncertainty as to whether *muti* murder should be considered as witchcraft. However, many residents felt that the intention or motive to kill another human being for his/her body parts, and to use them in making medicine to benefit the perpetrator, constitute witchcraft because ultimately it involves advancing one's own position at the life and expense of another. It is generally believed that traditional healers are involved in these cases, as they 'either supervise the act of killing, give advice on how it should be done or ... instruct the killers as to the kind of victim and the kind of body parts that are required' (Petrus 2011, p. 5).

Unlike in the case of psychic witchcraft, where it is only the alleged witch involved in the bewitchment of a victim, *muti* murder involves several stakeholders, all of whom are implicated in the crime. It has already been mentioned that a traditional healer may be involved. However, often the traditional healer's instruction is based on the needs of a client who might require a particular type of medicine. It is believed that medicines made from human parts are primarily used to bring good fortune in business or to improve fertility. Hence, a client wanting to make his/her business successful or improve his/her reproductive potential may consult a traditional healer for medicine to achieve this. In addition to the client and traditional healer there may also be the hired killers. In most cases, the client and traditional healer would not commit the actual act of removing the victim's organs. Often killers would be hired and paid to obtain the required body parts.

A holistic definition of witchcraft-related crime would incorporate all three of the above dimensions. However, the complexity of such a definition is clear and once again highlights the disjuncture between the rationalist Western orientation of the state (represented by the police and the courts) and the traditional cultural belief orientation of local communities. Differences in perceptions of evidence and what could be considered rationally possible are often contradictory. It is for this reason that the South African state has not yet found away to adequately address witchcraft-related crime.

Conclusion

This chapter has illustrated the influence of cultural belief on perceptions of crime by exploring the nature of witchcraft-related crime in South Africa. In this country, culture continues to play a significant part in the lives of citizens and cultural groups. As shown, *certain* cultural beliefs are, in a *certain* sense, the basis that underpins the everyday lived experiences of those who hold these beliefs. Among the Xhosa-speaking people of the Eastern Cape, the belief in witchcraft continues to occupy a specific place in the overarching cosmological belief system. Despite colonial and apartheid efforts to eradicate these beliefs they have not only endured but have adapted to the changing conditions of the post-apartheid environment. Consequently, witchcraft-related crime, as a manifestation of these beliefs, continues to be a complex issue, one that foregrounds the tension between modernity and traditionalism. While the country's constitution protects both individual and cultural rights, the liberal democratic philosophy underpinning the constitution favours the protection of human rights above all others. Witchcraft-related crime tests this philosophy and its continuance, despite the constitutional protection of the rights of those who are victims of witchcraft-related violence or *muti* murder, suggests that for communities in the rural areas where these incidences occur most frequently, the disjuncture between what is enshrined in the constitution and what is reality for these communities is quite wide. Cultural beliefs that inform these actions cannot simply be dismissed through recourse to a constitution, regardless of how progressive it is perceived to be. The beliefs held by communities such as those in the Eastern Cape predate the country's constitution. This would imply then that any meaningful attempt at addressing witchcraft-related crime would need to take the underlying beliefs seriously and learn from the mistakes of the past in trying to eradicate these beliefs. The most viable efforts at dealing with witchcraft-related crime will need a holistic approach, one that would include due sensitivity to the cultural beliefs of the communities concerned.

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8

Challenges of Late Modernity, Religion, Homophobia and Crime: Police and Criminal Justice Reform in Jamaica and Uganda

Perry Stanislas

Introduction

This chapter, first, explores a number of issues around sexuality that have import for former colonial countries in efforts to modernise their criminal justice system. These concerns are rooted in a history of struggle for political independence and new post-colonial realities which have transformed many developing nations and reflect contemporary priorities. Second, the chapter elucidates how the relationship of pre-modern and late-modern beliefs around same-sex relationships highlights the challenges for those advocating legal reform. Third, the chapter explores these issues through case studies of Jamaica and Uganda given their involvement in controversies which has significance for other developing countries (Smith 2014), due to the current status of homophobia (Altman 1996). As a result Jamaica and Uganda have been dubbed the

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most homophobic countries in the world (Stanislas 2013; Smith *ibid.*). The role of religious sentiment in contributing to particular worldviews has resulted in resistance to legal equality for same-sex relationships on the one hand, and supportive attitudes on the other which will be explored. Finally, broader contextual factors in these countries will be interrogated to advance understanding as to why homophobia became a point of concern at the time it did and the various outcomes of these controversies.

Same-Sex Sexual Relationships in Premodern Sub-Saharan African Societies

Sub-Saharan African societies have historically placed a high value on procreation in the context of marriage as an essential precondition for the healthy development of society based on extended kinship relations (see Oppong 1983; Gregerson 1982). Connell (1995) argues that maintaining approved notions of masculinity, particularly in the context of the family, involves stigmatising masculinities which are deemed problematic. Homophobia, or more correctly sexual prejudice (see Herek 2004), is one of the primary mechanisms for regulating masculine behaviour (Hilliard 2006). How homophobia manifests is contingent on the types of society, context, and cultural norms. However, what is common is the problematic status accorded to males who engage in same-sex relations (Connell *ibid.*).

Anthropologists have identified same-sex relations as being common in sub-Saharan Africa and coexisting alongside societal expectations around marriage (Evans-Pritchard 1970; Gregerson 1982). The familiarity of African societies with same-sex relations can be seen in early art featuring males engaged in sexual activity (Gregerson 1982, p. 200). One of the difficulties in discussing sexuality cross-culturally is the problem of meaning associated with same-sex relationships. Gregerson (1982, p. 196), Roscoe and Murray (1998, pp. 12–13) maintain that the concept of homosexuality as known in the West is largely alien to African societies, up until very recently, as opposed to same-sex relations which has different meaning. There are three interrelated issues that can be summarised for these differences in understanding. First, the notion that masculine identity can be defined by sexual activity is an essentially Eurocentric way of viewing

the world (Gregerson *ibid.*; Mbiti 1982, see Petrus chapter). Second, a common feature of premodern African worldviews was the notion that gender and sexual roles are flexible and context-specific (Gregerson *ibid.*; see Roscoe and Murray 1998). This accounts for the inclusion of African women in societal roles denied to their European counterparts (Etienne 1983; Okonjo 1983; Arhin 1983). West African states and ethnic groups boasted powerful women in the area of commerce, politics, as well as warriors (Alpern 2011).

Third, sexual acts (including same-sex relations) in many African cultures were often sacred in character and associated with important rituals reflecting a wider belief system, which included gendered spiritual identities (Mbiti 1982, pp. 35–38). Examples of this are male witchdoctors taking on female identities and living as women (see Evans-Pritchard 1970; Gregerson 1982, p. 196). Such a way of viewing the world was not unique to African societies. Williams (1986) notes in many Native American tribes, it was not uncommon for some individuals to live most of their lives as a man and significant parts of it as a woman (see Gregerson 1982; Epprecht 2008, p. 37). These types of complex worldviews about the nature of humankind (see Mbiti 1982; Petrus *ibid.*) do not easily lend themselves to the type of social processes, elucidated by Connell, required in reproducing simplistic and mutually exclusive representation of gender.

Evidence of same-sex relations in African societies can be found in many places. One of the most illuminating examples of the African concept of 'boy-wives' (Roscoe and Murray 1998) is described by Barnett & Njama (1966; 1970). Njama, a young Kenyan nationalist, details his experiences in a 'Mau Mau' guerrilla camp, where many of the senior warriors had boy-wives. Same-sex relation has been an accepted practice in a wide number of African cultures at all levels of society. For example, among royal families and the royal court, with the Kabaka (*King*) of Buganda, situated in today's modern Uganda, being the most well-known (Ward 1990; Epprecht 2008, p. 41). Other examples of same-sex relations would include women-to-women marriages where more established women are able to take younger wives (Greene 1998; Nguruuya and O'Brien 2000).

How sanctions against same-sex relations were used in African societies and what they consist of in real terms is not well documented. In some instances, the supposed punishment for breaking important taboos was

supernatural in origin. The Fang ethnic group (from what is today modern Nigeria) are reported to believe those who participated in same-sex relations, outside particular rituals, were punished by leprosy (Gregerson 1982, p. 196). More is known about official rules and sanctions than how they were used in real cases, which does suggest a general reluctance to use extreme measures if they existed given the lack of accounts from colonial administrators and travellers (see Evans-Pritchard *ibid.*, Gregerson 1982; Spivak 1985). Same-sex relations were not subject to criminalisation (Gregerson 1982, p. 196; Ward 2013, p. 412; Jjuuko *ibid.*). One account for the development of the institution of the boy-wife in Azande culture was men's fear of the death penalty for adultery (Evans-Pritchard 1970, p. 1430).

African societies had humane attitudes to minorities who did not conform to expectations around marriage and developed various explanations for this that preserved the value of an individual to the group (Epprecht 2008, p. 9). With specific reference to modern Uganda, Muth (2013) in his examination of legislative history found little evidence of homophobia. The lack of cases tried before colonial courts seems to confirm that same-sex relations was not a punishable matter, which illustrates a critical difference between the views of the colonised and their colonisers (see Jjuuko 2013).

Christianity and Modernity and Their Impact on Attitudes to Same-Sex Sexual Relations in Africa and the Caribbean

Christianity arrived late in Uganda compared to other parts of Africa. The first missionaries to make representation at the court of Kabaka Muteesa of Buganda did so in 1877. There are several factors which explain the growth of Christianity to surpass Islam and weaken traditional religious systems in Buganda (Ward 1990). First, the Bugandans were open to new ideas which in part accounts for the kingdom's success. Second, Christianity like Islam is a literacy-based belief system which appealed to the progressive attitudes towards learning. The Christian church played an important role in spreading education in Africa and the modernisation

process (Taiwo 2010, p. 206). Third, Christianity like Islam is a universal belief system that addresses the everyday challenges of human existence and is intrinsically appealing. Finally, Christianity is monotheistic in character and less complex than many traditional religious systems and more suited to modern requirements (Mbiti 1982, p. 135; Taiwo 2010, p. 77).

The Bugandan policy of openness was driven by the desire to trade and modernise through learning about new technology (Ward *ibid.*; see Kunene 1979). The warmth extended to travellers such as Henry Stanley Morton reflected this attitude (Kiwanuka 1971, p. 67; Ward 1990). Morton's famous letter in the *Daily Telegraph* in 1875 where he painted a favourable picture of the Kabaka Mutessa led to the arrival of the first Christian missionaries to the region, in the form of the Anglican Church Missionary Society, and the French Catholic White Fathers in 1879 (Kiwanuka 1971, p. 50). Through the establishment of study groups, missionaries were able to attract many, especially young people, to Christianity. The early attempts to establish a Christian presence in Buganda was not problem-free and the different attitudes towards same-sex sexual relations were an important source of tension. The French Catholic White Fathers withdrew from the kingdom shortly after their arrival due to their horror that same-sex relations were practised in some of these groups, which they viewed as immoral and corrupting (Ward *ibid.*).

Kabaka Mutessa was succeeded by his 18-year-old son who became Kabaka in 1884. Unlike his father, Kabaka Mwanga was a religious sceptic and, to make matters worse, engaged in what was seen by the Anglican missionaries as flagrant homosexual behaviour (Jjuuko 2013, p. 385; Ward *ibid.*). The young king, while respecting his father's religious tolerance, had learnt from his experience of Islam's efforts to challenge the Kabaka's authority. Mwanga took the opportunity of his ascent to the throne to assert his power in curbing Christian influence, which resulted in Christians being sentenced to death for challenging his authority and being agents of foreign powers (Kiwanuka 1971, p. 102). These executions were the first of many under Mwanga's reign where his perceived sexuality was one factor in the underlying antagonism (Ward 2013, p. 418). This led to a change in the environment against Christians (see Ward *ibid.*) and to Protestants looking to Britain as a source of support to guarantee the survival of Christianity in Buganda.

In 1888–1892 the tensions between government and Muslims escalated into civil war resulting in the forging of a common cause between the government, Protestants, Catholics, and supporters of indigenous religions who had long opposed Islam for its unaccommodating view of traditional practices. These groups armed themselves against Muslim adversaries who defeated them and established a Muslim State before being overthrown. Concerns amongst Christians about the possible re-emergence of the Muslim threat reinforced the need for military and political support (Kiwanuka 1971, p. 114). This contributed to a dispute between Protestants and Catholics about from whom this support should come. Catholics enjoyed greater support as the faith more closely associated with Mawanga, who in turn believed he would be better able to maintain his kingdom's autonomy with the French who had little imperial interest in East Africa. This led to Britain throwing its support behind the Protestants. By 1894 Buganda became a British Protectorate and the Protestant religion became the dominant religion.

Despite Christianity becoming very influential in Uganda, concerns were being expressed about the commitment of converts and in particular the maintenance of traditional values which were deemed contrary to religious teaching, such as the consumption of banana liquor (Ndyabahika 1993, p. 21; Niringiye 1997). One explanation for this observation was the lack of attention given to new converts given the large numbers of people flocking to Christianity. The attraction of Christianity, for some, had little to do with spiritual matters, but instrumental ones about social advancement which led to many converts being described as 'nominal' Christians (Niringiye 1997, p. 315). This contributed to a strong revivalist movement among Ugandan Christians in an attempt to introduce religious renewal to improve individual moral character and strengthen their commitment to the church (Ndyabahika 1993, p. 21; Niringiye *ibid.*). Paradoxically one of the principal reasons for the success of Christianity in Uganda was its ability to adapt to local cultures (Niringiye 1997; Ward 1990). Criticisms regarding nominalism often disguise anxieties about the maintenance of indigenous cultural attitudes and the failure to transform Africans into Europeans (Mbiti 1982; Niringiye 1997, pp. 319–321). Differing attitudes towards same-sex relations was one issue that elucidated this tension.

Political independence in 1962 witnessed a close working relationship between the Protestant church (which became the Church of Uganda [COU]) and the State. This period saw a growth in a number of independent Pentecostal and Evangelical churches, many from the USA (Ndyabahika 1993; Niringiye 1997). The post-independence tranquillity did not last long with disputes resulting in violence over the role of the Bugandan Kingdom in the new Uganda (Mazuri and Tidy 1984, pp. 108–109) and further turmoil that was to last until the 1990s with Museveni's National Resistance Movement (NRM). The most significant conflict is associated with the Amin regime 1971–1979 which saw a change in the relationship between the Church and the State in response to the brutality unleashed against political opponents and communities (Niringiye 1997; Mazuri and Tidy 1984, pp. 271–280). The murder of church leaders hardened resistance against the Muslim Amin and created a unified Christian opposition and mass support for the Church given the leadership it demonstrated in the face of the merciless Amin regime. The Christian church and its leaders came through this experience with a renewed authority which they still enjoy (Bruner 2014).

Christianity was brought to the British slave colony of Jamaica by former African-American slaves George Lisle and Moses Baker in 1790 in an attempt to relieve the suffering of the African population (Gordon 1996; Gerloff 2006). Lisle devoted his life to the service of the victims of slavery and with Baker quickly established a strong following in the capital Kingston and the Western region of the island, forming the first church in 1793 (Manning 1990, p. 117). In 1820 the newly-formed Baptist Missionary Society in England began sending missionaries to Jamaica after Lisle sought their assistance. Prior to the introduction of Christianity, the religious beliefs of most Africans were based on their ethnic group's traditional beliefs which they adapted to form their own religious systems (Gerloff 2006, p. 228; Suckley 1987). The largely unassimilated slaves maintained aspects of their culture which included consulting spiritual mediums, witchcraft and health practices (Smith and Smith 1986, p. 69; Suckley *ibid.*). Little is known about the attitudes towards same-sex relations among enslaved Africans, contrary to the erroneous view that 'homosexuality' was introduced to Jamaica by white men during slavery (Mercer and Julien 1988; Chevannes 2001). Same-sex relations were

well-known amongst West Africans from whom most African-Jamaicans were descended (Goudio 1998; Ajen 1998; Tessman 1998).

Other than being exposed to verbal pronouncements about Christianity the average African in Jamaica had little exposure to Christianity (Manning 1990, p. 117), which was reinforced by being denied the right to education. In Antigua, for example, Africans were barred from church or the legal right to wed until the 1900s (Smith and Smith 1986, p. 121). The work started by Lisle and Baker teaching slaves about the emancipatory nature of Christianity and to read and interpret the Bible for themselves (Gordon 1996; Gerloff 2006, p. 230) was viewed with great anxiety by the slave-owning class given the implications for the slave regime. These fears were to be proved well-founded. The history of slavery in Jamaica is one characterised by violent resistance. The Bible gave doctrinal support for what many authors have termed a liberation theology (Garrow 1988; Reid-Salmon 2012) and the notion of the Christian duty to stand up to oppression and in some instances, the moral justification for the use of violence. These sentiments were particularly deep within the Jamaican Baptist church and illustrated by the role of two of its famous sons (Gerloff 2006, pp. 230–231). Minister Sam Sharpe led the largest rebellion in 1831 to end slavery (Reid-Salmon 2012). Deacon Paul Bogle was the leader of the extremely violent 1865 Morant Bay rebellion (Manning 1990, p. 165). This event rocked the British establishment coming as it did nearly 30 years after the abolition of slavery and highlighted the dire conditions Africans were left in.

A unique feature of Jamaica is that it is a rich source of messianic cults and social movements based on a synthesis of religious and political ideology rooted in Christianity, African religious practices and the desire to preserve African identity. Common to these beliefs is the desire to empower the downtrodden or marginalised sections of the population through some association with Africa (Barrett 1977, p. 34). Throughout the 1900s numerous social movements emerged that were informed by these ideas, with Rastafarianism being the most well-known (Barrett 1977, pp. 45–49; Gerloff 2006, pp. 232–233). At the heart of these beliefs was a critique of the history of slavery, colonialism and a rejection of mainstream Christianity which was viewed as providing the religious rationale for capitalism and global black oppression (see Barrett 1977).

Other African-based religious systems include the Pocomania church which has roots in rural areas and often associated with witchcraft (Gunst 1995, pp. 36–37).

Christianity is the major religion in Jamaica and represented by denominations which include Anglican, Baptist, Church of God, Seventh-Day Adventist, Methodist and Pentecostal. What is particularly striking is these denominations traditionally enjoyed equal shares of representation among the population (The Gleaner 2012). Roman Catholicism is popular amongst the Chinese, Lebanese and East Indian ethnic communities. During the 1970s a number of American-style fundamentalist-type churches began to emerge under the administration of socialist Prime Minister Manley. These new churches were staunch opponents of Manley and virulently anti-Communist and believed to be backed by important US interests (Gunst 1995, pp. 43–45).

While the range of Christian denominations and religious influences are extremely diverse in Jamaica, which can be seen as a positive feature of the society, it is also a potential weakness. Jamaica with its population of just under three million people has been described as having one of the highest numbers of churches per capita in the world, with churches on most street corners (The Gleaner 2012). Recently the more established denominations have been eclipsed by the charismatically-led Pentecostal and Seventh-Day Adventist evangelical churches with their populist appeal in this highly competitive environment (The Gleaner *ibid.*; Reid 2012). These denominations tend to increase in popularity in periods of economic hardship (Oluikpe 2013, p. 9), and for Meeks (2000), they represent a longer decline in the legitimacy of the traditional Jamaican social order. Given the lack of dominance of any denomination in this religious marketplace the competition between churches is likely to contribute to further fragmentation and important differences in values on issues of social import. These dynamics can contribute to forms of nominal Christianity, which can be exacerbated in the fight to increase church numbers (Niringiye 1997; Oluikpe 2013, p. 10). Attitudes to sexual relations, family, and childbirth illustrate this. Jamaica has the highest illegitimacy rate in the English-speaking Caribbean as a consequence of slavery, poverty and their impact on the family (Baker 1994; Manning 1990, p. 25). This has led to the wide range of types of family

found there compared to other countries (Stanislas 2010, pp. 194–198). Despite Jamaica being a Christian country, adherence to the Christian family model is limited to a narrow section of society (see Gouldbourne and Chamberlain 2001).

The diversity of religious beliefs held by important sections of Jamaican society suggests that views on any important social issue will be varied, complex and potentially contradictory whether it be attitudes to the family, crime and punishment, or same-sex relations. These differences provide opportunities for those attempting to bring about change in attitudes around potentially contentious issues such as same-sex relations. Attitudes towards the family are instructive here given the critical role of marriage in Christian doctrine and the flexibility demonstrated by church leaders for those who do not meet this standard and the religious rationales they utilise to support their view.

The Campaign for Legal Equality for Same-Sex Relations in Uganda

One of the most striking issues that highlight the contradictory role that religion can play in the modernisation process is the reversal of attitudes towards same-sex relations in Uganda. The conflict between the COU and the American Anglican church has its origins in the ordination of gay priests. This came on the back of heavy media coverage and concern about homosexuality which reflected the influence of Western gay rights activists (Altman 1996; Stanislas 2013). One of the outcomes of this tension was the COU breaking with the US Episcopal Church (Sadgrove et al. 2012, p. 112; Bruner 2014). Pastor Martin Ssempa, leader of Inter Faith Rainbow Coalition Against Homosexuality who had various associations with the American religious right and government ministers, played a pivotal role in the escalation of events (Sadgrove et al. *ibid.*). Another influential person was fierce anti-gay religious activist American Scott Lively who visited Uganda to participate in a seminar in 2009. The seminar addressed the perceived spread of homosexuality and was responsible for the emergence of the Anti-Homosexual Bill 2009 (Jjuuko 2013, p. 392; Bruner *ibid.*).

Cultural and normative changes in Uganda created social anxieties and the environment that contributed to a moral panic around homosexuality (Ward 2013, pp. 418–420). The HIV/AIDS epidemic and the increase in divorce *inter alia* helped to produce this atmosphere (Sadgrove et al. 2012; Bruner *ibid.*). In addition, Uganda over the last decade has experienced an unprecedented crime wave and one of the highest homicide rates in the world (Fry 2014). It also experienced a major increase in violent robberies and drug-related crime due to poverty and ineffective policing (Fry 2014; HURINET-U 2010; Stanislas 2014). At a time when Uganda was achieving crucial development goals in poverty-reduction and improvements in its gross domestic product (Uganda Ministry of Finance, Planning and Economic Development 2010), the population was experiencing high levels of insecurity.

A critical aspect of the conflict taking place was that it was characterised as a battle between secularism and extreme liberalism and proper religious values, with the COU portrayed as the last bastion of Christian morality against a decadent Western church (Bruner 2014; Sadgrove et al. 2012, p. 115). This environment helps explain the emergence of the Anti-Homosexuality Bill proposed by young NRM MP David Bahati; another associate of the American religious right (Sadgrove et al. 2012, p. 115; Jjuuko 2013, p. 392). The proposed Bill while receiving support from some influential figures in government was not enacted as many politicians refused to back it. However, overt homophobic sentiments were found within government and among influential figures within the State machinery, such as chief police officers (Sadgrove et al. 2012, p. 114).

The Ugandan media was influential in fuelling homophobic sentiments. Tabloid *Red Pepper* regularly described homosexuals in the most derogative terms, while the *Rolling Stone* went further and published the personal information of people suspected to be homosexuals and called for them to be hanged (Sadgrove et al. 2012, p. 112). In 2011, gay rights activist David Kato was murdered in his home which was believed to be directly related to the environment of hate that had been created, along with mob beatings and police arrests of those suspected of being homosexuals (Jjuuko 2013, p. 382). The hostility to same-sex relations can be seen by recent legislation. Same-sex relationships were not explicitly proscribed under colonial law but were criminalised as part of

2004 Constitutional amendments defined homosexual acts as 'unnatural offences' as a means to delegitimise and weaken the growing influence of local gay rights activists (Jjuuko 2013, p. 382). The intent to deny homosexuals legal recourse is highlighted in the Equal Opportunities Commission Act (2007) which prevents investigation of anything deemed immoral, in a clear attempt to decouple equality of opportunity for women and other groups from gay rights (see Stanislas 2013; Jjuuko 2013, p. 388).

The changes in the law led to widespread criminalisation (Bruner *ibid.*; Jjuuko *ibid.*). A more subtle understanding of these developments is the resistance described was not so much about same-sex relations, which was widely accepted as something that had always existed, but to the notion of giving legal recognition to gay identities as promoted in the West (Altman 1996, p. 79; Sadgrove et al. 2012, p. 109). The most controversial development was the provisions of the Anti-Homosexual Bill (2009) that called for the death penalty for 'aggravated homosexuality' which included having sex with a minor or if one party is HIV positive. It also criminalises individuals for not disclosing known homosexuals to the police, thereby placing landlords, teachers and parents at risk of prosecution. Even more troubling, the Bill also made unlawful the failure to bring to the authorities' attention anyone 'promoting' homosexuality, which in effect could mean anybody who objected to the legislation (Sadgrove et al. 2012, p. 103; Jjuuko 2013, pp. 388–390). The project of making Uganda a bastion of Christian virtue required transforming the country into a totalitarian State and abandoning the traditional benign attitude to same-sex relations. This involved constructing a Uganda that never existed.

The issue of same-sex relations had significant ramifications for important interests in Uganda. First, the more established Anglican Church was concerned about the popularity of newer Pentecostal churches led by younger leaders. The anxieties caused by these churches, to what was perceived as the establishment church (Ward 2013; Bruner 2014), can be seen by the efforts to discredit their leaders. Robert Kayanja, the pastor of a Pentecostal mega-church, was falsely accused by Martin Ssempa and his associates of sexually abusing minors within their congregation (Jjuuko 2013, p. 421). The choice of these allegation is important in a context where safeguarding children from sexual abuse was a central theme in the

opposition to same-sexual relations (Gutzmore 2004; Jjuuko 2013, *ibid.*). Religious leaders such as Kayanja who did not support the populist narrative were open to expedient charges of promoting same-sex sexual relations and participating in criminal sexual activity.

President Museveni's response to the political and media pressure for tougher action against homosexuality highlights his awareness and sensitivity to the implications and its impact on his political support with the country's population of 33 million, predominantly Christian-electorate (Jjuuko 2013, p. 381), and important foreign partners such as the US Obama administration. By the time the Anti-Homosexuality Bill became popular discussion, Museveni had already been in office for over two decades and had an eye on the 2016 election (Bruner 2014). His response to the Bill was an attempt to achieve a political balancing act of not undermining his position with rivals and to appease popular opinion and international critics. Museveni's initial response to the Bill was to criticise its punitive and extreme tone, while agreeing with the popular disquiet about cultural decline.

Just before signing the Bill, Museveni called for expert opinion on homosexuality and its causes to ensure his decision was informed by the best available information (Ford 2014). A Ministerial Committee composed of scientists from the Ministry of Health and academics was established for this purpose (Ford 2014). Museveni had previously refused to sign the Bill because of the lack of quorum, which is a constitutional requirement in passing new laws (Bruner 2014). The uncontroversial findings of the experts, that same-sex relations are not caused by physical or psychological disorders and individuals were relatively free in making choices around sexual behaviour, was sufficient for Museveni to sign the Bill (New Vision 2014). However, by this time it had undergone major amendments to remove the proposals that caused the greatest controversy (Parliament Watch Uganda 2014; Ford 2014). Despite threats of retaliatory actions by foreign governments against Museveni and his government if they passed the Bill (Bruner 2014), it became law. This demonstrates Museveni's political astuteness in adopting positions which strengthen his authority and prospects, while meeting the needs of important constituencies. Within a year of being passed, the Constitutional Court ruled that the Anti-Homosexual Act was unlawful and threw it out

on the technicality that the quorum which passed the legislation was too small. This represents an important victory for gay rights' campaigners and also seems to suggest a covert effort by politicians either to kill the legislation or weaken it by delays and non-participation.

The attitude of the courts stands in sharp relief to that of the police in providing some reassurance to gay men and lesbian women (see Jjuuko 2013). This is evidenced in the sentences given to the killer of David Katzo who received a life sentence and the court's treatment of the *Rolling Stone* newspaper. The newspaper was ordered to pay considerable damages to the complainants and had a permanent injunction placed on it preventing it from publishing similar information. In the case of Victor Juliet Mukasa *inter alia* the court found in favour of the complainants after the home of the lesbians was raided by the police and local council officials who subjected them to inhuman treatment (Jjuuko 2013, pp. 393–395). The greater independence of the court in Uganda, compared to the police service, offers some small comfort for those gay men and lesbian women who are able to utilise it. While many of the most egregious aspects of the legislation were defeated, these laws nevertheless reinforce and give official support to homophobic prejudices. On the other hand, the defeat of the more extreme measures should not be underestimated in terms of its significance and demonstrates the influence of countervailing interests. This victory provides an opportunity for campaigners to re-group and develop an effective legal strategy (see Jjuuko *ibid.*). In this regard the project to make Uganda the exemplar 'Christian country' failed.

The Campaign Against Homophobia and Popular Culture in Jamaica

The post-war attitude towards same-sex relations in Jamaica has been described in contradictory terms. Christian language and values shaped aspects of everyday life including matters regarding sexuality, where same-sex relationships was viewed as violating God's ordained design (Hilliard 2006, pp. 546–547). Jamaica is similar to other Caribbean countries where ridicule is the traditional response to homosexuality, although homosexual prejudice has historically been stronger in the former

(Chevannes 2001, p. 125; Gromer et al. 2013). Mercer and Julien (1988) in the first account of the experiences of Blue British homosexuals cited name-calling, particularly by the religiously-inclined, as the most common form of abuse experienced from this group who were disproportionately of Jamaican descent. Their descriptions suggest a greater tolerance from British Caribbean communities towards homosexuality compared to their white counterparts. This is illustrated by the lack of violence experienced by black gays from other black people (Stanislas 2013, p. 15), compared to white gays' fear of violence (Mason and Tomsen 1997).

Jamaican society has always had a tolerance towards same-sex relations, despite opposing religious pronouncements (Cooper 1994; Gutzmore 2004, p. 121). This can be seen by what Gutzmore called the 'low level social policing of sexuality' which provides space for same-sex activity to operate. The Jamaican police through most of its history did not target homosexuals or places associated with them for harassment as was common in Britain (Tatchell 1999). During the late 1970s Jamaica experienced a number of challenges that had an adverse effect on the country. First, Prime Minister Manley was forced from office (see Gunst 1995). Second, this led to the introduction of neo liberal policies and the dismantling of the economy which contributed to unprecedented levels of male unemployment (Stanislas 2013, p. 11). The failure of the political and ruling classes to meet the population's basic expectations led to a crisis in legitimacy and loss of influence of traditional sources of authority (Meeks 2000, pp. 54–55). Meeks highlights the normative change among the population which ranged from discourteous behaviour towards their 'social betters', to targeting middle-class properties for robberies. Jamaica became a crime-ridden country with the highest homicide rate in the world (United Nations Office of Drugs and Crime and the Latin America and Caribbean Region of the World Bank 2007; Stanislas 2014, pp. 1–2).

Perhaps the best indicator of the changes that took place is seen in the area of culture and the rise of a particular genre of controversial reggae called dancehall music, which appealed to the working poor and underclass. Its content placed a high value on gratuitous violence, foul language, sex and a new-found homophobia (Stanislas 2013, p. 13). This

led to several reggae artists being targeted by Western gay activists as the focus for demonstrations and concert cancellations as part of the Stop the Murder Music campaign launched in 2002 (Stanislas *ibid.*). An important dimension of the British-led campaign was an attempt to link the homophobic sentiments of this music with actual violence and murders of high-profile Jamaican gay activists who were killed during robberies. Research found that those who listened to dancehall music were more likely to hold homophobic views (University of the West Indies 2011, p. 34). What is very clear was the increased hostility towards homosexuals and evidence of mob beatings, harassment and in some instances killings. The attitude of the police was a major factor in the fear experienced by sections of the population. Carr (2003) describes how a gay man was chased by a mob who managed to reach a police station. He was instructed to leave by the sergeant and pounced on by the awaiting mob that killed him and set his body on fire.

The change in attitude towards same-sex relations has been explained by the impact of structural changes on gender, which is illustrated by the fact that unemployed males exhibited higher levels of homophobic prejudice (Chevannes 2001, p. 220). Chevannes maintains that the economic conditions have impacted on working-class males in their ability to meet societal expectations around manhood and contributed to a 'crisis of masculinity'. This has led to forms of gender behaviour, such as public demonstrations of masculinity in terms of hostility to homosexuals. The heightened sensitivity towards sexuality can be seen in the intense social surveillance of behaviour for signs of deviance, reinforced by the willingness to dissociate from anyone suspected of having 'gay tendencies', including family members and lifelong friends (Chevannes 2001, p. 219; West and Hewstone). The unwillingness to disassociate from what is perceived as social pollution opens individuals to charges about their own sexuality.

While politicians, the church and respectable mainstream Jamaican society opposed dancehall music, the inflammatory tactics utilised by Western campaigners served to unify these and other disparate interests in a nationalistic response (Stanislas 2013, p. 16). Rastafarians were some of the most outspoken critics of what they perceived as new white cultural imperialist attempts to impose its moral decadence. Demands by

Western campaigners for the Jamaican government to scrap its colonial sodomy laws that carried a 10-year prison sentence (West and Hewstone 2012, p. 47) intensified the defiance within the country. The response of Jamaican's politicians was not simply defensive; on the contrary the criticisms from abroad enabled them to endear themselves to the masses by playing to popular homophobia and position themselves as nationalistic strong men. The best example of this was Prime Minister Bruce Golding who asserted proudly that he had no gays in his cabinet, which clearly implied he would not accept homosexuals in government (West and Hewstone 2012, p. 47).

The inflammatory Western media coverage, much of which was racist in character, intensified the hostility against gay men in Jamaica, increasing their vulnerability (Stanislas *ibid.*). This environment coexisted with traditional liberal and more accommodating Christian attitudes (Cooper 1994; Gutzmore 2004) that contributed to making Jamaica, before its homophobic turn, a safer place for its gays and lesbians than most Western countries (Mason and Tomsen 1997; Moran and Sharpe 2004). Evidence of this can be seen in the case of British citizen John Terry. Terry lived in Jamaica for 40 years, as the only white man in a remote rural area, openly with his local partner despite hiding his sexuality from his family. Terry was killed during a robbery of his home (Jones 2009). The problems experienced in Jamaica were exploited by local gays and lesbians at home and their supporters abroad in the extreme and oversimplified depiction of the situation in the country. One outcome of this was British activists' successfully lobbying their government to grant asylum to Jamaican homosexuals. The question of why Britain is seen as a safe haven as opposed to other Caribbean countries is not explained by campaigners. Out of the list compiled by them of former colonial countries where gays and lesbians live in fear, Jamaica is the only Caribbean country mentioned (Bentham 2002).

Several interests are served by the narrative that insists physical safety is only achievable in Britain and part of a broader discourse (Arondekar 2005, pp. 242–244). In the case of those fleeing persecution, their characterisation of Jamaica cannot be divorced from the possibility of living in an economically advanced country, a highly sought-after but limited opportunity for those in the disadvantaged post-colonial world. Antigua

received 10,000 Jamaican immigrants between 2008–2009 alone (Luton 2009). The granting of asylum to victims of sexuality-based crimes provides official support for characterising Jamaica as a kind of homophobic terrorist State and, equally importantly, validates the Western global queering agenda (Altman 1996; Sadgrove et al. 2012, p. 109).

The outcome of this dispute has been disappointing given the absence of any substantive gain from the point of view of those who started the campaign; despite some artists agreeing to stop producing homophobic music, which could be viewed as a hollow victory (Topping 2007), Jamaican anti-sodomy laws remains in place. Threats from the new Jamaican PM to withdraw from the Commonwealth as a means to register its protests about British interventions in its affairs (Wright 2012) are equally empty. Such negative publicity has led to concerns about Jamaica's reputation and the need to take some positive action as highlighted by the pledge of chief police officers to introduce human rights training (Stanislas 2014, p. 1). Whether this will take the form similar to that of the St Lucian police which directly addresses sexuality and discrimination is unknown (Stanislas 2014, pp. 229–230). Another important development has been the desire to ascertain what Jamaicans think about sexuality by means of research. This represents an important development in the Jamaican debate about sexuality (University of the West Indies 2011).

Conclusion

Western premodern attitudes towards same-sex relations stood in stark contrast to the views found in many societies. Populist homophobia in Jamaica and Uganda illuminates a paradox about modernisation and the processes involved. Some Christian denominations played a pivotal role in the modernisation process and have also eroded the permissive world-views that accepted same-sex relations. This illustrates that modernisation is not a linear process and can contribute to inconsistent outcomes (Held and McGrew 2002; Stanislas 2013, p. 7). Various factors have conspired in taking attitudes in Jamaica and Uganda backward while the West has moved in the opposite direction, enabling it to challenge these countries about their treatment of homosexuals.

Fundamental to the aforementioned changes are structural matters and problems associated with the material needs of sections of the population. Unlike the West, where the extension of equal opportunities for a number of groups took place in the context of strong economies (Altman 1996, p. 78), demands for legal rights for homosexuals in Jamaica and Uganda seek to establish new social identities and entitlements at a time when these countries are experiencing considerable strain and uncertainty (Sadgrove et al. 2012; Chevannes 2001). Concerns about violent crime, and the authorities' inability to alleviate these worries, create the environment for individuals to act with impunity, which exacerbates the vulnerability of sexual minorities. Attempts to influence local events by external actors trigger nationalistic resistance (Connell and Messerschmidt 2005) which is a common response to globalisation (Held and McGrew 2002, p. 4) that intensifies the hostilities towards homosexuals.

The emotional intensity of these moral panics cannot be sustained for long periods of time, despite the homophobic legacy left in their wake and the underlying social conditions and concerns that fuel them remaining unaddressed. The failure of religious fundamentalists in Uganda to introduce extreme legislation constitutes a major blow, and there is little evidence that the emotional energy, and many of the tactics utilised in that campaign, can be repeated to reinstitute parts of the legislation which were rejected by the court. The attitudes of the Ugandan courts in defending the constitutional rights of gays and lesbians in the country provides some hope that the remainder of the legislation can be challenged to claw back the gains made by fundamentalists. In Jamaica one of the outcomes of the campaign against homophobia has been the first large-scale piece of research into attitudes in the country which has thrown up some very interesting findings. While those with religious views were found to be more likely to be prejudiced against homosexuals, against a background of strong views against homosexuality and legal equality, 43 % of respondents found no conflict in being homosexual and Christian (University of the West Indies 2011, p. 27). These findings provide scope for further national debate and an intellectual foothold for reformers. The controversy about homophobia has led to a small number of churches opening their doors to homosexuals, demonstrating that sexual and religious identities can be reconciled under the rubric of Christianity (Woods

2014). These clergy have joined the ranks of other religious dissenters who opposed the environment of hate against gays and lesbians from the outset.

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9

Child Sexual Abuse and the Church

Jodi Death

Introduction

This chapter considers the issue of child sexual abuse (CSA) within the Roman Catholic Church (the Church) internationally. In particular, the State-facilitated responses in the USA, Ireland and Australia are considered for this study. This includes the function of civil litigation and State inquiry. Such inquiries continue to be extremely important in understanding CSA in Catholic institutions. Internationally, civil litigation and public inquiries have become a substantial response in the survivor's pursuit of justice and in understanding the breadth and depth of the issues associated with CSA by Roman Catholic clergy (clergy). Such methods are inherently jurisdictional and may not go far enough to challenge the deeply rooted systemic and cultural issues that impact on the ways in which CSA by clergy is perpetrated and managed. Hence, consideration

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needs to be given as to how the upper echelons of the Church can be brought to account for both primary and secondary abuses in the perpetration and management of CSA by clergy.

State Responses to CSA by Clergy: Are They Sufficient for Justice and Accountability?

CSA by the clergy, and the consequent mismanagement of complaints, is now widely recognised as an international phenomenon (Farrell 2009; Kline et al. 2008; McLoone-Richards 2012). Common themes of cover-up, secrecy, the perpetuation of abuse, the Church prioritising its reputation and clergy over the protection of children and absent or inadequate services to the victims have become represented in international discourses on this issue (Balboni and Bishop 2010; Pilgrim 2012; Piquero et al. 2008; Terry 2008). It is now recognised that the primary abuse has often been followed by secondary abuses through institutional mismanagement of complaints. Common factors in bringing accountability to the Church for its abuses, both primary and secondary, has only occurred through widespread and repetitive media representation and relentless pressure from victims and their advocates to demand accountability from the Church through State mechanisms (Allen 2010; Inglis and Donnelly 2010; Lytton 2009). Internationally this accountability has taken different forms. Two common means of accountability have been through formal State inquiry and civil litigation. Although it does occur, criminal prosecution of clergy perpetrators has proven difficult in many cases, because much of the CSA cases is historical in nature and prosecution in adversarial criminal justice systems is often difficult and unsatisfactory for the victims (Harvey and Noll 2008). Cases are not only beset with the evidentiary difficulties in prosecuting historical CSA cases but are also faced with the challenges of some perpetrators being deceased and an institution willing to go to extraordinary lengths to protect itself and avoid such cases proceeding to hearing (Bunting 2008; Connolly et al. 2009; Parkinson et al. 2002).

This chapter identifies and discusses various elements of the management of CSA by clergy in three jurisdictions: the USA, Ireland and Australia. It is acknowledged that there has been State intervention in other jurisdictions, such as Canada, England and Wales, Belgium and the

Netherlands (Keenan 2012a). The three jurisdictions chosen for discussion here represent locations where there has been significant intervention on a State level either through support of civil litigation or through public inquiry and its consequent outcomes. The USA is recognised as being one of the first to deal with widespread allegations of CSA by clergy. The USA is also known for extensive civil litigation against dioceses, and large amounts of compensation are paid to the victims as a result of such processes (Formicola 2007; Balboni 2011). As such, civil litigation in the USA represents a particular form of State management of both initial abuses perpetrated by clergy and subsequent mismanagement of abuse by the Church. In contrast, Ireland has had significant State intervention in the form of public inquiry which has resulted in significant shifts in the State–Church relationship and wide-scale exposure of the moral and criminal failures of the Church that was for many decades central to the very functioning of the State (Brennan 2008; Conway 2014; Pilgrim 2012). Australia is a relative latecomer to State intervention and has recently seen three major State inquiries into the management of CSA in institutions, including the Church. There is currently an ongoing *Royal Commission into Institutional Responses to Child Sexual Abuse* (the Royal Commission) that has considered multiple elements of the Catholic Church of Australia's management of CSA in particular dioceses, institutions and through the Australian Church policy *Towards Healing* (Barter et al. 2014; Beck 2013; Budiselik et al. 2014). As a result of one of these inquiries, criminal charges have been laid against a senior Australian cleric for concealing the abuse perpetrated by another priest in the 1970s (Cunneen 2014). Such charges represent an anomaly in States addressing the cover-up of CSA by the Church. Each of these jurisdictions is remarkable for the distinct similarities in the perpetration of abuse and the mismanagement of complaints by the Church. What this points to is that although jurisdictional responses are important, they do not sufficiently address the central structural issues that have contributed to the mismanagement of CSA in the Church and exist on a much wider scale. Whilst it is important that individuals who have perpetrated criminal offences are called to account and that the dioceses are called to account for negligent management of CSA, the picture that emerges is of a global issue that must be tackled at a higher level than what a jurisdictional approach accommodates.

The USA

Modern reports of CSA by clergy are often thought to have emerged from the USA, so much so that Pope Francis attempted to characterise the issue as 'the American Problem' (Fawley-O'Dea 2004, pp. 16–17). It was investigative journalism that brought to the world's attention the modern scourge of CSA by clergy (The Investigative Staff of the Boston Globe 2002; Decosse 2007). This is not to say that CSA by clergy has not been an issue for the Church throughout history, it has for the two millennia in which the Church has existed (Doyle et al. 2006). The advent of the Internet, the globalisation of media and the determination of victims/survivors and their supporters to garner the power of these sources led to a shift in power relations that removed the capacity of the Church to manipulate victims/survivors into silence. This power became provocatively evident as waves of scandals emerged in both the occurrence and management of CSA by clergy in the USA (Formicola 2007; Doyle et al. 2006).

In response to mounting exposure and pressure, the US Conference of Catholic Bishops (USCCB) commissioned a study to be undertaken by a team from the John Jay College of Criminal Justice (2004). This would be the first large-scale study of clergy abuse and is still cited as a seminal study. The first John Jay study relied on surveys completed by 97 % of the 202 US dioceses (John Jay College of Criminal Justice 2004, p. 16). Religious orders of men were also invited to participate in the study. Dioceses and religious orders were surveyed to provide a diocese/order profile, information from records on clergy who had been accused of CSA, and information on victims and specific incidence data (John Jay College of Criminal Justice 2004). The purpose of this large-scale and detailed study was to determine the 'nature and scope' of CSA by clergy between 1950 and 2002. The study is notable not only because it was the first of its kind but also because it found that approximately 4 % of priests in active duty in the timeframe had allegations of abuse made against them, and there were accusations made by over 10,000 individuals (John Jay College of Criminal Justice 2004, p. 27).

A second John Jay study, partially paid for by the USCCB, examined the 'causes and contexts' of CSA by clergy (Terry et al. 2011). This study comprised a large data set of a varied nature including interviews with

inactive priests who had been accused of CSA, clinical files from treatment centres for clergy accused of CSA, surveys of a number of active clergy about policy and wider data that examined social trends in marriage, divorce, crime and premarital sex (Terry et al. 2011). One of the most controversial points made by this study is that the majority of CSA by clergy was reported as being perpetrated in the 1970s, a time of shifting sexual moralities and social change that clergy were ill-prepared to cope with (Terry et al. 2011).

Since the John Jay studies, a number of US-based academics have provided deeper theoretical perspectives explaining CSA by clergy in terms of clericalism, institutional culture and neutralisations, theological discourses of forgiveness and sin versus crime (Benkert and Doyle 2009; Doyle 2006, 2003). Importantly, American studies have also considered the role of civil litigation (Balboni 2011; Balboni and Bishop 2010). It is in America where the bulk of civil litigation against the Church has occurred. It is estimated that compensation paid by the US Catholic Church has totalled over \$2 billion and resulted in the bankruptcy of some dioceses (Daly 2009).

Balboni's (2011; Balboni and Bishop 2010) work has indicated, however, that where victims have pursued civil litigation it has only been because the Church authorities have failed to respond with compassion and appropriate services when disclosures were made. For many victims, successful civil litigation represents a victory and some representation of justice, but a victory they never would have sought had the Church responded in just ways to their initial complaint (Balboni 2011; Balboni and Bishop 2010). As such, civil litigation has been used by survivors as a tool of accountability when they have not been taken seriously in Church processes and have experienced further marginalisation and harms as a result of mismanagement by Church authorities (Doyle and Rubino 2003). As such, civil litigation has been constructed as a means of holding the Church to financial account and representing some form of justice through findings whereby churches are compelled to accept responsibility for harms caused by the original abuse and secondary abuses in the management of disclosures and offenders (Feldthusen et al. 2000).

Early responses to civil litigation made by Catholic officials included representing litigants as greedy victims seeking large financial payouts and

undermining the Church's moral standing (Balboni and Bishop 2010). The Church has also responded by utilising its extensive financial resources to vigorously defend itself in court. These resources often far outweigh those of victims, even when class actions are brought against specific dioceses (Balboni 2011). When criticised for doing so, the response has often been to say that leaders were only following the direction of solicitors and insurers (Doyle and Rubino 2003). What these discourses betray is that, despite apologies which profess the contrary, it is often the case that the Church wished to distance itself from accepting responsibility for abuses by externalising the blame of poor responses to the victims (Thomas et al. 2008).

It has been argued that whilst civil litigation has extended the State's authority over the Church, in the US context, it is unconstitutional and a violation of freedom of religion. As this argument goes, the State cannot hold the Church liable for decisions it makes to hire and disperse clergy as this interferes with the right for religions to function independently of the State (Formicola 2007; Lacovara 2013; Lupu and Tuttle 2005). This difficulty is largely overcome, however, by arguments that the failure to adequately deal with perpetrators of abuse, failures to warn parishes to which priests were moved after disclosures of abuse were made, failure to remove priests from active ministry and failure to enact sufficient safeguards to protect further victimisation were not official Church policy (Formicola 2007; Lacovara 2013; Lupu and Tuttle 2005). What this demonstrates, however, is significant tension between the exercise of the State authority to respond to criminal abuses and violation of torts and the capacity of the Church to exercise its right to religious freedoms. Such tensions between the State and the Church are also evident in the Irish setting where civil litigation is less prominent, but there have been extensive public inquiries into abuses against children in Catholic settings.

Ireland

Ireland has had perhaps the most extensive public inquiry into child abuse by clergy. The *Ryan Report*, the Commission to Inquire into Child Abuse (CICA), investigated the nature and scope of all forms of child abuse in children's homes and organisations run by religious orders and

congregants (2009). The inquiry took almost a decade to complete, and it found evidence of extensive and severe physical, emotional and sexual abuse and neglect in the facilities under its remit (*ibid.*). In 2002, the Church agreed to institute a compensation scheme for victims of abuse. This scheme was managed by the State and involved capped payments to victims. This was widely criticised because, although the Church provided a substantial transfer of property to the State for the purposes of compensation to victims, the potential cost to the State expanded exponentially as the extent of abuse became clear. At the conclusion of the inquiry by CICA, there was still significant debate as to the legitimacy of compensation paid to victims of clergy abuse (Barnardos et al. 2010; Brennan 2008; Hogan 2011).

What became known as the *Murphy Report*, from the Dublin Archdiocese Commission of Inquiry, explored allegations of CSA by a 'representative sample' of priests in the Dublin Archdiocese between 1975 and 2004. This equated to complaints by 302 children against 42 priests during this time (Department of Justice and Equality 2009). The *Murphy Report* found evidence of both extensive CSA and deliberate cover-ups by the Church (Department of Justice and Equality 2009). This cover-up was also facilitated by State agencies, such as the Gardai, that had an inconsistent approach to investigation, and the *Murphy Report* notes significant delays of 20 years in prosecuting some clergy (Department of Justice and Equality 2009).

The *Ferns Report* examined 100 allegations made against 21 priests in the Diocese of Ferns between 1962 and 2002 (Murphy et al. 2005). The Ferns inquiry found that although the responses of the Church authorities to allegations of CSA varied across the timeframe examined, they were consistently inadequate and inappropriate. Most often child protection was not a central concern, and protecting the reputation of the accused priest and the Church was prioritised (Murphy et al. 2009). Further it was found that the Canon Law and Church processes were used inefficiently and inappropriately (Murphy et al. 2009). The *Ferns Report* also pointed to the management of complaints of abuse, emphasising the 'moral' aspect of CSA perpetrated by clergy, rather than the criminal nature of the offences. This is not unique to the Diocese of Ferns, with research and public inquiry pointing to the Church prioritising the

management of CSA as a moral failure on behalf of offending clergy, rather than as a crime to be managed by the State. This has otherwise been framed as focusing on offences of CSA as 'sin' and being managed by the Church as such (Conway 2014; Daly 2009, 2014). Initial constructions of CSA by clergy as a 'crime' prioritised it as a crime under the Canon Law and resisted intervention by State-based criminal justice (Formicola 2004).

The *Cloyne Report* examined complaints made against 19 clerics between January 1996 and February 2009. What is unique about the inquiry into the Diocese of Cloyne is that it considered a time after the Church implemented Child Protection procedures in 1996 (Murphy et al. 2011). Hence as the report states:

This meant that the so-called 'learning curve' which it was claimed excused very poor handling of complaints in other Dioceses in the past could not have had any basis or relevance in Cloyne. (Murphy et al. 2011, p. 2)

The Inquiry into the Diocese of Cloyne found that Church officials did not implement Church procedures including what was widely known as the *Framework Document*¹ adopted by the Irish Bishops' Conference in 1996. This document outlines procedures by which Church authorities were to 'deal appropriately' with allegations of abuse by clergy. The Cloyne Inquiry found that failure to apply the policies outlined in the *Framework Document* was encouraged by a lack of support from the Vatican for the policy which led to Church officials disregarding and dismissing the requirements of the policy (Murphy et al. 2011).

One reason why Ireland has had such entrenched problems with CSA by clergy has been attributed to the lack of separation between the Church and the State which afforded the Church special privileges, social and political standing, and protection (Conway 2014; Hogan 2011; Regan 2013). This is important in understanding the reasons why victims' access to justice was withheld, prolonged and denied for many decades. Because of the deep privileges the Catholic Church held as a constitutionally-identified State religion, Ireland, more so than other

¹ *Child Sexual Abuse: Framework for a Church Response*.

jurisdictions, highlights the worst of the barriers to accessing justice for victims. This includes the Catholic Church having a monopoly on service provision to vulnerable populations, including children, the high-standing afforded to Catholic clerics socially and politically, and the reliance of the State on the Church to administer its own affairs in relation to service provision—all of which occurred under the assumption of the high moral character of the Church as an institution and of those who held positions of authority within the Church (Groome 2011; Inglis and Donnelly 2010; Skokauskas 2012). In this wider social and political context, the high esteem for the institution, coupled with poor accountability, the entrenched clericalism of an essentially closed institution, with centralised leadership, contributed to the sustained CSA by individual clerics and the mismanagement of disclosures which led to further abuses being perpetrated and the institution being enabled to protect its reputation at the expense of the vulnerable and the victimised (Keenan 2012a, b). The Irish experience points to the perfect environment for CSA by clergy to flourish. That is until there was a sufficient groundswell of support for exposing the violence and abuse perpetrated against children and the hypocrisy and negligence of institutional management of such abuse (Inglis and Donnelly 2010). Similarly, in Australia, it is the relentless insistence of victims and their supporters through public media that has resulted in the instigation of public inquiry.

Australia

The pattern of CSA by clergy in Australia is remarkably similar to other jurisdictions. Some evidence from Australia suggests that the CSA of boys and girls by clergy is not as disproportionately against boys as in other jurisdictions (Death 2013). Of the 81 participants in this study, who self-identified as survivors of CSA by personnel in Christian institutions, 49 % were male and 51 % were female. This may be explained, however, by the type of study as it relied on self-report by victims, not on the Church records or on material presented as evidence to a formal inquiry (Death 2013). It is not possible to speculate further on this at this point. What remains consistent with other studies is that there is a significant

amount of CSA against boys within Christian institutions (Hartill 2009; Ponton and Goldstein 2004; Valente 2005; Wexler et al. 2009).

Although the Australian Catholic Church developed *Towards Healing*, an internal child protection policy in the mid 1990s, this did not prevent allegations of the ongoing mishandling of complaints (Truth Justice and Healing Council 2013). Complaints of this nature were so sustained that in 2012, then Prime Minister Julia Gillard announced a Royal Commission in Institutional Responses to Child Abuse (Middleton et al. 2013). As in other locations across the world, whilst the issue of the perpetration of abuse itself is significant for victims, complaints have primarily been about the ways in which disclosures have been managed—silencing victims, moving complainants on, inadequate compensation, adversarial complaints processes, the minimisation of the abuse and harm to victims and the woeful inadequacy of means by which the Church may be brought to account for this (Dagmang 2012; Doyle 2003; Gilligan 2012; Gleeson 2015).

Unlike other jurisdictions, Australian complainants have been effectively prevented from pursuing civil litigation against the Catholic Church of Australia due to the 'Ellis decision' in the NSW Supreme Court (Gau et al. 2008). According to this case, John Ellis was abused as a young boy in the diocese of Sydney and later sought to sue the Catholic Church of Australia for damages. After a protracted legal case, the NSW Supreme Court ruled that the Church did not exist as a legal entity capable of being sued (Gau et al. 2008). The impact of this decision in preventing other civil litigation against the Catholic Church of Australia has been examined by the current Royal Commission and was also acknowledged by the *Victorian Inquiry* (Family and Community Development Committee 2013). Several Anglican dioceses in Victoria have already made moves to become companies so as to remove this barrier for survivors seeking compensation through civil litigation, for abuse in their dioceses (The Border Mail 2015). The Catholic Church of Australia continues to say that it is an entity capable of being sued and although making statements that the Ellis defence is unacceptable for use, continues to do so (Commonwealth of Australia 2015).

What Australia has enacted more recently is a number of significant public inquiries into the management of CSA in institutional and religious

settings. These have occurred at both the State and federal levels. Recent inquiries include the Victorian Parliamentary Inquiry into the Handling of Child Abuse by Religious and other Organisations (the *Victorian Inquiry*), Special Commission of Inquiry Concerning the Investigation of Certain Child Sexual Abuse Allegations in the Hunter Region (the *Hunter Inquiry*) and the Royal Commission already discussed. These follow on from a number of more historical inquiries that addressed different types of child abuse cases in religious organisations including the Church. These include the Senate Inquiry into Forgotten Australians, the Forde Inquiry in Queensland and the Wood Royal Commission in NSW (Commonwealth of Australia 2004; Queensland Government 1999; Wood 1997). Except for the *Hunter Inquiry*, none of these inquiries specifically focused on the Church but instead took a wider approach to investigating institutional abuse. As international inquiries have found, however, each of these substantiated severe physical, emotional and sexual abuse of children by clergy and other personnel and found evidence of the Church's failure to deal with these abuses, instead seeking to cover up abuses (Cunneen 2014; Family and Community Development Committee 2013).

In Australia, as internationally, few priests have been charged with criminal offences pertaining to the concealment of serious indictable offences, the most recent being Archbishop Phillip Wilson for his failure to report knowledge of offences committed by Father James Fletcher in the 1970s (Cunneen 2014). At the time of writing, the case against Archbishop Wilson is yet to be heard. What is interesting about this is that the criminal charges for concealing the offences of Fletcher come after the *Hunter Inquiry* investigated and made specific recommendations as to charges being laid against individuals who had acted on behalf of the Diocese of Maitland-Newcastle (Cunneen 2014). In this particular case, there were direct disclosures by victims to a number of senior clerics, various victims were at times asked if they wished to report the abuses to police and Father Fletcher was ultimately convicted of sexual offences against a number of altar boys (Cunneen 2014). What is interesting about the *Hunter Inquiry* is that it was solely focused on a particular diocese with the explicit remit to consider concealment of abuses by the Church, the management of investigations by NSW police and the

potential for any criminal liability (NSW Department of Premier and Cabinet 2013). With this remit, the *Hunter Inquiry* demonstrated a willingness of the State not only to find out what had occurred and to give voice to victims of abuse, but also to make specific recommendations as to criminal liability for actions of cover-up.

The significance of criminal liability for concealing abuse is that it addresses the reality that the damage caused by CSA by clergy goes beyond criminal incidences of abuse themselves, to the mismanagement of such abuses. For victims of abuse, this recognises that there is significant harm caused through cover-up (Doyle 2008; Farrell 2009; Flynn 2008). Often this harm is as, if not more, damaging than the initial abuse because it represents a betrayal by spiritual authorities on whom victims relied to ensure spiritual, physical and emotional safety and well-being. Instead, trust invested in such authorities was betrayed and secondary victimisation occurred for both victims and their families through mismanagement of the cases (Jones 2011). Criminal prosecution for concealing child abuse offences, limited though it is, is an important step in the State holding the Church authorities to account for abuses of power. Whilst public inquiry, civil litigation and criminal prosecution may bring exposure, knowledge and some accountability, these methods are often limited to impacts by jurisdiction. There is increasing debate, however, that systemic issues that emerge from higher up in Catholic systems should also be addressed for accountability and justice to occur (Groome 2011; McAlinden 2013).

Church Structure and Higher Level Accountability

The structure of the Church is not as linear and hierarchical as it is commonly thought. Indeed many public inquiries devote significant time in their reports to outlining the structures that are directly relevant to their remit (Department of Justice and Equality 2009; Cunneen 2014). Recently in Australia, the Church has clearly stated to the Royal Commission that its structures are not hierarchical and are so diverse as to make a common management strategy and policy intervention difficult (Truth Justice and Healing Council 2013). Despite such assertions,

it is now acknowledged that the management of complaints of CSA were not the sole responsibility of bishops and other management in each diocese. Rather, in 2001, the Congregation of the Doctrine of the Faith (CDF), led by Cardinal Ratzinger, sent a letter to all bishops instructing them to refer all cases of CSA by clergy to the CDF after a cursory investigation (Beal 2007). The document *Crimen Sollicitationis* established a strict code of secrecy around such cases, which included swearing victims to secrecy and was core to Ratzinger's centralisation of the management of abuse (Burkett 2010; Neu 2010). Cardinal Ratzinger went on to become Pope Benedict XIV in 2005 and so ensued discussions as to his liability for the mismanagement of abuse and harms caused to victims through this mismanagement. This was first framed as liability for crimes against humanity and possible prosecution in the International Criminal Court (Landry 2011). The issue surrounding the culpability of the Pope for crimes against humanity was first proposed by UN Lawyer Geoffrey Robertson and has been the subject of some discussion (Robertson 2010; Formicola 2011; Landry 2011; Neu 2010; Groome 2011).

Whilst such action has not been specifically taken, one case in the USA, *Doe v. Holy See*, allowed for a complainant to pursue litigation against the Holy See² for vicarious liability in relation to the 'actions of its various US corporations' (Burkett 2010, p. 35). Whilst the decision held that the relevant State authority could obtain jurisdiction over a foreign state, the decision of the court was that the complainant did not allege facts that indicated the Holy See had 'day to day control' over the actions of its corporations (Burkett 2010, p. 36). Although this case was ultimately unsuccessful in holding the international management of the Church to account for the local management of CSA by clergy, it demonstrates a will by victims to have the significance of such management acknowledged through State mechanisms and goes towards creating potential for such accountability (Burkett 2010).

This is important as it is well recognised and widely discussed that the difficulties with the poor management of CSA are not a case of 'bad apples' mismanaging abuse but rather 'bad barrels' of institutional culture, structure and policy-facilitating environments where the marginalisation

²The Holy See is the head of the worldwide Catholic Church.

and silencing of victims are preferred in order to facilitate the protection of the Church and its clergy (Doyle et al. 2006). The reality is, however, that the most significant issues are institutional and go to a number of institutional practices and Canon Law that is at odds with the just and effective management of CSA by clergy (Bergin 2007; Deetman et al. 2011). Whilst accountability at the individual or diocesan level may go some way to address this, without significant change at higher levels, this is bound to have only minimal effect. It is arguable that until the Holy See is compelled to make substantial changes through official forms of accountability, the issue will continue to be addressed at a local level, with limited success. As such, deep institutional change will not occur.

Concluding Thoughts

The capacity for States to address large-scale incidences of CSA by clergy has been tested in multiple jurisdictions internationally. What is revealed by this is the reality that the issue affects the Church regardless of location and often the issues confronted are remarkably similar, even if responses by the State vary (Conway 2014). What is revealed is that whilst the issues are often the same, the capacity to address these is diverse. What this points to is the limitation of taking a jurisdictional approach to deal with what is an international problem due to the nature of the Church as an international religious body. A jurisdictional approach necessarily criminalises individuals, or holds specific dioceses to account through civil litigation, but ignores the reality that the Church structure and institutional culture has led to wide-scale abuses. Further, the cover-up of abuses are not individualised circumstances, but rather are impacted by the centralised management role of the Vatican and Canon Law (Doyle et al. 2006; Groome 2011). The capacity to hold the upper echelons of the Church to account for their role in the perpetration and mismanagement of CSA is still being debated and tested; some progress has been made to challenge the necessity of this for justice and accountability. As the process to draw State intervention to address the needs of victims in terms of justice and accountability from the Church is long and laboured,

it is likely that a process of holding the Holy See to account will likewise be long and laboured. Until this occurs, however, it is questionable as to whether the deeply held traditions, structure and culture of the Church will be sufficiently challenged to address the root causes of the perpetration of CSA by clergy and its mismanagement.

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10

“Rejected and Dejected”: The Impacts and Contexts of Islamophobic Violence

Barbara Perry

Introduction

While not as prevalent in Canada as in the USA or UK, Islamophobic violence continues to affect Muslims in this country. The consequences of this violence on victims and non-victims alike are daunting and range from elevated fear of victimisation to withdrawal, to behavioural changes and to disillusionment with Canada. Drawing on a cluster of surveys, interviews and focus groups, this chapter begins to paint a picture of these wide-ranging impacts.

The backlash did alienate the Muslim community even further and made them feel rejected and dejected. And, that's the other problem too, between, I guess, the non-Muslim and the Muslim battle. It's that feeling that we would never fit in and that's how people have this hatred toward the non-Muslims. (Male, Toronto)

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This opening quote from which I drew the title of the chapter captures the range of both contexts and consequences of Islamophobic violence against Muslim communities. The speaker alludes to the enabling sentiment that gives rise to such violence, as well as the sense of marginalisation and exclusion that can arise from hostility and violence directed towards them. Many members of the diverse Muslim communities in the West—Canada specifically—feel “rejected” by the broader culture around them, especially as a result of ongoing Islamophobic harassment and violence. Consequently, they also feel “dejected” about the messages entailed in that violence: that they are different, dangerous, and do not belong. While there is a lengthy history of demonisation that has ensured that racist violence is a readily available resource by which to contain and control a threatening “other,” it is also the case that backlash violence against those perceived to be Muslim has escalated dramatically in the post-9/11 era. In addition, as Wagner (2011, p. 43) remarks, an ongoing Western diaspora means that Muslims are much more obvious in the streets by virtue of their dress, their appearance and their mosques. “All of a sudden,” suggests a Muslim male, “there are Muslims. There is backlash, a movement to control the ‘infiltration’ of Muslims. There are anti-Muslim/racist radio shows and TV shows.” Muslim bodies are now increasingly within our gaze.

Indeed, Muslims comprise a rapidly growing proportion of the population in Canada. From 1.9 % (nearly 600,000) in 2001, the Muslim population had grown to 2.7 % (nearly 900,000) by 2006 (Caron Malenfant et al. 2010). Growth projections suggest no slowing of this pace. By 2017, they may represent over 4 % (1.4 million) (Belanger and Caron Malenfant 2005), and by 2031, Muslims could very well represent over 6 % (2.5 million) of Canadians (Caron Malenfant et al. 2010). Approximately 85 % of Canadian Muslims live in major metropolitan areas, with nearly 400,000 in the Greater Toronto region, over 150,000 in Montreal and nearly 60,000 in Ottawa. (Caron Malenfant et al. 2010). Roughly one-third of Canadian Muslims are of South Asian background, a third of Arab background and a third of other backgrounds, including African and European. This ethnic diversity suggests that religion may elide with race/ethnicity in hate crime targeting. It is these demographic patterns that set the stage for subsequent challenges faced by the Muslim community, including hate crimes.

Keeping this in mind I and my team conducted a series of surveys, interviews and focus groups with Muslims in Ottawa and Toronto in 2011 and 2012. In both Toronto and Ottawa, we conducted 8 in-depth, semi-structured interviews with members of local Muslim organisations. In each city, we also held separate focus groups for youth and for women, as well as one open mixed group. Both the interviews and focus groups probed for insights into the experiences, especially the impacts of targeted violence against Muslims. I was particularly interested in exploring what meanings these events have for the people involved and for their communities. That is, how fearful of bias-motivated victimisation are Canadian Muslims? What impact does it have on their sense of belonging in Canada? I also highlighted the respondents' suggestions for policy initiatives or intervention programmes that might ameliorate the damage to community harmony and mitigate future occurrences. The latter set of questions is particularly important for informing policy considerations.

In the end, just over 300 people from Toronto and Ottawa completed the survey. We conducted 16 interviews with community leaders. The six focus groups yielded far more participants than anticipated—72. The participants ranged in age from 16 to 76; 40 were female, 32 were male. Culturally, they were a diverse lot, ranging from native-born Canadians to people who had lived in the country for several years or only a few years or even a few months. Multiple nations of origin were represented, including India, Pakistan, Somalia, Turkey, Albania, the UK and France. Some were Imams, some were educators, some were health professionals and some were unemployed. Many were underemployed having trained as professionals elsewhere but working below their skill levels in Canada.

In this chapter, I share the voices of the participants in my study. I paint a picture of the nature and dynamics of harassment and violence experienced by Muslims in Canada. I also explore what these experiences have meant for both individual victims and the broader Muslim community. Hate crimes are message crimes intended to remind a community—not just direct victims—of their “place” within the society. They are threats and actions that, as revealed in the study, often render communities fearful and, thus, hypervigilant. Hate crime can also invoke behavioural changes, wherein group members change their ways of being in the world—from changing patterns and routines to changing expressions

of Muslim identity. Yet on the positive side, such forms of violence can also have the opposite impact; that is, they can mobilise individuals and communities against such attempts to silence them.

Anti-Muslim Violence

That Muslims are over-represented as victims of hate crime is suggested by the finding that, in 2011, Muslims represented about 15 % of all victims of hate crime motivated by religion. Added to this is the fact that more than 25 % of racially motivated hate crimes were perpetrated against East/South-East Asians, South Asians and Arab/West Asians—ethno-racial groups typically perceived by the general population as likely to be Muslim (Allen and Boyce 2013, Table 10.1).

Table 10.1 Police-reported hate crimes, by detailed motivation, 2010 and 2011

Detailed motivation	2010		2011	
	#	%	#	%
Race/ethnicity				
Black	271	20	268	21
East/Southeast Asian	41	3	62	5
South Asian	67	5	59	5
Arab/West Asian	75	6	50	4
White	36	3	30	2
Aboriginal	17	1	27	2
Other	182	14	152	12
Unknown	18	NA	31	NA
Religion				
Jewish	204	16	188	15
Muslim	52	4	49	4
Catholic	50	4	29	2
Other	62	5	36	3
Unknown	27	NA	24	NA
Sexual Orientation				
Other	51	4	68	5
Unknown	30	NA	19	NA
Total	1401	100	1332	100

Source: Statistics Canada, Canadian Centre for Justice Statistics

The potential elision of race, ethnicity and religion also raises the broader question of the multiple levels on which Muslims may find themselves vulnerable to harassment and violence. Indeed, as Chakraborti and Garland (2012, p. 507) have recently argued, any individual “may become a victim because of how that aspect of their identity intersects with other aspects of their self, and with other situational factors and context, to make them vulnerable in the eyes of the perpetrator.” It is often the intersectionality of victims that renders them viable targets. This is something noted very convincingly by a participant who observed that

I also feel that the socio-economic factor also gets lost. For example, I would argue that you'll probably find that it's actually more lower-income Muslims who are facing violence because they don't own cars, because if I own a car, I am not going to be standing at the bus stop or walking down the street where people can hurt me. Lower income Muslims' perceptions of the violence happening against them are going to be different than that of the upper class Muslims because they have cars, they can live in more isolation and have less interaction with other communities. Also, ethno specific issues ... For example, the Muslim community is ethno culturally diverse. So Black Muslims are gonna have a serious problem because they are Black and Black people are discriminated against and they're Muslim. (Female, Ottawa)

Nowhere is the importance of the multiple layers of risk more evident than in the trends around violence experienced by Muslim women. Regardless of the cultural background of women, they become even more vulnerable to bias-motivated violence when they can be “othered.” Moreover, Crenshaw (1994) makes clear that women of colour are uniquely vulnerable to gendered violence because of their multiply determined structural disempowerment. They are often simultaneously oppressed by their class, gender, ethnic, racial and, here, religious position. For these women, the Islamophobic violence they experience is different in its dynamics and impacts than that perpetrated against Muslim men; yet their gendered violence is experienced in ways that are distinct from that experienced by differently raced women.

There is increasing evidence showing that Muslim women may be unexpectedly vulnerable to Islamophobic violence. This is in stark contrast to the demographics of hate crime generally, which tend to target men disproportionately (excluding domestic violence). Recent reports suggest, however, that Muslim women are at elevated risk. For example, an Australian Community Relations Commission (Dreher 2005) on post-9/11 experiences of Muslims found that 50.4 % of the victims were females, whereas only 44.4 % were males (the remainder were institutions/buildings). Other similar reports out of Australia confirm this trend, as do some coming out of the UK. Githens-Mazer and Lambert's (2010) London study also discovered that while racist violence typically targets men, Muslim women are more vulnerable to religiously motivated hate crime.

These observations were corroborated by the participants in my study, who similarly highlighted the particular vulnerability of women:

My experience has been that the majority of anti-Muslim sentiment is generally directed towards women because they are much more identifiable. With at least women who are visibly observant as Muslims and whether they wear hijab or what not and how they're manifesting their observance.
(Male, Ottawa)

Interestingly, the motives for Islamophobic violence against women are both the same and different from those underlying violence against men. That is, they are informed by parallel negative images—"Like Muslim males, she too bears the brunt of entrenched stereotypes profiling Muslims as the primary threat to American national security" (Aziz 2012, p. 25). Yet women are further subject to specific gendered constructs, which serve to "other" them in very specific ways, ways that render them vulnerable to harassment and violence. In short, their position outside the boundaries of the dominant white, Christian culture means that they are less valued and thus less protected (Jiwani 2005).

The link between visibility and vulnerability does not affect women only. Muslim bodies generally—"as mediums to show religion"—are becoming increasingly visible in ways that seem to cause popular

concern (Wagner 2011, p. 43). The experiences of participants in my study make it very clear that they understand the implications of visibility for attempts to marginalise them further through harassment and violence: “I think there have been a lot of cases of assaults and vandalism of mosques and hateful acts committed against Muslims who were especially visible Muslims, so people who wear very traditional clothing or cover their heads” (Female, Ottawa). Visibility thus becomes the context and impetus for outward attacks on those who are “obviously” Muslim. Several participants remarked on this, including the following:

You do see more hate crimes at Ramadan, especially because they have a lot of, especially men tending to dress more of the cultural way coming into and out of the masjid. So, usually, the people don’t assume that you’re a Muslim until they see them and once you do and that can get spiked. But it might be different for the women because they’re always dressing, you know, they’re always representing Islam, so it’s just interesting. (Male, Toronto)

Here physical visibility is heightened by the salience of Muslim holy days and rituals. The two together set Muslims apart as “different from” and therefore “threatening to” traditional Canadian—read white Christian—values and practices.

Violence and the threat of violence are devices available to counter this noted “threat” and thus remind Muslims of “their place” in the cultural hierarchy. Interestingly, few of the participants had experienced serious violence, although most had been targets of verbal abuse. Moreover, virtually everyone had multiple stories to share about incidents that they had witnessed or of which they were otherwise aware. As one participant indicated,

So it’s less somebody who is like “I’m gonna kill you.” It’s more somebody who does something pretty minor. I’ve actually seen someone throwing something from a car. I get that a lot. I’ve seen a lot of other people get that a lot. If you see a Muslim wearing hijab and they see you coming up and throw something at you. That happens a lot. I’ve had that personally happen to me more than one occasion. (Female, Ottawa)

Nonetheless, the reported violence ran the gamut from verbal violence to arson to extreme forms of violence. At the lower extreme are incidents like the following:

I mean, kind of, I guess, what you could call verbal violence that I was subject to was mostly by an older generation of people, and, ah. I was in a bus once and this guy was reading the newspaper—Metro obviously. And he just like got a pen out. He kept like looking at me the whole time. And then he got a pen out and then just wrote, like, “Fuck Islam” and showed it to me. He couldn’t say it to me. He was too shy or something. (Female, Ottawa)

I was walking through my neighbourhood with my Muslim friends when someone threw a bottle of urine at us from a car window and drove away, laughing and calling us terrorists. (Female, Ottawa)

The latter example is particularly indicative of the tendency to equate Islam with terrorism, which I discuss at length below. However, at this juncture, it is important to stress the frequency of this pattern. References to bombs, to terrorism and to violence commonly emerged in the context of verbal and physical assaults. Clearly, this widely dispersed impression of Muslims was the key factor in shaping subsequent violence.

Aside from attack on individuals, participants shared many examples of strikes against mosques, as signs of Islam, as in the following example:

I remember the mosque I was going to, we used to have Friday night classes with the youths, and we got several threats that we were, that the teachers were brainwashing the students. So then, eventually we started getting, like, bomb threats and then people would stand outside and have guns, just crazy obscene things. (Female, Ottawa)

Not even in the context of institutions of higher learning could Muslims feel safe. University students shared their experiences of ongoing harassment and vandalism directed towards them and towards on campus “markers” of Islam, such as prayer rooms and Islamic event posters. The following woman describes this campaign in detail:

There was an Islamic awareness week, we would, we had a booth set up and people would write comments about how Islam is violent and the Prophet

is violent and all those things. But specifically targeting Muslim students happened in my second year and then after that we had our musallah, our prayer space that was broken into, and we had originally thought that you know, was an isolated thing, they had broken into and stolen some money but there was also a sign that was defaced. The sign had previously said “Muslim Student Association this way” and had been defaced to read “Muslim Students should die.” And so after that we realised that this was more serious ... you know, we had gotten death threats, students were being yelled at on campus. We started an anti-Islamophobia campaign. In the middle of this campaign, so this was happening regularly ... Girls were being yelled at on the street corner. (Female, Toronto)

This is particularly disturbing, in that it occurred in a context where one might expect greater respect for and understanding of diversity. Yet, as I have argued elsewhere, universities are not exempt from perceptions of “threat” posed by increasing diversity (Perry 2011). There, too, the traditional white privilege is often challenged by the presence of the “other” who is thus seen as an undeserving intruder.

Failure to Report: Distrust of the System

During interviews and focus groups, attention frequently turned to the role of the state, and especially police and security officers in responding to, or in fact facilitating, hate crime. Perhaps not surprisingly, the general sense was that law enforcement was not effective in either acknowledging or investigating hate crime. One young woman claimed that “I’ve always been allergic to the cops.” She was one among many who indicated that there was “a general distrust in the whole system.” In short, the Muslims we spoke to held out little hope that their victimisation would be taken seriously, as was the case with the following woman.

Even in a very dramatic case, let’s say in Hamilton where a Hindu temple was set on fire because they thought it was a mosque they didn’t catch anyone. It’s great that people know that you can report, but I haven’t seen much in terms of being able to find the evidence to prosecute these people for hate crime against the Muslim community and many other communities.

That's very disheartening and it makes me question the ability of the criminal justice system to address issues like that. (Female, Ottawa)

There was, in other words, a perception that hate crimes against Muslims were under-policed. Since they had limited faith in the police, they tended not to report their victimisation.

For some people there's a sense that nothing is going to be done about this anyways, which unfortunately is often the case with hate crimes. I think for a lot of people it's like "What's the point. I don't think anything is going to happen from it." If you don't really trust the system you don't think they're really gonna care if something happens to you. (Female, Ottawa)

The hesitancy to engage with law enforcement is exacerbated by the related perception that Muslims are also likely to be heavily *over*-policed in ways that are intrusive and threatening to their civil rights. This is reflected in the multiple incidents wherein Muslims had either themselves been the target of disturbing exchanges with officers and agencies or knew others who had been. Participants suggested that anyone who displays an interest in Middle Eastern affairs, or who is noticeably devout in their religion, is vulnerable to scrutiny by law enforcement and security agencies in particular. Participants recognised this risk and its impact: "some practising Muslims are really afraid of large Muslim groups and seeing that you might be being followed by CSIS. My mom was really stringent on me saying, 'Stay away from the MSA. I know they're very good people, they do great things but you could be put in danger'" (Male). Here, Muslim identity is taken to signify terrorist identity, in a way that Muslims are marked as different from, and indeed threatening to, "good" Canadians.

A 2005 CAIR-CAN report documents extensive experiences in which law enforcement agents (CSIS, RCMP, police) "approached" or "contacted" Arabs and Muslims, often with no explanation for the contact. Participants in my study also shared tales of hypersurveillance, where they or someone close to them were subjected to scrutiny in their personal and public lives. Such incidents took place in their homes, their workplaces

and in border zones and served to mark them as racialised Muslims and thus as “suspects.” Consider the following illustrative example:

My father had a CSIS interview because he’s an Imam in Kanata, so they thought he’s a big authority figure. So they were thinking, “Oh he’s telling you whatever.” I mean, they sat him down. He went through an interview. Our phones were being tapped, I know that for sure. And it was frightening … And then when the CSIS people called him for an interview and everything, it was, like, so frightening; not only for me, for my mother. It was the worst feeling because it was like “Where’s the trust?” Just because he has a beard? (Female, Ottawa)

The effect of these patterns is to draw a line between “law-abiding” Canadians and “terrorist” Muslims. It reinforces the public perception that Muslims *are* questionable with respect to their loyalty to Canada and with respect to their knowledge of, if not involvement in, terrorism. However unfounded the police attention may be, it nonetheless leaves a lingering sense of doubt. The pattern of state badgering- of Muslims “makes people feel comfortable with their prejudices and grants those who hold pre-existing racist attitudes permission to express those attitudes and expect them to be taken seriously. It empowers individual prejudices and fuels popular fears” (Bahdi 2003, p. 314).

Contexts for Violence

As Bahdi’s assessment suggests, the patterns of discrimination and violence described above are predicated upon legitimating ideologies and images which mark the “other,” and the boundaries between self and other, in ways that normalise the corresponding inequities. Stereotypes thus help to distance white from non-white (Hage 1998). Almost invariably, they are loaded with disparaging associations, suggesting inferiority, irresponsibility, immorality and non-humanness, for example. Consequently, they provide both motive and rationale for injurious assaults on minority groups.

Political leaders, unfortunately, play a significant role in this, as Muslims can attest: “I think it’s just politicians using terrorism as a tool … It’s really putting it out there and making it become a really important part of people’s consciousness” (Female, Ottawa). We are by now all familiar with George W. Bush’s frequent references to “evil-doers”—by which he singled out Muslims—in the aftermath of the 9/11 attacks. More recently, Canadian Muslims have been vilified by Stephen Harper’s statement that “Islamicisation” is the greatest threat to the West. This did not go unnoticed by participants like the following, who commented on this sort of “fear-mongering”:

He set a tone because, if the prime minister of Canada, one of the most tolerable [sic] and peaceful nations, is making a statement like that, it just applies the stereotypes, the hatred, the ignorance in people. And it just makes the situation worse. Rather, as a political leader, he should have used it to diffuse. Like, yeah, maybe there is a threat by so-called fundamentalists. If he wanted to say something like that, okay, I would have kind of agreed in that vein. But to him to broaden it and be like Islam in general, that was a very dangerous statement. (Female, Ottawa)

As these statements imply, State rhetoric, practice and policy have often provided the formal framework within which popular imagery and hostility—as informal mechanisms of control—emerge. Practices within the State, at an individual and institutional level, which stigmatise, demonise or marginalise traditionally oppressed groups legitimate the mistreatment of these same groups on the streets.

Popular mythologies of Islam are also recreated through the media. For example, Moore (1995, p. 16) observes that

Crude caricatures of Muslims appear abundantly in the production and organisation of popular culture. Events and situations, whether fictional or real, are presented to us within a framework of symbols, concepts, and images through which we mediate our understanding about reality … The news and entertainment media both generate stereotypes and rely on our familiarity with them in order to formulate the world in their terms and communicate ideas in an efficient, i.e., timely, fashion.

As Moore suggests, the media are especially complicit in the dissemination of anti-Muslim imagery. The widespread perpetuation of such caricatures—by

the media and by public figures—fuels sentiments of suspicion and mistrust by shaping public perceptions in less than favourable ways. Muslims are cast as “Islamic, Islamic, fundamentalist, murderer, terrorist, terrorist, terrorist. They repeat ten times a day every day and it has, I think it has an impact on other people” (Male, Ottawa). There are few positive images of Arabs, Muslims or Middle Easterners generally. They are usually portrayed collectively as evil and warlike. One participant in the study lamented the fact that

the news media never covers this. We speak out against anything that is wrong within our community. They never give us the coverage. Somebody says something—the opposite, they will cover them. The news media is so biased, it's unbelievable. They never ever speak of the good things we are doing. (Female, Ottawa)

She is not alone in this assessment. In a [2002](#) nationwide survey of some 300 Canadian Muslims of South Asian, Arab, African and European background, CAIR-CAN found that 55 % of respondents thought the Canadian media were more biased since 9/11. The report remarked on “A startling similarity between media myths on Islam and Muslims and the hate-text of many documented anti-Muslim incidents” (Khan et al. [2004](#)). Moreover, work by Ismael and Measor ([2003](#)), by Helly ([2011](#)), and by the Canadian Islamic Congress ([2002](#), [2005](#)) all point to the uneven distribution of media bias across news sources. For example, a survey of nine Canadian newspapers by the Canadian Islamic Congress ([2005](#)) noted an increase in anti-Muslim stereotypes after September 2001. “Negative or biased information on Islam” appeared 10 times more often than in the previous months in the *Toronto Star*, 18 times more often in *The Globe and Mail* and 22 times more often in the *National Post*. More recently, Navigator Research found that, across Canadian mainstream media, 59 % of news articles featuring Muslims were negative in tone.

Clearly, stereotypes which distinguish the racialised “other” from white subjects are legion across media sources. Indeed, Muslims in my study were very clear about how deeply implicated the media are in constructing threatening images of Muslims. Consider the following examples:

I would say probably more media. It's more media. It's more what you see, how certain stories are discussed. There are all sorts of stories spread out, all

sorts of paper stories that Muslims aren't normal, that there's something really different about these people. It's just the idea that they are not normal, that they can't fit in the West for some inherent division between them and the Western world, that they are inherently violent against women. That plays a lot of factors into the idea that they are sort of barbaric, just this idea that we are not civilized and not rational. (Female, Ottawa)

The representations to which the participants refer help to distance white from non-white. Here "white" may be a metaphor for Western or non- "Third-World-looking," rather than a matter of skin pigmentation or other such phenotype (Hage 1998). The latter is to be feared, ridiculed and loathed for their differences as recognised in the popular psyche. A young Muslim man points to the extent to which this process of othering is manifest in "one of the talk shows at least once a week picks on some incident in Muslim community here or abroad in anywhere in the world, and uses that to (say) 'Yes, Muslims are the bad immigrants or bad people, they are not Canadian'" (Male, Toronto).

These images also filter down to people on the street. Since the early 2000s, annual surveys have shown that Canadians harbour distrustful sentiments with respect to Islam and Muslims. In August 2002, 45 % of Quebecers, 37 % of Albertans, 33 % of Ontarians and 22 % of British Columbian residents agreed with the statement: "The September 11 attacks made me more mistrustful of Arabs or Muslims coming from the Middle East" (Helly 2011). The most recent survey results available—from *Maclean's* (Geddes 2013)—underscore the persistence of widespread antipathy towards Muslims, finding that 54 % of Canadians held an unfavourable view of Islam, up sharply from 46 % 2009. To put this in perspective, 39 % held an unfavourable opinion of Sikhism; all the other religions were regarded unfavourably by less than 30 % of Canadians.

A 2006 Environics' poll sheds some light on the connection between the negative stereotypes described above and public opinion. It found that Canadians who believe that a growing sense of Islamic identity in Canada is bad for the country most often cite perceived poor treatment of women and girls (36 %) in Islam as their main worry. An additional 3 in 10 (30 %) say that the possibility of violence perpetrated by Muslims

is their main worry. These attitudes were confirmed in a 2012 study by Navigator Research, in which participants also voiced their beliefs that Islam in Canada was connected to oppression of women, violent extremism and an unwillingness to integrate into Canadian society. It is these underlying sentiments that shape the exclusionary violence that is hate crime.

Impacts of Anti-Muslim Violence

I noted earlier that most Muslims I spoke with had not, in fact, themselves been victims of hate crime. They did frequently indicate that they knew of others who had been directly affected in some way. Moreover, for the most part, the incidents that were shared tended to be relatively minor in terms of the level of violence involved. However, this does not mean that they were minor in their effect on the victims. Whether or not they had been victims, whether or not they experienced serious violence, the majority of participants indicated that they were always conscious of the risk of hate crime and, for that reason, were impacted much the same way as immediate victims. Those effects, as I will demonstrate below, ran the gamut from emotional to behavioural and also raised questions about Canadian inclusiveness. Interestingly, the awareness of Islamophobia and its related violence also had the potential to mobilise communities in positive ways.

Managing Emotion

The emotional toll of the threat and reality of hate crime is an obvious burden among Muslims. If this form of violence is intended to be an act of repression, then it is clearly successful in meeting that threshold. One woman expressed her reaction as follows:

It's exhausting. Like I feel, like sometimes you go home and you feel like you're hated. We've been beaten down and beaten down and beaten down.
(Female, Ottawa)

The dominant emotional response, however, was fear. Without question, awareness of the potential for hate crime enhances the sense of vulnerability and fearfulness of affected communities. This, after all, is the intent of hate crime—to intimidate and instil fear throughout the targeted community and not just the immediate victim. Interestingly, when asked to define hate crime, many participants explicitly acknowledged the nature of these “message crimes.” For example,

A “hate crime” is the act of causing personal or property damage with intent to intimidate because of a person’s religious or sexual beliefs. It is meant to send a message of intolerance against the “selected” group and to leave a message of fear. It is also meant to send a message that those targeted are not safe because of their belief. (Female, Toronto)

For many, the message is received loud and clear; they themselves feel equally vulnerable to victimisation, and thus, harbour fear. One of the key characteristics of hate crime that makes it so terrifying is its apparent randomness. As many hate crime scholars have observed, victims are often interchangeable (Lim 2009; Levin and McDevitt 1993). The chosen victim simply represents the “other” in generic terms. That he or she is a member of the hated or demonised group is enough to make them vulnerable to attack. Further knowledge of their identity, personality or status is unnecessary.

The very fact that bias motivated- violence can be so unpredictable is what makes it so frightening. It can happen anywhere, at any time, to any member of a targeted group. Young men heading out for an evening of bashing are not very concerned about exactly which Muslim they assault. Any individual can play the proxy for the group. Thus, “Within the community, I keep hearing comments about the dangers of being out in places where ‘incidents’ have occurred. General fear about public reaction is very common” (Male, Ottawa).

In part because of their elevated risk of targeting (Perry 2013; Chakraborti and Zempi 2012), Muslim women often experience a parallel escalation of fear. In an Australian study, women spoke of the detrimental impact racism had on their sense of well-being; freedom of movement and sense of safety; sense of belonging and participation in society and sense of control and agency over their lives. Many participants in that study stated that they

experienced a consistent sense of low-grade fear and vulnerability (Islamic Women's Welfare Council of Victoria 2008). Indeed, several studies corroborate the observation that their real and potential victimisation has the intended effect of terrorising and instilling fear among Muslim women—fear of violence, fear of harassment, fear of profiling and a generalised fear of appearing in public (Abu-Ras and Suarez 2009; Kwan 2008; Human Rights and Equal Opportunity Commission 2005). So, too, was this evident in my study. As one woman expressed it,

The women in the community would ask my mom to go shopping with them because they couldn't leave their homes. So, yeah. A lot of people had to change, ah, a lot about the way they, not only saw society, but the way they just carried about their daily lives because of fear of some of the hate crimes and hate speech that was occurring. (Female, Ottawa)

As this example highlights, the emotional impacts of hate crime have the potential, in turn, to affect how Muslims “carried about their daily lives.” Many did indeed express the ways in which they learned to manage their identities and activities, describing the process as a means of defending themselves from the risk of violence.

Managing Identities

As noted at the outset, Muslim bodies—“as mediums to show religion”—are becoming increasingly visible (Wagner 2011, p. 43). It is not just the rhetorical representations of Muslims that brings them to the public eye. Rather it is also the correspondence of these images with their physical presence that renders them vulnerable to harassment and violence in the public sphere. Muslims are at least thought to be visible and identifiable by virtue of sartorial markers such as beards, garb, and for women, head coverings. The risk of violence associated with being so conspicuous forces Muslims to rethink their visibility in certain contexts. One Muslim male talked about how

We can pick and choose when to hide our identities, right? And why is it that do we find it necessary to hide this identity? What signals are being

sent in the society that says, “Oh, this is not a good time to reveal that I’m Muslim” and this time it’s appropriate, right? There’s some kind of fear that’s operating inside of us. “I don’t want to be identified with Muslim right now, because there’s—there’s danger, right?” And what are the markers, right? (Male, Toronto)

The “markers” to which this man refers include sartorial representations of identity. The experiences of participants in my study make it clear that they understand the implications of this type of visibility for attempts to further marginalise them through violence. Visibility becomes the context and impetus for outward attacks on those who “look” Muslim by virtue of how they are attired. Consequently, many participants spoke of altering these outward expressions of self as a means of protecting themselves from the potential for harassment and violence. This is especially the case for Muslim women, who are particularly vulnerable, as those who opt to cover are taken as a proxy for all that is “wrong” with Islam. Thus,

We are seeing, ah, that the girls are beginning, some girls are taking off their hijabs. Some are trying to protect themselves or as a political sign. Basically to mingle and be accepted. Because for kids it’s too hard to be singled out. They have their grouping and this and that. I mean I see the impact, the psychological impact on the younger generation. There is just no doubt about that. (Female, Toronto)

Indeed, many spoke of their own or others’ grappling with whether or not it was safe to wear the hijab or other form of covering. It represented a dilemma for them, a choice between maintaining identity and maintaining security. Yet it was not only women who had choices to make. Men, too, spoke of their own challenges. For example, one young male said that

That’s part of the reason I actually had to trim my beard. My beard was originally longer. Because my parents are afraid for me that I will receive some kind of hate crime if I look Muslim so we’re kind of put in a dilemma. Where you don’t look Muslim or else you’re gonna get this kind of thing from the media, from all sorts of different backgrounds. (Male, Ottawa)

And finally, like Irish or Italians decades before them, some Muslims with what were or might be perceived to be Muslim or Arab names, opted to reject that particular sign of identity:

And then so, you know, these are small things; and people are changing their names. They're removing their Muslim names and taking, you know uh, Canadian names to hide their identity. Because when you put a Muslim name on a job application, you don't get a job. And if you're a Muslim; you're harassed or singled out, without rhyme or reason. There is a lot of these things going on and—and people are afraid even to speak up. And it happens right across from little children in school to right up to the top. (Female, Ottawa)

In an effort to defend themselves from the negative effects of a particular kind of subjugating visibility, Muslims find themselves questioning the risks associated with their presentation of self. Muslims' experiences shape their sense of ease and of belonging in their environment. They must consider whether to alter their performance of race and religion in accordance with what they recognise as the socially established- rules for doing so. It is not uncommon, then, for Muslims to alter ways of being in the world. In this respect, the potential for anti-Muslim violence serves its intended purpose of enforcing appropriate public performances at the very least. It can also have the similarly anticipated effects of further segregating Muslim from non-Muslim. Violence and the threat of violence are effective tools by which to reinforce, first, the physical separation of whites and non-whites, Christian and non-Christian, and, subsequently, their socio-cultural separation. As the following statement suggests, there were those who went so far as to change not only their outward expression of identity, but uprooted their families' lives:

For one, obviously from just personal experience, people move, ah, because they can't deal with—depending on the community that they live in—people will choose to actually move their belongings. Everything. Their whole family, um, and change their entire life because of hate crimes in a certain area. (Female, Ottawa)

Clearly, such responses have implications for Muslims' sense of belonging in Canada. Indeed, in this respect, hate crime lays bare the gaps in the Canadian ideology and practice of multiculturalism.

Managing Multiculturalism

Hate crime throws into question not only victims' and communities' identities, but also national commitments to tolerance and inclusion. The persistence—and in fact periodic flurries—of hate crime gives the lie to the canon of multiculturalism. If we peer more closely at the ideological underpinnings of Trudeau's vision of Canadian multiculturalism, this becomes even clearer. The central "myths" of that construct were that related policies and practices would ensure that "diverse cultural groups" could

- retain and nurture their identity
- overcome barriers to full participation at all levels of Canadian society
- engage in meaningful and constructive exchanges (Ungerleider 2006, p. 206).

These key elements of the discourse of multiculturalism in Canada form the core of our ideological understanding of our nation. Indeed, as Canadians, we pride ourselves on our commitment to welcoming all; internationally, we have long been recognised as a "successful" model for negotiating difference. Yet they are precisely the myths that are so forcefully contradicted by hate crime. The messages of inclusion, participation and engagement are contradicted by acts of violence inspired by Islamophobia. This is readily apparent in the observations by many of my participants. Several spoke of the divisiveness constructed by hate crime:

Incidents like these are likely to lead to deterioration of relationships between community and inter-group relations if not handled and controlled effectively. (Male, Toronto)

I believe this creates separation, hatred and rivalry as many might want to seek revenge and vice versa, then it will never stop. (Male, Toronto)

Related to divisiveness is another troubling effect of hate crime, and that is the extent to which it sends an exclusionary message that challenges Muslims' sense of belonging, of being a welcome part of Canadian society. Negative sentiments and their corresponding acts of violence make Muslims feel

rejected and dejected. And, that's the other problem too, between, I guess, the non-Muslim and the Muslim battle. It's that feeling that we would never fit in and that's how people have this hatred toward the non-Muslims, and that's very dangerous because there should be a level of respect and communication ... Obviously, from all the other hate crimes that we face, it is just going to make us feel like we're not part of this country when we rightfully belong here. (Male, Ottawa)

Again, this is likely an intentional effect of target violence, that is, to remind Muslims of "their place," which clearly does not mean Canada, at least from the perpetrator's perspective.

Conclusion: Confronting Islamophobia

I feel like it could easily happen to me and my family. I feel powerless. It makes me want to get the community together and organise "neighbourhood watches." It makes me want to create "open houses" opportunities for different groups to come and interact with one another. (Male, Toronto)

I think it makes people want to just stick to going from their jobs to just going home and being isolated because of fear, for example. On the other hand, some Muslims have a radically different reaction which is to want to go out in the community and be active to change that and improve on the situation. (Female, Ottawa)

Both these comments speak of the contradictory effects of hate crime. Though it can render its subjects "powerless," as indicated above, passivity and silence are not the only potential outcomes. Many Muslims refuse to be cowed into silence. On the contrary, they react with a determination to alter the conditions that enable Islamophobia. In both the examples above, it is clear that victimisation can also inspire self-aware

activism in the interests of social justice and inclusion. One man spoke about a local Muslim organisation which had as one of its aims “to reach out to fellow Canadians of other faiths to try to promote human rights, and dignity and equality for all Canadians.” Several others spoke about initiatives they were involved with, or aware of, that actively challenged the underlying representations that gave rise to hate crime. For some, this was to be achieved through individual interactions with non-Muslims. For example, “just by simply talking to a stranger and being like ‘Hey, I’m not scary. I’m a friendly person.’ It creates an image for them and they in turn will tell, ‘Hey. I met this, like, Muslim girl and she’s actually pretty cool’” (Female). For others, the crucial arenas for intervention were seen to be the very institutions that they felt to be most responsible for creating an enabling environment—politics and media. There was a strong recognition of the need to engage directly with them in order to re-image Muslims. Some spoke of the need to hold political leaders and the media accountable for shaping the popular image of Islam. There is much work to be done in both of those contexts:

So I think the big political leaders, not only in Canada, but global scale, the international political leaders, need to think about their rhetoric because whatever they say is taken out by the media and that sort of creates and perpetuates the image ... I think it's the politicians' responsibility not to other others and create these negative images in society. (Male, Ottawa)

There was, of course, some cynicism about the willingness and ability of the mainstream media to offer alternative and constructive voices. Some, then, highlighted the potential of representing themselves through Muslim-based media venues. This is an increasingly common practice among minority communities in Canada, where ethnic media provide counter discourses (Lindgren 2013). As one participant in my study put it,

There should be a strong journalism in the Muslim community also. The youth, especially the kids. There should be some system from mosques, from Islamic centres, even from the government, where there should be a special funding on people who have good writing skills. Yes, they should write. You know that Canada is a liberal country you can do whatever you

want; if they're writing against you, you counter attack them. You write what is right. (Male, Ottawa)

The point of these interventions is to resist the negative imagery to which I alluded early in the paper. The challenge for Muslim communities is to defy categorisation as the dangerous other. This means engaging with non-Muslim communities in ways that raise awareness and understanding and that highlights the damaging impacts of targeted violence. As one youth framed it,

I think Islamophobia has to become as scary of a word as anti-Semitism. Anti-Semitism brings up a lot of emotions and people are very revolted of any anti-Semitism because of the Second World War and the Holocaust. Images of the Holocaust come to mind I guess when speaking of that discrimination. I think we shouldn't wait until this happens again for us to know how bad certain discriminations are. I think Islamophobia has to become that scary word again. (Female, Ottawa)

There was a strong consensus among participants that such aims required dedicated educational initiatives. For maximum impact, some felt that public awareness strategies were needed, as in the following illustration:

And you can have public educational campaigns and videos created sort of looking at these scenarios: some visible girl walking down the street and a stupid guy in a car throwing something at her. People are gonna see and be like "Oh my God I've done that" or "I know somebody who's done that." They think about it and they say it's really stupid. We have to maybe do public education around it but that has to be rooted in talking to the people who are actually having things happening to them, not necessarily the people who are concerned and haven't had stuff happened to them. (Female, Ottawa)

What is especially interesting about this observation is the idea of "victims" sharing their stories publicly. No one is in a better position to describe what it is to be targeted or the impacts of that targeting. Their lived experiences lend gravitas that can invoke empathy.

There is also a place for formal school-based education. This is especially important in light of the perceived failure of public schools to do justice to the historical and contemporary place of diverse communities like that of Muslims. The standard model of education was described as a one-way street that reflects the paradigms of cultural imperialism. Youth learn white, Christian, straight culture, history, and beliefs, but rarely do they learn a great deal about the parallel dimensions of the other's ways of life. Recognising this, many participants spoke in favour of a reinvented educational system:

A. I think education in the school. If they start in schools, when the kids grow up, they will know that human beings are human beings, it does not matter what they look like, where they come from.

Q. So what is your suggestion?

A. They should be telling the kids in schools that they should not discriminate against somebody because of the different skin colour, they eat different food, or they pray differently. When the kids are young when they learn when they grow up they will remember these things. (Male, Toronto)

The final point of intervention highlighted by participants speaks directly to the criminal justice system. As noted above, the tendency for law enforcement to both over- and under-police Muslims renders the community vulnerable to hate crime. It comes as no surprise then that participants called for a change in how hate crime was managed by police. One woman demanded, "Absolutely zero tolerance policy towards hate crimes that should be enforced by the government and highly advertised in the media so people become aware of the consequences of their actions in Canada." Another shared the sentiment, suggesting that

To lessen the impact I think the crimes have to be taken seriously. Once we see that if a mosque is vandalized and people take it seriously and it's reported and they make a real effort to bring the perpetrator and bring him or her to justice as they do for vandalism of a church, synagogue. When they start treating those crimes equally, then you'll see that Muslims will probably start to see that they are taking our concerns seriously and they'll feel like they are a legitimate member of this society. (Female, Ottawa)

Importantly, the latter statement underscores the importance of effective policing in assuring Muslims that they “belong,” contrary to the perpetrators’ messages. In the absence of strong police responses to hate crime, affected communities come to see themselves as outside the boundaries of citizenship and its attendant rights, rather than as embedded in the polity and culture of the nation. Thus, the way forward must include more attentive proactive and reactive policing of violence targeting Muslim communities.

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11

'If There Is a God I Will Be Allowed to Enter Heaven as All Other Martyrs': Anders Behring Breivik and Religiously Inspired 'Righteous Slaughter'

James Treadwell

I am pursuing religion for this very reason and everyone else should as well, providing it will give you a mental boost. There is no shame in praying minutes before your death. I highly recommend that you, prior to the operation, visit a Church and perform the Eucharist (Holy Communion/The Lord's Supper) ... Finally, ask him to prepare for the arrival of a martyr for the Church. (Breivik 2011, p. 1346)

Should We Talk About Religious Violence?

We do not know for sure whether Anders Breivik did visit a church before he began the killing spree. What we do know is that Breivik, a native Norwegian, perpetrated the worst terrorist atrocities in the history of his nation when, on 22 July 2011, he killed eight people by setting off a van bomb in the middle of the government district in Oslo, before

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he travelled a short distance and shot dead 69 participants of a Workers' Youth League (AUF) summer camp on the island of Utøya. In August 2012, he was convicted of mass murder and causing a fatal explosion and terrorism, temporarily reminding those in Europe that terrorism need not necessarily always be thoughtlessly prefixed with the term 'Islamic'. Of course, the very problem above is one that many would immediately, and quite understandably, take issue with. For the vast majority of practising Muslims, it is deeply insulting to make the values of Islam synonymous with violence, as it would be for any religion. For the majority of adherents of most religions,¹ the association between violence and religious faith juxtaposes elements that appear to be wholly contradictory. Christian spree killers are certainly not normal representatives of a faith encompassing some 2.2 billion people worldwide. Rather, more characteristically, religious adherents generally derive positive morality, ethics, religious laws or a preferred lifestyle from their belief system. Yet the extent to which criminology ought to consider the role of religion in the commission of crime remains quite peripheral, even in the contemporary contexts. In doing this, it is necessary to engage in speculation, and there are few certainties and much can be contested, but I offer up this attempt at considering Breivik precisely because as Zizek's notes, 'Anders Behring Breivik's ideological self-justification as well as in reactions to his murderous act there are things that should make us think' (Zizek 2011).

Yet such a consideration of Breivik is not easy, and what part religion should play in such might be contested, precisely because, as Zizek notes:

Breivik's self-designation shuffles the cards of radical rightist ideology. Breivik advocates Christianity, but remains a secular agnostic: Christianity is for him merely a cultural construct to oppose Islam. He is anti-feminist

¹ There are of course exceptions, for example, Aum Shinrikyo, (which split into Aleph and Hikari no Wa in 2007) is a Japanese doomsday cult founded by Shoko Asahara in 1984 founded on a syncretic belief system that incorporates Asahara's facets of Christianity with idiosyncratic interpretations of yoga, and the writings of Nostradamus. It gained international notoriety when it carried out the deadly Tokyo subway Sarin gas attack in 1995. Aum Shinrikyo has been formally designated a terrorist organisation by several countries, including Canada and the USA, while Japan's Public Security Examination Commission considers Aleph and Hikari no Wa to be branches of a 'dangerous religion' and decreed in January 2015 that they would remain under surveillance for at least 3 years.

and thinks women should be discouraged from pursuing higher education; but he favours a “secular” society, supports abortion and declares himself pro-gay. (Zizek 2011)

To focus then on Breivik’s claims to religion might seem provocative, as to associate Breivik with Christianity as if he has any right to claim allegiance to that faith is clearly deeply insulting to many Christians, as the central tenets of that faith utterly oppose the violence that he perpetrated. Others, including some atheists, might agree with Richard Dawkins, who, reflecting on the capacity for violent acts to be facilitated by religion, suggested (in this case the London 7/7 suicide attacks) that ‘Only religious faith is a strong enough force to motivate such utter madness in otherwise sane and decent people’ (Dawkins 2006, p. 343). Even those who find this proclamation too extreme may still instinctively believe that there is a violent crux inherent in many religions when encountered in news media and global politics and when it radicalises conflict (because once combatants are convinced that God is on their side) religiously inspired brutality can often seemingly know no limit. Many of the worst excesses of contemporary inhumanity in conflict are seemingly propelled by justifications which they claim are supported by religious faith (Juergensmeyer 2003; Armstrong 2014).

For example, despite attempts by British Prime Minister David Cameron insisting that the lawless violence of Islamic State (ISIS) such as beheadings, cage-burnings and crucifixions have ‘nothing to do with Islam’ (a line that is quite contra to the British Government’s foreign policy), many people might instinctively disagree and the descriptor ISIS has become firmly established in the Western lexicon.

Of course when it comes to religious violence sweeping the Middle East and Africa, Western Europeans may also feel exasperated. In the West, we learned from bitter experience that the fanatical bigotry which religion always seems to unleash can only be contained by the creation of a liberal state that separates politics and religion. Such a discussion still rages on, just as it did during the scientific period that gave rise to the first emergence of an academic criminology (e.g., Morrison 1995). It is therefore perhaps unsurprising that contemporary criminology ignores religion and instead regards it as antithetical to the ‘scientific’ discussion

of crime, replacing outdated spiritualism or religiosity which, in many ways, was part of the very origin of criminology (Cottee 2014).

There are perhaps several reasons for this absence of religion from criminology, and recently Simon Cottee has gone some way to considering these (Cottee 2014). At least in part though, the absence of religion from criminological consideration must be premised on secularism and criminology's claim to scientific status. From the Middle Ages onwards, there were long-running debates about the difference between church and state, theology and philosophy, divine law and human law. However these were truly galvanised during the late seventeenth and early eighteenth centuries (Armstrong 2014). That is apparent, for example, in the growth of the philosophy that would in part provide the academic template for the evolution and development of criminology, and which by that period had begun to proffer a more urbane version of the secular ideal (Morrison 1995). For philosophers such as John Locke, the separation of religion and politics—'perfectly and infinitely different from each other'—was written into the very nature of being (Armstrong 2014, p. 394). Indeed as Armstrong notes, 'Locke insisted that the segregation of religion from government of state was above all things necessary for the creation of a peaceful society' (Armstrong 2014, p. 394). The growth and popularity of this perspective on natural human rights is of course inexorably connected with the very development of criminology, a discipline which arguably often does not give true recognition to its lineage of philosophy as pioneered by the renaissance humanists and which provided the theoretical underpinning for a progressive modernity which encompassed a move away from brutal arbitrary violence and practices of punishment (For an overview of criminology as a subject see Morrison 1995; also see Hall 2011).

Yet as Cottee has recently and persuasively argued, there is potentially great value to be found if criminology can incorporate a more nuanced understanding of religion's part in the driver to crime and, in particular, consider:

Theistic violence ... [which is a term used to delineate] 'violence imbued with an overt or avowed religious meaning and purpose' [is something] 'that criminology has all but ignored' ... any serious engagement with it

must attend to its specifically religious aspects. This is not an argument for suggesting that theistic violence is exclusively a religious phenomenon, but rather that religious motivations and meanings must be factored in alongside non-religious motivations and meanings. [We need] a more comprehensive and less polemically one-sided understanding of violence. (Cottee 2014, p. 901)

In seeking to advance this, Cottee draws on the case study approach and considers the murderer Mohammed Bouyeri (killer of the Dutch filmmaker Theo Van Gogh), who, at his trial, claimed that he acted out of a religious duty under Islam. Yet while such a focus may be in keeping with contemporary anxieties about Islam, one has to consider if whether theistic violence is a useful vehicle for understanding and analysing other forms of murderous terror, say the like of Anders Breivik in Norway.

A Christian Spree Killer?

Born in Oslo on 13 February 1979, the son of Wenche Behring, a nurse, and Jens David Breivik, a civil economist, who worked as a diplomat for the Norwegian Embassy in London and later Paris, Anders Breivik spent the first years of his life in London until his parents divorced when he was 1-year old. His father, who later married a diplomat, fought for custody of his son but failed. Breivik then seemingly lived with his mother and his half-sister in the West End of Oslo and regularly visited his father and stepmother in France, until they divorced when he was 12. His mother remarried a Norwegian Army officer, but it seems that for the most part Breivik's early life was not happy and in particular he seems to have had a difficult, problematic relationship with his mother. Breivik self-reported a childhood involving petty delinquency (tagging) and several incidents of violent victimisation at the hands of ethnic minority youngsters (eight in all are claimed in his writing, including one where he reported suffering a broken nose). Closer to the time where he launched his killing spree, Breivik spent much time on weight training and started using anabolic steroids, and much of his manifesto is given over to highly charged writing of a survivalist and fetishist military slant, training programmes,

tips for combat and the like. He cared a lot about his own looks and about appearing big and strong. In his early 20s, Breivik had cosmetic surgery performed on his chin, nose and forehead. He claimed it was to correct damage done to him in fights, but his friends claimed this was as the product of vanity and teasing about having an Arab nose.

After leaving school, where he seemed not to have excelled or stood out academically, his main verified work seems to have been in the customer service department of an office. In his manifesto, he claims that he started a 9-year plan to finance the attacks in 2002 (at the age of 23) and first founded his own computer-programming business. He claims that his enterprise grew to six employees and 'several offshore bank accounts', and that he made his first million Kroner at the age of 24 and that the company was later declared bankrupt after stock market losses.

Yet this self-projected image, coupled with Breivik's crimes, clearly state an attempt to establish and claim a particularly successful form of masculinity (Messerschmidt 1993). This masculinity and the marginalisation of white men is a core concern in his manifesto—the masculinity that continually stresses the imminent threat to the West emanating from Islam and multiculturalism. Indeed, his recurrent concerns with what he refers to as 'Cultural Marxism' or 'political correctness' are often underpinned by an anxiety about the threatened white male and European role which takes on an ostensibly paranoid, frustrated and fanatical tone. For Breivik, somewhere in his twenties, a deep anxiety and concern seemingly arose, and he became fixated on the dangers of tolerance, diversity, multiculturalism and feminism and the threat that these presented to a familiar 'traditional' (male and patriarchal) value system.

On the day of the attacks, Breivik electronically distributed a text *2083: A European Declaration of Independence*, under an alter ego, describing his far-right militant ideology. In it, he lays out a worldview encompassing Islamophobia, support for far-right Zionism and opposition to feminism. The texts call Islam and Cultural Marxism 'the enemy' and argues for the violent annihilation of 'Eurabia' and multiculturalism and advocate deportation of all Muslims from Europe. Breivik seemingly longs for a world not with racial and religious tolerance but instead of a world that returns to the violent medieval religious crusades. Breivik later claimed that his main motive for his atrocities was to market his manifesto and

draw attention to his world view and ideology which in no small part he proclaimed were framed by his Christianity, a claim that has continued to prove contentious. And yet his manifesto includes near 2500 references to Christ/Christianity and calls to promote a Christian insurgency, to develop a Christian Europe, to wage a Christian crusade and to establish Christian nations outside Europe. His Knights Templar would be required to take an oath to the Christian religion, and Muslims wishing to live in Europe would have to convert and be baptised as Christians.

Much of the consideration of the role, place and function of religion and theology as part of a criminal justice system has regarded piousness and spirituality as virtuous and positive (Cottee 2014). This is understandable, given that much of the more progressive developments in criminal justice have been underpinned by religious ideology. The deterrent effects of religious beliefs on criminal conduct have frequently been highlighted in criminology research (see meta-analysis by Baier and Wright 2001).

In contrast, relatively few accounts have considered how religion may have a counterintuitive criminogenic effect in some specific contexts or how religious motivations or justifications might inform specific instances of crime. It has recently been argued that through purposeful distortion or genuine ignorance, some offenders are able to exploit aspects of their interpretation of religious doctrine to neutralise their fear of consequences and justify their offending (Topalli et al. 2013). Yet there is hardly a consensus in wider discussion about the extent to which religion is connected to the problem of violence. For example, there is a huge difference between Armstrong's defence of religion and denial of the obvious connection to violence (Armstrong 2014) and the arguments of some critics such as Jack Nelson-Pallmeyer who propose that all monotheistic religions are inherently violent. For example, he states, 'Judaism, Christianity and Islam will continue to contribute to the destruction of the world until and unless each challenges violence in "sacred texts" and until each affirms the nonviolent power of God' (Nelson-Pallmeyer 2005, p. 136).

Can Breivik's murderous actions be read as a religiously inspired form of 'righteous slaughter' (Katz 1988) or are they as much a product of his gender, frustrated mind and social position. Was Anders Breivik something other than a frustrated, narcissistic, attention-seeking, fame-

hungry man? What part did Christianity play in this mix? Was it simply pragmatism as Zizek suggests that led Breivik to claim Christian status, or was there a more complex element of religious faith at play in Breivik's shocking crimes?

Murder on Utøya

The facts of Anders Behring Breivik's attacks in Norway on 22 July 2011 are now well established and have been subject to extensive media scrutiny. The attack began when Breivik casually parked 'up' in an Oslo street near to the Regeringskvartalet, the executive government quarter of Norway, in front of the office of Prime Minister Jens Stoltenberg and other government buildings (Lambert 2015; Humphreys et al. 2011). The vehicle, a white Volkswagen Crafter, was packed with a crude bomb made from a mixture of fertiliser and fuel oil concealed in its hold.

The vehicle was registered by surveillance cameras as entering the area at 15:13:23. Twenty seconds later, Breivik stopped 200 m before H block. It stood still with the hazard warning lights on for 1 min and 54 s, before he drove the last 200 m and parked the car in front of the main entrance at 15:16:30. He then quickly abandoned the vehicle. Some 9 min later, at 15:25:22, the sodium nitrate fuse ignited the 950 kg bomb in the van with devastating effect, producing a blast that could be heard 4 miles away, killing six people and injuring more than 200.

Approximately one and a half hours later, Breivik appeared dressed in a black wetsuit with police insignia, carrying a holdall and presented himself as 'Martin Nilsen' from the Oslo Police Department to a ferryman and boarded the ferry that would take him to Utøya island, the location of the Norwegian Labour Party's AUF annual youth camping event, largely attended by teenagers. At 17.22 Breivik began an hour-and-a-half shooting spree, during which he fired at least 186 shots from his legally owned Ruger Mini-14 semi-automatic rifle which he had carried to the island. Court evidence suggested that he had taken around 300 hollow point .223 bullets that he had purchased from a Norwegian supplier and still had a large amount of ammunition on him when he surrendered to the authorities after having murdered 69 of the 564 people present on

the island and wounded scores more. Many of those killed were aged just 14 years.

Righteous Slaughter, Cold-Blooded Murder or Theistic Violence

Jack Katz's book *The Seductions of Crime* is perhaps rightly considered by many cultural criminologists to be a seminal work in the discipline; it arises at least in part out of its uniqueness and Katz's ability to transcend then-dominant perspectives that were largely retreating from questions about causation. Therefore Katz's deeper consideration of the aetiology of crime and return to issues of emotive and psychological motivation was nothing short of ground-breaking. In *Seductions* Katz uses an inductive framework to frame discussion of an array of sources with each chapter highlighting a specific deviant or criminal activity which is then placed within his theoretical framework. For example, in Chap. 1, Katz details the phenomenon of 'Righteous Slaughter' in relation to criminal homicide and bases his observations on a variety of US newspaper reports, journalistic accounts, and psychological studies (Katz 1988, p. 11). Katz explores individual case studies, probes them for why a certain act was committed, and then fits their cognitive motivation within a larger criminological pattern. Katz's early focus on righteous slaughter somewhat contrasts with the book's concluding chapter, which focuses on the phenomena of cold-blooded murder or as Katz terms it, the disturbing nature of 'primordial evil' (1988, p. 281).

Katz begins the book with 'Righteous Slaughter' for a particular reason: it is not only the most frequently encountered form of homicide but probably the easiest to rationalise and comprehend. As Katz delineates, the righteous murderer primarily acts to restore a lost notion of the 'good' (1988, p. 12). This process entails three distinct components (1988, pp. 18–19). First, the would-be-killer interprets his or her victim as challenging their inherent moral worth. Second, the would-be-killer transforms emotions of humiliation into rage, 'forming a momentary sense of eternal unity with the Good.' Finally, the would-be-killer 'honours' this humiliation by violently sacrificing their victim (Katz 1988,

pp. 18–20). Though usually a lower-class male offence, righteous slaughter can be most vividly illustrated using the case of the frequently-abused intimate partner who one day murders their abusive lover (Katz 1988, p. 20). For those constantly beaten and humiliated, the decision to finally take a last stand to both protect honour and restore degraded dignity is emblematic of righteous slaughter (and seemingly not incompatible with Enzensberger's (2005) characterisation of the terrorist as radical loser).

For Katz then, 'Righteous Slaughter' is a self-righteous act associated with the defence of communal values; it typically occurs without pre-meditation in the heat of the moment (related concept of trivial altercation) occurring within a quickly developing rage, and there is an arbitrary relationship between the behaviour and the outcome.

In contrast, Katz's final chapter in *Seductions* focuses upon 'cold-blooded murderers' or people who commit 'seemingly senseless homicides'. Katz views cold-blooded murderers as the ultimate 'badass'; they are people who have placed themselves above and beyond traditional moral constraints, and in doing so, completely transcend the 'normal' social environment (1988, pp. 282–301). Katz attempts to elicit three major themes that may shape a cold-blooded killer's moral psychosis. First, the murderer 'enters' the scene as a social pariah, having been emotionally alienated and personally reviled throughout their entire life. Second, the cold-blooded murderer becomes 'lost in the dizzying symbolics of deviance'. For Katz, since they have never found contentment in the 'normal' society, the cold-blooded murderer seeks a different route to being in the world. Finally, by embracing their deviant attitude, the cold-blooded killer restores their sense of moral worth by taking perverse pride in their horrible activities. They find transcendence through atrocity, as this alone demonstrates their 'power' over traditional ways of being.

Breivik, of course, encompasses aspects of both. At least in part, his justification is framed by his warped view that in perpetrating multiple acts of murder against the unarmed, unthreatening children, he was enacting a righteous slaughter, and certainly his manifesto and subsequent behaviour suggest that, at least for himself, his 'righteous murders' primarily acted to restore in himself a sense of power and resist the pervasive feeling of powerlessness (Katz 1988, p. 12).

In his own writing, Breivik claimed that he was a Christian in various

forums, but most explicitly and in greatest detail in the 1500-page manifesto he compiled over several months and posted on the Internet. In it, he states, 'At the age of 15 I chose to be baptised and confirmed in the Norwegian State Church. I consider myself to be 100 percent Christian', and terms himself a cultural Christian. Clear in his writing is the sense of himself as a modern-day crusader in a resurrected order of the medieval Knights Templar, making a righteous last stand against multiculturalism. This was all too apparent not only in his written words but also in the crimes he committed, yet unlike Katz's righteous slaughter perpetrator, he transformed an uneasy, anxious and marginalised existence into a violent, murderous rage, which, contrary to the righteous slaughter model, was executed not in haste, but with a callous, calculated rationality. Breivik's murderous response to the perceived onslaught of 'Islamisation'—and the desire to suffer the glory of Christian martyrdom in the process blend together typologies of Katz and are driven by a range of concerns, not least his concern about his own gender identity and retreat from femininity as much as theistic or religious factors.

The biggest threat to Europe is the cultural Marxist/multiculturalist political doctrine of "extreme egalitarian emotionalism". This type of political stance involves destroying Christendom, the Church, our European cultures and identities and opening up our borders to Islamic colonisation. The Islamisation of Europe is merely a "secondary infection". Western Europe has grown weak and decadent and will be completely annihilated culturally unless we succeed to implement a second European renaissance and reverse the damage done. (Breivik 2011, pp. 1352–1353)

What seems apparent is that at heart there is a form of insecurity in this paragraph, and it certainly seems that rather than simply a perceived threat of egalitarianism and emotionalism, both of which, for Breivik, threaten the (should be) privileged, seemingly heterosexual, white male. On one reading, his words and acts suggest he was threatened and defensive about these facets of his identity but also that he was extremely insecure about his own status as a 'Christian' (and indeed as a heterosexual man).

When this is taken together with his murderous rampage, it is apparent that on some level Breivik certainly conforms to some aspects of Katz's 'righteous slaughter' model as he interpreted his victims as challenging

his inherent moral worth by virtue of their betrayal of him and by their self-perception of political superiority. At some future point, the swell of these frustrations were clearly transformed into feelings of vulnerability and then perhaps latterly into a sense of humiliation followed by rage. Yet Breivik clearly casts himself in the heroic role of masculine defender of Christian values.

Davie (2013) in her book *The Sociology of Religion* discusses the ways religious belief and identity manifest themselves in contemporary Europe. Most of Western Europe may be described as in a state of 'believing without belonging'; this Davie suggests is where people state they believe in God (and would generally call themselves Christians), but this is not demonstrated through attendance at a place of worship. What is more interesting, certainly in the case of Anders Breivik, is the concept of 'vicarious religion'. Within Nordic countries there appears to be a reversal of the 'formula' for believing without belonging, aka 'vicarious religion': 'in this part of Europe the characteristic stance in terms of religion is to belong without believing ... and regard membership [of the Church] as part of national just as much as religious identity' (Davie 2013, p. 143). Furthermore, such 'belonging' does not present as frequent church attendance or a belief in the tenets of the Christian denomination they belong to; in fact 'they appear on every comparative scale to be among the least believing and least practising populations in the world' (ibid.). So maybe this allows us a glimpse into the 'Christian' identity Breivik claims as his own. This notion of vicarious religion (belonging without believing) seems to reveal itself in times of 'personal or collective crises' (ibid.). Although more evident in the role of the 'church' in former communist countries (but equally applicable in this case) the church is seen as a protected public space that is available to the whole community 'at the moment of need' and a place where 'protest could become explicit' (Martin 1996a cited in Davie 2013, p. 145), not unlike the role of the 'square' across the world, for example, Tiananmen Square, Beijing, in 1989 and Tahrir Square, Cairo, in 2011 and 2013. So it is feasible to think that Breivik turned to the 'church' (as both a symbol of national identity and of protest) in response to what he saw as his (and his country's) personal and collective crisis—the religio-cultural annihilation and 'Islamisation' of Europe.

'There Are No Atheists in Foxholes'² and the Battlefield Is a Pretty Masculine Place

So was Breivik really a religiously-inspired Christian killer? Is such a religious dynamic necessary while considering the character of his crimes? By his own admission, he ingested high dosages of synthetic steroids, undertook bodybuilding and isolated physical training, much in keeping with his preoccupation with a highly-masculine militarist ideology. Elsewhere, he seems keen to stress on highly-masculine (hetero) sexual prowess, and sophistication of taste, in part illustrated in the journal segments of his manifesto:

I have been storing three bottles of Château Kirwan 1979 (French red wine) which I purchased at an auction 10 years ago with the intention of enjoying them at a very special occasion ... My thought was to save the last flask for my last martyrdom celebration and enjoy it with the two high-class model whores I intend to rent prior to the mission. My interpretation of being a—Perfect Knight does not and should not include celibacy, although some of my KT [Knights Templar] peers might disagree with me on this point. I believe that in order to strengthen the resolve, morale and motivation prior to a martyrdom operation, the Justiciar Knight should be encouraged to embrace and take advantage of a significant reward system designed to increase focus and remove any last doubts. (Breivik 2011, p. 1435)

Of course, in such writing, Breivik is establishing his credentials as heterosexual male and much of his writing is framed by an obsession with an idealised version of the heterosexual image of the strong, rugged warrior, the 'Knight Templar'. Yet there is little in his biography to suggest he was in anyway split secure in male identity and relationships with females (other than the difficult relationship with his mother), and in his writing he almost declares so much noting, 'As for girlfriends, I do get the occasional lead, or the occasional girl making a move, especially now a day [sic] as I'm fit like hell and feel great. But I'm trying to avoid

² The first part is a title given to a section of his manifesto, 2083, that Breivik self-authored, which deals largely with religion.

relationships as it would only complicate my plans and it may jeopardise my operation'. Yet at trial, a former friend suggested he knew that Breivik exhibited feminine behaviour and used make-up and did not have many long-lasting relationships with women (see Seierstad 2015).

Even if his writing is as much a work of fantasy as reality (though some might suspect the hiring of prostitutes may be a very real part of Breivik's pre-criminal actions), his projected image and representation of self is one that is rooted in aggressive, heterosexual masculine ideals as much as any aspect of religion. As Carle suggests, it is masculine decline that preoccupies Breivik in the early part of his manifesto when:

Breivik begins his manifesto with an introduction that describes the assault on western values by feminism, de-constructionism and the Frankfurt School. Breivik expresses nostalgia for the 1950s, when "our fathers were strong and silent men whose acts of personal upkeep was limited to shaving and putting on a tie". By contrast men of today are concerned about "Making themselves Pretty" obsessing over such things as "A Flat Belly for the Beach" (Verge), or "three new men's fragrances for the Fall Season" (GQ), or "the New Fall Suit" (Esquire) (Carle 2013, p. 396).

The way in which masculinity has been fused with crime and violence in much existing criminological literature has ensured that the characteristics of offenders are understood in terms of gender, race and class as structural influences rather than via a psychological or psychoanalytic dimension (see Hood-Williams 2001). This arises out of a recognition that dominant perspectives drawn from masculinity perspectives essentially rest on socio-structural explanations without giving adequate consideration to why it is that only some men resort to crime and violence when thwarted by personal disempowerment (Gadd and Jefferson 2007). Traditionally, more-sociological masculinity theorists (e.g., Connell 1987, 1995; Messerschmidt 1993) have suggested such structural models of masculinity where hegemonic forms are organised around the discursive subordination of others (particularly women and gay men). Yet if we take Breivik, it would seem that it was political association and affiliation and specifically acceptance of multiculturalism (hence a state of mind) that was the primary factor that led to his selecting of victims and targeting of individuals (Berntzen and Sandberg 2014). His killing was 'hate-driven',

predicated against a vulnerable group in what even Katz would recognise was a most pre-planned and cold-blooded manner (young people, isolated and on an island with little chance to defend themselves) and directed towards difference that was multifaceted but based more on victims' social and political attitudes than anything else. It seems in many aspects of his life, Breivik, quite in contrast to the grandiosity of the claims he makes, was an unremarkable and largely inadequate social failure. At the age of 26, an age where many young men would be expected to have begun to mature and find their way in life, Breivik decided to move back in with his mother and become ever more isolated from the small social network that he had. In Breivik's case, his extreme violence 'may be regarded as functional in maintaining an idealised and internalised sense of manhood in the face of external realities that point to his inability to do so' (Whitehead 2005, p. 414); but can we call it religious?

Recently Cottee has argued for criminology's greater engagement in considering the theological dimensions of crime as motive. It is notable that in making this case, he draws on the November 2004 murder of the Dutch film-maker Theo Van Gogh by Mohammed Bouyeri, and thus Cottee makes his appeal to consider religious motivation synonymous with Islam. Yet perhaps what is more interesting in using the case of Breivik is, why there is so much willingness to consider religiously inspired motives of terrorism when connected to Islam but not where Breivik is concerned? For example, conservative media pundits in the USA who share some of his views about the threat of Islam and also consider themselves Christians quickly sought to distance themselves from him by declaring, as Bill O'Reilly did on US network channel *Fox News*, that Breivik is not a Christian. No one believing in Jesus commits mass murder. The man might have called himself a Christian on the 'net, but he is certainly not of that faith.' Of course O'Reilly's objection to religion being discussed as an aspect of Breivik's crime has been echoed by a much wider group of commentators, many on the political right, and many who have, on occasion, expressed concerns about Islam, in many instances, forging close allegiances with the wider anti-Islamic movement.

As Berntzen and Sandberg have noted, this anti-Islamic movement was an essential underpinning source of support to Breivik, and the group 'have a dual, and sometimes inconsistent, collective action framing. On

the one hand, they portray Islam as an existential threat to the West and a warlike enemy; on the other, they promote peaceful and democratic opposition' (2014, p. 759). Yet as they remind us, Breivik was inexorably embedded in this larger social movement, illustrating clearly how political narratives rejecting terrorism and political violence still end up inspiring such acts (Berntzen and Sandberg 2014, p. 759). Perhaps the most conspicuous evidence of Breivik's external influence can be seen in the composition of his manifesto, which Breivik himself admitted was around 60 % cut and paste with the remainder of his original writings (Siddique and Pidd 2012). Breivik's admission demonstrates the existence of a network in which he developed ideology and his reliance on the work of others. Breivik's actions were certainly linked to the larger milieu of anti-jihadism or counter-jihad campaigners. The counter-jihad movement is a network of foundations, bloggers, political activists and street gangs. It is an anti-Islamic, Islamophobic, far-right, and intellectual movement that gained considerable momentum after 9/11. This now extensive counter-jihadist movement is (with writers the likes of Peder Are Nøstvold Jensen, David Horowitz, Robert Spencer and Pamela Geller) inspiring an array of new Right-wing movements which often blend Islamophobia, cultural conservatism and Judeo-Christian fundamentalist rhetoric.

If criminology is to begin to consider theistic motives for criminal conduct as Cottee avers, we perhaps ought to consider whether that need be focused on faith in a more challenging way than has been to date. Indeed as Cottee suggests:

If criminology is so lacking in a language for making sense of theistic violence, why are criminologists seemingly so hesitant to raise concern about this? One possible answer is that the reluctance among criminologists to address the question of theistic violence reflects a liberal uneasiness on their part about the current public debate on religion and the polemical and highly politicised form it has taken. (Cottee 2014, p. 905)

Cottee therefore is arguing that a liberal sentiment amongst criminology generally means that questions of religion (and particularly Islamic religion) are not raised or considered in part due to a wider, culture of

intolerance that is pervasive in the wake of 9/11 and the discourse of war on terror (Cottee 2014). If, as Teehan (2010) argues, religious morality and religious violence [shared throughout the Abrahamic faiths] both spring from the same source and this is the evolutionary psychology underlying religious ethics, then at least criminology has a responsibility to recognise the universality of the source. Therefore, if criminology does want to consider religious violence in a meaningful manner, might it be prudent to begin with Anders Breivik? It might be prudent to ask whether the rejection of Breivik's 'Christianity' or the grounding of his actions as religious, particularly by US republican media commentators, would have been nearly so pronounced if, as *Fox News* terrorism experts had initially inaccurately opined, he had been an adherent of violent Salafism? While clearly he twisted the Christian tradition in directions most adherents to the faith would not countenance, Breivik rooted his hate and his terrorism in a Christian history, particularly the history of the medieval crusades against Muslims, and the current efforts to renew that clash as justification. Prior to his murderous spree, Breivik wrote, 'If there is a God I will be allowed to enter heaven as all other martyrs'—a sentiment so jarringly akin to the mantra expressed by killers who aspire to the ideals and doctrine of violent Salafism that it should not be allowed to pass without comment. If, however, there is an obvious objection to the links made between the Christian faith and Breivik, then why is there not the same thing when it comes to the violent Salafi jihadi?

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12

Polygamy, American Style: Empire, Faith, Law and Bad Public Policy

Jacob W. Petterchak

Introduction

In a country as large, pluralistic and morally-permissive as the USA, there are relatively few taboos left capable of drawing nearly universal disapproval. Polygamy is precisely one of these things. Strange as it may be, polygamous marriage just makes us Americans uneasy, although it also piques our curiosity judging by the presence of polygamists from Latter-day Saints (LDS) churches on popular television dramas such as HBO's *Big Love* and reality shows on the TLC channel like *My Five Wives* and *Sister Wives*, among others. Weirder still is that the public reaction is not so much characterised by righteous indignation and moral outrage at the idea of people brazenly defying the law of all 50 States and the federal government as it is with curiosity and very mild antipathy that usually ends up generally making fun of the Mormon faith. The American public's more general conception of polygamy is vaguely analogous to

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that of a socially-acceptable freak show and something of a big joke that Mormons are normally the butt of.

Ironically, polygamy also occupies the popular conscience outside our own borders the United States (particularly current policy agendas), but for vastly different reasons. Canada is currently considering legislation aimed at curtailing the rights of polygamists seeking to settle in Canada (Mackrael 2014). France and the UK have also seen their fair share of litigation and political debates about the rights of polygamists to pensions, public housing and residency.¹ But as far as polygamy and the law go, the debate and conversation in the USA is radically different from that in Western Europe and Canada. While European and Canadian discussions on the subject focus on mostly Muslim or African immigrants with an incompatible culture or repugnant social practices, American polygamy is much different in that it is historically and presently seen as a home-grown phenomenon that touches on issues of faith, democracy and observance of the law.

This chapter will analyse the history of polygamy in the USA and the various legal efforts to stamp out this peculiar institution. Further, it will consider the underpinning rationale of law and policy on polygamous marriages from the nineteenth century and how they compare to current attitudes and opinions regarding the role of the State in family life, rights to privacy and the separation of church and State.

The History and Law of Polygamy in the USA

One may be justified in saying that polygamy occupies an important, if perhaps unwanted, place in American history and society. As our present law pertaining to both ethnic/religious minorities and polygamists (of whatever variety) is a product of our shared national history and often-

¹Ali v. Ali [1968] P 564; AM v. AM [2001] 2 FLR 6; Bibi v. Chief Adjudication Officer [1998] 1 FLR 375; Hashmi v. Hashmi [1972] Fam 36; Hyde v. Hyde and Woodmansee {L.R.} 1 P. & D. 130; Imam Din v. National Assistance Board [1967] 2 QB 213; Khoo Hooi Leong v. Khoo Chong Yeok [1930] AC 346; Muhammed v. Suna 1956 SLT 175; Shahnaz v. Rizwan [1965] 1 QB 390; Sharif v. Sharif [1980] 10 Fam Law 216; Shemshadfar v. Shemshadfar [1981] 1 All ER 726; Srini Vasan (Otherwise Clayton) v. Srini Vasan [1946] P 67.

changing cultural attitudes, it is imperative that any fair analysis of this matter duly consider the role and origins of polygamy in the USA. Our national experience differs markedly from that of other countries in that polygamy is a result of our own internal pluralities rather than an unwanted intrusion by outsiders. Any measures and strategies addressing polygamy must accordingly take this key fact into consideration.

Polygamy Amongst the Native Americans

Anthropologists are generally in agreement about how the marital practices and family structures of pre-Columbian Native Americans generally did not adhere to Western norms and varied considerably between tribes and social classes.

The Taino Indians were the first people that Christopher Columbus stumbled upon. They were indigenous to Puerto Rico and found throughout much of the Caribbean. Although now extinct, they were polygamous according to contemporary sources (Losada et al. 1971; Hanna & Stanford, 2012). Having two, three or more spouses was common among men and women, although it is also of note that Taino society was very patriarchal and women were largely confined to domestic life and perhaps even buried alive with their deceased husbands. Other Arawakan tribes of the Caribbean were known polygamists also, as were the southerly Caribs who antagonised them all before the arrival of the Spanish and subsequent extinction of almost all natives from the Caribbean and West Indies.

Among the first native tribes contacted by the English in Jamestown, Virginia, was the Powhatan Confederacy. Although little is known about the social institutions of its general population, those of its Chief Wahunsenacawh (the father of Pocahontas) are well documented in contemporary accounts by John Smith and Henry Spelman. As per custom, Chief Powhatan was semi-monogamous and would maintain each wife only until she bore him a child, at which point she returned to her home village and remarried with the child who would then rejoin the Chief's household 8–10 years later as something of a political hostage (Spelman 1998). It is also of note that Powhatan society was fundamen-

tally matriarchal, as the ruling dynasty followed lateral matrilineal succession (Smith 1983). In other words, siblings would pass the title of Chief down amongst each other from oldest to youngest regardless of gender, but the next generation only inherited the Chief title by maternal descent (Rountree 2011). As such, the origins and basis for this matrimonial ‘musical chairs’ may have been largely political—as a rotating form of hostage-taking that guaranteed loyalty between tribes, clans and competing chieftaincies.

These matrifocal and matrilineal societies were common among pre-Columbian Native American tribes. The communal tribes of the south-eastern USA, such as the Cherokee, Choctaw, Creek and Seminoles, were also known to be partially polygamous among elite men prior to assimilation and Christianisation (Perdue 1999). Divorces for women were also common and easily obtained (*ibid.*, pp. 44, 57–58). The Comanches were also known as polygamists, with the last Chief, Quanah Parker, having five wives.

Conversely, the Maliacones, Avavares and Arbadaos tribes of south-central Texas and the Rio Grande Valley were steadfast monogamists (Krieger 2010). Although ‘divorce’ was fairly commonplace amongst young couples (along with quick recoupling) prior to childbirth, such was impermissible in households with children (Cabeza De Vaca 1997). Their society was highly egalitarian given its undeveloped status as very primitive nomadic hunter-gatherers.

Outside of these documented historical situations amongst particular notable tribes, polygyny, polyandry, polygynandry, concubinage and even homosexual relationships existed to varying extents amongst the many indigenous tribes of North America. In shamanic religions and non-literate cultures, literally anything goes. Even today some tribes are known to socially tolerate in some corners (although never legally recognise) what some might call ‘alternative lifestyles’ under the aegis of tribal custom.² Syncretism and shamanic traditions, new and old, come and pass without much notice in Indian Country and few are ever terribly

²Customary native religious ceremonies of plural, homosexual or even animal ‘spirit unions’ have been known to take place on reservations under the auspices of practitioners of Native American religion, but have no legal effect at the tribal level.

bothered when novel or unusual personal lifestyle arrangements form without official sanction.

As for the *de jure* status of Native American family arrangements (past and present), both State and federal governments have historically afforded a wide margin of deference to customary family practice (Strasser 2010). Due to their *sui generis* status as neither States nor foreign nations under the US Constitution, but as 'domestic dependent nations' under direct federal rule, tribes retain all powers not formally denied by Congress—including extensive control of internal affairs.³ Indeed, many treaties specifically provide for the US government to enforce and recognise rights of inheritance under tribal law, which in the nineteenth century required federal district courts to recognise non-monogamous families.⁴ State laws rarely applied to Indian marriages of any sort, so long as they involved at least one tribe member and were celebrated on tribal lands under tribal law or custom.⁵ Although some exceptions to this pattern occur concerning interracial marriages in the bygone era of eugenics enthusiasm, this is no longer the case.⁶ There are no federally-recognised American Indian tribes performing, recognising or sanctioning any non-monogamous relations.⁷ By way of cultural assimilation and Christianisation, Indian Country has abandoned polygamous families. As such, this issue is of greater historical than legal importance.

Given the absence of written history and extreme plurality of tribes, confederations and religious beliefs, it is difficult to establish or even suggest any particular pattern or trend regarding polygamy amongst the indigenous people of North America. It can, however, be stated with confidence that polygamy was not an uncommon occurrence in customary Native American religious and family life. This diversity of family organ-

³ Worcester v. Georgia (1832) 31 U.S. 515.

⁴ Kobogum v. Jackson Iron Co., 43 N.W. 602 (Mich. 1889).

⁵ Scott v. Epperson, 284 P. 19 (Okla. 1930); Cyr v. Walker, 116 P. 931 (Okla. 1911).

⁶ Blake v. Sessions, 220 P. 876 (Okla. 1923); Stevens v. United States, 146 F.2d 120 (10th Cir. 1944); Baker v. Carter, 68 P.2d 85.

⁷ A number of Native American tribes, which are sovereign entities independent of any state, embraced marriage equality before many states. The Coquille Tribe of Oregon was the first of these to do so in 2008.

isation is, as such, not foreign to the USA and is to some extent officially accommodated under dead-letter federal law.

Reception of English Law and Polygamy in the American Colonies and Early Republic

The Celtic tribes of Britain are the earliest significant inhabitants of the British Islands. They were known to practice polygyny and polyandry according to many contemporary sources, including Julius Caesar. Celtic marriage was social and contractual but not religious in nature (Markale 1986).

The Romans were quite a bit different from their subject peoples in this regard. Monogamy and the nuclear family was a defining feature of Roman family life. Adultery (*adulterium*) was a public offence for Roman citizens and tried in a specialised court—the *quaestio de adulteriis* (Corbett 1930). Indeed, in the early years of the Roman Republic divorce was largely unknown and Roman women enjoyed a high degree of social standing and liberty for the time. As the Roman Empire expanded, the law went with it and applied to its citizens but not necessarily all of its subjects. Moreover, with this strict moral code came deviation and vice, such as orgies and prostitution, a taboo form of rebellion against strong social mores. These Roman normative values greatly informed those of mainstream Protestant and Roman Catholic theology, which are decidedly against polygamy on theological grounds. As Christianity came to dominate the religious and social life of Roman and post-Roman Britain, so too did the more ‘traditional’ model of marriage and family of which we are familiar.

Ancient laws rarely made any distinction between ethics, morality and religion, but medieval legal systems typically rested upon a double foundation of divinity and human ordinance. In CE 684, the Council of Hertford declared the Roman Catholic doctrine of marriage to be limited to one man and wife, with only death permitting another marriage lest it be bigamous.⁸ Until the Norman Invasion, England lacked formal ecclesiastical courts, as most matters were handled by more-or-less

⁸ Matthew 19:3–9; 1 Timothy 3:2; 1 Timothy 3:12; Titus 1:6; 1 Corinthians 6:16; Bede (1990).

formal common-law courts. William the Conqueror (CE 1066–1087) established matrimonial law as the sole dominion of the church's ecclesiastical courts in the *Sciatis Vos Ommes* (Giesen 1973). Although matters of dowry and inheritance were judged according to the common law, papal decree and Canon law judged marital contracts.

In the sixteenth century, the spiritual and political monopoly of the Roman Catholic Church was challenged by the Protestant Reformation. Radical ideas came to the fore, such as those of Hugo Grotius, the influential Dutch jurist and intellectual, who advocated a separation of law from theology. It is well-known that Henry VIII (CE 1509–1547) changed this situation drastically by putting these religious institutions under his direct control subject to revision by himself. Henry VIII did not consider marriage a secular concern though, and ecclesiastical courts continued to govern marriage until the Matrimonial Causes Act of 1857 abolished them totally, barring a short period during the Commonwealth when ruling English Puritans opposed the stringent regulation of marriage as a sacrament by a State church (Purkiss 2007).

Although the gradual elimination of ecclesiastical courts took centuries, the zero point doubtlessly came with the passage of the Bigamy Act of 1603. This act made bigamy a capital offence in Common law, thus removing it from the ecclesiastical courts' jurisdiction (Wilf 2010). Divorce was nearly impossible before the Matrimonial Causes Act, as it required either an expensive act of parliament or a convoluted annulment by way of an arbitrary ecclesiastical court.⁹ Today, divorce is exceedingly common while bigamy is still illegal and frequently prosecuted in Britain as both an indictable (felony) and non-indictable offence (misdemeanour).¹⁰ It is no longer a capital offence, although prison sentences often accompany the conviction (BBC News 2008; McGuire 2013).¹¹

A variety of reasons existed for the removal of bigamy from the purview of ecclesiastical courts. Competing movements within the protest-

⁹ Matrimonial Causes Act 1857, 20 & 21 Vict., c. 85.

¹⁰ Offences against the Person Act 1861 (24 & 25 Vict c 100).

¹¹ R v. Tolson [1889] 23 QBD 164; R v. Taylor [1950] 2 All ER 170, CCA; R v. Crowhurst [1979] Crim. L.R. 399; R v. Smith 1994 15 Cr App R (S) 407; R v. Cairns [1997] 1 Cr App R (S); R v. Bajlu Islam Khan, Karen Mary Kennedy [2004] EWCA Crim. 3316, CA; R v. Trigger Alan, Mike Seed and Philip Stark [2007] EWCA 254, [2007] 2 Cr. App. R. (s) 69; R v. Arthur William Ballard [2007] 2 Cr. App. R. (S) 94, C.A.

tant reformation brought the issue into greater focus as non-Episcopal churches, such as the Presbyterians and the Puritans, vied for power with Anglicans and Catholics. The strong penalties for polygamy and enforcement of monogamy were also possibly driven by fearful reactions of Catholics and Protestants to Ottoman incursions into Europe and the rise of colonial empires in America and other places where polygamous cultures existed.

These laws and values came with the British Empire to the original Thirteen Colonies. Under the doctrine of reception, the laws of the motherland extended to its peripheries. Following American Independence, many States passed reception statutes directly incorporating the law of Great Britain as their own. In addition to this, the American legal system relied heavily upon the law commentaries of William Blackstone. Given that both the laws of Britain and Blackstone were decidedly against the institution of polygamy, it might come as a surprise that some white settlers occasionally 'went tribal' in the backwoods as they adopted aspects of Native American culture such as polygyny, while some Scottish, Irish and Welsh immigrants brought with them ancient customary polygamous marriages holding over from Celtic times (Gallichan 1986; Tracy 2001). Familial abandonment and the heart-breaking antics of would-be casanovas was also a frequent occurrence and to a great extent shaped early American statutes and common law of bigamy.

As such, polygamy was a rare and atypical occurrence among the settler society of the early USA. It was also consistently frowned upon. This presents a strong dichotomy with the pluralistic attitudes of indigenous inhabitants about familial organisation and the consistently monolithic mores of the now-dominant Anglo-Celtic population.

The LDS Movement

Perhaps the best known and most frequently associated with polygamy in the USA is the Church of Jesus Christ of the LDS Church, also known as the Mormons. Although Mormonism is a relatively young religious movement with global reach and millions of adherents, its history and

name are perhaps permanently linked to the original church's former custom of polygyny and the continued practice of it by breakaway sects.

Faith in Early America and the Genesis of Mormonism

Americans have always been somewhat known for their tendency towards religious fervour, be it on account of Rev. Cotton Mather and the Salem Witch Trials or because of John Edwards' 'Sinners in the Hands of an Angry God' sermon of the First Great Awakening. No matter how you look at it, American Christians have a perhaps well-deserved reputation for embracing radical interpretations of their chosen scriptures. The relative remoteness of our early frontier ancestors made communities insular, and given how so many of the earliest settlers were essentially religious refugees of a very radical sort (either English Puritans or German Anabaptists), it is not difficult to understand how people living under threat of Indian attacks and enjoying a hardscrabble existence can become somewhat addicted to extreme religious views of their isolated communities. Even today, Appalachia is host to many small, independent and occasionally extreme sects of Protestant Christianity, ranging from simple independent Baptists, the Amish and the Mennonites to snake-handling Christians that drink snake venom as a test of faith. Even today, a hapless worshipper can stumble into a Sunday service at a new church in an unknown locale to find people talking in tongues, exorcisms and other strange occurrences.

Mormonism originated under similar conditions in the 1820s in western New York State during a period of renewed religiousness (Shipps 1985). This particular area of the state is generally mountainous to hilly, being the northern part of the rugged Appalachian Mountains and the start of the Lake Ontario Basin. It was also relatively newly settled and ethnically cleansed of its previous Native American residents when the family of Joseph Smith came to the town of Palmyra from neighbouring Vermont. America was in the midst of the 'Second Great Awakening' for most of the early 1800s, and western New York was so alight with Christian fanaticism that it was called 'the Burnt Over District' (Altman and Ginat 1996). This corner of the country generated some peculiar religious cults that

slowly died out on their own, such as the anti-procreation Shakers and the group-marrying communes of Oneida Society. The Smith family was certainly a product of their environment and was deeply involved in various sorts of Christian mysticism. The LDS Church (initially called the Church of Christ) grew in number fairly rapidly, but was not widely accepted by contemporary mainstream Christians for their rejection of the Trinity, peculiar cosmology and heretical mythology centred around the adventures of the resurrected Jesus Christ in pre-Columbian America (Embry 1987). Even today, mainline Christianity does not accept the Book of Mormon or the revelations of Joseph Smith, Jr. as canon, nor its adherents as Christians. This general ostracism is part of the reason the church is primarily concentrated in Utah, as they were largely driven out of New England and the Midwest for their theocratic and totalitarian tendencies.

Social Persecution, Legal Restrictions and Political Scrutiny of Plural Marriage

The LDS did not initially embrace this tradition of 'plural marriage' and did not do so openly until almost 30 years after their founding, although church father did partake behind closed doors. Plural marriage was never gender-equal in the movement and, as such, fit the definition of polygyny. As bigamy was illegal in every state, either by statute or common law, and there was reason to keep this sort of thing 'hush-hush'. Even then, it was primarily reserved for church leadership and fairly limited at that. Joseph Smith and Brigham Young both maintained veritable harems of 30–60 wives, but perhaps only three dozen nineteenth Century Mormon men ever had more than eight wives. A small minority of these women were under the age of 18, sometimes considerably so. Feuds between wives occasionally occurred, but general want and personality clashes were more important motivating factors, and occasionally led to divorces. Many more were widows of fellow polygynists who were then 'sealed' for life to their new husbands while 'sealed' for eternity to the deceased as per Mormon cosmology.

Polygynists were a majority in the very early years of the Mormon theocracy in Utah, but their families were a minority of perhaps 30 % (at most) in the Utah Territory between 1870 and 1880, and that number

rapidly decreased thereafter (Bennion 1984). Due the biological law of averages making plural marriage difficult to sustain without creating a large class of permanently single and sexually frustrated men, Brigham Young and other church fathers endeavoured to 'import' women of 'unfortunate' circumstances from Great Britain, particularly East London through a permanent emigrants fund until the effort slowed up when it became too large, difficult and costly before being altogether outlawed by Congress. The 1890 Manifesto officially marked the LDS' abandonment of plural marriage. Increasing pressure from the US federal government on polygamists in federal territories and distaste among the church fathers due to public scorn also contributed to its decline and the rise of numerous splinter movements that resisted this change, including the generally respectable and integrated Apostolic United Brethren (AUB) and the radical Fundamentalist Church of Jesus Christ of the Latter-day Saints (FLDS Church) that will be discussed below at greater length.

In some ways, the LDS became the nineteenth-century equivalent of North American Men Boys Love Association thanks to their intense unpopularity, peculiar customs, radically different religion and attempt to form an independent scofflaw theocracy in the Rocky Mountain West. The 1857 Utah War and Mountain Meadows Massacre certainly did not help matters either, but the 1856 Republican Party platform officially condemned Mormon polygamy as one of the 'twin relics of barbarism' along with slavery (another hallmark of Mormonism) and demanded aggressive measures against both peculiar institutions (Gordon 2002). The widespread revulsion and heavy hand by the American to Mormon polygamy stands in stark contrast to the passive acceptance of similar arrangements by American Indians, indicating a fear of social degeneration and anti-republican allegiance. More importantly though, these attitudes bought the issue to the fore and drastically reshaped our law on polygamy.

Legal Status of Polygamy: *Reynolds v. US* to Present

The American law on polygamy has departed considerably from that which was imported from England principally because of the national experience with the LDS movement. The language is similar and a

reminder of shared legal and cultural origins, but as it is also uniquely American and considerably more aggressive. Whether this heavy-handed approach is now, or ever was, justifiable is contentious.

The Federal Law of Polygamy and Reformed State Statutes

Marriage is an undeniably prominent means for organising society. Like most of Western Europe, America's standard model of the family conveniently aligns with the Judeo-Christian one, which I think is fundamentally Roman in character. As with any closely held belief or thought, it is subject to constant rationalisation by each subsequent generation. American nationalism had a profound effect on family life, including the concept of Republican Motherhood and the belief that good citizens fit for a new nation came from 'proper families' (Cott 2000). The unconventional ways and theocratic inclinations of the LDS did not take stock in these ideas and as such presented an existential threat to the nation and the idea that it alone was a purveyor of civilisation, individualism and freedom. As such, the national values had to be expressed in law to be protected from dangerous elements within.

Earlier law on the offence of bigamy was a relic of English rule. Its application was piecemeal in a frontier country with a poorly developed legal system of travelling judges, mostly informal law enforcement efforts and a patchwork legislative approach by way of each state. The Mormon swell and their devotion to polygyny provided strange common ground between Republican and Democratic lawmakers of the 1850s, as Republicans were eager to tie polygyny to slavery in their grand moral crusade while Democrats were keen to use polygyny to deflect increasing regional outrage at slavery. Furthermore, the LDS had made enemies among the locals in various locales it had called home—including the politically powerful states of New York, Ohio, Illinois and Missouri—so it provided a convenient whipping post for which much anger and frustration was directed. Anti-Mormonism was especially strong in Abraham Lincoln's home state of Illinois on account of the LDS' tenure in Nauvoo.

Aside from sending a string of highly ineffectual territorial governors and the 1857 Utah War, little of this moral panic resulted in national legislation until the Morrill 'Anti-Bigamy' Act of 1862 was passed in the midst of the American Civil War.¹² It provided for a sentence of up to 5 years and a fine of \$500 upon conviction for felony bigamy. The Morrill Act outlawed plural marriages in the Utah Territory, disincorporated the LDS Church and escheated its property to the government. The law was not enforced as part of a de facto wartime compromise between Brigham Young and Abraham Lincoln to keep Utah in the Union, as control over the slave-inclined territory was tenuous. After the war, the Utah Territorial Legislature formally requested that the act be repealed, which instead attracted the scrutiny of Washington legislators.

In response to this (mostly intentional) deficiency, Congress passed the Poland Act in 1874.¹³ The Poland Act effectively dissolved the Utah territorial judiciary and imposed direct rule of the territory by non-Mormon officials deployed by Washington. In spite of this, Mormons flagrantly ignored the law on the basis that it was an infringement of the 1st Amendment to the US Constitution and the free exercise of religion clause. However, this legal uncertainty ended in 1879.

Reynolds v. US (1878)

To test the constitutionality of the laws, George Reynolds, Brigham Young's private secretary, agreed to be tried in a case intended for Supreme Court judicial review with the cooperation of federal prosecutors. Reynolds even furnished the prosecution with witnesses. He was convicted and sentenced to a prison term of 2 years in something of a prosecutorial betrayal that would be seriously frowned upon under current case law.

In 1879, the Supreme Court upheld the Morrill Act in the landmark case of *Reynolds v. US*.¹⁴ In this case, the defence of religious duty to the

¹² Morill Anti-Bigamy Act 1862, Ch. 126, 12 Stat. 501 (1862), 37th United States Congress, Session 2.

¹³ Poland Act 1874, 18 Stat. 253 (1874), 43rd United States Congress.

¹⁴ *Reynolds v. United States*, 98 US (8 Otto) 145 (1878).

statute failed importantly holding that marriage is a civil contract under government prerogative. It also made the key distinction between the freedom of religious belief and practice, for protecting religious practices contrary to public laws of the majority would 'make professed doctrines of religious beliefs superior to the law of the land, and in effect to permit every citizen to become a law unto himself'. The idea of a religion being a matter of strictly personal choice is a uniquely secular notion and fundamental to American conceptions of personal liberty. Such a system based on the supremacy of personal law would challenge the rule of law and is objectively unworkable in any plural society.

In some ways, *Reynolds* was a zero point for polygamy among the Mormons. Further efforts were made to plug loopholes that grandfathered in polygamists who were married before the Morrill Act by criminalising 'unlawful cohabitation', which was much easier to establish from the perspective of building cases for prosecution. Aggressive measures were taken to seize church land that had been held in contravention of the 'death sentence' levied against the church and prosecutions of bigamists picked up extensively. About a dozen further appeals came before the Supreme Court concerning Mormon polygynists, almost none of which were successful.¹⁵ It also further ostracised convicted polygamists from political life and more effectively outlawed the LDS Church until it abandoned polygyny in 1890 in a deal of sorts to grant Utah statehood and restore the outlawed LDS Church. This event marked a schism between the mainline LDS and approximately a dozen breakaway factions that persist today and practice polygamy. Criminal raids on these groups continue even today.

Much of *Reynolds* is premised on mainline Christian normative values, their manifestation in English and American law, contemporary political criticism of polygamy as dangerous to democratic societal values because of despotic inclinations and racist notions describing polygamy

¹⁵They are Miles v. United States, 103 US (13 Otto) 304 (1881); Clawson v. United States, 113 US 143 (1885); Murphy v. Ramsey, 114 US 15 (1885); Snow v. United States, 118 US 346 (1886); In re Nelson 131 US 176 (1889); Davis v. Beason, 133 US 333 (1890); Late Corporation of the Church of Jesus Christ of Latter-day Saints v. United States, 136 US 1 (1890); Bassett v. United States, 137 US 496 (1890); Cope v. Cope 137 US 682 (1891); Chapman v. Handley, 151 US 443 (1894).

as 'exclusively a feature of the life of Asiatic and African people'. As such, it employs much problematic language that could be described as outdated. I contend that much of this is *obiter dicta* that have been largely ignored by courts following the precedent. Indeed, the primary opponents of Mormonism and polygamy were to a great degree motivated by the racism and religious bigotry typical of the epoch, eschewing an early version of the 'clash of civilizations' and ceaseless reductionist antagonism (Huntington 1993). The LDS Church of *Reynolds* was also much different from that we know today, as it was a peculiar throwback to overt and shockingly extreme patriarchal rule in a world where a form of softer patriarchy was in fact welcomed.

The social environment that spawned *Reynolds* regarded polygamy as a threat to the national social and political well-being. Attitudes have subsequently shifted, with little public space afforded to it (Strassberg 2003). In a post-'Sexual Revolution' society that has redefined the 'family' many times over, it would seem that few today are quite as alarmed about polygynous Mormons as our forefathers were.

Legal Regulation of Polygamy in the USA: Twentieth Century to Present

With the 1890 Manifesto, most practicing Mormons abandoned plural marriage as an act of faith. Fundamentalist breakaways have ignored this manifesto ever since and frequently meet the same fate as George Reynolds, often serving prison time. The Short Creek Raid of 1953 in Arizona was a notable mass-arrest of fundamentalist Mormons. It is in this way that the legacy of *Reynolds* and the anti-Mormon polygyny statutes continue to inform our anti-bigamy laws more than a century later. It is in this way that criminal bigamy laws are a product of an outdated normative structure that effectively serves to undermine its own intent of safety and social support to communities at risk of exploitation by coercive and exploitative communities.

Bigamy's existing position in law defines it as the offence of entering into an additional marriage while one existing has not been dissolved by operation of law. Currently, all 50 States and the federal government have

some criminal bigamy prohibition on the books, either felonious or misdemeanour. The Model Penal Code (MPC) compiled by the American Bar Association proposes bigamy as a Class 4 felony and attaches a Class A misdemeanour for knowingly marrying a bigamist with fines and prison terms varying greatly.¹⁶

Even federal Congressmen are not left untouched by bigamy laws, as Rep. Allan Grayson is currently suing his estranged wife in the family court for being a bigamist as a means of escaping a costly equal division of marital assets—an occasional tactic in contentious high-worth divorces (Landy 2015). The defence of 'Oops, I forgot' is frequently used to little effect (WPBF News 2011). It is also normally a strict liability offence that even a defence of bad legal advice cannot defeat.¹⁷ As homosexual marriage has become legalised, so have homosexual bigamists been created, showing how truly non-discriminatory the justice system can be if it so chooses (Zinn 2015).

In spite of the universalism, there is some margin of difference between each state's statutes, as not all have strictly adopted the MPC or have amended it, with the individual State's definition of marriage and recognition of common-law marriage key among their differences. For example States such as California and Nevada only recognise those bigamous marriages officially licensed by the State and do not penalise common-law polygamous marriages or polygamous cohabitants, while Utah takes the opposite position. Thanks to this, Hugh Heffner is able to cohabit with multiple female companions and lead his 'playboy' lifestyle free from government interference for presenting the appearance of being a *de facto* bigamist with a veritable personal harem. By the same token, Utah does not host the Playboy Mansion, but rather tens of thousands of FLDS Church members, where under-aged and forced marriage is endemic among a great tragedy of other social ills resulting from the power and abuse of the FLDS.

States with high concentrations of polygamy now avoid prosecution of bigamy itself and rely on a harm-reductionist model focusing on

¹⁶The Model Penal Code, §230.1; Ala. Code §13A-13-1; Cal. Pen. Code §281, 282; Ga. Code §16-6-20; 720 Ill. Comp. Stat. 5/11-45.

¹⁷Turner v. State of Mississippi (1951) 212 Miss. 590, 55 So.2d 228; State of Iowa v. Hughes (1882) 58 Iowa 165, 11 N.W. 706.

associated crimes such as child abuse, forced marriages, domestic violence and frauds (Van Kerkvoorde 2010). The high-profile arrest and trial of FLDS leader Warren Jeffs did not involve a single charge of bigamy, and he is now serving a life sentence (and then some) for crimes related to child sexual abuse (Dougherty 2007). In the twin FLDS enclaves of Hilldale, Utah, and Colorado City, Arizona, these social ills are common, and the extremely high concentration of FLDS polygamists in society and government gives the area all the trappings of a thoroughly oppressive theocracy that routinely violates the rights of children and women. Welfare fraud is commonplace and so is extreme poverty. As the USA is a signatory of the Convention on the *Elimination of All Forms of Discrimination against Women*, it is obligated to combat under age marriage and matrimonial inequalities to the best of its abilities (UN 1979). Senate Majority leader and LDS member Harry Reid proposed additional legislation in 2008, which was never voted on, aimed at the FLDS and AUB as part of wider crackdown effort by Utah and Arizona.¹⁸ The Hilldale and Colorado City communities are currently being disbanded by court order over a variety of issues related to the FLDS crackdown and the Warren Jeffs case, most of it related to frauds perpetrated by the church and its various businesses and properties in the area.

As recently as 2006, the Utah Supreme Court in *State of Utah v. Holm* upheld the constitutionality of the prohibition on de facto polygamous marriages in spite of the right to privacy by heavily relying on *Reynolds*, without referencing the more objectionable commentary mentioned above.¹⁹ *Holm*, focused most heavily on the policy aspect of bigamous families and the harm polygamy causes, much like a 2011 Canadian judicial reference that found polygamy threatens the social order due to societal polarisation, unequal mate distribution, welfare costs borne by the State and because plural marriage often occurs in communities where women are exploited and depreciated in undemocratic ways.²⁰ Studies show women in such marriages suffer great physical and psychological

¹⁸Victims of Polygamy Assistance Act 2008, S. 3313(IS) 110th Congress, 2d Session.

¹⁹State of Utah v. Holm, (2006) 137 P.3d 726 (Utah Supreme Court).

²⁰Reference re: Section 293 of the Criminal Code of Canada (2011) BCSC 1588, per Bauman CJ at paras 229–233.

harm from low self-esteem through competition in familial dynamics. Partners are also at greater risk of contracting venereal diseases such as HIV, as is the case for locales in sub-Saharan Africa with high concentrations of polygyny (Chambers 1997). Additionally, polygamy deprives women and children of the potential to succeed economically based on limited resources in large families (Campbell 2005).

Until recently, the State law in Utah was very aggressive following *Holm*, prohibiting even the outward appearance of polygamous relations through plural cohabitation. This was part of a concerted crackdown by Utah and Arizona against polygamous sects that had existed with impunity since the political fallout from the Short Creek Raid almost 50 years prior.

This posed something of a problem for the 'stars' of one of the popular polygamist reality shows mentioned above. Kody Brown and his family of the *Sister Wives* programme on the TLC cable television network were subsequently investigated (but never charged) by Utah authorities even after they fled to the most morally permissive jurisdiction in the USA (and perhaps history)—Las Vegas, Nevada. Kody Brown has insisted that his family living arrangement is a 'lifestyle choice' based in a 'spiritual union' with no official, legal or religious sanction in spite of their affiliation with the AUB, an LDS breakaway sect (Schwartz 2013). They challenged the validity of the State statute, its special status under the Utah Constitution and case law pre-emptively in federal courts and won on the basis of the right to privacy under the 4th Amendment.²¹ The Brown case disparaged *Reynolds* for its racist undertones and declined to apply the narrowest provisions of the statute in spite of Utah's special duty to enforce bigamy laws per its aforementioned statehood compromise. Ironically, the Utah Federal District Court invalidated the Utah cohabitation clause the same week that another case in the Utah District Court invalidated Utah's constitutional ban on homosexual marriage (passed in a landslide referendum in 2004) albeit on grounds of discrimination.²²

²¹ Brown v. Buhman, Case No. 2:11-cv-0652-CW, 13 Dec 2013.

²² Kitchen v. Herbert, Case No. 2:13-cv-217, 20 Dec 2013.

It is this parallel with the homosexual marriage equality movement that illustrates the tension of applying the body of our current bigamy laws and the conflict between libertarianism and legalism. *Reynolds* does not trouble itself with issues of minority rights like similar civil rights litigation today. It is fundamentally based on legal majoritarianism and the power of a majority to make laws by which all must abide even if the said law is covertly in place to target a specific group.

Reynolds is based on an unspoken and somewhat vague standard about how wide this curtailment of practices can go: reasonableness. This standard of constitutional scrutiny has largely fallen out of use and is mostly applied to minorities in prison seeking exceptions or special treatment, as incarcerated felons are under special circumstances and subject to reasonableness.²³ *Reynolds* and bigamy laws in general predate a massive body of constitutional jurisprudence, including the 'king' of judicial review: strict scrutiny. Under strict scrutiny, the government may only infringe upon constitutional rights of ethnic, racial and religious minorities if there is a compelling government interest narrowly tailored to be the least restrictive means of achieving that interest.²⁴ Any statute targeting specific minorities or groups with a history of persecution and discrimination is subject to this onerous standard of review, and very few laws are found constitutional because of it. Furthermore, the Federal Religious Freedom Restoration Act of 1993 expands this standard to all religious freedom litigation.²⁵

All of this calls into question the validity of the belief/practice distinction from *Reynolds*, which no bigamy appellant, Mormon or otherwise, has successfully challenged. Aside from criticism of the case's problematic language, the merits of its arguments remain in place. This shows just how far *Reynolds* predates or fails to align with modern notions of strict scrutiny, equal protection constitutionalism and tolerance.

²³ *O'Lone v. Shabazz* (1987) 482 US 342.

²⁴ *United States v. Carolene Products Company* (1938) 304 U.S. 144; *Roe v. Wade* (1973) 410 U.S. 113, Blackmun J at p. 155; *Village of Arlington Heights v. Metropolitan Housing Development Corp* (1977) 429 U.S. 252; *City of Boerne v. Flores* (1997) 521 U.S. 507.

²⁵ Religious Freedom Restoration Act of 1993, Pub. L. No. 103–141, 107 Stat. 1488 (November 16, 1993), codified at 42 U.S.C. §2000bb through 42 U.S.C. §2000bb-4.

Bigamy Law Reform and Its Relevance

Estimates regarding the American polygamous population varies but may be as high as 40,000, the vast majority being Mormons of some sort or another (Cart 2001). Although typically a preserve of LDS fundamentalists and outright scoundrels, an increasing number of African and South Asian families practice plural marriage in spite of immigration controls rather than leaving their cultural baggage at the airport (Bernstein 2007). Although something of a relic, polygamy is recognised in over 60 countries either under civil law (Saudi Arabia) or customary law (South Africa). In a world deeply invested in globalisation, including the cultural and economic expansion of Asia, Africa and the Middle East, the issue of multicultural polygamy will become an issue of increasing importance as will the debate on assimilation and law and order, much as it has in Europe (Flather 2010). Indeed, one finds a troubling pattern of the high social costs imposed on society at large wherever polygamy is institutionalised, such as in Hildale, Utah.

This is problematic because the current status of anti-bigamy laws is now seriously in doubt following the *Brown* case, which is pending appeal. In reducing the issue of bigamy to that of a compliance issue tailored very narrowly around the American perception of marriage as a legal institution, *Brown* has created a massive loophole for polygamists amounting to stealth legalisation. It also raises the central question in *Reynolds*: What good is a legal system if every citizen of faith is 'a law unto himself'? That anyone can avoid prosecution if they rationalise their polygynous family differently and call it a 'lifestyle choice' must surely challenge the rule of law on some level, especially when done on a national television show called *Sister Wives* where the chosen wordage and media attention indicates the true intentions of this polygynous family to make a mockery of anti-bigamy laws.

Further complicating this problem is the high social costs of polygyny. The reality television programmes gloss over the institutionalised sex abuse in these outlaw communities and their shunning of dissenters, opting instead to cancel the series when they get too 'real' (Associated Press 2014). As such, most cases of abuse in insular communities occur in secret. The obscurity, social stigma and criminal sanction attached to polygamous families discourage reporting abuse to authorities for fear of

exposure (Batchelor 2000). Polygamous immigrant women experience different situations in plural marriages usually grounded in the Islamic faith (Hassouneh-Phillips 2001). Evidence suggests that such isolation can cause problems such as loss of perspective in making informed and autonomous life choices and puts great distance in monitoring abuse and providing support. By appealing to the State for recognition, the religious minorities are essentialised and their status as the minority 'other' is further reinforced. Much as this school of thought has moved Native Americans closer to the dominant Anglo-Saxon culture, it has done so under an atmosphere of inferiority and has few proponents.

But modern nation-states value public order as the basic obligation of government to its people, and classical liberals continually moot the precise role of the law in shaping public opinion and values or vice versa. Inevitably though, the success of any state under the rule of law depends of the observance of those laws, regardless of the consensus on philosophy.

It is with this in mind that a new legal framework must be devised. The current regimen aimed almost specifically at breakaway factions like the FLDS makes hero-outlaws of criminals by granting them a victim complex with a steady supply of human fodder for them to abuse and use for cover. With all 50 States and the federal government implementing their own individual and widely divergent family law, a new uniform civil marriage code would be a noble attempt at harmonising efforts in enforcing bigamy laws. It would be immensely more effective to reclassify bigamy as a misdemeanour intended to coerce miscreants into compliance with heavy fines first and judicial contempt second. This new legal status would also have an assimilationist effect given the 'outlaw' character of both polygamists in general and Western frontier life. It would also hit scofflaws in the pocketbook where it hurts most.

Conclusion

Family life in the USA is conveniently regulated to such an extent to best accommodate the belief systems of mainline Protestant Christianity by any means necessary. This is no coincidence, as the USA was, and arguably remains to some extent, an imperial polity dominated by a white,

Anglo-Saxon Protestant culture. In this regard, marriage is a tool of cultural regulation that matches the narrative that polygamous marriages are resoundingly barbaric and misogynistic. Accordingly, the narrative is not unfounded, but the means of achieving it are problematic because of their historical foundations and motivations.

Though there is no overt appearance of undue social oppression, the legacy of the Mormon anti-bigamy crusade has left a mark on our law that is at odds with our national respect for human rights and embarrassing in some regards. Rather than correct the course, a massive grey area has developed that recognises the intersection of polygyny with a variety of other crimes and social ills, but makes a ham-handed attempt to fix it for fear of legal uncertainty.

If any conclusion can be drawn from America's history of polygamy, it is that a polygamous society is not necessarily incompatible with American life and values, but polygyny, misogyny and patriarchy are. A polygamous society can be egalitarian in theory, but the only polygamous subcultures present in the USA are supremely unequal and dangerous to both their members and the public good. It is for these reasons that polygyny challenges the national identity and basic rights appurtenant to citizenship which necessitates substantial legal reform to secure those rights for all.

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Power and Citizenship in the Social Media Networks: British Muslims, Crime Prevention and Social Engagement

Noureddine Miladi

Introduction

Debates about the potential of new media in citizen engagement and crime prevention especially among the youth have attracted interest of scores of researchers, policymakers and civil society organisations across the world. During the last few years, various studies have focused on the socialising role of social media networks, how subcultures are formed and sustained and how individuals build a network of friends online and present themselves while they keep their privacy protected or otherwise. The Arab Spring revolutions have also brought to the forefront the study of social media networks in relation to power struggle, political mobilisation and social change. In Tunisia, Egypt, Libya, Yemen and, currently, Syria, Facebook and Twitter have proven to be effective tools that have empowered protest movements and helped activists get their voices heard both locally and internationally.

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This chapter aims to analyse the role of new media in the perceived social change among Muslim minority groups in the UK. It looks at how Muslim users, civil society organisations and youth groups have understood these technologies and have discovered the right tools and strategies to power their work sustainably. It also reveals the potential of Muslim media outlets in understanding criminology and crime prevention. The chapter investigates the way old and new forms of media can be seen as sites of resistance/alternative spheres where free debates can take place and how power relations can develop among minority groups in a Western liberal environment.

Muslims in Britain

According to the the Office for National Statistics (2013), there are about two million Muslims spread in various parts of Britain. However, they are mainly based in London and in major cities like Birmingham, Leicester, Manchester, Sheffield, Bradford, Newcastle and Glasgow. Because Muslims in the UK are more ethnically diverse than any other community, their media outlets are as a result unsurprisingly varied. The 2013 National Population Census¹ in England accounts for 68 % of Muslims who come from an Asian background and about 10 % from a black/African/Caribbean/black British origin. The census also reveals that about 47.2 % of the British Muslim population are second and third generation, those who are born and educated in the UK.

This ethnic diversity has not always been deemed enriching to the multicultural make-up of the British society. In fact,

‘Attempts by Muslims to preserve their faith and practices have sometimes been interpreted as separatism, a threat to “traditional British” values and have led to a questioning of the loyalty of “Muslims within” Britain’s boundaries. This series of questions/responses has in turn notably sharpened the sense of a Muslim identity (or identities) and resulted in the politicisation of Muslims in Britain, who have put forward numerous

¹Office for National Statistics, 2013: <http://www.ons.gov.uk> (accessed 10 November 2014).

claims, including the one to be recognised as a religious minority/such as Jews or Sikhs/rather than as an ethnic minority' (Rigoni 2005, p. 565).

Similar to the black community in the UK which has been historically subject to discrimination and at times institutional racism, British Muslims have faced recurrent Islamophobic cases (Pilkington 2014; Modood 2014). The Runnymede Trust (1997) accounted in its reports for several cases of racial abuse against Muslims which it termed 'Islamophobia'. This trend of hatred towards Muslims and Islam has in fact been on the increase during the last few decades, starting from the Rushdie affair in the 1980s to the September 11, 2001 attacks in the USA and the 2005 London Bombings and what is currently known as the 'war on terror'. The publication of the Danish cartoons defaming Prophet Mohammed as a 'terrorist' and the murder of 11 journalists of the French newspaper *Charlie Hebdo* further opened the door for the blanket stigmatisation of Islam and Muslims. Since then, the role of scores of western media outlets has been considered significant in further constructing a negative perception about Islam, hence the increase of racial hatred towards the Muslim minority community.

A pivotal question at this juncture is the debate about cultural encounters due to migration and the global communication flow. One of the enduring issues related to Islamic culture vis-à-vis social change is the acceptance or rejection of the global cultural influx being mediated through the traditional media as well as social media networks. The implication of the Western encounters with the Muslim minorities in the West, for instance, has been of great challenge to their belief system and Islamic identity. What is evident among Muslims in Europe is that Western culture has been embraced differently depending on the domain and age group. While the first-generation Muslims tend to cling to their Islamic beliefs and the cultural norms of their countries of origin, the second- and third-generation Muslims tend to be more flexible in their adoption of both their parents' customs and the norms of the mainstream British society. The exigencies of the present and the local environment seem to have compelled a negotiation of their cultural values with those of the modern liberal society. Considering the traditional Muslim society's cultural practices, the exposure to the Western lifestyle has brought to the older generations new values, which are in contrast to what they had been

brought up with in their countries of origin. As for the second and third generations, the norms and way of life they embrace while living in the West pose a challenge to the conservative customs of their families.

The evolving nature of the Muslim community in the UK is largely related to the transformation in the international media scene, especially satellite technologies; for example, a large number of Arabic TV channels broadcasting from outside the UK are now available, which can be received by the Arab and Asian communities. Up to 800 satellite TV channels from various parts of the Arab world can be accessed by diasporic communities in Europe. Hundreds of other channels beaming from India, Pakistan and Bangladesh can also be received via satellite by Muslims in Europe. Moreover, there has been a growing number of Muslim TV channels broadcasting from the UK like Islam Channel, Al-Hiwar TV, Channel S and Bangla TV, among others. These media outlets provide their audiences with a vast array of programme content from news to soap opera, lifestyle, religious programmes, sports and music. Such diversity in the Muslim TV market has broadly widened the choice of British Muslim audiences and subsequently thinned out the possibility of staying loyal to the mainstream British media.

Furthermore, the launch of Al Jazeera English in April 2007 was probably one of the key moments for Muslims in Europe in terms of the provision of an English-speaking alternative news channel as a mirror to the already well-received Al Jazeera Arabic channel. The long-awaited sister Al Jazeera English (now called Al Jazeera International) was welcomed as a more trusted source of news and current affairs analysis as compared to the mainstream British media or other western outlets like CNN or Euro news.

A Long History of Misrepresentation

A close look at the media portrayal of Muslims in the UK reveals a long history of misrepresentation. Ethnic minorities, subjects and citizens are words that have played an essential role in the historical development and representation of what Marranci (2011) calls the 'rhetoric of civilisation'. Various tabloid newspapers as well as broadcasting media have been criticised for the repetitive stereotypical frames which tend to

associate Muslims with fanaticism and violence and their faith to a backward religion not fit for the modern age. Referring to Pierre Bourdieu's post-modernism, as a framework for understanding this historical representation, labelling can be understood as not merely a neutral process of classification that social scientists perform, but rather an act of power, often politically connoted, in relation to the studied minorities and 'others' (Bourdieu and Boltanski 2007). In that process, the media tend to be powerful in producing and disseminating representation about minority groups in society. They often categorise, classify and evaluate individuals and communities in a way which leads to producing new meanings.

Therefore, the dissatisfaction of the Muslim community in the UK regarding the media coverage of their affairs is not hard to observe. Said (1997) in his *Covering Islam* pointed to the global trend among Western media which depict Islam in a systematic manner through a negative lens, mainly synonymous with terrorism and religious fanaticism. Also in a parallel case, in their study regarding 'media-for' (mainstream media) and the 'media-by' (by minority communities) which focuses on Arab and Russian minorities in Israel, Caspi and Elias (2011) reveal that

As a tool in the hands of the majority, media-for may serve as a versatile means of achieving political and cultural influence over the minority and its socialisation to the majority's values. As such, media-for would be more likely to express abundant support of the majority and to criticise it only rarely. A near-mirror-image situation may prevail, regarding media-by, which could give a voice to the minority's criticism of and dissatisfaction with the majority's policies and expose its discriminatory mechanisms towards the minority. (pp. 73–74)

In the UK, Poole (2002), Maxwell (2006), Miladi (2006), Dwyer et al. (2008) and Tsagarousianou (2012) among scores of other studies testify to the disappointment with which Muslim leaders, for instance, view their community as represented in the British media. Elizabeth Poole pioneered one of the significant studies regarding the misrepresentation of Muslims and Islam in the British press. Through an analysis of the British national newspapers, Poole (2002) argues that apart from very few exceptions, there is a systematic misrepresentation of Muslim issues

in British newspapers. News tends always to follow certain frames and is made sensational in order to attract attention. Also, mainstream media is regarded as very selective vis-à-vis events related to the Arab world, Pakistan, Bangladesh and Afghanistan, for instance.

Attestation to this claim has been intermittently made by consecutive studies during the last decade. In her research on European Muslims which looked at their perception of the media coverage as part of their general sense of belonging, Rosa Tsagarousianou argues that

when it comes to broadcasting—commercial and Public Service alike and the national press, European Muslims, regardless of country of residence, tend to express a number of reservations that relate to: (a) the misrepresentation of themselves as Muslims but also as residents and citizens of European societies; (b) the accuracy and truthfulness of news and other information relating to the Muslim world; (c) the values propagated by the media. (2012, p. 287)

In sum, the representation of Muslims in the mainstream media appears restricted to certain frames or zones, such as the frame of security, terrorism, crime, radicalisation and disorder. Also they are typically not covered in the news media through other positive aspects such as their successes, service to society and contribution to the health service and economy.

However, for the Muslim community, their faith is associated with peace and understanding. The Islamic values call for justice, freedom and democracy. They also encourage social justice, fighting crime and corruption in society. For Muslims in the UK, like other communities globally, Islam represents a faith that is firmly fixed in the monotheistic belief of the oneness of God (Allah) and the prophethood of Muhammad as a seal of the prophets. Also Islam to them is embodied in a culture which sets the codes and parameters of all cultural practices in everyday life.

The British Ministerial Group on Public Order and Community Cohesion established after the Bradford Burnley and Oldham summer riots in 2001 suggested in its report that the key to riots and subsequent social unrests was the marginalisation of the Muslim youth in Bradford and the 'ghettoisation' of the community from the mainstream British soci-

ety. The report titled 'Building Cohesive Communities: A Report of the Ministerial Group on Public Order and Community Cohesion' launched in January 2001 argued that among the key issues were

'the fragmentation and polarisation of communities—on economic, geographical, racial and cultural lines—on a scale which amounts to segregation, albeit to an extent by choice; ... disengagement of young people from the local decision making process ... and irresponsible coverage of race stories by sections of the local media' (p. 17).²

The report further highlights the disturbing local media coverage of racial issues. It reads that

'The main criticisms were of biased reporting of race issues—particularly racial attacks by Asians on white people—over a long period and inflammatory reporting of the disturbances. Cantle and Ritchie point to the cumulative effect that such reporting can have in souring community relations'. (p. 17)³

It may be argued that it is partly a result of the above that the British media scene has witnessed the appearance of numerous ethnic minorities' media outlets during the last 20 years. This is addressed in the next part of this chapter but suffice it note here that such changes may be attributed to various reasons: (1) complete mistrust in the content of the mainstream media. News programmes as well as current affairs are viewed as brainwashing and setting the agenda for demonising the community; (2) others have pursued a deliberate choice of complete withdrawal from the mainstream society, and they are totally engrossed in consuming TV and radio programmes or reading newspapers belonging to their community and (3) while the most easygoing will watch the mainstream media in its various genres because they see it as part and parcel of being British, they are not passive consumers. They would rather file official complaints when they spot bias reporting against their faith or community.

² 'Building cohesive communities, Report of the Ministerial Group on Public Order and Community Cohesion – The Denham Report', UK Home Office, January 2001. <http://resources.cohesioninstitute.org.uk/Publications/Documents/Document/Default.aspx?recordId=94>.

³ *Ibid.*

Muslim Media and the New Spaces for Cultural Expression

Against this backdrop of misrepresentation, scores of Muslim media outlets have emerged during the last two decades. Various newspapers, a few of them in English, others in Arabic, Urdu and Gujarati were launched to provide alternative platforms of information circulation and communication among the various communities. *Impact International*, *Q-News*, *Crescent International*, *The Muslim News* and *Trends* were thriving outlets in the 1990s and were considered valuable spheres that provided the news and analysis missing in the mainstream British media about the Muslim communities. Subsequently, the new millennium has also witnessed the emergence of Emel magazine⁴ (a Muslim lifestyle magazine established in 2003) which has given a new dimension to the representation of the Muslim way of life and has echoed the diversity and moderation Muslims cherish in their faith and daily practice. On the news production front, a few newspapers appeared, albeit limited in their circulation and impact, which caught attention by providing the news analysis Muslim readers look for. *The Muslim Weekly*,⁵ for instance, may be considered the most popular in this regard which started circulation in East London among the Asian community and now spans various cities of the UK in term of its outreach and bearing.

On the broadcasting front, Islam TV Channel⁶ was launched in 2004 to address the social, cultural and religious needs of the growing Muslim community. A UK government research, in 2008, found that the channel had been watched by up to 59 % of British Muslims (Kerbaj and Kennedy 2008). For those considered second- and third-generation Muslims (born and brought up in the UK), the channel has become the vehicle of their aspirations and a platform for their cultural and faith expression. It is not a coincidence then that the channel is run by a small group of professional media experts but also staffed with a large pool of young volunteers (new graduates as well as university students) who do everything from

⁴<http://www.emel.com/>.

⁵<http://www.themuslimweekly.com>.

⁶<http://www.islamchannel.tv/>.

camera studio production work and administration responsibilities to publicity, marketing and fundraising for its various projects.

Al-Hiwar TV⁷ (launched in January 2006) is another significant TV channel launched by the Arab community, broadcasting from West London. Like the Islam Channel, Al-Hiwar TV provides its audiences with a unique programming content in Arabic. It promotes itself as supplementing the Al Jazeera channel. Its executive director, Adnan Faour, argues that 'We address hot and daring issues related to the Arab region which you don't sometimes see on Al Jazeera. We cover events and perspectives that mainstream Arab and non-Arab channels miss out'.⁸ With regard to their programme agenda, both Islam Channel and Al-Hiwar TV consistently reflect the priorities of their respective audiences and adapt to their worldview. During the fasting month of Ramadan, for instance, these channels carry special programmes that cater to the people observing the fast. Scheduling content tends to appeal to their audiences' taste, part of which is less entertainment and more religious content. Special programmes are broadcast around the start of the fast and during the evenings just before and after the breaking of the fast (after sunset). All evenings and all nights are also dedicated to fundraising for various humanitarian causes. For instance, every night during the fasting month viewers are presented with a new fundraising appeal led by a Muslim charity organisation. This activity significantly raises the popularity of such channels and also inspires the community to donate, sympathise with needy people from around the world and potentially partake in humanitarian work efforts.

Worthy of mention is that news programmes and other TV content have to do significantly with the minorities' countries of origin. Typically minority communities are inclined to keep close relationships with their homelands especially when it comes to the first generation of immigrants. Close ties are manifestly cultural as well as economical. Fund transfers to families in Bangladesh and Pakistan or India via Western Union have been a regular feature of scores among those communities especially at the end of each month. However, consumption of satellite TV content from abroad signifies an affinity to the countries of origin. The symbolic

⁷ <http://www.alhiwar.tv/>.

⁸ Adnan Faour, Al-Hiwar TV, Personal Interview, London, 21 June 2012.

connection is unmistakable through the soaps and news programmes, that minority communities consume, which are broadcast on channels from overseas.

Apart from the significance of TV broadcasting on satellite, the advent of radio broadcasting on Restricted Short Licences (RSL) proved an engaging medium among the UK minority communities. One such example is the development of community radio. During Ramadan, among the Muslim community, radio broadcasting has become a key medium of information and inspiration. This tailor-made restricted radio service has been a successful medium involving diverse members of the community and broadcasting during Ramadan. Radio Glasgow, for example, introduces its service as

a community radio station which broadcasts every year on a month-long RSL licence. It is entirely organised and run by volunteers, and is registered as a not-for-profit company. Our funding comes from advertising revenue through local and national businesses, and statutory service providers. Radio Ramadan aims to provide a valuable service to the local Muslim community, which wants focused programmes during the holy month of Ramadan.⁹

After 17 years since the inception of the first experience of Radio Ramadan in London, this radio service has become widely adopted in various UK cities, embraced by both younger and older generations among the Muslim community. Its content covers a wide spectrum of tastes and interests such as women's and children's programmes, news and current affairs, entertainment, religious and cultural content, as well as fundraising opportunities for charitable organisations. Such a platform, as suggested by Browne (2005), Miladi (2008) and Caspi and Elias (2011) has assumed an important mission for minority communities, which is to compensate for the lack of space in the mainstream media. Both in broadcasting and print, ethnic minority media outlets serve as a 'compensative means of expression for groups whose image the mainstream media tend to ignore' (Caspi & Elias 2011, p. 63). Many have transformed

⁹ Radio Ramadan Glasgow (UK) homepage; <http://www.radioglasgow.org/> (accessed 6 March 2015).

from humble projects that may entertain or facilitate communication into thriving 'arena(s) of alternative representation and a tool for promotion of the minority's political, social and cultural interests' (ibid.). Also the fast development in Internet technologies has facilitated the availability of online radio broadcasting and online newspapers which can be accessed 24 h a day, 7 days a week. The Internet has further facilitated the development of new spaces of interactivity known as cyberscapes, which increasingly seem to have become an alternative public sphere.

Social Media and the New Cultural cyberscape

There have been strong claims regarding the power of globalisation in affecting local cultural practices and beliefs. The impact is not hard to perceive when we consider the day-to-day routine of younger Muslim generations, their lifestyles and consumption behaviour. Clothing, music, hairstyle, habits and other daily practices are reflections of the desire for international brands, music and film stars and less adherence to traditional conservative religious teachings. The Internet, however, seems to have brought new opportunities and possibilities of cultural expression and identity manifestation. Social media networks, which now tend to reflect the Muslim community's political and cultural interests, seem to work as cyberscapes beyond the home for Muslim youth. One may call this trend a form of empowerment and identity consolidation which does not typically find its manifestation in the everyday spheres of the mainstream society. For most Muslim youth, this new transformative cognitive environment seems to have become a strong alternative of cultural and religious expression on the one hand. On the other hand, it serves as a space for confronting extremism and the tendency towards deviance and crime.

Faced with the day-to-day challenges of misrepresentation and given the new opportunities made possible through new technologies, British Muslims have not remained silent vis-à-vis the bad image they have been receiving over the years. In the recent decade, with the technological developments in satellite technology and the Internet 'European Muslims', argues Rosa Tsagarousianou, 'have developed critical attitudes

towards and distance from European mainstream media. They have developed skills that enable them actively to deconstruct and reconstruct mainstream as well as “Muslim” media content’ (2012, p. 293). Social media networks particularly have been harnessed as valued spaces of interactivity and connectivity. They have proved effective in providing an alternative space for Muslim youth by breaking through geographical barriers and communicative spheres.

From Marginalisation to Empowerment

Hence the feeling of marginalisation due to the negative portrayal of the mainstream media has been overcome by the advent of the Internet. The free space available via social media networks has proven very valuable in this regard. New technologies have helped Muslim youth gain confidence and proactively engage in the cyber environment. University students and young professionals have found tools to educate others about their faith and get involved in debates related to various social and political issues through social media. The mushrooming of community as well as individual internet and social media networks signify a desire to challenge the status quo instead of submitting to the stereotypical frames set by the mainstream media.

Also, it is evident, with the fast expansions in the media scene, that British Muslims have developed critical media consumption habits. The mainstream media are always scrutinised in terms of their content which can be seen as stepping over the limit of objective reporting of their affairs, including that of mosques, *madrasah* (Islamic school), *hijab* (Muslim women dress), Prophet Mohammed, the Qur'an or other aspects of their religion. In a study exploring how minority groups have been employing new media as platforms for cultural expression, Johnson and Callahan (2013) looked at how the Garifuna people (who are a group of Black Latinos, descending from West African slaves in the Caribbean and Arawak Indians and of whom currently about 600,000 exist in Central America and the USA) capitalise on social media to consolidate their cultural identity. After feeling marginalised for decades and having suffered from the inadequacies of the mainstream American media, they turned to social media for connectivity and self-expression. Johnson and Callahan

(2013) further write that 'Garifuna of all ages quickly began to adopt social media ... [T]he spread of social media to mobile phones allowed a whole new dimension of cultural uses and access' (p. 326). In addition the 'Garifuna created a supraterritorial cultural space within the framework of social media and have used this space to propagate and strengthen their culture regardless of geographical considerations' (ibid., p. 326).

In another study conducted on the Muslim minority media in Western Europe, Rigoni (2005) reveals that ethnic minorities are not extensively studied in relation to their contribution or use of the media in western societies. Growing evidence in Europe demonstrates that 'ethnic and religious minorities are playing a growing role in the media and the public sphere, especially through their intensive use of new technologies of information and communications. At the same time, as participants in mainstream media and as producers of minority media, they challenge existing notions and practices in the context of a multicultural Europe. These new forms of mobility and mobilisation question the concepts of inclusion and exclusion, political participation, representation and citizenship' (ibid., p. 564). Also, one may observe that there has been a growth in the Muslim youth's tendency towards religiosity. While this can be considered a positive aspect towards consolidating one's own identity and self-confidence, this trend has also meant somehow a form of dissociation from the first generation's cultural affinities towards an association with a more global community of the *Ummah*.

However, capitalising on McLuhan's (1994) theory, new media is said to have an empowerment effect on the Muslim community. The emergence of various media outlets run by members of the community signifies the emancipatory function earlier attributed to the media. This aspect of the media's social empowerment has been further developed by various scholars. In his book *The Rise of the Network Society* (2000) Manuel Castells gives credit to the media technologies' significant social functions and sees it as radically impacting on social transformation. In these new 'technological conditions', he considers information as key aspect to social life and digital networks constitute the nerve system and a decisive tool for social transformation. According to him 'the networked society' means a situation where people become more efficient in accumulating, storing and using information, thus becoming more and more empowered.

Banking on Castells' line of analysis, one may argue that firstly, the development of the World Wide Web has opened up new avenues during the last two decades for subcultural groups and minority communities. The new forms of online campaigning which have been attributed various terms such as 'cyberactivism', 'Internet activism', 'electronic advocacy', 'electronic resistance' or 'electronic *Intifadah*' (in the Palestinian context) constitute facets of developments in the virtual internet environment. All these emergent terminologies signify the potential of Internet platforms for the circulation of information, organising public relations campaigns, connecting members, calling for action and organising protest movements. This new environment allows, according to Di Felice (2013, p. 15), 'all actors in a technologically symmetrical fashion the faculty of construction and diffusion of content'.

Secondly, one may also highlight another dimension proposed by Castells (2009) who anticipated that the rise of social media networks will contribute to a change in power relations in society. The mass self-communication theory (Castells 2009, p. 63) involves the ability of individuals in society to amplify their outreach in expressing their views and influence on public opinion. The fact that human rights or political/apolitical activists have tens of thousands of members as friends or followers on their Twitter and Facebook pages has meant that such individuals have become potential competitors to media organisations in spreading news content. Some of them may be considered influential opinion makers in this process. In her book *Life on the Screen* (1995), Sherry Turkle anticipated, back in the mid-1990s the role of the Internet as a potential 'space for growth'. This newly-emerging platform for interaction at the time presented a significant tool for self-expression and communication with others. According to Turkle, all this happens in what may be understood as a transitional space of identity expression.

New Forms of Mobilisation and Citizenship Engagement

There is growing evidence which confirms that, thanks to social media, Muslims in the UK have developed a vibrant space for the active contribution towards social, political and cultural life in the country. Debates

on what it means to be British and integration and modern interpretations of multiculturalism and citizenship circulate widely in these alternative media platforms. Like other minority groups in the UK, the Muslim community has capitalised on fast-developing technological changes. The online spaces as well as old media, like radio broadcasting and newspapers, provide essential spaces of engagement to discuss identity and citizenship. The new media technologies have also served as precious tools for youth, activists and community organisations to develop their alternative forms of communication among Muslims and the wider society. Social media networks have further expanded their outreach and to some extent blurred the media divide in modern Britain at least in cyberspace. Civil society organisations have consolidated their virtual presence through a thriving social media environment. This environment has not only become a manifestation of a community in action but advanced the possibilities for activism and mobilisation. The online diffusion of messages regarding protests, gatherings and other social events have provided activists with unprecedented possibilities of connectivity and influence. The Muslim Council of Britain (MCB), Muslim Association of Britain (MAB) and other major organisations used to depend on email groups, telephone messaging, flyer distribution or direct face-to-face communication to call for protests and mobilise their members for big gatherings. Nowadays they capitalise on Twitter, Facebook, WhatsApp, among other tools, to reach out to thousands of supporters in a matter of minutes. Never before have minority groups managed to break the barriers of communication like today.

Moreover, old media platforms such as Islam Channel, Al-Hiwar TV, Radio Ramadan, *Emel* magazine and The Muslim Weekly, to mention a few, have been instrumental in enlightening the Muslim community about mainstream Islamic teachings and how they should be applied in their daily lives. Also such outlets have had a leading role in fighting extremism, deviance and crime in the midst of the Muslim Community. Programmes like 'IslamiQA', a 'daily surgery presented by Muslim scholars who answer viewers' questions', in addition to Fiqh programmes on Al-Hiwar TV deal with complex issues related to Islamic jurisprudence. Themes in these genres range from how to perform prayers, fasting, zakat and hajj, to other social matters like how to fight extremism, what are the

boundaries of halal (legal) and haram (illegal) in Islam and what is a criminal act as compared to a legal practice in the everyday life of a Muslim. One would argue that the plethora of topics being discussed in those programmes, in addition to the debates that take place on social media, provide a source of guidance to both young and old generations about the dangers of criminal behaviour and the hallmarks of efficacious citizenship.

Muslims have also been dynamically engaged in the British civil society's peaceful activism. According to the MCB, which is the largest umbrella organisation representing Muslims, the UK has become a multicultural society, where various cultural expressions should be recognised and accepted. The MCB, MAB, Islamic Forum Europe along with other umbrella organisations have been active participants in Stop the War Coalition which have mobilised millions of British people during the last decade towards various protests against the invasion of Iraq in 2003, Gaza war in 2009–2010 and 2014 and the Syrian crisis, to name a few. On the universities' front, the Federation of Student Islamic Societies in the UK and Eire, and despite the criticism that one may put regarding some of its activities, has had a significant role in the organisation of Muslim students and campaigning for their rights. Also its remarkable presence and impact in the affairs of the UK National Union of Students is not to be missed. Moreover, on the European level the Federation of European Muslim Youth and Students Organisations (FEMYSO) is another noteworthy example of an efficient Muslim organisation that has been working on the positive and active inclusion of Muslim youth and students in the mainstream European societies. Through its various projects, FEMYSO promotes positive integration and active participation in the welfare of European societies.

Spaces for Potential Radicalisation

While considering the above advantages of Muslim media outlets and their benefits to the often-marginalised Muslim youth in British society, one would also highlight some of the challenges that have come with the new media technologies. Although the trajectories may be hard to pin down empirically, social media seem to have facilitated links with global

extremist groups, hence have paved the way for easy affiliation and commitment to their agenda.

Various studies and official reports testify to the fact that social media platforms have served as tools for radicalisation as well as recruitment by extremist groups. Whether this concerns far-right movements in Europe or religious extremist groups such as Al Qaeda and the so-called Islamic State of Iraq and Syria (ISIS), the abundant circulation of video messages on YouTube as well as other social media networks is a case in point. On the other hand, new technologies have extended the scope of cultural expansion and influence of online activists. Facebook, Twitter, YouTube and WhatsApp have not only offered platforms for influence to such extremist groups like Al Qaeda and nowadays ISIS, but also enabled them to have global reach and recruit new members solely via online interactions. Cultural identities and cultural expressions, argues Mitchell (1995), are not limited any more by geographical spaces. This form of unprecedented communication and potential for connectivity and recruitment has been unparalleled in the history of radical groups in terms of their formation, expansion and infiltration of global society in spite of the limitations of geographical space in which they can physically manoeuvre.

Nonetheless, there has been remarkable literature about the exaggerated perceived radicalisation of Muslim youth and activists in the UK. Most often the results of these works, in addition to calls by community leaders, pinpoint the root causes of radicalisation and terrorism as a starting point for a solution. Studies such as 'Commission on British Muslims and Islamophobia' (2004); Abbas (2005); Hopkins (2006); Maxwell (2006); Dwyer et al. (2008) confirm that there has been a tendency to inflate the dangers of a few elements amongst Muslim youth who have been misled by extremist groups. Such studies call also for bravely looking at the causes of such possible radicalisation and working on the positive integration of Muslim youth in British society instead of demonising them from a young age. It is worth noting that the Home Office in the UK has been investing great efforts and resources in this direction for over 7 years. The Prevent Agenda has helped identify few cases of radicalised youth who have followed a path of extreme behaviour, whether from among the Muslim community or from the far-right groups in the UK. However

one may argue that such efforts sometimes are not sustained while a few media outlets, namely tabloid newspapers, still persist with a scaremongering agenda when reporting about Islam and Muslim affairs.

Alluding to the above, Muslim youth seem to be on the one hand lacking the proper social conditions where they can prosper intellectually and financially like their fellow citizens. On the other hand, they seem deprived of equal support mechanisms to foster future aspirations which help them actively contribute to the welfare of the wider British society. More importantly, one may assert that the media is partly responsible for depriving Muslim youth and professionals of a proper democratic participation due to the systematic approach in seeking to alienate them.

Therefore, being faithful to one's faith should not be regarded as a form of radicalisation or potential extreme tendencies. The manifestation of the distinct self as a reflection of one's own beliefs is relevant to all religious groups in modern society and is at the core of religious freedom. In a comparative study between Muslim and Christian youth, Kashyap and Lewis (2013) reveal that 'Muslim youth religiosity although uniquely expressed, influences moral and social attitudes for Muslims similarly to that of Christian or other religious youth' (p. 2117). Hence, attempts by a few media outlets to report aspects of religiosity among Muslim youth, such as religious dress, commitment to prayers in mosques, religious education and youth gatherings, as signs for potential radicalisation, are far from being objective journalism.

Conclusion

In sum, and as noted in the above discussion, the characterisation of British media along a continuum reveals a problematic relationship with Islam and the Muslim minority in the UK. Anxieties by British Muslims regarding the negative portrayal they receive from the mainstream media are frequently underscored. This misrepresentation of Islam has not abated in spite of the continuous critics who pointed out this selective agenda by a few media outlets. Themes and frames relating to Muslim extremism and terrorism have been recurrently reproduced as dominant topics in the British media coverage (Baker 2010; Poole 2011). Media representation

and the public's perception of Muslim youth as potential troublemakers, in addition to the UK government's foreign policies, namely in Iraq, Afghanistan and Palestine, are seen to affect the social integration of young Muslims in the mainstream British society. It can be also noted that 'Increasing literature has emerged that critiques such stereotypical constructions of Muslim youth and problematises the conflation of radical political Islam with quotidian religious practices, behaviour and beliefs of Muslim communities' (Kashyap and Lewis 2013, p. 2118). However, concerns about this continuous misrepresentation of the Muslim culture and faith seem to remain only in the books and journals of academic research and do not find resonance in policymaking quarters.

Worthy of a mention in this expanding media environment, and in spite of the above trepidations, is that the Muslim community has developed efficient means to get its message across and provide an alternative discourse about their causes. Social media spaces as well as other media outlets such as radio and TV have turned into vibrant milieus of engagements with the wider society. They have also proved effective tools for preventing deviance, extremism and criminal behaviour. With these social developments in mind, the Muslim media can be said to have contributed to the debates about the redefinition of British citizenship and civil society. They have also made significant contributions towards a peaceful and prosperous society. Subsequently, what appears to have become hot on the agenda of British civil society are new issues which are being debated and revisited like Islam, Muslims and Islamic culture. Thus, although they may not seem effective in penetrating mainstream British public opinion, the fast-developing new media technologies as well as satellite TV channels such as Al Jazeera International, and Islam Channel, among others, may in the future offset the discourse about Islam and Muslims in the UK as well as in the rest of Europe.

Moreover, it is noteworthy to highlight the extent to which young Muslims negotiate their identities in the midst of a puzzling atmosphere of media bias. It is evident nowadays that a few are lured to a radical tendency, partly because they feel rejected by mainstream society. Many feel the pressure of the media's negative portrayal hence become further alienated in their own world. Others, although they may have good education and upbringing, remain disillusioned with their identity. They perceive being

Muslim and British as conflicting parts in their identity. However, while few may resort to a radical tendency, the majority courageously attempt to challenge the stereotypes and set a good example of a Muslim citizen proud of his/her Britishness as well as his/her distinctive faith. Also, in spite of the fact that Muslim media can be possibly perceived as detaching part of their audiences from the British mainstream media environment and the British society's broader concerns, they also seem to be a source of empowerment and enrichment. Because they are produced and managed by Muslim youth/professionals, TV as well as radio channels such as Islam Channel and Radio Ramadan are regarded by the Muslim community as more authentic and legitimate representatives of their concerns.

On a final note, and reflecting on social science research regarding minority communities in Western societies, one would argue that traditionally, studies relating to minority groups in the UK have mainly focused on issues involving marginalisation, social usage, integration, homogenisation and cultural impact. However the evolving social media environment, I would argue, has opened up a new field of research which helps to the study minority communities from fresh perspectives. One such area which deserves to be flagged up is the mass media as a terrain where dominant groups struggle to create and maintain their hegemony and where minority groups are becoming able to challenge that hegemony. Central to this thesis are social media, which are nowadays becoming sites for ideological, cultural and even religious battles and where cultural and social relations of power can be negotiated, won and maintained.

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14

Spirituality and the Black Community: Criminality, Victimisation and Well-Being

Bertha Ochieng

Introduction

A growing number of studies have reported fairly consistent positive relationships between religion and spirituality with positive coping strategies for negative life experiences (Hazel and Moffat 2001; Maman et al. 2009). This suggests that the spiritual dimension of an individual needs to be considered in experiences of victimisation and negative life experiences. Although Struve (2001) demonstrated that religious involvement directly influences an individual's quality of life, other studies have reviewed the close connection between religion and spirituality and positive well-being (see the work of Hylton 1997; Larson et al. 1998). Hill and Butter (1995) argued that religion and spirituality can have beneficial effects on well-being through social networks. Religious and spiritual communities provide opportunities for companionship and involvement

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in formal social programmes, which can have beneficial effects by reducing both psychological and physical stressors. With regard to people of African descent, Smith (2010) discusses how members of the community who adhere to Kwanza celebrations articulate the strategic benefits of this ceremony in facilitating their reaffirmation of unity and culture as people of African descent.

According to Hylton's (1997) study of Black families, the term spirituality is used to refer to wider feelings that include religious adherence and a way of life that can help families survive life within a context of discrimination and marginalisation; however, Miller and Thoresen (2003) argued that spirituality concerns the individual quest to understand and attribute meaning to life and being sacred. Meanwhile Stebbins (1997) and Weinbender and Rossignol (1996) suggested that spirituality is primarily one of the means by which people of African descent are able to adapt and respond to victimisation and widespread social discrimination. This implies that spirituality is a complex construct, which encourages believers to adhere to certain beliefs and behavioural patterns and practices which can be beneficial to their physical and psychological well-being. In this chapter, spirituality is used to refer to wider feelings that include religious adherence, an active connection to some 'power' and 'spirit' related to selfhood and an ethical way of life. While religion according to Sadique (2014) refers to:

a belief in [God(s), Humans, Nature, Self], that often requires faith in one or more of these having influence over our lives, that is demonstrated through certain practices, rituals, rites, and 'ties fast' its followers to itself and other followers (in a non-geographical community) who share the same values.

There is growing knowledge and understanding of the ways in which spirituality and religion play a part in how people understand and cope with their physical and mental well-being. Other studies (Koffman et al. 2008; Maman et al. 2009) suggest that many people of African descent turn to their religious and spiritual beliefs to help them cope with difficult and at times traumatic life circumstances, including victimisation and discrimination. Drawing on data from a community-based study in

the north of England conducted by the author in 2012 and drawing on other published work, the chapter will present a critical analysis of Black families' use of religion and spirituality as a vehicle to sustain their well-being against experiences of victimisation, discrimination and strengthening individual and community support. Perhaps one of the best-known illustrations of this is among the Jewish community during and after the Nazi Holocaust (Jakobovits 1986).

In my 2012 study, data were collected by means of an in-depth interviewing process. Forty-eight families of African descent (22 men and 26 women) with ages ranging from 39 to 60 years from the north of England participated in the study with interviews conducted in their homes. The participants were not randomly selected and cannot therefore be regarded as 'typical' or representative in the statistical sense. However, they are typical in that their lives reflect the history and experiences of the social and the economic life of working-class Black African families within the region. The chapter explores five key areas which emerged from the study. This chapter concludes by stressing the need for a greater awareness and understanding of the nature of religion and spirituality in the lives of Black families.

Spirituality and Interface with Health and Well-Being

In my study with families in the north of England, all Black families argued that their spiritual and religious beliefs were a core element of what constituted positive well-being. One respondent summed this up as:

Good health is having a relationship with God. (56-year-old woman)

According to the participants, a good sense of well-being and emotional equilibrium was not possible without a spiritual relationship with a higher being or God. Their religious and spiritual beliefs gave them inner peace and contentment and contributed towards a healthy physical mental and social well-being. Furthermore, they argued that their physical and mental well-being was 'in the hands of God' and not them; God

was accountable for the state of their health and well-being, hence the frequent expression, 'I leave everything to God':

if I tell you the victimisation and discrimination I have suffered through the years and being called names on the street, if it was not for my religion and what I believe in, I do not think I would be here now, but maybe dead or in prison. (61-year-old man)

Though the participants acknowledged they faced the challenges and struggles that are features of a significant proportion of Black families residing in the UK, such as poor working conditions, marginalisation, racism and victimisation, they stated that to an extent their spiritual beliefs provided them with strength and empowerment and enhanced their coping mechanism for dealing with the effects of such experiences. This is in line with evidence from a number of studies (Beckford 2001, 2006; Campbell 1986; Cruz 1999), which suggests that the majority of Africans and people of African ancestry in the UK and Europe use spirituality as a coping mechanism to deal with challenges such as victimisation and social disadvantages that on the surface appeared insurmountable; they use worship, meditation and prayers to enable them to cope psychologically with such challenges. Spirituality was therefore an important element of their lived experiences because it enhanced their physical, psychological and emotional well-being.

One of the criticisms of this use of religion is that it contributes to forms of individual escapism and the abdication of responsibility for collective engagement to solve problems facing the group as a whole, as documented by Rex and Tomlinson (1979) in their observations of the Pentecostal and similar churches in the early African Caribbean community. Retreatist religious strategies represent the opposite of other popular religious responses to black oppression (Cleage 1972; see Stanislas chapter) explaining its lack of appeal to black males, and African Caribbeans in particular, and its association with what is seen as an effeminate Christian church, and the growing interest in the more masculine Islam for this group (Reddit 2009).

Although people's spiritual dimension is not frequently mentioned when discussing experiences of victimisation, because it is difficult to conceptualise, the Black families in the north of England study found that spiritual belief and religion promote a broad holistic view of the individual

that encompasses the physical as well as the psychological, social and spiritual dimensions. For instance, the salient beliefs of particular religious and spiritual beliefs were described as engendering peacefulness and a sense of purpose. Consequently, spiritual and religious belief was a core element of what constituted coping mechanisms against disadvantage and victimisation. The participants suggested that strategies to alleviate and reduce victimisation, including working with victims who have experienced victimisation, should take account of an individual's spiritual beliefs.

Spirituality as a Mechanism of Coping with Victimisation

The spiritual part of a human being is very important. (52-year-old man)

The African-descent participants in my study highlighted considerable knowledge on maintaining physical safety and their well-being such as: positive family and kin network, awareness of their environment, being physically and mentally healthy/active, drinking alcohol in moderation and meditation as a form of relaxation and way to improve mental well-being. However, when they described the activities that they use to promote their physical safety and well-being, it emerged that it was the participant's spiritual beliefs that directed certain behavioural patterns and practices, rather than a reliance on law enforcement agencies:

The choices I make in my life are guided by my spiritual beliefs ... my physical and mental wellbeing and decision of what is right and wrong is based on my spiritual beliefs, I am a very spiritual person. (37-year-old man)

Indeed, spiritual beliefs and practices seemed to be woven into these families' way of life and gave them a purpose for living. They drew on their spiritual practices and faith as a source of strength and as a rationale for engaging in activities that promoted their individual safety and positive well-being. The participants argued that their spiritual beliefs promoted a broadly holistic view of the individual, which encompasses the physical as well as the psychological and social dimensions of their well-being. They maintained that leaving matters to God, spending time

in prayer or spiritual meditation and being involved in fellowship with like-minded believers fostered a sense of serenity even in the face of victimisation and otherwise stressful situations. This should not be surprising because young people of African descent are particularly likely to be victims or convicted of offences (Eades et al. 2007). Dobby et al.'s (2004) highlighted that from eight police sources, the peak age for victimisation in relation to firearms was 20–24 years old and 40–44 years old for air weapons. Earlier work by the Institute of Race Relations (1987) revealed that men were significantly over-represented both as victims and in particular as offenders, and that certain ethnic groups, particularly Black men (African Caribbean, Black British and Mixed race) were over-represented as victims and offenders. Indeed the analysis from Wilson's work suggests that violent victimisation was disproportionately directed at young Black men in comparison with other communities. Young Black men's mass incarceration distorted age–sex ratios in the Black community and inhibited the capacity of stable family formation. Important in this discourse is the fact that Black men and family did not only experience such disproportionate victimisation, but on a daily basis they are confronted with racial discrimination and racism and these carry with them severe repercussions. Yet what is most certainly significant is that Black families are not resigned to their fate, but were using spirituality to provide them with notions of resilience and psychological resolve. Of even more importance, these Black forms of worship contain the types of defiance and resistance that enabled families and communities to recognise the commonality of their condition during the chattel slave era (Smith 2010, see Stanislas chapter). Evidence also suggests that Black families are calling for a better understanding of the challenges Black men encounter within the wider UK society and the need for their community and themselves to redress a masculinity constantly damaged by racism and discrimination, leading to socio-economic disadvantages, family breakdowns and poor experiences of healthy lifestyle for men, women and their children (Ochieng 2013).

In the north of England study, although spirituality remained central in the lives of participants, the individuals who were members of an organised religious group, for instance the Christians, preferred to attend an all-Black church; they claimed that this gave them a sense of companionship and belonging. All-Black churches were seen as an exten-

sion of the family and functioned like a family. Participants described how church activities brought different families together where they used terms such as 'sister' and 'brother': Participants thought that the spiritual practices and the style of worship in the Black churches enhanced their integrity and individual and collective identity as Africans, at the same time offering a level of security within the clear boundaries of religion. African-descent families felt that the Black churches played a crucial role in creating a sense of community and as an institution for social and political change. They described these religious organisations as an important source of positive psychological support through the convivial fellowship and as a focal point for community participation, giving them a sense of security, belonging and kinship. Additionally, participants described how against a background of low socio-economic status, racism and discrimination, it was their spiritual beliefs that seemed to sustain a positive outlook on their life experiences. They maintained that leaving matters to God, spending time in prayer or spiritual meditation and being involved in fellowship with like-minded believers may foster a sense of serenity even in the face of demanding and otherwise stressful situations. This is confirmed by Martin and Carlson (1988) who argued that stress-inducing demands and expectations may be less upsetting to a religious person. The salutary effects of religious practice which were as a result of participating in worship and prayer were associated with psychological well-being and served to ease anxiety and dread, defeat loneliness and establish a sense of being loved and appreciated.

Black Spiritual Movement as a Form of Resistance

As mentioned above, the emergence of a Black spiritual movement in the West was a representation of the efforts made by people of African descent to help them cope with mainstream society. In the UK, the African Indigenous Churches and the African Caribbean Churches have made significant steps in developing themselves and their communities as a people who can face adversities and move onwards and upwards in their goal to equality. Just as participants in my study preferred to attend an all-Black church, it is likely that early and present African-descent migrants in the

UK are making the same choice because those in the native congregation were not friendly to them (see the work of Gerloff 1992; Parris 2010); therefore, they identified and affiliated with religious organisations which were more likely to express their interests and sentiments. According to Smith (2010), the 'resultant clash of cultures' in mainstream places of worship was because the White majority congregation found it difficult to understand and welcome the behaviours of the Black members of the congregation, who in most instances would appear to feel 'moved' by the 'word' throughout the service. Furthermore because of discrimination even within the majority churches, African descent migrants have tended to set up their own congregations, which offer another lifestyle (Stebbins 1997; Weinbender and Rossignol 1996). Additionally, this distinctive form of worship appeared attractive to members of the community since there is evidence that the early immigrants were treated less warmly by the native congregation (Gerloff 1992). This led to a greater identity of the community with churches that were more likely to express their interests and sentiments (Hunt and Lightly 2001). Black religious organisations such as the Musama Disco Christo Church in the UK have been described as churches that readily draw on traditional Akan religion and culture in the search for more satisfactory answers to the problems of contemporary life (Ayegboin and Ishola 1997). According to Parris (2010), founders of such spiritual movements attempt to reassert the values of African cultures and customs in the face of what they consider to be an all-out rejection by the West (Stanislas chapter). The style of worship appears to be spiritually and emotionally satisfactory for its members.

Spirituality and religion play a large part in the African community and is an important factor in beliefs and practices as well as an important social focal point where members are allowed to be who they are and provides them with resilience against experiences of discrimination and victimisation. This implies that, as long as the Black African communities in the UK and Europe continue to experience social marginalisation and victimisation, the all-Black religious organisations and spiritual sects will not disappear but will remain a strong feature of the lives of those in the Black community offering them the mental, psychological and social support and perhaps will continue to exist in a state of permanent tension with the majority White population (Ochieng 2010a). They may also

play an important role in integrating black people and individuals into the broader British religious community.

The majority of the African-descent spiritual movements in addition to having a strong theological focus also emphasise the social and welfare aspects of their members. For instance, the Black churches have had a leadership role in the effort to politically empower people of African descent and were previously vocal against trans-Atlantic enslavement and a commitment to ministry with the poor and oppressed and a desire to work for peace (Calhoun-Brown 1998; Stanislas chapter). The Seventh Day Adventist Church, which is a Pentecostal Church, also champions social justice (Gerloff 1992). Equally, the worldwide sister/brotherhood and the Nation of Islam emphasises the need for strong families and Black empowerment. In the UK, they are known to have some impact in the inner cities of the UK by steering young Black men away from crime and pointing them towards other types of economic activities (Parris 2010). Such spiritual movements are gaining widespread popularity amongst people of African descent for their role in promoting social justice, challenging racial discrimination and the empowerment of people in multi-cultural societies of the UK and Europe. The organisations are welcomed as a necessity, because they are viewed as platforms for solidarity and an important channel to raise awareness of Black issues and problems.

In my study, families expressed the need for solidarity within the Black community which was expressed by all participants and significantly the ones who had identified with a faith organisation. This finding is contrary to Pryce's (1986) earlier work in Bristol, which found that though the churchgoers appeared to be indignant and had a growing sense of dissatisfaction with their position and experiences of inequalities; they still remained outwardly quiescent and isolated themselves within their little sub-communities. The difference as observed in my study with African-descent families in the north of England suggests that the inequalities and discrimination that led to the disadvantaged position most occupied, irrespective of their spiritual belief, is in essence enabling the present African-descent generation to express and seek unity based on the inequality and victimisation which they had all experienced; indeed for some Christians, this was expressed as part of their duty. Therefore being made to feel like outsiders in the wider community and conscious that they, as well as

other people of African descent, lack the organisational forces necessary to fight crime and discrimination effectively is acting as an impetus for the expressed need for unity. In general, it appeared that racism is breaking down the antagonism between people of African descent with the resultant effect of bringing them together (Hall 2000). Though unity alone may not be successful in transforming their situation in Britain the dual identity that most young Black people exhibit (Ochieng 2010b) as both African and British, will determine the reaction of future African-descent migrants in Britain and may lead to questioning the role of the State in subordinating them and the need for solidarity not only among themselves but with other minority groups based on the common material interests that they share in their struggle for equality and justice.

Religion, Faith and Well-Being

There is significant evidence to suggest that an individual's involvement in religious church activities may have some deterrent effect on unhealthy behaviour (Craig and Brown 1975; Globetti and Brigance 1974). The positive influence of religious beliefs on well-being is directly related. Ellison et al. (2001) found that individuals with a strong religious faith report a higher level of life satisfaction, greater personal happiness and fewer negative psychosocial consequences of traumatic life events. This suggests that they experience positive well-being in comparison to others without any religious beliefs. Although an individual's experience of well-being is the outcome of the interaction of their surroundings, it is the individual's subjective perception of the outcome of that interaction day by day and month by month, which constitutes that person's experience of well-being, such that experiences of victimisation and discrimination resulted in poor well-being, while the outcome of being involved in religious organisation is good well-being. It was therefore not surprising in my study in the north of England that while families talked of strong social ties with and relied on other family members, their social systems also included friends from religious organisations such as their local churches. There was some evidence of reciprocal caring and willingness

to provide friendship and care with other members, which were viewed as helping to cope with experiences of victimisation.

In the north of England study, participants' spirituality and the style of worship were important for these families and directly promoted their well-being. The feeling of being at home in the Black churches suggests the need for some form of security within an environment that constantly burdens them with discrimination and victimisation. In general, spirituality and the church were important elements; spirituality reinforced their values of sharing, caring and hard work. The all-Black church was seen as an extension of the family and community, whereby different families were brought together by church activities, again reinforcing the social and psychological value of unity and kinship. Families felt that their spiritual beliefs recognised and preserved their identities and integrity as Africans. Given that the Black churches attended by families are already involved in education about values and family life and have an existing participant base, they were described as an ideal avenue for pursuing physical and psychological well-being for Black families. Consequently, in keeping with the mission of Black spiritual movements over the decades, the current Black spiritual organisations have a role in assisting families and society at large to function in a manner that will empower marginalised and disadvantaged communities. Indeed religious organisations or their associates need to be seen by Black families as the place where information on well-being may begin and continue.

Religion as a Strategy for Victim Support

Many researchers have recognised that social support is an important resource that has a beneficial effect on an individual's mental well-being (Berkman et al. 2000; Cohen et al. 2000; Ochieng 2006; Stansfield 2006). Sherbourne and Stewart (1991) argued that having someone to provide emotional support protected individuals from some of the negative consequences of stressful situations. Previous studies confirm that individuals who are 'well-connected' often have fewer psychological problems; indeed the participants who were interviewed by Reilly et al. (2008) stated that when they needed to solve problems and con-

front challenges, their first point of reference was their support network. This is similar to the care and concern often demonstrated to members of a religious organisation and they are the most important 'mediating structures' for their well-being because members are safeguarded from victimisation and marginalisation. This suggests that spiritual and religious practice is essential for understanding its members' behaviour and needs to be considered in the strategies to address victimisation and marginalisation. In their present format, victim-support strategies appear to overlook and under-utilise the religious community. Implied within this view are an experiential wholeness and the integration of these various aspects of being human, from which a sense of well-being and self-worth is defined and measured. Equally, there is a need for the development of an African-descent-centred victim-support strategy. Currently, policy-makers, activists, law enforcement agencies, social workers and even educators are continuing to shape victim-support services that are devoid of any or very little spiritual leadership (Vincent et al. 2015). A significant step towards the practice of integrative victim support across professional fields is needed and this calls for specific training in inter-professional teamwork so as to include religious leaders.

In my study, Black African families in the north of England described the personal comfort and support they receive from such settings, which directly influenced their psychological well-being. Participants discussed how the activities structured by their religious organisations, crucial in times of crisis, provided them with the security in what seemed an otherwise hostile world. The salutary effects of the spiritual beliefs and practices that result from participating in worship and prayer as previously indicated are associated with psychological well-being and served to ease experiences of social discrimination, victimisation and marginalisation, while establishing a sense of empowerment. Capstick et al. (2009) took a similar view, arguing that stress-inducing demands and expectations can be less upsetting to a religious person than to someone who is not religious, and they found that certain behaviours are related to spiritual commitment and that observance to some spiritual practices can lead to better emotional well-being outcomes and coping mechanisms. The respondents in Pittman's (2003) study stated that their religious beliefs encouraged them to be more integrated and whole. These findings sug-

gest that because spiritual beliefs and practices are essential, they should be considered when planning programmes for victim support. The programmes could use the central tenets of different African-descent religious beliefs to create a liberative model of empowerment for the community.

Religion, Community Cohesion and the Pursuit of Social Justice

In the north of England study the respondents argued that spiritual belief and religion promote a broad holistic view of the individual that encompasses the physical as well as the psychological, social and spiritual dimensions. Indeed some of their religious beliefs seemed to converge with respective social justice beliefs. For instance, the salient principles of particular religious and spiritual beliefs were described as engendering equality, peacefulness and a sense of purpose. Families often commented on the strong role that historically religious-organisations played in creating a sense of community and as an institution for social and political change. Consequently, spiritual and religious belief was a core element of what constituted mechanisms to cope with victimisation, pursue social justice and enhance their well-being. Spirituality itself was described as part of being empowered and there was an acknowledgement that strategy to promote social justice and psychological well-being needs to be connected with their belief system.

It is clear that spirituality and being part of a religious organisation has enabled African-descent communities to survive, build resilience and educate themselves. Consequently, it is not surprising that the UK government is calling on religious leaders to be involved in resolving problems of the community. There is now a need to identify those dimensions of spiritual and religious beliefs that appear most important in the promotion of community cohesion and social justice. Additionally, there is a need for specific training in inter-professional teamwork so as to include religious and spiritual leaders in promoting social justice and the empowerment of the African community in the UK. Currently, strategies to promote and enable social justice appear to overlook and make little use of religious organisations; policymakers and even law enforcement

authorities continue to shape services devoid of any or very little spiritual leadership. Conversely religious and spiritual leaders need to be involved more creatively in not only addressing experiences of victimisation but also in providing leadership to young Black people so that they can be provided with opportunities which impact the country economically and politically. They need to be proactive in the areas of social, economic, foreign, environmental and poverty policy issues working across many spheres with others who may not share their religious beliefs, but certainly wish to build and empower the Black community.

Religious practice is essential for understanding individual and family behaviour and needs to be considered in the strategies for promoting community support and addressing victimisation. This is crucial because while the participants from my earlier study appeared to value community cohesion and social justice, for the ones who were part of a religious organisation, the reason given related more to their spiritual beliefs rather than any government policy. For instance, it was their identity as Christians or Muslims that served as the basis for seeking community cohesion. It is well documented that certain social justice movements are related to religious commitment (e.g., Armstrong et al. 1977), confirming that many religiously sanctioned behaviours could lead to social justice and positive community cohesion. While not explicitly identifying social justice as a major goal of religion or a primary focus of their work, these respondents suggested that a social-justice-oriented perspective from religion encouraged individuals to be more integrated and whole. The findings highlight the need for a multidimensional platform, whereby government agencies work together with other organisations to promote community cohesion and social justice while challenging experiences of victimisation and discrimination.

However, it is widely known that certain religious or spiritual beliefs can have serious implications for community cohesion and that religion and spirituality can also be pathological: authoritarian, obedient, superficially literal, strictly extrinsic or self-beneficial, or conflict ridden- and fragmented. The most obvious cases where religion has a negative effect on society are associated with extreme groups who are typically fanatical in nature and practice. Certain cults and religious sects may encourage behaviours such as ritual suicide or self-abuse as a purification exer-

cise (see Jarvis and Northcott 1987). Additionally, Gartner et al. (1991) found an ambiguous or complex relationship between religion and such mental health measures as anxiety, sexual disorders, psychosis, prejudice and self-esteem. Consequently there is a need to examine those dimensions of religion that appear most important in community support and social justice.

Conclusion

Overall, although the connection between spirituality and an individual's experiences of victimisation warrants additional investigation, the analysis of current research suggests that spirituality is particularly beneficial for the well-being of individuals experiencing harm and victimisation. Consequently, the positive aspects of a spiritual dimension need to be introduced and valued in strategies to promote well-being and community cohesion. As religious organisations are already involved in education about values and family life, and have a participant base, they can be an ideal resource for promoting well-being.

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15

Changing Religious Influences, Young People, Crime and Extremism in Nigeria

Perry Stanislas and Iyah Iyah

Introduction

Youth crime is a trend that is bedevilling various countries of the world in varying degrees and affects human, regional and national development. This is a problem particularly in sub-Saharan Africa which has a very young population estimated at 200 million people aged between 15 and 24 years and it has the fastest population group in the world (Ighobor 2013). Young people constitute an important stratum of the make-up of developing countries. For any emerging country to attain its development goals, it must address youth restiveness and crime by reducing its rate of recurrence.

The phenomenon of youth crime negatively impacts social, economic and political life of nations, states and communities. This chapter explores the experience of young persons in Nigeria, considering its historical and cultural legacies as a frame, to critically define and explore the experiences

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of young people specifically within communities in Northern Nigeria and obtain institutional responses. While the chapter focuses primarily on Nigeria, many of the problems experienced has import for other developing countries.

The chapter considers the impact of religion, faith and institutional failures on generations of young persons in normative, socio-economic, policing and criminal justice terms. It specifically explores how these factors shaped religious and ethnically induced violence in northern Nigeria over the years which parallel disturbing developments in countries such as Kenya and Zanzibar more recently. The chapter provides a background of historical factors and the role of young persons in the cycle of violence and public crimes and its contribution to religiously inspired conflict.

A Brief Overview of the History of Nigeria

Today's Nigeria is, in fact, a forced amalgamation of different civilisations and societies, ranging from centralised and advanced systems of government and administration headed by powerful monarchies (as elsewhere in Africa such as Uganda) to smaller clan- and kinship-based systems operating at the village level (Chinweizu 1975; Mair 1979). An illustration of this is the Hausa Empire and the important role of Queen Amina of Zaria who conquered neighbouring territories during the sixteenth century to create one of the largest states in West Africa (Okonjo 1983). These diverse systems of governance were crudely brought together under British colonial administration in efforts to manage and exploit the large geography and populations that resided in this part of West Africa. To further complicate matters, ethnic, regional and religious affiliations are often closely intertwined in societies where ethnic or tribal identities are fundamental sources of social identity and affiliation (Osaghe and Suberu 2005). There are currently over 250 different ethnic groups in Nigeria with the Igbo-, Hausa- and Yoruba-speaking groups being the largest in the country (Nolte et al. 2009, p. 6). Today the Yourba, for example, are found predominantly in the South and are largely Christian; they trace their origins to ancient Upper Egypt and have a developed, advanced and

sophisticated civilisation (Diop 1975; Michalopoulos and Papaioannou 2013), along with their northern Muslim neighbours, the Fulani.

While Islam was known in many parts of Africa since the fourteenth century through trade with northern Arab merchants, it had relatively minor influence on these societies (Chinweizu 1975; Okonjo 1983). Military force played a critical role in the spread of Islam as seen in the 1802–1817 Fulbe conquests which led to mass forced conversions in many instances thereby challenging and undermining indigenous religious beliefs systems (see Chap. 8 by Stanislas). Christianity, which took root at the end of colonialism in the late nineteenth century, particularly among the indigenous elite, further weakened the traditional religious systems (Nolte et al. 2009). Traditional practices are still popular among sections of the population and regions of the country, such as the Niger Delta (see Chap. 7 by Petrus), and it is estimated that around 10 % of the population adhere to them. Over 51 % of Nigerians identify themselves as Muslims, the majority of whom belong to the Sunni sect, and the remainder being to various Christian denominations (Pew Research Centre 2010). Roman Catholicism has traditionally been popular among the Igbo-speaking South East, although the Pentecostal Church, like elsewhere in Africa, is becoming increasingly popular, with the Protestant Church being influential in the south of the country (Nolte et al. 2009, p. 13).

One of the consequences of the adoption of these ‘foreign religions’ was the undermining of the status, authority and equality enjoyed by African women which was reinforced by indigenous religious systems and concepts of spirituality and the important role women played in them (Mbiti 1982; Okonjo 1983; Chap. 8 by Stanislas). This change in women’s social status laid the foundation for their position in society centuries later, in so far as female youth and women generally are the poorest and least powerful groups in contemporary Nigerian society (Tannenbaum et al. 2005).

Given the intersectionality of ethnicity, regional and religious identity in Nigeria, attitudes in terms of sensitivity, or lack of it, towards other ethnic communities, policies and practices of the post-independence governments, which replaced the British, was to have important ramifications on how the country developed as elsewhere in Africa. For example, one of the enduring contributions of President Julius Nyerere of Tanzania

was the adoption of an inclusive approach to governance, which saw all ethnic groups and important sectional interests incorporated into the government and its various structures (Mazuri and Tidy 1984, p. 85; LeSage 2014). This contributed to reducing inter-ethnic conflict and removing it as an issue of concern in the governance and development of the country for most of its post-independence history, which stands in stark contrast to Tanzania's neighbours, such as Kenya (Mkutu & Wandera, 2013), or the approach that was to be adopted in postcolonial Nigeria.

After independence, in the years between 1963 and 1976, the country had five governments, four of which were led by Christians and characterised by often violent conflict and ethnic groups' struggles for power and control of the new federal state. In 1966, a military coup led by young officers overthrew the civilian government and killed its prominent leaders, including the Muslim Prime Minister Sir Abubakar Tafawa Balewa and other important elected regional leaders (Mazuri and Tidy 1984, pp. 238–243).

These actions caused concern among leaders in Northern and Western Nigeria and their supporters as they feared a concerted effort by the largely Christian Southerners to take control of the federal government and usurp power and the abundant resources, both natural and man-made, in the country required for its development. These fears were also supported by the comparative lack of education of the Northern Muslim majority, compared to those in the South. Despite most of the Muslim elite enjoying western education, they have been central in calling for its rejection within their communities. The result of this has been the educational disadvantaging of the Muslim majority in the north compared to more educated Christian southerners (Nolte et al. 2009, p. 13). The culmination of these problems led to the Biafran War in 1967–1970 which resulted in the deaths of over a million civilians and approximately 100,000 soldiers. Concerns about ethnic dominance, discrimination and abuse in the use of State and other resources, which was to become a constant theme in the post-civil war years, can be understood by the culture of political clientelism that was to emerge in Nigeria (see Mazuri and Tidy 1984; Meeks 2000, pp. 67–69). The State was seen as the property of the ethnic group (or its elites) who emerged victorious from general elections and used to further its interests and agendas (see Meeks 2000).

Communal mutual distrust and suspicion became embedded and a feature of Nigerian political culture and social life. In 1993, Southerner Chief M.K. Abiola was prevented from taking office by the Northern Muslim military President General Babangida who controversially annulled the general election results on the grounds of suspicions of impropriety. No evidence was ever provided to support these claims (Replace ref with: (Amuwo et al, 2001)). This action was viewed by government opponents as a ruse to exclude their preferred candidate from power, further adding to existing grievances. Chief Abiola was to die in prison in 1998 after being jailed by the government in what was viewed locally and internationally on suspect grounds and a day before he was expected to be released after an amnesty was granted. His death sparked riots in parts of Nigeria and drew the comments of the UN.¹ What has been described provides some of the key features and developments which inform the broader historical context that shapes the social world young Nigerians enter, and have to successfully navigate to achieve their personal and socially expected goals. The ability of young people to achieve these outcomes is largely determined by regional, ethnic and other factors, such as class and gender, which we now turn to.

The Experience of Young Persons in Nigeria

Young persons in Nigeria, just like in other parts of the world, are fundamental resources to the country, in terms of their potential energy and creativity, not just as future leaders but as vital investments towards national development. The UN defines youth as young people between the ages of 14 and 25, although it recognises that the experiences and expectations of this group will differ between countries (Olufunke and Foluke 2014, p. 154). The current population of Nigeria is 181,562,056 (CIA Fact Book 2015). Of this number young people between the ages of 15–25 make up 19.3 % of the population which may be higher among Muslims, who are the fastest growing sections of the population

¹ 'Kofi Anan: Abiola's Death Was Suspicious' www.thisdaylive.com (19 October 2012). Accessed 21 September 2015.

and currently make up just over half of the population. This is difficult to confirm given the refusal of Muslim leaders to have religious affiliation included in the census (Odunfa 2006). However, given the political ramifications of the population data, it has not unsurprisingly been disputed by the Christian Association of Nigeria. However, the growth in the Muslim population in Nigeria reflects the global trend (Pew Research Centre 2010; The Economist 2011). People under the age of 30 make up well over 50 % of the population.

A critical determinant in the life chances of young people is the quality and levels of education received. Ekeji (n.d.) in his survey of the educational data demonstrates the links between patterns of poverty and education in Nigeria (Also see Ebele et al. 2015; Olufunke and Foluke 2014). In terms of secondary education attendance, 65 % of children in the South West attended secondary schools as compared with 22 % of children in the North East. An important factor in this disparity and more generally is poverty and the unwillingness to attend free schools in many instances and the inability of parents to afford educational fees in others in a country where over 100 million people live on less than one dollar a day (National Bureau of Statistics 2010). At the university level, the data are equally troubling with only 4.3 % of young people having the opportunity of tertiary education out of a total of 25 million young people (Ekeji ibid.).

One of the critical challenges faced by many developing countries is the inability of the economy to absorb the number of school leavers and graduates in particular, despite their relatively small numbers (Yesufu 2000). It is not uncommon for graduates to be found roaming the streets aimlessly even five years after graduating (Ebele et al. 2015, p. 1125). An important factor in Nigerian unemployment, as in other parts of the developing world, reflects its macroeconomic policies and implementation of the neo-liberal structural adjustment programme which has had devastating effects on the economy, contributing to serious adult unemployment (Okafor 2011; Ebele et al. 2015, p. 392).

Finally, Nigeria suffers from chronic corruption, nepotism and inefficiencies which robs the country of incalculable amounts of its national wealth and contributes to poverty (Okafor 2011, p. 365; see Adebayo 2004; Aremu 2016). Questions have been raised about the quality and

type of education provided, which too often does not meet the needs of major employers or give young people the requisite knowledge or skills to exploit opportunities in the economy (Olufunke and Foluke 2014). The National Bureau of Statistics (2012) found that 54 % of Nigerian youth were unemployed, which in all likelihood is higher if regional differences are taken into consideration. In 2008 the rate of unemployment among young people was as high as 80 % (Emeh et al. 2012, p. 1126). To compound matters the majority of these young people have no work experience. This has resulted in an increase in crime rates in Nigeria, in turn threatening national development and the quality of life and safety of citizens, visitors and those who interact with the country in a variety of ways with important reputational consequences (Ekeji *ibid.*).

A significant factor in this upsurge in crime is the increasing involvement of young offenders. Poverty and lack of opportunity has driven many youth into a wide variety of crimes ranging from vandalism, violence, prostitution, organised crime, including drug trafficking (often involving women; see Ezeamalu 2015), cybercrime and a range of fraud and financial scams, murder for hire and politically inspired thuggery *inter alia*.

One of the features of this violence is the role of local or regional powerful men in exploiting unemployed young men and engaging them to participate in crime, whether in the context of electoral violence or to drive off and steal other ethnic groups' land or to access other important natural resources, such as water, often utilising ethnic narratives or discord to mask their true agendas (Keenan 2012; Street 2013). This type of crime is well established in other African countries such as Kenya (Mkutu & Wandera, 2013, pp. 27–28). The role of adult leaders involved in widespread crime ranging from corruption and fraud to facilitation of murder with impunity, legitimised this type of behaviour in terms of social modelling. Their criminality has weakened the norms about criminal behaviour among the young. (see Meeks 2000). This highlights the absence of ethical leadership in many postcolonial countries (Stanislas 2016).

The general increase in violence, homicides and gang-related activities has made certain urban locations no-go areas for residents and local people. The Nigerian Police Force's lack of legitimacy and its general ineffectiveness contributes to the improper handling of criminal or anti-social

activities (Adebayo 2004; Aremu 2016). The National Prison Services' figures show an increase in the number of young males in particular being incarcerated (Ekeji *ibid.*; Okafor 2011, p. 369) which represents a potential fraction of those engaged in criminal activities given the ineffectiveness of the police and other agencies.

Apart from crime, lack of economic resources can contribute to frustration and anxieties and this is highlighted, for example, in the inability to marry due to males not being able to afford dowries, an important custom among some Nigerian ethnic groups, which is witnessed elsewhere contributing to crimes such as organised livestock theft, and which can lead to friction between young men and their elders (Olufunke and Foluke 2014, p. 155; see Wunder 2016). These sentiments contribute to anti-government and or anti-social attitudes and militancy (Ekeji *ibid.*) and can also weaken religious and core beliefs that contribute to a number of social problems. The inability to achieve socially ascribed standards of manhood rarely comes without a high price for wider society, and sections of the community, such as women, children and families generally, as already illustrated in Chapter 8 (see Gurr 1970). Other consequences of economic hardship have been the increased sexual promiscuity outside established relationships, and poor women entering prostitution, which have been cited as factors in the very high rates of HIV/AIDS in Nigeria (Ukemena et al. 2014; Olufunke and Foluke 2014).

While Christianity has been influential in parts of the country and has helped in shaping many aspects of social lives of many, and is continuing to do so (Keenan 2012), the weakening of this influence and waning of other traditional sources of authority, such as parents under economic strain and work pressures (Olufunke and Foluke 2014, p. 156), elders, tribal and political leaders (Okafor 2011, p. 365), have clearly contributed to the decline in marriage and normal sexual behaviour and the significant rise in divorce cases in Nigeria (Ukemena et al. 2014). In addition, the conduct of some sections of the Christian church is highly unlikely to give confidence to many struggling young people. An example of this is the establishment of expensive megachurches, boasting of thousands of members, which are the epicentres of expansive commercial enterprises that include, in some instances, televangelists, arms, hotels, guest houses and tourist operations for visiting worshippers who appear too

often more driven by entrepreneurial than by spiritual concerns (Cocks 2012; Nolte et al. 2009, p. 39).

Many church leaders are represented among some of Nigeria's wealthiest elite (Nshe 2011). Another development is the rise in the number of prosperity ministries in Nigeria, based on the prosperity theology adopted from the USA (Cocks *ibid.*). Prosperity ministries came to international attention recently due to the controversy involving an African American minister (aptly named Creflo Dollar) who sought to raise funds from his congregation for a multimillion-dollar private jet (Blair 2015). The rationale behind these ministries is that members contribute money with the belief and expectation of financial prosperity through improved opportunities or success of their various enterprises with the help of divine influence. This practice can be viewed as a contemporary twist on the Lutheran indulgences controversy that rocked the sixteenth-century Western European church (Brecht and Schaaf 1993).

As Bertha Ochieng highlights in her chapter, religious and spiritual beliefs can provide meaning and a resource for individuals and groups in extreme and trying circumstances such as how they respond to the questionable behaviour of Christian leaders. Street (2013) highlights the strong influence of religious and ethnic identity among many young Northern Christians who are developing their own ideas and agency in challenging the ideology of established Christian leaders. For far too many young people, however, the declining influence of the Church, highlighted due to its involvement in one controversy or another (see Akbar 2015), and other authority figures in Nigeria, represents the wider hegemonic dissolution and failure of societal leadership described by Meeks (2000) (see Chap. 8 by Stanislas).

Many religious voices have expressed worry about these developments and other trends in the Nigerian Christian church with much wider implications, given its numerical importance in African Christianity with a purported 18 million active church members (Edu 2015; see Chap. 8 by Stanislas). Of particular concern is the declining spirituality of the church, increased nominalism and as a consequence of the growing proliferation of churches, competition and rivalry for members and finances, as highlighted in the Jamaican context. In some instances, the church has been accused or associated with corruption and or troubling financial

practices (Edu 2015; Winsor 2015). A case in point is the lack of transparency of some of these megachurches and a reluctance to publish their finances. In this regard, these churches it would appear are indistinguishable in terms of their practices from many of the institutions which have become almost synonymous with Nigeria in terms of poor governance (Adebayo 2004; Aremu 2016). In this context, the church appears to offer little for many young males and females who are at greatest risk of falling into crime or other forms of harmful behaviour.

Government Responses to Youth Unemployment and Crime

Successive administrations in post-independence Nigeria have initiated policies and programmes with the aim of protecting and developing young people. Some of these objectives include educational capacity-building, and physical and mental development activities, especially in the areas of arts, culture and sports (see National Youth Policy 2009-2014). Foremost amongst government initiatives was the introduction of the compulsory National Youth Service Corps scheme for young Nigerian graduates of tertiary institutions in 1973 for the purpose of national integration, unity, community development and leadership training. To further demonstrate commitment to youth development, the Nigerian government, and its successive administrations from the 1970s created and have since maintained, a statutory Ministry of Youth, Sport and Culture at the federal and state levels.

During the short-lived civilian administration led by President Aliyu Shehu Shagari, an attempt was made in 1981 to introduce a National Youth Policy (NYP) before the military overthrew his government. In 1986, the federal government established the Chukuma Committee which led to the creation of the National Directorate of Employment with a remit to promote skills acquisition and to foster self-reliance and economic independence (Emeh et al. 2013, p. 1129). This action contributed to raising the profile of the issue of vocational training for young people on the national agenda, where it remains. An evaluation of many of the initiatives launched under this rubric by the National Economic

Empowerment and Development Strategies in 2004 found the majority of these programmes to reduce poverty (by improving human capital) were ad hoc in nature and provided little evidence they had a lasting or sustainable impact on poverty-reduction. In other instances, programmes are not evaluated to establish the benefits they provide for young people (Emeh et al. *ibid.*). Some of these projects covered areas such as youth vocational training, graduate employment programmes, agricultural production and marketing, establishing community and micro-banking, small-scale enterprise development, women's projects and a Family Support Programme. Even some of the most promising programmes, such as agricultural production projects, were hampered by poor federal government administration and the late release of funds.

The first comprehensive draft of the youth policy was developed in 1989 without any political will or tangible framework to address the challenges confronting young persons in Nigeria (National Youth Policy 2009). The 1990s saw a youth development model which linked the challenges faced by young people to policy development in related areas to include, education, gender equality, vocational skill development, and health *inter alia*. In terms of delivery government focused primarily on sporting and cultural activities, while the component strands of leadership training, political and socio-economic development was totally relegated to the background. Even this narrow government focus failed to adequately fund sporting and cultural activities under its national youth policy, which exemplified its lack of commitment to young people (National Youth Policy 2009, p. 7).

Other important themes highlighted in national policy (which covered the period 2009–2014) regarding young people are the importance of consultation, respect for gender, diversity and the interests of communities across which is cited as central to the strategic objectives of the policy (National Youth Policy 2009, p. 8). However, consistent with successive governments' performance in this area, there has been a lack of commitment in real terms to achieve its declared policy objectives (National Youth Policy 2009, p. 7). The policy framework laid bare the significance of young persons as the future resource of any society and thus the need to understand their needs, interests, aspirations and vulnerability in the context of development in Nigeria and other important parts of Africa

(see Mkutu et al. 2015). In view of weak existing institutions designed to harness young peoples' individual and collective human capital, the government policy in this area can be viewed as largely aspirational.

Developments in Northern Nigeria

The problems of governance in Nigeria, which is epitomised in the introduction of military rule which ended in 1999, provided the context for further destabilisation and instability, particularly in the North East of the country, where young people were to become very important actors in unfolding events. First, the success of the Iranian Islamic Revolution under Ayatollah Khomeini led to the spread of militant Islamic ideologies around the world, influencing local struggles and tensions involving Muslim communities, witnessed by the formation of various Islamic organisations fuelled by a newfound confidence (Adesoji 2010; Ekanem et al. 2012; Reisman et al. 2013, p. 53). Many of these formations established youth wings or Shabaab organisations which were critical to the recruitment strategies which relied on narratives which posited the problems experienced by young people and the wider Muslim community being rooted in the immoral, corrupt and maladministration of the secular federal government (Adesoji *ibid.*). This is compounded by the Alma Jeri Islamic practice of allowing under-age children, amongst other young persons, to live under the tutelage and absolute control of Islamic scholars, usually called mallams in northern Nigeria, which is often a form of parental abandonment. Children and young people are not uncommonly treated poorly and indoctrinated into extremism (Uche 2010).

Second, military rule in Nigeria inadvertently contributed to the militarisation of society and increased militants' access to military resources through personnel in the police and security services and it strives to seek military solutions through new emerging forces, particularly among Islamic communities (Adesoji 2010).

The Maitatsine uprisings in Kano State between 1980 and 1985 were orchestrated by Islamic militants and the first wave of religiously inspired violence which was to spread throughout the region. The supporters of the leader, Muhammadu Mara, were largely the poor, unemployed

seasonable workers, young males and students seeking an Islamic education in Kano, a historic centre of Muslim learning (Adesoji 2010; Isichei 1987). The Maitatsine disturbances are particularly important as they represent the first concerted efforts to impose a religiously inspired ideology on the secular state and society. The pivotal role of young people in the unfolding events can be seen through the student riots at the University of Ibadan in 1986 and Kaduna Polytechnic a year later. The trigger point at the core of these conflicts was the heightened sensitivities around perceived preferential treatment and discrimination on the basis of religious affiliation (Adesoji 2010, p. 97; Isichei 1987, p. 196). For example, the denial of rights and opportunities to one ethnic group, such as the ability to hire venues for meetings, in areas controlled by dominant religious/ethnic affiliations. This has heightened tension and contributed to confrontation and violence (Adesoji 2010, p. 96; Nolte et al. 2009, p. 32). In the city of Kano, for instance, Christian leaders were aggrieved by the perceived discrimination against their community.

While these conflicts were couched in religious terms by adult leaders and elites (Adesoji 2010, p. 97; Street 2013), they masked more fundamental issues of inequality, poverty and hopelessness, especially among young people. The introduction of sharia law in 2000 in 12 Northern states by leaders in a direct challenge to the federal constitution was part of a broader objective to establish an Islamic State (Elaigwu and Galadima 2002; Nolte et al. 2009, p. 16), and served to heighten the tensions throughout the country, evoking new waves of inter-communal violence. The sentence passed by Islamic authorities on Amina Lawal for suspected adultery highlighted some of the most objectionable aspects of sharia law and radical Islamisation on women and other sections of society (Nmehielle 2004; Okonjo 1983, p. 212). In response, many leaders demanded the introduction of Christian Canon law in territories dominated by Christians (Nolte et al. 2009, p. 16).

Hostility to Western education, modernisation and technology is a characteristic of organisations like Boko Haram, which emerged as the most militant and effective of the numerous groups to declare war on the federal state in their desire for an Islamic State. Its founder, a Shiite, was trained and educated in Iran, with links to Saudi Arabia, from whom it is believed he received financial and other forms of

support (Adesoji 2010, pp. 98–100; Nolte et al. 2009, p. 33). The success of Boko Haram's campaign of violence against the state and Christian community, churches and other symbols (Woods 2015), and the audaciousness of their leaders proved very attractive in their recruitment of young males to their ranks (Adesoji 2010, p. 96). The reign of religious violence and counter-violence, along with the brutal responses of the federal security forces, involving torture and summary executions of suspected Islamic terrorists, and those viewed as sympathetic to them, has resulted in the death of tens of thousands of Nigerians since the start of the Maitatsine uprisings and brought increasing insecurity to the region (Reuters 2015).

An essential factor in the escalation of violence is the inability of the state and the police and security forces, which are often polarised on religious lines, to protect communities from either religious community. This is compounded by their incompetence, corruption and inefficiency (Adebayo ibid.; Stanislas 2014, pp. 299–300; see Ruterre & Mkutu 2016), and suspicions of state involvement in attacks against Muslim communities, such as the bombings of mosques and killing of worshippers. This has spurned the need for communal self-defence and in many cases retaliatory action (Insenyo 2014).

In one week alone in January 2015, 2000 Nigerians lost their lives primarily due to Boko Haram's violence using their trademark methods, involving suicide bombers, bus and other forms of explosions, often using children (Purefoy and Mullen 2015), and raids on isolated rural communities and schools (Mark 2015; Owunna 2015). The potency and capacity of Boko Haram was demonstrated to the world with the kidnapping of approximately 200 young girls in Chibok (a not uncommon occurrence) which led to an international outcry (Amnesty International 2014). To date most of these girls have not been found or returned to their families. Religiously inspired violence is overlaid with the significant rise in crime, witnessed in the alarming rate of armed robberies, abductions and kidnapping for ransom, which is an epidemic in Nigeria (Dodo 2010). Crime has a devastating impact on economic activity, creating fear and reluctance of businesses to set up operations in parts of the country, and in conjunction with the general instability, draws a significant amount of state resources that could be used for development purposes (Ebele et al. 2015, p. 394).

Despite the fragile inter-communal relations in the North and North-East, especially where Christians and Muslims are well-represented in numerical terms, and the posture of religious leaders in defending or extending their spheres of influence and perceived territories, alternative voices committed to inter-communal peace and reconciliation are making a crucial contribution (Reisman et al. 2013, p. 56, see Stanislas 2016). In this context, many young religious leaders from the Christian and Muslim communities are forging new inclusive narratives which often significantly diverge from some of the very muscular and confrontational narratives of established religious leaders.

Street (2013) documents the work of young religious leaders in Plateau State and the various activities they have developed to build bridges between Christian and Muslim youth to prevent them being drawn into the inter-communal violence. This includes educational activities to increase awareness and understanding of the dangers to themselves, families and friends of the escalation of religious and ethnic violence, programmes to develop appropriate understanding and respect for other religions, social and sporting activities designed to create more unifying identities.

An important dimension to these activities is to educate young people about the real challenges facing them and the country around unemployment and inequalities (Reisman et al. *ibid.*), increasing their vigilance about the use and abuse of ethnic and religious identities by elites in the furtherance of their agendas. Grounds for hope and common ground are illustrated in the findings of Nolte et al. (2009, p. 25) which found that both Muslims and Christians shared similar perceptions of the problems plaguing the federal and state governments and notions of good governance and development. At the same time, the strength of religious identities in parts of Nigeria cannot be understated (Nolte et al. 2009, p. 9; Street 2013).

The importance of inter-communal reconciliation and peace building as a means to reduce violence is underscored by the launching of the Faith Foundation involving the British government and senior Nigerian religious leaders to build on existing areas of activity, and to develop new ones, to improve communication, education and inter-communal social relations (Keenan 2012). Britain has important economic, geo-political and security interests in Nigeria, which is the sixth-largest petroleum producer after Russia.

The Joss-based Christian-led Centre for Development and Livelihood Enhancement (CDLE) (<http://www.centreidle.org>) has been working to achieve aims, similar to those already described, by organising Muslim and Christian youth dialogue events in Benue Plateau and Nassarawa States. Other critical dimensions of their work programme involves teaching alternative dispute resolution methods (Mkutu et al. 2015, p. 72), and supporting victims of the conflict by facilitating their interactions with appropriate agencies, especially in matters regarding physical disability, emotional health and trauma. Another important facet of the CDLE's work is carrying out conflict-vulnerability assessments and community-security capacity-building in order to prevent conflict or protect local communities in the event of violence (Mkutu et al. 2015, p. 13).²

Some organisations have programmes focused primarily on alleviating poverty and providing assistance with issues that range from the provision of food for Ramadan, helping individuals set up businesses by the purchasing of basic equipment, such as sewing machines or motorcycles and other interventions, to help individuals earn money and taking them off the streets (Nolte et al. 2009, p. 83). Many of those found begging in the streets of Nigeria are children and young people, many of whom have lost their parents to communal violence or fled their homes and are often taken in by terrorists and subjected to indoctrination or, in the case of females, sold as sex slaves or trafficked abroad (Uche 2010, p. 395).

Conclusion

The trends of religious extremism in Nigeria, over the years, are predicated by the decline in existing state systems and the decreasing influence of traditional religious leaders within their communities due to hegemonic dissolution. Unemployment and hopelessness have driven a

² Dr Perry Stanislas hosted the Community Security Symposium held at De Montfort University in February 2012. The symposium explored the manner in which to protect communities in the developing and other parts of the world where state agencies were unable or unwilling to. Among the deliberations was a paper by former Air Vice Marshal Danbaba on mobilising local communities in the face of the Boko Haram threat.

decline in the legitimacy of state, and more conventional institutions, and leadership which is evidenced in the crisis in law and order which is crippling the country and its development.

Much of this crime involves young people. These matters reflect social inequalities which are exacerbated by regional and religious differences that have fed religious extremism that threatens the stability, potential and future of the federal state. The seriousness of these matters is placed in a context of Nigeria being the most populous country in Africa and probably the most important nation on the continent in terms of its economic potential. Moreover, many of the religious and regional tensions and social factors being played out in Nigeria are replicated in other parts of the continent. Despite the declining influence of religion in parts of the country and within sections of the population, the Christian church in particular (as elsewhere), has been an important vehicle in efforts to address many of the underlying problems experienced by the young and poor in Nigeria and to foster inter-communal reconciliation and a non-violent future.

The moderation of religious activities in the past was mostly ascribed to strong traditional institutions in Northern Nigeria. However, with the return of democracy in 1999, the overriding influence of politicians within religious circles has become a characteristic feature of individual and regional quest for the control of power in the middle in a multi-ethnic and religious Nigeria. Young persons are readily available to be used to achieve selfish goals by the various gatekeepers. Furthermore, the dimension of ethno-religious politics in Nigeria that brews extremism are too numerous to be explored in this chapter, issues of sharia, minority interest rights in the north, the resource control agitation in the south, power rotation within the six geo-political zones are on their own circles of treatises that attract youth patronage and engagements in activities aimed at meeting set objectives within a weak governmental systems and institutions.

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16

Faith and Identity in Prison

Alison Booker and Helen Dearnley

*Gaol, an ancient place in Reading.
Jail, go directly there do not pass Go, do not collect £200.*

Although both these well-known phrases are familiar within twenty-first-century British society, neither is truly effective in forming our understanding of criminal justice and the prison system. As a society, we appear to have lost much of our 'faith in prison' (although television and theatre productions would suggest, not our fascination) and appear to have adopted the medieval concept of 'Oubliette' meaning 'forgotten' when considering prisoners. Phrases like, 'Lock them up and throw away the key' and 'Rot in Hell' encapsulate that sense of disengagement with those who are incarcerated. Those who work within the prison system,

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however, find personal motivation and justification for their involvement, which in turn affects their perception and understanding (Bennett et al. 2008).

We are serving priests in the Church of England, and, as such, we have not only a shared Christian faith perspective and approach, but also a distinctive perspective, with Helen working within, and Alison alongside, the criminal justice system.

Within Christian tradition, there are many biblical passages and theological writings identified as giving a mandate to work with the poor, needy and vulnerable. One of the most often used is from Matthew's gospel:

He will say to those at his left hand, 'You that are accursed depart from me into the eternal fire prepared for the devil and his angels; for I was hungry and you gave me no food, I was thirsty and you gave me nothing to drink, I was a stranger and you did not welcome me, naked and you did not give me clothing, sick and in prison and you did not visit me'. (Matthew 25: 41–43, New Revised Standard Version)

This powerful passage, within the wider Christian understanding of the ministry to those in need, defines work in prison and with prisoners as essential to the Christian ministry. These words come directly from Jesus' own mouth to his followers; additionally, these words are part of Jesus' conversation about God's final judgement. It is clear that in the parable of the sheep and the goats (to which this belongs), the behaviour of those who call themselves followers of God is to be judged. The 'king' of the parable (representing God to the reader) speaks of those who have not helped in these ways. However, he also speaks to the righteous of how they have done these things, although they ask him in reply, 'When did we do this?'

The following answer they receive from the king may explain why this passage is often quoted when speaking of the mandate for Christian work with those in need, including prisoners.

Truly I tell you, just as you did it to one of the least of these who are the members of my family you did it to me. (Matthew 24: 45, New Revised Standard Version)

As priests in the Church of England, this requirement to serve those in prison as though they were Jesus Christ himself has been part of our formation. However, anyone who works within the criminal justice system will recognise that there is nothing simplistic about working with prisoners and within the prison system.

In this chapter, the exploration of 'faith in prison' seeks to give a brief overview of the structure of prison chaplaincy, as it has developed over the last 63 years (since the Prison Act 1952), alongside an underpinning theological framework and an exploration of contemporary shared societal preconceptions and understanding of prisons and prisoners. We will then examine the identity of prisoners throughout the process of incarceration, which is divided into three distinct parts: identity that is 'de-formed' on becoming a prisoner, identity that is 'formed' during incarceration and identity that is 're-formed' on preparation for, and on actual release into, the community. This will include examining the prisoner's experience of faith and the distinct role of chaplaincy within that process.

Structural Changes of Prison Chaplaincy

Since the 1950s, the religious demographic of England and Wales has changed and with it the prison population's religious demographic.¹

Due to the transient prison population, accurate religious demographics are impossible. However, a series of 'snapshots' can, over time, reveal clear trends. One such 'snapshot', on 30 June 2014 (Prison Reform Trust 2014), revealed that the religious demographic for prisoners in England and Wales was Christian 50 % (of whom 40 % are Anglican, 36 % Roman Catholic, 22 % Other Christian, 2 % Free Church), Muslim 14 %, Buddhist 2 % and No Religion 30 %.

The disparity between the religious demographic of the prison population and the religious demographic of England and Wales² generally

¹ PSI 51/2011 'Faith and Pastoral care for Prisoners' states that 'chaplains and chaplaincy teams must be appointed to meet the needs and reflect the faiths make-up of the prison population'.

² 59.3% Christian, 4.8% Muslim, 1.5% Hindu, 0.8% Sikh, 0.5% Jewish, 0.4% Buddhist, 0.4% Other, 25.1% No Religion and 7.2% did not answer (2011 Census, Office for National Statistics).

raises questions³ particularly with regard to the over-representation of the Muslim community. Research has identified the prominence of staff and prisoner experience regarding 'the role of faith and in-prison conversions to Islam ... [and] ... the risks of radicalisation' (Liebling et al. 2011, p. iv).

More generally, questions have been raised regarding community identity within the wider society and globally. In particular, those relating to disaffection in communities, because of exclusion due poverty, race, culture or religion, might then lead to criminal behaviour or conversely an increasing tendency to give any particular community an identity that leads to greater suspicion and an increased arrest rate.

Over the last two decades, there has been a significant change in the shape and form of prison chaplaincy. In this period, there has been a clear and intentional organisational decision taken, and led by chaplaincy itself, to move towards a collaborative and principled multi-faith approach where multi-faith teams work together to provide space and opportunity for prisoners to express their faith and receive pastoral care; managing chaplain roles are accessible to any faith; a chaplaincy headquarters team of diverse faith chaplains and a chaplaincy council representing different faith communities supports and advises chaplaincy. Before this relatively recent change in attitude and culture there was an inherited experience of prison chaplaincy and its place within the wider prison service which it is important to note.

The legal status of modern chaplaincy begins with the Prison Act 1952 which states:

- 7.1 'Every prison shall have a governor, a chaplain and prison officers.'
- 7.4 'The chaplain and any assistant chaplain shall be a clergyman of the Church of England'.

From this legislation, the identity of prison chaplaincy was primarily defined as 'essential' within the prison system.⁴

³The discrepancy between proportions of race, gender and economic status of the prison population compared with the national population is beyond the remit of this chapter.

⁴The 1952 Prison Act also included a medic in the list of essential personnel; medics were later removed from the list of essential personnel but chaplains remained.

In 1952 these roles were held uniquely by Anglican clergymen; other Christian denominations were recognised initially as visiting ministers and only later as chaplains.

Some prisons had separate worship spaces for Christian denominations; Liverpool prison had separate Anglican, Roman Catholic and Methodist chapels.⁵

In 2002 the first Muslim chaplains were employed by the service, and in 2003 a private sector prison appointed a Muslim chaplain to the senior chaplain role (co-ordinating chaplain) and in 2005 this became the case in a public sector prison.

From 1 April 2013 there was further structural change and the introduction of the title 'managing chaplain' for the 'senior' chaplain's role.

After a process of competitive interviews, co-ordinating chaplains were replaced by 'managing chaplains', which led to a more diverse faith demographic.⁶ 'Senior' chaplains were now clearly part of the hierarchical structure of the wider prison institution's governance.

This led to a more hierarchical view of the 'senior' chaplain's role, reflected in the title 'managing'. This role was deliberately accessible to chaplains from any faith or denomination and gave the managing chaplain a clear oversight responsibility for the delivery of faith services.⁷

These changes in structure and culture have led to prison chaplaincy being at the cutting edge of multi-faith working practices which seek to create a space where chaplains of differing faiths contribute from their particular perspective in a way that allows individual integrity rather than being syncretistic.

⁵ Pentonville and Camphill also had synagogues at this time.

⁶ Faith demographic of managing chaplains 2015: Public sector prisons—92 managing chaplains, of whom 61 are Christian and 25 are Muslim, 6 posts vacant. Private sector prisons—five managing chaplains, six co-ordinating chaplains, two posts which combine the posts of managing and co-ordinating chaplain, all of these are Christian. NB: Contracted-out prisons have their own grading structures and job titles; roles will not necessarily be identical to those within the public sector.

⁷ Band 7: senior/managing chaplain job description, marked a deliberate move to clarity within the advertisement and eligibility criteria to include all faiths and denominations.

An Underpinning Theological Framework

For Christian chaplains there is a shared understanding across denominations of the importance of a belief in individuals as created beings. That is, an individual's humanity is seen in relation to God their Creator, regardless of who the individual is or what they have done.

At the licensing of a new co-ordinating chaplain The Bishop challenged the new chaplain to 'find the humanity in each and every person' (2006 HMP Leicester). This comment may in part have been informed by the same theological assumptions as the Venerable William Noblett (Chaplain General, 2001–2011) who identified the de-humanising process of imprisonment (Noblett 1998).

It is not surprising that incarceration itself raises some important questions for Christians whose theological approach to anthropology is often *Imago Dei* (the belief that all of humanity is made in the image of God) and that to live fully in that image is to live freely in society a life which includes love of God, neighbour and self in ways that are tangible.

However, there are within the institution some processes that are viewed as more de-humanising than others. Neither the bishop nor the chaplain general is suggesting that people should not be incarcerated but rather that the process should have as few de-humanising elements as possible. They both argued that faith has the possibility to counter those de-humanising elements that exist within the system.

This theological perspective holds within it the premise that if, within the institution, prisoners are treated in ways that acknowledge their humanity this engenders within the prisoner the possibility of transformation, in their understanding, in the way that they relate to others and in their self-definition. This transformation of self leads to a rehabilitation which potentially reduces reoffending and allows those released to reintegrate more easily into wider society. This transformative and rehabilitative approach is gaining credibility and popularity within the wider criminal justice system including prison chaplaincy (Offender Rehabilitation Act (ORA) 2014).

Alongside this focus on individuals, prison service chaplaincy has developed a communal understanding of the value of engagement with

shared values and perspectives while also acknowledging in the words of the former Chief Rabbi, the 'dignity of difference'.

This has expressed itself in the structure of training chaplains from different faiths alongside one another⁸ in order that the structure of training reinforces the working practice that is expected in order to deliver chaplaincy services in any given establishment.

Alongside practical training undertaken in this way, specific events sought to create a space of listening and learning from the tradition and wisdom of individual faith texts and understandings through the practice of Spiritual reasoning: a method to enable conversation on topics such as pastoral care, working with those of other faith traditions and understanding of leadership (Cambridge Interfaith Programme 2015).

Through experiencing training in this way some chaplains employed the same method to work with prisoners of different faiths by introducing the practice of Scriptural reasoning as a regular way of enabling discussion and learning.

Chaplains also deliver faith-awareness training which enables prison staff of all grades to explore the positive role that faith can play in helping people adapt to imprisonment and potentially continue a transformational trajectory away from crime.

Societal Preconceptions and Understanding of the Prison System

Currently (May 2015), the prison population of England and Wales numbers 85,704 (81,850 male, 3854 female) (MoJ 2015). In England and Wales, the number of children with parents in prison is estimated at approximately 200,000 (Barnardo's 2015). For those individuals not personally connected with the prison system their perception of prison is shaped in part by the regular headlines in tabloid newspapers, which

⁸The chaplaincy training courses are as follows: starting out, world faiths and pastoral counselling. These are delivered in a multi-faith environment and are accessible to all chaplains regardless of status (employed, sessional or volunteer).

question the credibility of the system and raise the question as to whether more punitive measures are required.

Such headlines as: 'too many "inappropriate prisoners" are being sent to open prisons' (Hallett and Lowbridge 2014). 'Inmate had mobile phone at Dartmoor Prison' (Abel 2015) or those where prison is presented as a soft option where 'criminals' are given luxuries and prisoners run the institutions ostensibly there to incarcerate them: 'Slopping out case: life of luxury in British jails' (The Telegraph 2011).

While at the same time prison is experienced by those incarcerated as being de-humanising within a regime that is too punitive, as stated by Ash Meadows [resident at HMP Wolds] 'rehabilitation has completely disappeared almost overnight ... this place has become just another warehouse' (cited in McGraw 2014).

However, the punitive (or otherwise) nature of the prison system is not the only consideration, as well as asking 'have offenders been sufficiently punished?' socially, and indeed politically, much emphasis is placed on whether or not an individual is a reformed character at the end of their sentence. Will they reoffend? Are they properly rehabilitated? Within these questions the identity of an individual is of vital importance, yet the identity of a prisoner is anything but static.

Forming Identity

Many of the de-humanising effects of incarceration are linked to 'identity'; therefore, it is necessary then to analyse how incarceration affects individual identity (Liebling and Maruna 2005).

On entering prison a person's identity is 'de-formed', a new identity must then be 'formed' during incarceration. However, this identity is transient as it will be necessary to re-form identity on release. The quality of that re-formed identity is critical in effecting whether or not an individual will reoffend. However, the re-formed identity depends on the depth and quality of their transient 'formed' prison identity.

De-formed Identity

An individual's identity is 'de-formed' upon imprisonment; what they 'were' is no longer true from the moment they become a prisoner (Sykes 1958). For some, this is a blessing. 'Whatever my life had been up until the judge sentenced me, whatever it had meant—to me or anyone else—it was over, and I realised suddenly that I was glad' (James 2003, p. xiv). For others, it begins a period of brokenness deeper than even they could imagine, which can lead to self-harm or even suicide (Liebling 1999).

Obviously, the first identity change is from an identity as a free man or woman, who makes their own choices, to a man or woman whose freedom and, to a large extent, choices have been removed from them.

This is an instant change when a person is either sentenced or remanded to prison. It is not only the fact that they have had their freedom removed by being incarcerated but also within that decision there is very little choice or even influence. The Prison Act (1952) makes it clear that 'A prisoner ... may be lawfully confined in any prison' (12.1) and 'Prisoners ... may be ... removed during the term of their imprisonment from the prison in which they are confined to any other prison' (12.2). Not only can a person no longer choose to leave where they are but even 'where they are' is decided by someone else, and they can be moved, without warning or reply, to another place.⁹

The de-humanising effect of this is twofold. Firstly, the removal of choice which is an important part of what it means to be a free human being. Secondly, the fact that the person can be moved without reference to anything or anyone else has the effect of reducing that person to a commodity, moved at will, an individual item that is not considered in relation to anything else. Removing an individual from the wider human community has a de-humanising effect because to be human (from a Christian, *Imago Dei* perspective) is to be in a community and in relation with others.

⁹ Moving a prisoner is noted as being a significant factor in the increased risk of self-inflicted deaths (ibid.).

The important caveat to this is that the ORA 2014, now requires that before release attention should be paid to where the sentence is being served and that prisoners should be moved to a 'resettlement prison' close to their community at least 3 months before their release.

William Noblett highlighted the reception process as being particularly de-humanising; he retells this story:

He had never been in prison before and now he was being 'processed', subjected to a 'strip search', which he saw as the final humiliation as he was 'de-humanised', stripped of his dignity. 'I felt as if I was being mocked,' he said, 'though no-one said a word wrong. The whole procedure just seemed designed to humiliate me. I know it's the system but it's awful'. (Noblett 1998)

This observation is vital because it draws our attention to the fact that it is not individual officers who are being accused of doing anything wrong, or even individual prisons, but the process itself, even when it is enacted correctly, has a de-humanising effect.

Perhaps this is unavoidable in a system designed to exclude individuals from human society. Michel Foucault (1979, p. 199 cited in Volf 1996, p. 61) argues that the 'mechanism of exclusion functions through a double repressive strategy of "binary division" (mad/sane; abnormal/normal) and "coercive assignment" (out/in)'. When a person is imprisoned, it is this change of identity, from normal to abnormal and literally from 'out' (in the community) to 'in' (inside the prison walls); by being 'in' they are then abnormal 'out' (casts) of society.

The emphasis on the reception process is not surprising given that this is the visible moment when an individual's freedom is removed and therefore their identity is tangibly de-formed. Within fictional prison drama, there is a focus on the reception process as the moment when a character's identity can be demonstrated to be de-formed and made something other than the free human being they were.

While there is much criticism to be made regarding the accuracy of what is portrayed and indeed whether or not prison is 'glamorised' or 'sexualised' in such productions, there is a dramatic portrayal of this de-humanising process. The reception scenes of Netflix's *Orange Is the New Black* (set in an American correctional facility) give the viewer a graphic

depiction of the reception ‘strip-search’, as this appears in Piper Kerman’s autobiography of the same name, on which the series is based, and its inclusion is not particularly surprising.

However, the long-running cult television series *Bad Girls*,¹⁰ set in a fictional British prison, which then transferred to the stage in the form of *Bad Girls: The Musical*,¹¹ also has a depiction of a newly-incarcerated woman being ‘strip-searched’. Given that this is not standard procedure in the prisons of England and Wales¹² the question as to why it was included is an important one.

Dramatically, this scene demonstrates, in a specifically corporeal manner, the character’s humanity (she is still producing breast milk from recently giving birth) and, by virtue of not having her child with her, her isolation.

The audience is shown the character’s identity as it is de-formed by making them aware that this is a young mother now separated from her child. This strong relational image, designed to create empathy and connection with the character, is contrasted dramatically with the lack of humanity in the prison officer’s response.¹³

While academically and professionally these dramatic portrayals of the female estate have been criticised for their factual inaccuracy, most of those watching will have no experience of actual prison. The portrayals make little or no distinction between the American and British penal systems; these dramas are partly responsible for social attitudes towards prison and prisoners.

However, news reporting is arguably a greater factor in shaping the general population’s response to and preconceptions of prisoners. Headlines often seek to label prisoners as ‘evil’ such as ‘13 of Britain’s most evil killers...’ (Pettifor 2011) or refer to prisoners by their sensationalised nickname ‘Scarborough Slasher’ (Evans 2014).

¹⁰ ITV1 drama 1 June 1999 to 20 December 2006.

¹¹ Leeds 27 May–1 July 2006, London West End 16 August–17 November 2007.

¹² PSI 67/2011: 2.39 ‘Women prisoners must not be full-searched as a matter of routine’.

¹³ Sylvia Hollamby ‘Lift your bosoms up for me, have to get the doctor to give you some pills, stop you leaking’.

These headlines serve to disconnect the humanity of the person held in prison by using labels that are impersonal and emphasise the 'fearful otherness' of the prisoner. They create a separation emotionally and intellectually between prisoners and the general society. Such headlines discourage the general public from regarding prisoners as human, thus de-humanising and emotionally disconnecting prisoners in the same way the walls physically disconnect prisoners from those who are free.

If this disconnection from society is in part what de-humanises prisoners, de-forming their identity, then anything which 'counts' this will necessarily be part of forming an (albeit transient) identity as an incarcerated, but nevertheless primarily, human being.

The Unique Role of a Prison Chaplain

The chaplain's 'statutory induction visit' following the reception procedure has the potential to be a key part in the process of an individual's de-forming and forming of their identity, should a prisoner choose to engage with this possibility.

The best practice in this visit seeks to recognise the humanity of the person being visited and thus helps to counter the potentially de-humanising effect of the reception process. The chaplain is both a part of the prison system but also due to his/her particular role 'apart' from that system. Much of the reception process is necessarily functional and often with time constraints meaning the prisoner can feel as though they are simply an object to be processed. However, the chaplain is required to take time, in a discreet place, to give attention to the story of the individual. The chaplain, in taking time and care to listen, gives back a sense of value to the individual's story.

Second, the chaplain takes time to ensure that prisoners who declare themselves 'a person of faith' are aware of how they can have a lived experience of faith in prison and of the support available from the chaplains and faith communities within the prison.¹⁴ For prisoners who

¹⁴ PSI 51/2011 also requires the chaplaincy to facilitate appropriate ministerial visits from their external religious community leaders if required.

declare themselves to be 'of no faith' chaplains offer the opportunity to be listened to and supported if and when the person wishes.

This particular role is recognised within the wider prison culture; chaplains hold a place of respect (Todd and Tipton 2011) as those who provide a safe space in which a person can be vulnerable. While this safe space is not held in absolute confidentiality, the grounds on which conversations would be shared are clearly understood to be on particular grounds of individual safety, the safety of others or potential security implications. This means emotional conversations regarding personal vulnerability and struggle on entering prison are confidential and safe. 'Chaplaincy space seems to serve, very much like the chaplain, as a pressure valve where men and women can come to release tension' (Todd and Tipton 2011, p. 36).

A prison officer expressed the following comparison of the role played by chaplains, prison officers and governors:

I often think of [the prison chaplain] as the ears of the prison...purely there to listen to, rather than to watch prisoners. I think we are the eyes and the hands, the governors the brains but the chaplains—they are the ears.
(Todd and Tipton 2011, p. 21)

Forming a New Identity: Given, Claimed, Observed

Having lost the identity of a free human the prisoner's new 'formed' identity is more complex as it is formed through a multiplicity of means. It is partly 'given' by the institution, partly 'claimed' by the prisoners themselves and partly 'observed' by other people.

Given Identity

The institution gives an identity often experienced as 'de-humanised' or 'de-formed'. Each person receives a unique prison number during the reception process; it is possible that this is the only unique identifier as there are cases of two prisoners (or more) with the same name. Although

prisoners are rarely called by their number in today's prison regime, for security and pastoral reasons their unique number is on all documentation and is always used for cross reference. Even when this is pastoral, ensuring good or bad news is communicated to the correct person, to be given a number is somehow to be primarily a prisoner rather than a named human being.

However, the strength of this given identity can be so powerful that those who have written about life in prison have done so using their prison number as their name. An early historic example of this would be 'the final sign that a man, as far as prison officialdom goes, is completely robbed of his personality and has become a number' (B.2.15 1924, p. 31). A contemporary example is the chaplain who received numerous Christmas cards signed not only by name but also by number. While in society those over 16 do have a National Insurance number and everyone is issued an NHS number these do not become part of an individual's identity in the same way. Most people need to look up those numbers while most prisoners can repeat their prison number from memory. The only other place this type of identification might occur is in the armed forces where 'name, rank and number' would be given from memory.

As well as a prison number, each prisoner, currently incarcerated, is given an incentives and earned privileges (IEP) scheme 'identity label' which controls their access to privileges additional to safe, legal and decent requirements of a basic prison regime. Prison Service Instruction (PSI) 30/2013 introduced 'entry level' to the existing IEP scheme, which classifies prisoners into basic, standard or enhanced, depending on their behaviour and their engagement with rehabilitation. The desired outcome of this is that 'prisoners engage with their rehabilitation. Good behaviour is incentivised and bad behaviour is challenged with loss of incentives' (PSI 30/2013). The IEP process was felt by prisoners to be a 'factor that had divided and individualised the inmate community' (Liebling and Maruna 2005, p. 181). The IEP scheme also includes regulations that govern which prisoners are issued with prison clothing and those who are entitled to wear their own clothes. As the incarceration process generally has been seen to reduce the ability to allow an individual's personality to be expressed, the lack of freedom to wear one's own clothes is clearly also part of restricting that expression.

In terms of given identity, then, the institution gives a number and an ‘identity label’—the latter alters an individual’s experience both in terms of what privileges are afforded to them and how they are judged to be by the system. It is possible to argue that prison officers and others in authority may afford more opportunities to demonstrate engagement to an ‘enhanced’ prisoner compared to a prisoner on ‘basic’, therefore magnifying the division in the prison population and crystallising the new ‘given’ identity.

A caveat to this ‘given’ structure is that the chaplaincy, in their role as ‘apart’ from the system, has no mechanism for recognising IEP identity labels. Whether basic or enhanced, access to a chaplain is identical. Even those prisoners who have been segregated are still risk-assessed on a case by case basis to attend corporate worship should they wish to do so, in addition to any pastoral support they may wish to receive individually from a chaplain.

Claimed Identity

Prisoners, who choose to do so, can claim for themselves a faith identity by accessing and engaging with the ministry of chaplaincy in various ways, two of which are significant in forming an identity that is not entirely isolated from general society. These can be expressed as metaphors which enable and develop our understanding of how identity might be claimed through the way chaplaincy operates.

Chaplain as Icon

Icon is a word with particular Christian connotations. However, here we are using the definition of icon as ‘a person or thing regarded as a representative symbol of a culture, movement, etc.’ (OED 2002); regarding a chaplain as an icon in this sense means their very presence is symbolic of a wider faith community and also therefore of a belief in divine presence and activity. This is a concept which has a wider application in Christian theology, where for some Christians the priest has been viewed as iconic,

that is to say, pointing to something beyond themselves, in many ways, including Austin Farrer's now famous metaphor of the priest as 'Walking sacrament' (Farrer 1991, p. 101). This develops the concept, of someone whose image points beyond themselves to a greater truth, into someone whose presence is itself the outward and visible sign of an inward and invisible grace.¹⁵ The priest then, by their presence, conveys a belief that God's grace is active in the place where they are.

With regard to prison chaplains, whether the metaphor is icon or walking sacrament, there is a sense in which the encounter is with the same faith whether the religious minister is encountered in free society or inside the prison walls. It is this 'sameness' that therefore counters the separation. When a prisoner meets a chaplain, their experience is the same as a free person who meets their church leader. This can serve to reconnect the prisoner with a shared human experience that is not distinct from the wider, free, community. Although this metaphor specifically relates to a particular Christian understanding, it can be true also of chaplains from other faiths, a Hindu, a Muslim, a Sikh (or indeed any other chaplain), would be experienced the same when encountered in prison as when encountered 'outside'. It is for this reason the allowance of a 'Kirpan' for Sikh chaplains is vital because if this important tenet of the Sikh faith were to be banned from prison then the minister would no longer be the same regardless of where they were encountered.

In claiming for themselves a faith identity in part by recognising the 'sameness' of the minister both inside and out, the prisoner provides themselves with the opportunity to have a 'self-identity [which can be kept] constant whether the prisoner was inside or outside the prison' (Maruna et al. 2006, p. 179).

Chaplain as Bridge

There are many ways in which chaplains form a bridge (Church of England Board for Social Responsibility 1999) between the prisoner

¹⁵ Book of Common Prayer, Catechism www.churchofengland.org/prayer-worship/worship/book-of-common-prayer/a-catechism.aspx.

and the outside community, not only metaphorically by being the iconic 'same' but also, by physically being that which connects the inside and the out.

It is through the chaplain that members of the faith community come into the prison and sit alongside prisoners as fellow worshippers, or lead faith study groups. These interactions of prisoners and wider community literally break down the separation of the prisoner from the community. Chaplaincy is unique within the prison system in regularly involving ordinary volunteers in their day-to-day work.

The partnership between the chaplains and outside faith communities is essential for the success of any chaplain's ministry ... Chaplains must realise the communal dimension of the new covenant and their own limitations in representing the outside community. (Church of England 1999, p. 107)

When members of the community are allowed to enter the prison walls and meet prisoners, to be introduced to them by name, rather than only knowing sensationalised nicknames (as presented often in the news), the human face of a prisoner is made apparent and the emotional connectedness begins to be restored both for those who come into the prison and those who cannot go out. This is a vital reconnecting. It is formational, for this interaction allows a prisoner to form a new identity, one that is more than 'prisoner' or 'offence', one which reflects their true self. One prisoner reflecting on his time in a young offender institution said, 'I don't think that there's any forgiveness except in the chapel, they just look at you as a prisoner ... in Church like, they see your true colours and who you really are'.¹⁶

Additionally prisoners are able to claim an identity for themselves by belonging to a faith group. This allows an individual to claim as 'primary identifying group' his or her faith as distinct from those of another faith (or none) rather than their primary identity being 'prisoner' as distinct from staff. If a prisoner chooses to belong to a faith group, the allowed religious objects (PSI 51/2011; MoJ 2011) are often tangible

¹⁶Young offender in a YOI 2006.

evidence of that identity in the same way a clothing label or particular sport shirt might be in the community.

Previous research has shown a variety of reasons for claiming a faith identity including 'sense making, searching for meaning, identity and structure; dealing with the pains of long-term imprisonment: seeking "brotherhood"/family; or "anchored relations"; seeking care and protection: gang membership; rebellion; and coercion' (Leibling et al. 2011, p. vi). This research was in response to a very particular situation and establishment; however it highlights the potential range of motivation for prisoners to claim a faith identity including 'gang membership' or 'coercion' which stand against the tenets of any of the world faiths.

Faith identity is itself complex and chaplains have an instrumental responsibility in ensuring that the orthodoxy of their particular faith tradition is taught without manipulation or particular bias. Equally, chaplains of all faiths have a responsibility to ensure that prisoners' claimed faith identity is able to be expressed corporately and not simply individually. This ability to claim a corporate and therefore relational identity for one's self is vital in ensuring the quality of 'formed' identity which can lead to an effective 're-formed' identity on release which in turn significantly reduces the likelihood of reoffending.

Part of claiming a faith identity is to also claim shared ownership of a faith space, whether this is a multi-faith space, a specifically-Christian chapel or a specifically-Muslim space ('mosque' or 'Muslim prayer space'). Prisoners describe this space as a place where they 'feel free', perhaps this is due to its 'perceived non-prison status' (Todd and Tipton 2011, p. 36). It is the perceived neutrality of the space which allows prisoners to feel that sense of freedom which transcends their day-to-day routine. The religious images or built environment again are not markedly different whether they are encountered inside prison or out in the community allowing for a brief moment the bars, doors, locks and keys that visually remind a prisoner of their incarceration to be replaced by familiar religious images. In Christian worship spaces these religious artefacts are often deliberately chosen images of hope, resurrection and freedom.

Specifically in one multi-faith space the Christian imagery that is used includes:

- The risen Christ
- Mary
- Stations of the Cross painted by prisoners
- Light
- Loaves and fish
- Chi Rho (the symbol for Jesus);
- Sheaf of wheat
- Dove and flames (symbols for the Holy Spirit).

In another prison worship space, the focus of a large wrought iron crucifix is in part balanced by colour and light from painted glass windows, and both are the work of prisoners. Any work by prisoners gains a symbolism which is not only religious in context but also symbolic of the ownership of faith and faith symbols by those who are part of the prison community.

Within corporate worship, uniformed staff do not take an active leadership role and are therefore more discreet, usually sitting at the back of the room (see PSI 51/2011: 11.3 and 11.7). This being the case, the chaplain is the central figure who (as icon or bridge) brings the outside connection visibly into the room. Uniformed staff, iconic of incarceration itself, simply because they are the person who locks the door at night and unlocks it in the morning, are less prominent.

Observed Identity

Throughout this chapter we have deliberately used examples from contemporary drama and media coverage to illustrate how the general public's understanding of what it means to be incarcerated is shaped. Criminologist Louise Ridley argues that

Media discourse on crime, and the subsequent representation of prison, influences the general debate about prison and the aim of imprisonment. Mason

(2006) suggests that, 'cultural constructions of prison' are an important component of the punitive and populist ideologies that underpin much of our current criminal justice policy. Occasionally, the media offer some well researched and carefully filmed documentary, such as the work of Rex Bloomstein, or the BBC Two documentary *Women on the Edge: the truth about Styal Prison* in 2007, which aim to challenge some of the public's firmly held beliefs about prison. However, these are soon forgotten, unlike the infamous *Bad Girls* that ran for seven years on ITV from 1999 to 2006 and the more gentle 1970s BBC sitcom *Porridge*. (Ridley et al. 2010, pp. 32–42)

Mathiesen takes this further by arguing that

The way in which the entertainment industry of television has transformed crime and prison to entertainment objects, thus corroding our doubts and worries about the prison solution, is particularly important. But the mass media, though setting the stage and the major agendas, are not alone in bearing responsibility ... Leading political figures today increasingly and willingly adjust themselves to the agendas set by the mass media, reinforcing and legitimizing them. (Mathiesen 2000, Preface)

If Mathiesen and Ridley et al. are correct that drama and documentaries can create perceptions which influence criminal justice policy, political responses to crime and offenders and the assumptions of criminology students (many of whom will go on to work within the criminal justice system), then drama and media portrayals of prisons affect the experience of actual prisoners.

Within the prison estate, chaplaincy provides a unique opportunity for members of the public to experience this same process because the day-to-day work of chaplaincy facilitates volunteers entering prisons to support prisoners in their lived faith experience.

The 'observed identity' which volunteers, coming into a prison for the first time, bring with them is also largely shaped by the media. However, time in the prison allows them to observe prisoners and therefore gain a more holistic impression of prisoner identity. Volunteers (surprised) often remark, 'They're just like me'. While this marks a change in the volunteer, it also affects the prisoner. To be observed to be 'just like' a free man or woman is to be observed as 'normal'; this observed normalisation can lead to a change in the self-image of a prisoner. A positive 'observed

identity' has the potential to counter a negative 'given identity' and to strengthen a positive 'claimed identity'.

Re-formed Identity

On release, each individual must re-form their identity; the quality of the identity they had formed in prison now affects this re-forming process. If an individual was able to create and maintain a positive identity during their time in prison, they are more able to re-form an identity which is sufficiently distinct from their pre-prison identity to reduce their chances of reoffending.

Chaplaincy and faith have a particular role in this re-formation, by regularly and systematically bringing the outside into the prison walls both by their representative nature and by facilitating ordinary members of the public with no particular 'skill' or 'status' to access the prison. These are 'ordinary men and women' not writers, singers, actors or other professionals who may work inside prisons.¹⁷ Additionally chaplaincy (among others now) is able to accompany prisoners on their journey through the gates and into the process of identity re-formation.

Community chaplaincy has been the primary way¹⁸ in which faith-based support beyond the gates has been delivered in England and Wales since 2002; this is in part due to the restrictions placed on those who work within the prison walls, preventing continuing communication with those who are released. Community chaplaincy self-defines its purpose as a faith-based organisation that

supports [prisoners] through the gate upon release, and during those first critical days, weeks, months ... back in the community. [Seeking not to] duplicate other projects ... but to complement existing provision working with a multi-disciplinary and multi-faith approach. (Community Chaplaincy Association 2011)

¹⁷ Members of the public do work in prison in contexts such as: writers in residence, opera groups, music in prisons.

¹⁸ Others involved in this work have included 'Caring for ex-offenders' and 'Prison Fellowship'.

The ORA 2014 introduced an organisational change which created Community Rehabilitation Companies (CRCs) whose role is 'designing and delivering an innovative new service to rehabilitate offenders and help them turn their lives around' (MoJ 2013). Currently there are no data on how community chaplaincy is working within the CRCs. However, the ethos of both is to work collaboratively with others to meet the needs of those under their jurisdiction; community chaplaincy works with prisoners before their release and continues that support through the gates. This is specifically listed as part of the role of the new CRCs.

The ORA sets out specifically the fact that the reformation brought by this legislation will 'reorganise our prisons to resettle offenders "through the gate", with continuous support from custody to community. This will mean the majority of prisoners will be moved to a resettlement prison close to their community at least 3 months before release' (MoJ 2013).

This action of connecting a prisoner with their community before release strengthens the process of a formed identity inside prison which has a communal aspect to it. This means that on release the re-formation of identity should also have a communal dimension, as healthy communal bonds may reduce the possibility of reoffending.

Although there are no data for England and Wales since the introduction of the ORA, there has been extensive research by the Pew Forum in the USA (Boddie and Funk 2012). This research has taken account of the views of chaplains working within the penal system after Congress introduced 'the Second Chance Act' in 2007,¹⁹ which provided federal funding for re-entry services.

Chaplains surveyed were clear that 'successful rehabilitation and reintegration of inmates into society requires efforts both in prison and after release' (Boddie and Funk 2012).

When reflecting on their own role Chaplains said:

Prison chaplains are, in essence, religious programs providers. [Ensuring that] the religious beliefs of offenders [are] met ... as a prison chaplain, am not to convert persons [but] to ensure their religious rights. (*Ibid.*)

¹⁹ <https://www.congress.gov/bill/110th-congress/house-bill/1593>.

Chaplains stated that 'Transformational Change' was an important requirement and that 'chaplains play a key role in helping inmates transform their understanding of responsibility, choices and possibilities. Behavior only changes when hearts change' (Ibid.).

In terms of re-entry support one chaplain commented that:

[Rehabilitation], in general, is inadequate.... Religious services should be allowed to help inmates transition into churches and participate with mentors prior to discharge who will follow them upon discharge. (Ibid.)

Identity of Chaplaincy from an Anglican Perspective

The change of structure and identity which has occurred within prison chaplaincy has been explored above and within it, the changing place of Anglican chaplains particularly. For Anglican chaplains, specifically (although this experience may also be shared by Christian chaplains from Methodist or Roman Catholic denominations), there are experiences that parallel the prisoner experience, that is to say, the process of de-formation, formation and re-formation of identity.

Chaplains hold the only role within the Prison Service which requires external endorsement, additional to their professional qualifications and experience, in order to work within the prison system. For Anglican chaplains this comes in the form of a licence from their diocesan Bishop. Thus, the chaplain both structurally and personally connects the inside prison system with the outside world.

Additionally, the personal experience of becoming a prison chaplain holds within it a reflection of the prisoner experience in relation to identity formation. Anglican ordinands (those training for ordination) are traditionally formed in the mould of 'parish priest'. The parish church is the assumed context for ordained ministry (the Church and Congregation whom you must serve). This identity is formed very strongly during training and in the first years of ministry when s/he serves as a curate.

Upon becoming a prison chaplain the experience is one of deformation, there is no longer a parish to which the chaplain belongs (even though the prison will inevitably sit within one), the legalities pertaining to the parish church no longer apply, the Anglican priest is 'cut off' from much that formed their professional, spiritual and personal identities.

Prison chaplains then begin the process of identity formation which has as its unit of reference the prison itself, whose 'cure of souls' is not geographic (for staff may live in a wide area) but institutional. The danger of forming an identity in this context is that the strength of the institutional structure can lead to a prison chaplain becoming institutionalised where their role becomes 'who I am and not what I do through faith'²⁰ and this in turn can lead to a loss of prophetic wisdom and a fear of challenging the institutional structures. This mirrors the vulnerability that can be felt by prisoners as they form their identity within the same fixed regime.

The process of re-formation takes place in two slightly different contexts. For the Anglican chaplain, there can be a re-formation of identity within the institution of the prison, their identity as priest may be formed by different interactions from those of a parish priest. However, when s/he is involved in diocesan structures and life, there may be a need to assert the newly re-formed identity as both priest without parish and priest within a different institution.

Just as prisoners on release will need to live as free women or men in order for that re-formed identity to solidify and gain a reality of its own Anglicans serving as prison chaplains need to live in the wider diocesan structures in order for their own identity to do the same. This process both strengthens the experience of prison chaplaincy and the wider church, just as when the wider community is introduced to those who are incarcerated both are strengthened and enriched by the experience.

Conclusion

The year 2015 marks a significant change in the prison system with the implementation of ORA 2014. It raises significant issues for chaplaincy particularly regarding the question 'How do we keep faith in the system?'

²⁰ Helen Dearnley (unpublished).

Chaplaincy in its multi-faith form must continue to build connections with wider community faith bodies and in particular continue the work of facilitating volunteers within the prison system.

The UK government's Transforming Rehabilitation agenda between 2010 and 2015 shares much of the faith language and experience, and chaplaincy will need to make structural responses to include and develop its identity within this transformation agenda. Other European systems are also highlighting the importance of combating de-humanising effects by actively seeking to recognise the humanity of those who are incarcerated by deliberately treating 'prisoners as human beings, not criminals' (Öberg cited in Longford Trust, n.d.). Chaplaincy needs to continue to develop ways in which faith experience can act as a counter to any de-humanising effect of incarceration.²¹

Prison chaplaincy must hold onto the belief that change and transformation are possible and seek to ensure the continuation of a model of chaplaincy which enables 'prisoners to see themselves differently, to truly value their own lives so that they can come to value the lives of others: to live full lives themselves and not to mar the life living of others' (Swift et al. 2015, p. 255).

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²¹ For a wider discussion on the effects of imprisonment, see Liebling and Maruna (2005) *The effects of imprisonment*.

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Index

A

Abiola, M.K., 329
Abrahamic cosmologies, 68
 disability in, 70
Abrahamic faiths, 46–52
 God of, 60
accountability, 192
African cosmology, 141–2
 and rationalism, 143–4
African descent migrants, 314
 in Britain, 316
African-descent spiritual movements, 315
African National Congress (ANC), 153–4
African societies, same-sex relations in, 169
African women, 327
Africa, witchcraft-related crimes in, 151–2

influence of, 152–4
Ralushai Commission (1995–1996), 154–7
witchcraft beliefs in global context, 150–1
Al-Hiwar TV, 293
Al Jazeera International, 288
American Indian tribes, 263
American polygamy, 260
Amin regime 1971–1979, 173
ANC. *See* African National Congress (ANC)
ancestral spirits, 145, 146
ancient Greece, 93
 Hesiod, 52–3
 Plato, 53–4
ancient laws, 264
ancient Rome, 54–5
Anglican chaplains, 369–70
Anglo-Saxon culture, 279

anthropology, holistic approach of, 138

Anti-Homosexual Act, 179

Anti-Homosexual Bill (2009), 177–9

anti-Mormonism, 270

anti-Muslim violence, 214–19
 impacts of, 225–31

anti-psychiatrist movement, 90

anti-psychiatry movement, 98, 99

anti-Semitism, 233

apocrypha, 47

attachment, 23–4

Australia CSA, within Roman Catholic Church, 199–202

Australian Community Relations Commission, 216

B

Babylonian Code of Hammurabi c. 2000 BCE, 48

Bahdi's assessment, 221

Baker, Moses, 173

Balewa, Abubakar Tafawa, 328

belief, 141
 in moral order, 24

Biafran War in 1967–1970, 328

Bigamy Act of 1603, 265

bigamy law reform, 278–9

biological determinism, 100

Black African communities in UK and Europe, 314

Black African families in north of England, 318

Black churches, 317

Black community in UK, 287, 314–15

Black families, 309
 in north of England study, 310
 in UK, 310

Black religious organisations, 314

Black spiritual movement, 313–16

Bogle, Deacon Paul, 174

Boko Haram, 337–8

Breivik, Anders Behring
 admission, 254
 attacks in Norway (2011), facts of, 246
 Christianity, 255
 concept of 'vicarious religion,' 250
 crimes, 244
 ideological self-justification, 240

Breivik, Jens David, 243

Britain, Muslims in, 286–8

British civil society, 303

British Ministerial Group on Public Order and Community Cohesion, 290

British Muslim communities, 14

Bugandan policy of openness, 171

'Building Cohesive Communities: A Report of the Ministerial Group on Public Order and Community Cohesion,' 291

C

Cameron, David, 241

Canadian multiculturalism, 230

Canon Law, 204

capital punishment, 56

caput, 56

Castells, Manuel, 297

Catholic Church of Australia, 200

Celtic tribes of Britain, 264

child sexual abuse (CSA), within Roman Catholic Church, 191–2

Australia, 199–202

by clergy, 192–3

Ireland, 196–9
USA, 194–6

Child Support, Pensions and Social Security Act 2000, 123

Christian-based beliefs, 13

Christian chaplains, 352

Christian faith perspective, 348

Christian family model, 176

Christianity like Islam

- literacy-based belief system, 170
- universal belief system, 171

Christian theology, 361–2

Christological resource, 130

Chukuma Committee, 334

Church, structure of, 202–4

CICA. *See* Commission to Inquire into Child Abuse (CICA)

Cicero, 57–8

Circles of Support and Accountability (COSA), 120

citizenship engagement, forms of, 298–300

civil litigation in USA, 193

civil society organisations, 299

claimed identity, 361–5

Cloyne Report, 198

Coalition Government (2010–2015), 123–6

cognitive maturity, 32

colonial era anti-witchcraft laws, extension of, 152

Commission to Inquire into Child Abuse (CICA), 196, 197

commitment, 24

community chaplaincy, 367

community-level control, 36

Community Rehabilitation Companies (CRCs), 368

conceptual device of moral economy, 114

conflict theorists, 22, 23

contexts for violence, 221–5

contract theory, 61

COSA. *See* Circles of Support and Accountability (COSA)

cosmological framework, 142

cosmologies, 141

- of Xhosa-speaking people, 144

cost-benefit analysis, 24

Cottee, Simon, 242, 253

CPS. *See* Crown Prosecution Service (CPS)

CRCs. *See* Community Rehabilitation Companies (CRCs)

crime in cross-cultural perspective, 148–50

criminal justice system, 129

criminological theories, 23–7, 34

cross-cultural comparison, 138–9

cross-cultural perspective, crime in, 148–50

Crown Prosecution Service (CPS), 82

CSA. *See* child sexual abuse (CSA)

cultural contexts for violence, 12

cultural expression, new spaces for, 292–5

Cultural Marxism, 244

culture, 139–40

culture-bound syndromes, 104

curanderismo, 104

D

Dawkins, Richard, 241

dead-letter federal law, 263

de-formed identity, 355–8

de jure status, 263

deterrance-based surveillance model, 63
 Deuteronomy, 47, 48, 72
 differential association, 26
 Disability
 and textual exegesis, 69
 culture and contemporary treatment of disabled people, 77
 hate, hostility and lives unworthy, 77–80
 pity, vulnerability and rescue, 80–3
 religion and, 70–7
 disabled people, disability, culture and contemporary treatment of, 77
 hate, hostility and lives unworthy, 77–80
 pity, vulnerability and rescue, 80–3
 disabling theology, 73
 divination methods, 146
 ‘Divine Right’ of kings, 51
Doe v. Holy See, 203
 Dublin Archdiocese Commission of Inquiry, 197
 Durkheim, Émile, 61–2, 69, 91, 92
 ‘dysfunctions’ of society, 23

E

Eastern Cape, witchcraft-related crime in, 157–61
 Ely Hospital Enquiry Report of 1967, 77
 empirical evidence, 28–9
 English Law and polygamy in
 American Colonies and early Republic, reception of, 264–6

Equal Opportunities Commission Act (2007), 178

Europe, Black African communities in, 314
 evil spirits, 90
 ‘the Exodus,’ 47

F

faith in society, issues of, 2
 Fang ethnic group, 170
 Faour, Adnan, 293
 federal law of polygamy, 270–1
 Federal Religious Freedom Restoration Act of 1993, 277
 Federation of European Muslim Youth and Students Organisations (FEMYSO), 300
Ferns Report, 197
 Fielding, Henry, 4
 Fielding, John, 4
 Fletcher, James, 201
 focus
 religion and religiosity in, 32–6
 young people in, 31–2
 forming identity, 354
 Foucault, Michel, 356
 ‘the Great Confinement,’ 96
 ‘traitement moral,’ 95

Fulbe conquests (1802–1817), 327
 functionalist perspectives, 22

G

gender, 5
 Genesis of Mormonism, 267–8
 Gillard, Julia, 200

given identity, 359–61
Glasgow, Radio, 294
Goffman, Erving, 78
Golding, Bruce, 183
Grayling, Chris, 125
Grayson, Allan, 274
Greco-Roman period, 60
Greco-Roman political power, 59
Greek's predominant method of punishment, 54

Islam, 327
 popular mythologies of, 222
Islamic State of Iraq and Syria (ISIS), 301
Islamisation of Europe, 249
Islamophobic violence, 11
 anti-Muslim violence, 214–19
 impacts of, 225–31
 contexts for, 211–14, 221–5
 impacts of, 211–14
Islam TV Channel, 292

H

harm-reductionist model, 274
Hebrew law, 46
Heffner, Hugh, 274
Hellfire hypothesis, 27
Hirschi's control theory, 23, 117
Hoddle, Glenn, 2
homophobia, campaign against, 180–4
Hopkins, Matthew, 2
Hough, Rebecca, 82
Howard, Michael, 121

I

idlis, 147
incentives and earned privileges (IEP) scheme, 360
Information for Partnership Boards, 81
intentional religion, 118
involvement in conventional activities, 24
Iranian Islamic Revolution, 336
Ireland CSA, within Roman Catholic Church, 196–9
ISIS. *See* Islamic State of Iraq and Syria (ISIS)

J

Jamaica
 Christianity in, 173, 175
 English-speaking Caribbean in, 175
 history of slavery in, 174
 popular culture in, 180–4
Jamaican society, 181
 views on social issues, 176
John Jay study, 194–5
Joss-based Christian-led Centre for Development and Livelihood Enhancement (CDLE), 340
Judaeo-Christian cosmology, 72, 77
'justice,' concept of, 50

K

Katz, Jack, 247
 'righteous slaughter' model, 249–50
 themes, 248
Kayanja, Robert, 178
Kennedy, Helena, 122

Khomeini, Ayatollah, 336

Krochmaluk, Eric, 79

L

Latter-day Saints (LDS) movement, 266

legal language, transmission of, 55

legal status of polygamy in USA, 269–70

federal law, 270–1

regulation, 273–7

Reynolds v. US (1878), 271–3

lex talionis, 48, 61

Lisle, George, 173

Locke, John, 242

Loewenthal, Kate, 102

London Bombings (2005), 287

'low level social policing of

sexuality,' 181

Luther, Martin, 73

M

mainstream criminological theory, 7

Manifesto (1890), 269, 273

Mara, Muhammadu, 336–7

Martin, Brent, 78

Marx's view of religion, 22

masculine identity, 168

mass self-communication theory, 298

matrifocal society, 262

matrilineal society, 262

Matrimonial Causes Act of 1857, 265

medicalisation of madness, 95–9

mental disorders, connection and

context of, 91–5

mental health, intersectionality of

faith, criminality and, 102–6

Merton's reference group theory, 29

metanoia, 115–16

individual perspective on, 117–20

metaphysics, 115–16

misrepresentation, history of, 288–91

mobilisation

and citizenship engagement, forms of, 298–300

Model Penal Code (MPC), 274

modernising reforms, 124

modern secular society concept, 3

monotheism, 69

Montagu, Ashley, 78

Moral Communities Model, 27–9

moral community hypothesis, 29–30

moral economy approach, 125–6

Moral Messages Model, 28

Morrill 'Anti-Bigamy' Act of 1862, 271, 272

Mountain Meadows Massacre, 269

MPC. *See* Model Penal Code (MPC)

multiculturalism, management of, 230–1

Murphy Report, 197

Museveni's National Resistance Movement (NRM), 173

Muslim chaplains, 351

Muslim communities

in UK, 286–9

in West Canada, 212

Muslim media, 292–5

N

National Bureau of Statistics (2012), 331

National Conference on Witchcraft Violence, 156

National Economic Empowerment and Development Strategies in 2004, 335

National Offender Management Service (NOMS), 122–3

National Population Census in England (2013), 286

National Prison Services, 332

National Probation Service (NPS), 122

National Youth Policy (NYP), 334

Native Americans, polygamy amongst, 261–3

Nelson-Pallmeyer, Jack, 245

New Labour's Dispensation (1997–2010), 122–3

New Public Management (NPM), 121

New Testament, 47

Nigeria

- developments in Northern Nigeria, 336–40
- experience of young persons in, 329–34
- government responses to youth unemployment and crime, 334–6
- history of, 326–9
- military rule in, 336

Nigerian ethnic groups, 332

Nigerian Police Force, 331

Nigerian population, 13

Noblett, William, 356

NOMS. *See* National Offender Management Service (NOMS)

Northern Nigeria, developments in, 336–40

Northern Rhodesian Witchcraft Ordinance (No. 31 of 1952), 153

north of England study, 312

- Black families in, 310
- participants' spirituality and the style of worship, 317
- spiritual belief and religion, 319

NPM. *See* New Public Management (NPM)

NPS. *See* National Probation Service (NPS)

Nyerere, Julius, 327–8

NYP. *See* National Youth Policy (NYP)

O

observed identity, 365–7

Obsessive Acts and Religious Practices, 94

obsessive-compulsive disorder (OCD), 94

offence/punishment, types of, 56–7

Offender Management Act 2007, 123

Offender Rehabilitation Act (ORA) 2014, 352, 356, 368

Office for Public Management (OPM), 82

Old Testament command, 60

Old Testament-style biblical literalism, 64

omnipresent and omniscient, 63

Oneida Society, 267

organic religion, 118

P

Panopticon, 63

paternalism, 95–9

paternalist era of disability policy, 82

Pauline theology, 59, 61, 127

penal evolution, 61–2

penal populism, 9

Perry, Barbara, 11

person-centred ontologies, 106

Pew Forum in USA, 368

plural marriage, social persecution, legal restrictions and political scrutiny of, 268–9

Poland Act in 1874, 271

Police and Criminal Evidence Act 1984, 121

political correctness, 244

polygamy in USA, 259

- bigamy law reform, 278–9
- history and law of, 260–1
- English Law and, 264–6
- faith in early America and
- Genesis of Mormonism, 267–8
- LDS movement, 266
- Native Americans, 261–3
- social persecution, legal
- restrictions and political
- scrutiny of plural marriage, 268–9

legal status of, 269–70

- federal law, 270–1
- regulation, 273–7

Reynolds v. US (1878), 271–3

Poole, Elizabeth, 289

postmodernist theorists, 101

postmodern secular society

- concept, 3

post-'Sexual Revolution' society, 273

potential radicalisation, spaces for, 300–2

Powhatan society, 261

PPUs. *See* public protection units (PPUs)

Prison Act 1952, 350–1, 355

prison chaplaincy

- structural changes of, 349–51
- unique role of, 358–9

prison, faith and identity in, 347–9

prison chaplaincy

- structural changes of, 349–51
- unique role of, 358–9

Prison Service Instruction (PSI) 30/2013, 360

prison system, societal

- preconceptions and
- understanding of, 353–4

programmatic religion, 118

'the prophets,' 47

Protection of Vulnerable Adults Scheme 2004 (POVA), 81

The Protestant Ethic and Spirit of Capitalism (Weber), 23

PSI 30/2013. *See* Prison Service Instruction (PSI) 30/2013

psychological perspective, 100

public protection units (PPUs), 68

punishment, 95–9

- in Roman Republic, 62

R

Ralushai Commission (1995–1996), 154–7

Ralushai, Victor, 154

rational choice theory, 26

reference group theory, 26–7

re-formed identity, 367–9

Rehabilitation Revolution, principles of, 124

rei publicae utilitas, 57

religio-cultural context of punishment, 45–6

Abrahamic faiths, 46–52

ancient Greece
 Hesiod, 52–3
 Plato, 53–4

ancient Rome, 54–5

caput, 56

Cicero, 57–8

offence/punishment, types of,
 56–7

omnipresent and omniscient, 63

penal evolution, 61–2

religio-cultural legacy, 63–4

right to punish, 60–1

 transmission of legal language, 55

religio-cultural legacy, 63–4

religion, 5
 in African community, 314
 as strategy for victim support,
 317–19

 community cohesion and pursuit
 for social justice, 319–21

 Comte's view of, 23

 connection and context of, 91–5

 in focus, 32–6

 Marx's view of, 22

 self-control *vs.*, 36

 in society, issues of, 2

religion on crime and deviancy, effect
 of, 21–3

 criminological theories, 23–7

 empirical evidence, 28–9

 moral community hypothesis,
 29–30

 religion and religiosity in focus,
 32–6

 religion-specific theories, 27–8

 type-of-crime hypothesis, 30–1

 young people in focus, 31–2

religion-specific theories, 27–8

religiosity in focus, 32–6

religious beliefs, 2, 4, 5, 90

religious church activities, 316

religious communities, 307–8

'religiously motivated' issues, 22

religious matters, centrality of, 6

religious practice, 320

religious world views, 5

Restricted Short Licenses (RSL), 294

retreatist religious strategies, 310

revolutionary reforms, 124

Revolving Door Syndrome, 98

Reynolds v. US (1878), 271–3

Roman Catholicism, 175

Roman concepts of law and justice,
 57

Roman era, 57

Roman legal literature, 56–7

Roman Republic, punishment in, 62

Roulstone, Alan, 4, 8

RSL. *See* Restricted Short Licenses
 (RSL)

Runnymede Trust (1997), 287

S

same-sex sexual relationships
 in Africa and Caribbean, 170

 in premodern sub-Saharan
 African societies, 168–70

 in Uganda, 176–80

Second Chance Act in 2007, 368

secular constraints, 25

The Seductions of Crime (Katz), 247

self-control, 35
 vs. religion, 36

September 11, 2001 attacks,
 224, 287

sexual acts in African cultures, 169

sexuality-based crimes, 183

Shagari, Aliyu Shehu, 334
Sherry, Mark, 79
Singer, Peter, 79
social control theory, 24–5
social ecology theories, 25
social integration theory, 25
socialisation, 36
social justice, religion, community cohesion and pursuit for, 319–21
social media networks, 295–6, 299 power and citizenship in, 285–6 marginalisation to empowerment, 296–8 misrepresentation, history of, 288–91 mobilisation and citizenship engagement, forms of, 298–300 Muslim media and new spaces for cultural expression, 292–5 Muslims in Britain, 286–8 potential radicalisation, spaces for, 300–2 social media and new cultural cyberscapes, 295–6

The Sociology of Religion (Davie), 1

South African Constitution, 151–2

South African witchcraft legislation, influence of, 152–4

spiritual and religious beliefs, 309–11

spiritual cleansing process, 73

spiritual communities, 307–8

spirituality, 310 in African community, 314 as mechanism of coping with victimisation, 311–13

Ssempa, Martin, 176

standard model of education, 234

Stoltenberg, Jens, 246

sub-Saharan African societies, same-sex sexual relationships in, 168–70

sui generis status, 263

Sutherland's differential association theory, 29

symbolic interactionists, 101

T

Taino Indians, 261

Taino society, 261

textual exegesis, disability and, 69

theological resource, 130

traditionalism, 151–2

Transforming Rehabilitation, 124

transmission of legal language, 55

tribes of North America, 262

Tsagarousianou, Rosa, 290, 295

Turkle, Sherry, 298

Turn of Moral Significance (1992–1997), 121–2

Tylor, Edward, 139

type-of-crime hypothesis, 30–1

U

Uganda Christians in, 172 media, 177 same-sex sexual relationships in, 176–80

UK

Black African communities in, 314

Black families in, 310

Muslim community in, 288

UK Care Standards Act, section 7 of, 81
ukudliswa, 147
ukuphosela, 147
ukuthathela, 147
umeqo, 147
USA CSA, within Roman Catholic Church, 194–6
US Conference of Catholic Bishops (USCCB), 194
Utah authorities, 276
Utah v. Holm, 275
Utah War (1857), 269, 271

V

vicarious religion, 12

W

‘war on terror,’ 287
West Canada, Muslim communities in, 212
Western concept of crime, 150 of mental illness, 104
Western legal rationalism, 10
William the Conqueror (CE 1066–1087), 264
witchcraft beliefs in global context, 150–1

witchcraft, practice of, 10
witchcraft-related crimes holistic definition of, 161 in Eastern Cape, 157–61 in South Africa, 151–2 influence of, 152–4 Ralushai Commission (1995–1996), 154–7
witchcraft beliefs in global context, 150–1
Witchcraft Suppression Act (No. 3 of 1957), 152–3, 155–6, 160
worldview concept, 141, 142

X

Xhosa-Speaking People of South Africa, 144–8

Y

young people in focus, 31–2
young persons in Nigeria, experience of, 329–34
youth crime, 325 government responses to, 334–6
youth development model, 335
youth unemployment, government responses to, 334–6