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Papers from the British Criminology Conference

An Online Journal by the British Society of Criminology

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Criminology in Times of Transition
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Editorial

Marian Duggan

Welcome to volume 23 of the British Society of Criminology's conference proceedings-themed Online Journal. The theme of the BSC's 2024 conference was *Criminology in Times of Transition*. From 10th to 12th July, the University of Strathclyde welcomed hundreds of national and international delegates to Glasgow. From the first day of postgraduate papers through to the subsequent panels and plenaries, speakers explored topical debates relating to criminology's past, present, and future. Streams and themes included border criminology; religion in prison; transitions from colonial to decolonial and counter colonial; shifting paradigms of policing; criminology, cars and climate; and policing in an era of digital justice. Celebrations were also afoot, with the 2024 BSC Outstanding Achievement Award being presented to Professor Tim Newburn, Professor of Criminology and Social Policy at the London School of Economics.

Plenaries explored the meaning of justice, unpacked the relationship between criminology and public problems, queried the 'who' of criminology, and examined criminology's relevance in times of transition. Keynote and plenary speakers included Sarah Armstrong on exploring the scales of justice; Reuben Biller on highlighting Black freedom and the possibility for a new world; Alistair Fraser on taking criminology public; Cara Jardine on neoliberal scholars; and Kieran McEvoy on apologies, violence and the criminology of transition.

This year's journal offers a selection of panel papers alongside one from a postgraduate member. We begin with a theoretical exploration of evolutionary criminology by Evelyn Svingen, who argues that criminology's rich multidisciplinary nature constitutes a strong foundation upon which to advance contemporary evolutionary ideas. The paper demonstrates how evolutionary theory's ability to unite and explain relationships between criminological variables can help to untangle elements of theoretical criminology. This is followed by Dacia Leslie's literature-based observational analysis of developments in Caribbean penology and its positioning within mainstream criminology. The paper argues for a region-specific understanding of penological frameworks in the context of global shifts in criminology.

Next, Maria Kaspersson addresses infanticide in Sweden, drawing from a collection of transcripts to illustrate the complexities of current legislative frameworks. The paper concludes

by arguing for the retention of the soon-to-be repealed child manslaughter section of the Swedish legislation. Finally, Nicola Coleman's paper presents findings from a project exploring the skills-based benefits of experiential learning for criminology students. Acknowledging the traditionally theoretically focused nature of the discipline, the paper suggests a number of practical recommendations for greater integration of experiential learning opportunities.

The BSC has a thriving postgraduate researcher community, which is important for sustaining the future of criminology as a discipline dedicated to the critical examination of past, present, and future issues. Our postgraduate paper is provided by Amrik Singh, who explores disparities in apportioning guilt and sentencing practices in mock juror trials involving transgender victims.

My thanks to everyone who submitted articles for consideration. As is usual, all submissions to the online journal went through a rigorous peer review process. My sincere thanks to all the reviewers for their careful engagement with submissions and helpful suggestions for improvement. As ever, the timeline for the journal is short and its production would not be possible without your compliance to the deadlines.

The 2025 BSC conference takes place from 1st – 4th July at the University of Portsmouth. The theme is: *Criminology for Social Justice.* If you're planning to present at the conference, then please see the information provided at the end of this volume about submitting your paper for consideration in the 2025 Online Journal. This edition will mark the 30th anniversary of the BSC publishing papers as part of its annual conference proceedings, so will be an exciting and historic special edition.

Marian Duggan, University of Kent, December 2024

Papers from the British Criminology Conference

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Panel Paper

Evolutionary criminology and the future of theory

Evelyn Svingen[1]

Abstract

Criminology's multidisciplinary nature allows it to draw from sociology, psychology, biology, and more, enriching the field but also creating challenges in integrating findings and theories. While some perceive this as a theoretical crisis, there is a scope at seeing this diversity as a strength. This paper argues that it represents an opportunity for cross-disciplinary enrichment. Evolutionary criminology offers a lens to enhance coherence without undermining the field's diversity, providing tools for unifying fragmented insights. This paper argues that evolutionary criminology can address this crisis by providing unique insights into human behaviour and societal organisation. Despite the longstanding distrust among criminologists towards biological explanations stemming from early misconceptions, contemporary evolutionary theory offers refined and scientifically robust insights far removed from these outdated views. Evolutionary theory adds an additional layer of analysis to our understanding of crime's aetiology and offers a framework for unifying existing theories. By leveraging the principles of evolutionary theory, this paper presents evolutionary theory as a useful tool in helping us understand crime.

Key words: Theories of crime; Crime causation; Evolutionary criminology; Multidisciplinarity

[1] e.svingen@bham.ac.uk Dr Evelyn Svingen is Assistant Professor in Criminology at the University of Birmingham, specialising in evolutionary criminology and the neurophysiology of crime. Her book, "Evolutionary Criminology and Cooperation: Retribution, Reciprocity, and Crime," won the European Society of Criminology Book Award, recognising evolutionary criminology's potential to contribute to the field.

1 Introduction

Criminology, as a multidisciplinary field, thrives on its diversity, integrating perspectives from a variety of different disciplines. This richness enables researchers to approach crime and harm from various angles, offering unparalleled flexibility. However, the coexistence of competing theories also presents challenges, particularly in synthesising insights into coherent frameworks of crime causation, which can impact our ability to create holistic approaches to crime prevention. In this paper, I propose Evolutionary Criminology as a tool that can help us link many of the theories and explanations together. Evolutionary Criminology is the study of crime-related mechanisms, naturally selected throughout human evolutionary history. As such, it falls under the umbrella of biosocial criminology (which I use interchangeably with biocriminology)[2], which studies the biological contributions to the study of crime. While biocriminology has had its fair share of criticism, biology has moved on as a field – and so has biosocial criminology – to produce insights into humans as species, enhancing criminological theory. Evolutionary criminology offers one such perspective, providing a framework that complements existing theories and fosters interdisciplinary dialogue. By focusing on fundamental questions about human behaviour and social organisation, evolutionary criminology can help bridge theoretical divides and contribute to a more nuanced understanding of crime causation. This paper explores how evolutionary theory can function as a unifying framework—not to replace other approaches but to complement and integrate them, promoting coherence without sacrificing the field's richness.

Good theory is indispensable for criminology's progress. Theory is not about adding complexity but about providing the tools to construct causal explanations and refine them through empirical testing. Causality, after all, does not exist in nature but in our interpretations of data. Without theory, criminology risks stagnation, unable to build the robust explanations that drive actionable insights. The hesitation toward theory in criminology, often rooted in scepticism of positivist approaches or concerns about overreach, reflects a diversity of worldviews within the field. While such caution underscores the importance of remaining critical of oversimplified models, recent advances in philosophy of science and cognitive neuroscience provide new tools to test and refine longstanding assumptions about human behaviour. These developments offer opportunities to complement existing perspectives with more precise, falsifiable, and impactful theories, fostering a broader understanding of criminological phenomena.

[2] The reason why I do it is because I don't believe that there are many (if any) biocriminologists that would argue that there is a biological explanation of crime that does not have any environmental influences. As such, I consider 'biosocial' to be a simply more precise term for what biocriminologists do either way.

Bruinsma (2016) observes that 'from a distance, the discipline looks like a battlefield of masses of rival and conflicting ideas about the causes of crime'. While this perspective highlights the field's diversity, it also underscores the challenges of integrating various explanations. Textbooks often reflect this multiplicity, presenting competing theories, correlates, and hypotheses, some of which lack empirical testing. Some (Bruinsma, 2016; Wikström, 2011) advocate for principles of falsifiability and testability, drawing on the work of Popper and Lakatos, as a way to assess and refine these explanations. While experimental testing is one valuable approach, it is important to recognise that criminology's strength lies in its methodological diversity, which enables rich, multifaceted insights into complex phenomena.

In this paper, I explore how evolutionary criminology can help criminological theorists in this enormous task of sifting through the fragmented field. I do so by showing what evolutionary criminology is, how it can contribute to our understanding of crime, and why it is an essential tool in our search for a way to sift through the myriad of existing theories. Evolutionary Theory's ability to unite, explain, and – most crucially – provide mechanisms and testable relationships between variables may be indispensable for current criminology and can help us untangle the predicament in which theoretical criminology finds itself today. I begin with the history of evolutionary theory and biocriminology, explaining their uneasy beginnings. I then proceed to talk about two important aspects in which evolutionary criminology can change the field as we know it: first, through the ability to sift through existing theories based on testing the underlying assumptions about human nature, and second, through its unique ability to create a unified theory that cuts across all three areas of criminological enquiry: rule making, rule breaking, and rule enforcement.

2 History of Evolutionary Criminology

In *On the Origin of Species* (1859), Charles Darwin famously argued that contemporary forms of life are the descendants of older forms of life[3]. He explained that species had evolved from simpler organisms by natural selection acting upon the variability of populations. Natural selection was based on three main principles: the principle of variation, the principle of heredity, and the principle of selection, which to this day remain important mechanisms through which we understand many aspects within such diverting field such as environmental science, conservation biology, human health, agriculture, and natural resource exploitation (Hendry et al., 2011).

[3] Darwin was not the only one to have discovered the principle of evolution by natural selection; Wallace came independently to the same conclusion.

Darwin's views were originally not well received, as they opposed the traditional (creationist) view that God created life on Earth and that the Earth was very young. Nevertheless, principles of evolution proliferated, and their applications led to a rapid growth of the field of evolutionary science. Later, genetic drift and gene flow were added to the mechanisms of evolution to create the modern synthesis of evolutionary theory and genetics. In time, the theory of natural selection became a go-to explanation of the origins and evolution of life, from which the concept of biosociology emerged. Biosociology studies the role of evolved biological factors (genetic, neural, hormonal, etc.) in different dimensions of social behaviour and is concerned with the biosocial mechanisms of social phenomena and processes at both micro and macro levels. Biosocial criminology, more specifically, looks for the biological explanations of crime and is sometimes referred to as biologically informed criminology. Evolutionary criminology is a part of bio(social)criminology, emphasising the evolutionary mechanisms that help explain how humans evolved with mechanisms that lead to criminality.

In the past, biological explanations have had their differences with criminological research. Many of the misunderstandings are related to outdated and disproven theories, but it must be said that early social scientists were, at least to some extent, influenced by Darwin. For instance, Robert Ezra Park (1921) and his account of the struggle for space in urban areas bears the influence of Darwinian thinking. George Herbert Mead (1934) accepted the biosocial man in his writings which would later become known as symbolic interactionism. These approaches used to be characterised as sociobiology, which later evolved into the younger disciplines of evolutionary psychology, behavioural ecology, and gene-culture coevolution.

As Charles Darwin revolutionised social thinking in the 19th century, his thoughts were applied to criminology in an infamous case of misunderstanding. Cesare Lombroso (Ferrero, 1911) theorised that people who are less evolved are more crime-prone and can be identified by specific appearance features, or 'stigmata'. This theory was central to the unease criminologists felt regarding biological, and especially evolutionary, explanations of crime. This unease is understandable, considering the consequences that can follow from misunderstandings about genetics and evolutionary explanations. However, these simplistic explanations remain what they are: a misunderstanding. Any evolutionary theory that exists today is far removed from Lombroso's misconceptions as our understanding of Darwin's work progressed through the centuries. The scientific fact remains that all humans belong to the same species and, by definition, cannot be 'more evolved' than others. One would be hard-pressed to find any biosocial criminologist today who would consider Lombroso's work useful in explaining any crime. If anything, it can only be used as a cautionary tale of conflating causation with correlation.

Early criticisms of biological approaches to criminology, such as those levelled at Lombroso's work, highlighted the dangers of conflating biological predispositions with deterministic or universal definitions of crime. These critiques underscored the importance of considering the cultural and societal contexts in which actions are deemed criminal. Modern evolutionary criminology has taken these lessons to heart, acknowledging that while biological traits—most of which are common in all of us—may influence behaviours, the categorisation of these behaviours as criminal is contingent upon legal and cultural norms. This distinction ensures that evolutionary criminology integrates responsibly with broader criminological inquiry, respecting the socio-cultural dimensions of crime.

Likewise, we also owe many misconceptions of evolutionary processes to the work of Herbert Spencer, who coined the phrase 'the survival of the fittest' and whose social Darwinism created a hostile vision of humans being only in competition with each other. However, Darwin wrote much more about cooperation than about competition. In fact, cooperation was viewed as a riddle in those days, but following Darwin, evolutionary biologists have contributed extensive work explaining the evolution of cooperation. The now-classic concepts of kin selection (Williams, 2018), inclusive fitness (Hamilton, 1963), and reciprocal altruism (Trivers, 1971), indirect reciprocity (Alexander, 1987), strong reciprocity (Gintis, 2000), and network selection and multi-level selection (Nowak & Highfield, 2011), contributed significantly to our understanding of the evolution of cooperation and altruism.

The sociobiology controversy continued, prompted by E. O. Wilson's (1975) classic work on sociobiology, where he announced that the division between biology and social sciences no longer exists. Wilson was falsely accused of racism and genetic determinism (Garlapati et al., 2021). However, sociobiology continued to thrive (Alcock, 2001) and produced some explanations of crime that are still widely respected in criminology, such as Terrie Moffit's (1993) studies of the neurophysiology of conduct disorders and the neurodevelopment of adolescents and its relation to the age-crime curve.

Some scholars have lamented the lack of interest in biological explanations from within the field of mainstream criminology (Walsh and Ellis, 2004). However, criminology remains cautious of biological - and especially genetic – explanations. The field of evolutionary theory moved on to produce more nuanced explanations, but the accusation that contemporary biology is racist remains alive in isolated circles, although if contemporary geneticists stress one thing, it is the fact that genes do not play a deterministic view (Sapolsky, 2017).

Even though biosocial criminology has moved on as a field, many textbooks discussing the topic continue to describe biocriminology as an idea that justified eugenics and racism, gave us Nazism, and is ultimately a dangerous idea that should not be propagated (Pinker, 2003; Rafter, 2008). As a result, very few biocriminological papers are published in

criminological journals (Wright et al., 2008) and even fewer such theories are taught at postgraduate or undergraduate level (Wright & Cullen, 2012). Nevertheless, recently, biosocial criminologists added a chapter on the role of evolutionary processes in crime causation in their handbooks (Walsh & Beaver, 2009; Duntley & Shackelford, 2008; Walsh, 2010) and wrote a few books about evolutionary criminology (Roach and Pease, 2013; Durrant and Ward, 2015; Svingen, 2023).

Ultimately, there is nothing to suggest that biological explanations are any more fatalistic than sociological ones. We have many *correlates* of crime that are considered mainstream and are accepted as *explanations* of crime. For example, past abuse, perceived strains, poverty, or the person's neighbourhood. All these things are very hard to change, yet we will not describe their relation to crime as fatalistic (often communicated as 'deterministic'). We accept these findings and seek to find explanations with the hope we can intervene to prevent people from falling into a life of crime.

There is no reason to treat biosocial criminology differently. We have already established that the misnamed 'warrior gene' (MAOA-L) makes people more susceptible to their environments and not more crime-prone (Sohrabi, 2015) and that no other genes are directly linked to criminal propensity. In fact, if there is anything we have learned from looking at evolutionary theorising, it is that humans are unique in their ability to act against their instincts[4] (Gardenfors, 2006). We have also learned that evolution thrives on individual differences - having differences allows us to fulfil different functions and survive as a group (Buss, 2009). Variation is a vital principle of evolutionary theorising, and the ability for rational reason is one of the most defining features of humanity. As a result, biosocial explanations are the opposite of fatalistic.

Despite all the hardwiring, instincts, and other biological forces at hand, humans remain unique in their ability to forge their own destinies while still being adaptive to their environments.

3 Evolutionary science as a solution to the theoretical crisis in criminology

3.1 Challenging assumptions on human nature and social order

In the search for a unified criminology, Agnew (2011) raises an important question: what are the fundamental assumptions on which criminological theories are built? More importantly, why do many mainstream criminologists not discuss those assumptions? Every theory of crime causation, implicitly or explicitly, starts from an assumption about human nature and/or the social order. Control theory views people as selfish (Akers, 1991), learning theories view

[4] exercise free will, if you must

people as blank slates (Akers, 2011), and Situational Action Theory views people as rule-guided (Wikström et al., 2012). On a more macro level, Marxist or conflict criminologies foreground unequal material class relations, whereas a Durkhemian would start from an assumption of (at least latent) social interdependence and value consensus. This raises a number of issues.

First, it causes a lack of a coherent understanding. When a field exists on different levels of analysis, it is unlikely that theorists will be able to easily see how different pieces of information form a universal explanation. Additionally, different starting assumptions are likely a cause of the fragmentation of criminology, which prevents us from having a common framework with which to relate to one another. It is hard to connect the different explanations in one theory when the theories have different starting assumptions. As a result, theorists tend to form 'camps' and rarely interact with people conducting research, starting with a different theoretical framework.

Second, even if there is an in-principle willingness among different theoretical schools to cooperate, the fact is that many of their foundational assumptions are indeed mutually exclusive and perhaps intrinsically impossible to reconcile. We often refer in general terms to 'nature vs nurture' debates, where theories compete over whether crime is environmental/learned or inherent criminal propensities. The answer, in my view, is 'it's a bit of both', and it is likely that some criminologists would agree with that. Humans are born with some predetermined features, which change depending on their surroundings, and they also learn how to act in the world around them through the process of learning. However, we often get bogged down in arguing which one is more important rather than seeing how the assumptions can be reconciled and fit in the same model.

This points to the third issue posed by these differing assumptions: the impact on our ability to interpret empirical results to assess a theory's explanatory power. If there are theories with fundamentally different assumptions about human nature, it becomes hard to understand how to interpret empirical results. The data might fit the proposed framework, but if the assumptions are mutually exclusive it might be a cause for re-evaluating what the data tells us.

Differing assumptions about human nature and social order lie at the heart of the theoretical crisis in criminology, which is why evolutionary criminology is uniquely positioned to solve it. First, because any attempt to self-censor as a discipline is doomed to end in a loss of knowledge. Second, because it offers explanations at the level of analysis that we are rarely exploring as criminologists. Third, because evolutionary criminology has tools to help that other approaches do not. In the remainder of this paper, I argue that biosocial criminology can help bring about a shift in the theoretical conundrum that our field found itself in.

Evolutionary criminology starts with the most important question: what is human nature? I consider this to be evolutionary criminology's greatest strength, but it is also the cause for great antagonism, as this approach to theorising 'confronts many sacred values in the social sciences generally and in criminology specifically' (Wright & Cullen, 2012). That is precisely why the field remains largely avoidant of biological explanations.

The important thing to remember is that evolutionary criminology simply creates explanations and brings about mechanisms. Explaining something does not mean condoning it, in the same way that the fact that some theories have been used to justify poor policymaking does not render those theories unjustified. Marxist ideologies were used to justify totalitarian regimes and genocides, and yet we do not shun Marxist criminologies as a result. Evolutionary criminology deserves the same willingness to engage scientific merit on its own terms. It has long been documented that criminological research falls prey to predominant ideological thinking (Walsh & Ellis, 2004), and criminologists' self-identified political orientation predicts their view on the causes of crime almost perfectly: for example, political liberals favour explanations of crime that centre on material social inequality, while conservatives focus on culture and family dysfunction (Wright & Cullen, 2012).

The other principle at the core of evolutionary criminology is that variation is a rule, as no successful variant would thrive without variation. The reason that humans have persevered and proliferated as a species, dispersing to all corners of the world where many other species of animals would die, is because they (a) are able to adapt and (b) possess different skills and abilities and are therefore able to take on different perspectives and social roles. Evolutionary theory explains patterns and why we evolved to have those; however, it does not take away either the effects of the environment (in fact, it amplifies those!) or individual differences and free will.

Biological variation is an evolutionary product, and there are numerous studies that show a heritability to both social and antisocial behaviour (Arseneault et al., 2003; Mason & Frick, 1994). Even more strongly hereditary is self-control, a trait that we find highly important in criminology (Friedman et al., 2008). Rejecting findings such as these for appearing 'deterministic' would prove to be sub-optimal for both the development of criminological theory, and ultimately the people we try to turn away from crime by creating interventions.

As a society, we do not reject eyesight tests because they represent biological fatalism. Instead, we do the opposite: we encourage more people to get their eyesight tested to benefit from eyeglasses and contact lenses. If biosocial criminology can help us identify traits that may make people more crime-prone than others, that is something to be applauded, as we can use that knowledge to develop better intervention and crime-prevention methods. We

should treat biological explanations the same way we would treat explanations of past abuse or poverty: through a lens of using these explanations to create better interventions.

In fact, in contrast to many other accepted criminological risk factors, such as poverty, past abuse, or a poor neighbourhood, biological effects are often reversible. The brain is a uniquely plastic organ (Mateos-Aparicio & Rodríguez-Moreno, 2019) that is changing and growing until our mid-twenties, and timely intervention can stall or reverse any potential poor development caused by neglect or abuse. Psychiatry as a field developed an incredible number of medical interventions for conditions that cannot be healed naturally, improving people's quality of life.

Evolutionary criminology can help us explain innate human instincts, how people survived as a group, and how we can create systems and societies that promote prosocial behaviours. People change and are different; there are no explanations in biological sciences that can be called deterministic. The aim of much science is to create interventions that lead to better crime-prevention outcomes. There is no reason why evolutionary criminology would be different.

3.2. A new level of analysis

Evolutionary criminology will never replace social or psychological explanations of crime - it asks different questions and offers different levels of analysis. In 1963, Tinbergen proposed four levels of explanation of behaviour (as synthesised in Kapheim, 2019). This framework suggested four questions that should be asked of any animal (and, by extension, human) behaviour. These levels are: the ultimate (evolutionary) explanations, 1) adaptive function and 2) phylogenetic history; and the proximate explanations, 3) underlying physiological processes and 4) ontogenetic/developmental history. In simple terms: 1) why have we evolved the way we evolved? 2) how did this evolution happen? 3) what is the mechanism of this behaviour? and 4) how does it develop in an individual?

Most criminological theories will likely deal with levels 3 and 4; most of the time, those theories will be separate. For example, developmental theories often just deal with level 4, whereas theories dealing with situational crime prevention would likely be at level 3. Looking at evolutionary science in criminology is essential to tapping into level 1, and understanding the biological and neurophysiological mechanisms is essential for level 2.

Criminology has not shied away from different levels of explanation. For example, life-course criminology is growing, expanding our knowledge of the different mechanisms of crime causation, starting with Moffit's biosociological theory and Samson and Laub's life-course theory (1992). In addition, we recognise intergenerational criminology as adding another dimension in which we can explain crime. Evolutionary criminology goes further beyond the

intergenerational, explaining how humans evolved as a species. However, we are still not going far enough in incorporating all these different levels. Most theories, in fact, would remain on one level of Timbergen's analysis, which leads to several problems.

First, theories talk past one another. While some theories discuss personal emergence, such as learning theories, some theories describe action, such as those concerned with situational crime prevention or the environment. When theories exist on a different level of analysis, they cannot communicate with one another.

Second, explanations that remain on one level become limited. As Timbergen pointed to the need for a detailed understanding of behaviour, biologists have universally adopted this model, which led to a better understanding of animal behaviour. Human behaviour is more complex than that of other animals, and hence, we have an even greater need to have a nuanced understanding of what we were hardwired to do, what we learned, or what we chose to do. Our behaviour constantly competes between our instincts and impulses with our deliberate deliberation and rational thought. Hence, we must understand what impulses we evolved with to understand how they come to be learned, unlearned and suppressed. Any theory that chooses not to engage with evolution as a level of analysis is doomed to ignore the ultimate explanations, remaining in the field of proximate explanations.

As a result, evolutionary criminology offers a new level of analysis to add to any criminological theorising. As a minimum, that helps us come up with better explanations. However, it can go beyond that by allowing us to come up with causal and mechanistic explanations that are currently lacking in criminological research.

3.3. Mechanistic explanations and falsifiability

We have amassed a vast knowledge of the risk factors or descriptors of people who commit crimes, as demonstrated by the existence of the Handbook of Crime Correlates (Ellis, Farrington & Hoskin, 2019). However, not enough attention is given to integrating those correlates and testing which have causal effects and which are merely markers of something else (Wikström & Kroneberg, 2022).

Whilst there are many steps to be taken to ensure true theory falsification in criminology, the integration of evolutionary explanations would be a helpful step forward. In contrast to most criminology, which starts with people who commit crime and then describe them, evolutionary criminology starts with mechanisms. Instead of making assumptions about human nature, evolutionary criminology collects evidence of how humans evolved and why they came to act in a certain way. Therefore, any criminological theory that chooses to start from an evolutionary mechanism is already more likely to a) start with an informed assumption

about human nature, and b) have an array of causal mechanisms about human behaviour that could be tested.

Evolutionary theory, as a result, will allow us to sift through the myriad of risk factors, or help to "separate the theoretical wheat from the chaff" (Cullen et al. 2008, p. 2) by first identifying which assumptions about human behaviour are based on empirical knowledge and eliminating or adjusting those theories of crime that do not align with the data. Mechanistic explanations in evolutionary criminology aim to uncover the biological and neurophysiological processes underlying behaviours, providing insights into the predispositions that shape human actions. However, these mechanisms do not operate in isolation; they exist within the framework of socially constructed definitions of crime. For example, while evolutionary criminology may explore the biological roots of aggression, societal norms ultimately determine the boundary between acceptable self-defence and criminal assault. By integrating these biological insights with an understanding of the socio-cultural contexts of crime, evolutionary criminology offers a robust approach to theorising and testing criminological phenomena.

In addition to helping us separate causal mechanisms from simple correlates, evolutionary criminology allows us to improve and add nuance to existing theories that withstand empirical scrutiny. Evolutionary criminology offers a more nuanced definition of the existing theoretical assumptions and proposed mechanisms. Any action a person takes involves a decision-making process largely shaped by how their brain developed and by how evolution shaped it. While it is possible to measure behaviour alone and not get bogged down in the exact mechanism of how that behaviour came about, it leads to a poor theory, both in terms of explanatory power and in terms of falsifiability.

In cognitive psychology, there is something called the 'computer analogy'[5], which distinguishes between 'hardware' and 'software'. As such, human biology is its hardware, with its predispositions and processing powers. The environment we find ourselves in and the lessons we learn are the 'software'. For instance, humans are usually born with the ability to learn a language (hardware) but not with a language itself. Depending on which country they are born into and in what language they are spoken to, people grow to be speaking different languages. Some would speak multiple languages! Some people are not able to speak a language, which could be due to severe brain damage (a hardware issue) or because the person was never exposed to any human language (a software issue).

The way we act, the way we talk, and the things we find important or less important all rely on our evolved preferences, which result from biology interacting with culture. Perceptions

[5] The computer analogy is a controversial issue in the field since not all scientists agree that this is how the mind processes information, but I consider it a useful analogy for demonstrating my point.

of the world go through our physiology, and then we act, starting from our brains and moving our bodies. Understanding how the brain works, how humans make decisions, and what predispositions we are born with will, in a similar way, help us understand why people commit crime and how we can better help them desist from it.

4 A unifying force of evolutionary criminology

So far, this paper has discussed the theoretical fragmentation of crime causation theories. However, anyone in criminology knows that criminology is much wider than that. Sutherland's account of (sociological) criminology lists three areas of enquiry: rulemaking, rule-breaking, and rule enforcement. Indeed, apart from theories of crime causation, there is a wealth of research into why we criminalise some behaviours and not others, or into the police and prison forces, or victimology and responses to crime. As we have seen, the issue is that most criminologists who exist within those strands tend not to talk to one another much.

There might exist some notable exceptions. However, theories of policing, imprisonment, or law guidelines tend not to overlap with one another, and criminologists exist in a self-contained bubble of researchers who study things relevant to them. This leads to limitations within each subfield and thinning of the pool of potential explanations of crime.

Evolutionary theory has a unique ability to unify us along the lines of potential explanations of all three: crime causation, law-making, and law enforcement. As such, evolutionary criminology offers 'A Theory of Everything', and that is since evolutionary criminology asks fundamental questions about human nature and human societies, that would be useful in all areas of inquiry.

One example of this in evolutionary criminology is the newly presented Retribution and Reciprocity Model (the RRM; Svingen, 2023a), which currently exists as a theory of crime causation. In the most simplified form, RRM suggests that we, on average, tend to a) respond to kindness with kindness, b) with hostility to hostility, and c) have a general knack for punishing the violation of a social norm. These evolved preferences or motives are generally not studied by criminological theories. This is relevant for explaining crime causation, but I argue that it can do more than that.

On the law enforcement side, it is clear that any discussion of cooperation with the police or with courts is reliant on the ideas of reciprocity and trust. In fact, these ideas already exist within legitimacy theory (Bottoms & Tankebe, 2012) and could be further expanded with mechanisms that evolutionary criminology provides. There also exists a discussion within prison research about the staff-resident relations that affect how the people in prison perceive their incarceration.

On the lawmaking side of criminology, the ideas of Retribution and Reciprocity become even more evident. Retribution lies at the heart of the court system of Western liberal democracies and plays a central role in penological debates. RRM could offer insights about why retribution is important, how to achieve it best, and why we consider some acts more serious than others. RRM is only one example of a potential 'theory of everything', and it is not within the scope of this paper to explain how to unify the three prongs of criminology. This example further exemplifies the possibilities for the theoretical and practical advances evolutionary criminology can bring to the study of the aetiology of crime.

It is important to note that explaining something does not mean condoning it, and RRM is not prescriptive; it does not advocate retribution as an ideal system of justice. Instead, it seeks to describe the psychological and social mechanisms underlying human responses to norm violations. Understanding these mechanisms allows us to critically assess the role of retributive tendencies in justice systems and explore alternative approaches, such as restorative justice. For instance, the RRM can inform why retributive responses persist despite their limitations and suggest pathways to mitigate harm by fostering empathy, cooperation, and trust in legal and social institutions.

Evolutionary criminology has the potential to create unified frameworks on which other theories can be built. It can engage criminologists from across the discipline to help us create more nuanced, inclusive, and integrated theories of criminal behaviour.

Evolutionary criminology has the potential to create unified frameworks on which other theories can be built, offering a unique avenue for bridging theoretical divides within the field. The call for unification in criminology is not without controversy. Some argue that the field's inherent diversity—encompassing insights from sociology, psychology, law, biology, and economics—is its greatest strength, enabling a multifaceted approach to the complexities of crime and harm. From this perspective, attempts to unify criminological theories risk oversimplifying or marginalising important disciplinary contributions.

However, proponents of unification, such as Agnew (2011), contend that the fragmentation of criminology into isolated theoretical "camps" limits the field's ability to integrate findings and develop comprehensive solutions to crime. Evolutionary criminology addresses this tension by offering a framework that neither overrides existing perspectives nor demands homogeneity but instead seeks to complement and connect them. By focusing on fundamental questions of human behaviour, such as cooperation, reciprocity, and norm enforcement, evolutionary criminology can provide foundational insights applicable across diverse theoretical domains.

This integrative potential does not imply a "theory of everything" that imposes rigid coherence on the field. Instead, it invites criminologists to identify shared principles and

mechanisms, fostering dialogue across subfields. For example, the Retribution and Reciprocity Model (RRM) could enhance understanding not only of crime causation but also of rule enforcement and lawmaking, creating opportunities for interdisciplinary collaboration. By acknowledging the strengths of criminology's diverse traditions while addressing the inefficiencies of fragmentation, evolutionary criminology offers a path toward more nuanced, inclusive, and integrated theories of criminal behaviour.

Evolutionary criminology coexists with many theories of crime and law enforcement. For example, labelling theory can have a mechanistic explanation in the evolutionary concepts of sexual and social selection (Tomasello, 2016) of how we make decisions based on choosing a reliable partner to cooperate with. Police brutality could have an explanation in the study of evolved hierarchy (Boehm & Boehm, 2009) and how we use various forms of status symbols to exercise our hierarchical structures. Strain theories could benefit from an explanation of endocrine systems and stress and how they influence our decision-making. Situational crime prevention can be improved by further thinking about the environments that humans have evolved to adapt to and improving our cities to promote the prosocial and cooperative behaviours that we evolved for. Racism has its evolutionary roots in the ingroup-outgroup syndrome (Cliquet, 2010). Gender-based violence has great explanations in Darwinian feminism (Vandermassen, 2005), which can be further studied.

Evolutionary science has long developed mechanisms and explanations for many aspects that we try to study, be it law-making, law-breaking, or law-enforcement. By examining these explanations, we can begin to develop overarching and powerful theories that can significantly advance the theory of criminology.

Conclusion

As criminologists, we have picked one of the most diverse, complicated, and ideologically loaded and contested areas for research. Therefore, the theories that attempt to explain crime, its causes, and its consequences should be equally robust, integrated, and nuanced.

Evolutionary criminology explains many aspects that biologically uninformed criminology does not. As criminology is a multidisciplinary field, we cannot afford to ignore these observations. Instead of arguing which general approach is better, we should acknowledge all theories and explanations presented and judge them on their merit in explaining criminal behaviour and beyond.

Nevertheless, evolutionary criminology's contribution could go way beyond simply adding a different factor to consider or a level of analysis. Through its focus on human nature and mechanistic explanations, evolutionary criminology can help us sift through the existing

theories, unify when needed, and streamline explanations of the theories that do withstand empirical scrutiny. That is the goal of consilience.

In addition, it can help facilitate further discussion of how different theories add a different level of explanations and how different explanations can be united to create more nuanced, overarching explanations. Criminology is a multidisciplinary science, and it should be treated as such. As criminologists, we cannot afford to shy away from particular fields for fear of being mistreated, as all fields are necessary to add another level of explanation and help us sift through the myriad of explanations of crime.

Evolutionary criminology will never replace sociology or psychology, but it offers unique tools to both sift through existing theories and unite and expand them to create a better, more well-rounded and analytically-facing criminology. There is a lot of scope for developing evolutionary frameworks.

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What and Where is Caribbean Penology?

Dacia Leslie[1]

Abstract

This article uses a decolonial lens to explore the positioning of "Caribbean penology" within the evolving landscape of mainstream criminology. Amidst the socio-political transformations of the independent Commonwealth Caribbean, mainstream theories often fail to address the region's distinct penal challenges and reforms. It is, therefore, crucial to examine Caribbean penology as a distinctive field during "times of transition". Through a literature-based observational analysis, the article explores how the region's experiences, practices, and scholarship challenge Western epistemologies of punishment. The findings underscore a growing critique as Anglophone Caribbean countries increasingly foreground historical contexts, cultural legacies and localised practices. This scholarship emphasises the importance of acknowledging the influence of colonial histories on Caribbean penal systems and advocates for transitions that prioritise local ownership and decolonial frameworks as challenges to creolised retributive Western models.

Key Words: Commonwealth Caribbean, penology, times of transition, creolisation

Introduction

Caribbean penology, which involves the study and application of processes and systems for punishing[i] offenders and caring for persons deprived of liberty in Caribbean justice systems (Brana-Shute and Brana-Shute, 1980; Rattray, 1991), represents a critical but often

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overlooked area in criminological scholarship. In this context, criminology should be "viewed as part of the object of study of penological research, insofar as criminology comes to function within penal practices" (Garland, 1997, p. 180). As such, penology is not strictly an "applied sub-discipline of criminology" (Garland, 1997, p. 180) because penology's focus and scope extend beyond merely applying criminological theories to penal systems. This distinction highlights the growing need to better understand and develop region-specific penological frameworks, particularly in the context of global shifts in criminology. This paradigm shift is particularly vital in the independent Commonwealth Caribbean region, where crime and incarceration rates significantly exceed global averages.

The region's average homicide rate of 30.2 per 100,000 people and prison population rate of 306.6 per 100,000 far surpass the global averages of 5.8 homicides and 140 inmates per 100,000[ii] people, respectively. Several Caribbean countries also experience significant levels of extrajudicial practices, including vigilante justice and unlawful actions by state actors (Kalunta-Crumpton, 2019). These patterns are rooted in the historical legacy of colonialism, which instituted punitive justice systems grounded in social control[iii], systemic inequality, and multiple forms of violence, including epistemic violence (Shepherd, 2006) and gender-based violence (Bean, 2022).

British colonisation of Caribbean societies, therefore, relied on penal methods and the imposition of violence—including flogging, branding, mutilation, execution and coercion to maintain the dominance of the coloniser over the colonised (Black et al., 2023). These measures were intended to control, dehumanise, demonise and dominate enslaved populations while supporting the reinforcement of a racial hierarchy that placed European colonisers at the top (Beckles, 2003). The emerging hierarchical structure used race to justify and enforce labour exploitation (Best, 1968). Judicial practices in colonies such as Jamaica also reinforced the distinction between enslaved individuals and free people and legitimised the private penal authority of slaveholders (Paton, 2001).

The Transatlantic Slave Trade, which lasted from the early 16th century to the mid-19th century, resulted in the forced migration and enslavement of an estimated 12.5 to 15 million Africans and continues to have profound impacts on both the African continent and the Americas (Micheletti et al., 2020). Approximately 2.3 million of these enslaved Africans were transported across the Atlantic to British colonies in the Caribbean (British Broadcasting Corporation, 2024). As Transatlantic Slavery waned, imperial governments continued to use practices from that era, such as imprisonment, to control the movement of Black bodies across the Atlantic (Newton, 2011). This approach solidified incarceration and removal as key tools in modern state responses to the migration of persons considered politically and economically marginalised (Newton, 2011). Thus, colonial brutality remains an enduring legacy of this

reliance on punitive measures. This legacy is evidenced in the region's contemporary policing systems that were initially designed to maintain order in racially stratified societies yet continue to present challenges for penal reform (Bishop and Kerrigan, 2022; Harriott, 2000), particularly as it relates to racial and colourism profiling.

Dominant penological theories often overlook these unique historical, social, and cultural contexts. This oversight complicates efforts to address emerging criminal justice issues such as cybercrime (Haughton, 2021), environmental crimes like illegal fishing (Bolaji, 2020), and the broader impacts of climate change (Clayton, 2016). Furthermore, the Caribbean's marginal position within the global criminological discourse limits the advancement of new ideas and practices that could help address these pressing challenges (Wallace, 2024a). Examining Caribbean penology, therefore, requires both a rethinking of conventional frameworks and a deeper understanding of the region's unique challenges, which have far-reaching global implications (Griffith, 2022).

This article builds on the theme of the 2024 British Society of Criminology Conference, "Criminology in Times of Transition," to explore the location of Caribbean penology within the shifting landscape of mainstream criminology. It begins with an introduction that underscores the importance of defining Caribbean penology, followed by a background section that describes the region's system of punishment. The methodology expounds on the literature-based observational analysis and the decolonial lens employed to trace the evolution of Caribbean penology. The findings highlight how independent Commonwealth Caribbean countries' experiences, practices, and scholarship challenge Western epistemologies of punishment while emphasising key transitions in the field. Lastly, the discussion and conclusion assess the implications for current and future penal reforms and offer recommendations to advance the decolonial agenda.

Background

The construct of Caribbean penology emerges from the region's distinctive historical, social, and political experiences (Rattray, 1991). It is deeply rooted in the legacies of colonialism, slavery, and postcolonial struggles for justice and self-determination (Brana-Shute and Brana-Shute, 1980). These historical legacies have entrenched systems of racialised penality. Unsurprisingly, the current structures and practices of criminalisation and punishment disproportionately affect marginalised groups and underserved communities (Harris, 2017). Consequently, contemporary penal practices reflect the enduring impacts of colonial control and racial hierarchies.

"Racialised punishment" (Davis, 2006, p. 360) in the independent Commonwealth Caribbean, which consists of 12 sovereign states (see Figure 3), is heavily shaped by the region's complex demographic makeup, predominantly of African descent[iv]. However, race and ethnicity in this context are not fixed biological or cultural realities (Alleyne, 2002). Instead, they are socially and historically constructed categories (Alleyne, 2002). These constructions are rooted in the region's colonial history and shaped by its socio-economic systems (Alleyne, 2002).

The region's sociodemographic profile, encompassing roughly 6,916 578 residents and 2,555,792 persons living in the diaspora (212,000 in the United Kingdom), features communities of East Indian, Afro-Indo and European heritage[v]. These groups, alongside smaller Indigenous communities (e.g. Taíno and Kalinagos) as well as Chinese[vi] and Arab[vii] populations, continue to be shaped by histories of colonisation, slavery, indentureship, and migration (Fergus, 2024). For example, countries like Jamaica have predominantly Afro-Caribbean populations. Still, others, such as Trinidad and Tobago and Guyana, feature more ethnically diverse populations due to the historical importation of labour from India and other regions (Bissessar and La Guerre, 2013).

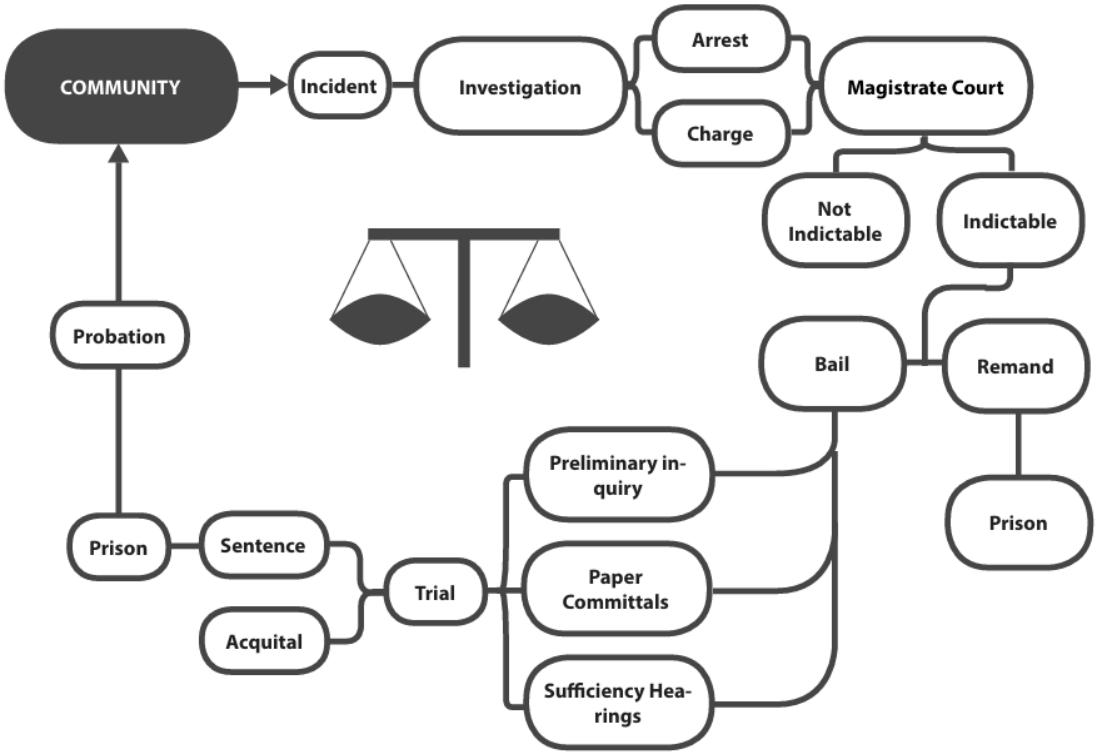
Racial dynamics within the Caribbean region are, therefore, far more complex than population demographics suggest. Race, ethnicity, and class intersect and significantly shape power dynamics, cultural representations, social stratification, and interpersonal relationships (Knight, 2003). This complexity brings to the fore the construct of "creolised"[viii] penality. Creolised penality denotes how penal systems in postcolonial societies, particularly in the Anglophone Caribbean, have developed through the fusion of diverse cultural, legal, and social influences. These influences stem from colonial legacies, indigenous traditions, and African, European, and other ethnic contributions.

Creolisation[ix] has also led to the development of penal systems resulting from a blend of various cultural and social elements, which have created unique, localised approaches to punishment and justice. Commonwealth Caribbean countries may, therefore, share histories of colonialism and have comparable legal, political, and penal systems, but each country displays distinct cultural identities, governance styles, and social dynamics (Bissessar, 2002). As such, the tendency to treat the Caribbean as homogenous is reductive and dismissive as it ignores the region's rich diversity and distinctiveness.

The approach to punishment in the region is heavily influenced by the British common law tradition and further shaped by domestic statutes and constitutional provisions (Rediker, 2013). The penal and judicial processes begin with law enforcement agencies, primarily the police, investigating crimes and apprehending offenders (see Figure 1). With a few exceptions, the Office of the Director of Public Prosecutions (ODPP) oversees the criminal proceedings

that follow to ensure that cases are backed by sufficient evidence and comply with legal standards (Seetahal and Ramgoolam, 2019).

Figure 1: The Criminal Justice Cycle in the Independent Commonwealth Caribbean



Source: Adapted from UNDP (2020, p.24)

Many Caribbean countries maintain traditional court structures. As such, each nation-state operates under a tiered judicial system, with courts addressing cases of varying severity. Specialised courts in countries such as Antigua and Barbuda, Belize, Guyana, and Trinidad and Tobago address unique legal and social challenges (United Nations Development Programme [UNDP], 2020). In addition to these courts, appellate courts play a critical role in the region's legal systems. Institutions such as the Caribbean Court of Justice (CCJ) and the Judicial Committee of the Privy Council (JCPC) serve as final arbiters (Antoine, 2008).

The JCPC was established as the final court for Commonwealth Caribbean countries during the colonial era (UNDP, 2020). Its role as the highest appellate court has been the focus of significant debate, as it operates from Britain, with primarily British judges deciding cases for now-independent Caribbean nations (O'Brien, 2021). This debate spurred the establishment of the Caribbean Court of Justice (CCJ) in 2005[x]. However, the Port of Spain, Trinidad-based JCPC remains the final court of appeal for criminal and civil matters in most

independent Commonwealth Caribbean countries, except Barbados, Belize, Dominica, Guyana, and Saint Lucia.

Reliance on the JCPC as the final appellate court significantly influences punishment practices, particularly the application of the death penalty (Rediker, 2013). The JCPC's rulings often reflect British legal standards and human rights perspectives, which tend to conflict with local punitive policies (Morrison, 2005). Albeit the last execution in the Caribbean was carried out approximately 16 years ago in Saint Kitts and Nevis on December 19, 2008 (Amnesty International, 2012). Nonetheless, many Caribbean countries continue to retain the death penalty, a position that reflects retributive societal attitudes towards punishment, a reluctance to adopt alternative forms of justice that are legitimate and limited public trust in rehabilitation interventions (UNDP, 2020).

To administer punishment, a range of institutions, including correctional centres, prisons, and juvenile facilities, are utilised by Caribbean governments. Many countries have also implemented alternatives to imprisonment for certain offences. The aim is to reduce costs to the criminal justice system, alleviate case backlogs, and ease overcrowding in correctional facilities (Scotland, 2024). Both Jamaica and Trinidad and Tobago have also formally embraced restorative justice (RJ) principles in addition to criminal law.

The use of alternative sentencing options, such as probation, fines, and community service programmes for less serious offenses, reflects a slowly growing focus on non-custodial sanctions (Chuck, 1980). There is also increasing recognition of the importance of child diversion programmes[xi] and therapeutic interventions for drug users and persons with mental disabilities[xii] in conflict with the law. Through mechanisms such as mediation and arbitration, Alternative Dispute Resolution (ADR) also plays an increasingly significant role (Diaz and Lewis, 2024). However, the potential of ADR is undermined by implementation challenges, including limited resources, a shortage of trained mediators, and cultural resistance (UNDP, 2020).

Despite the penological advances, weak law enforcement, corruption and breakdown of trust in law enforcement agencies continue to result in brutal and disproportionate responses to alleged offences (Bowling, 2010). There are, however, established accountability mechanisms, such as civilian oversight bodies, that seek to address misconduct complaints or excessive use of force (Wallace, 2019). However, challenges persist with enforcement and impunity. Human rights organisations, therefore, remain critical to ensuring the enforcement and protection of the legal framework.

Caribbean penal systems are extended by removals, which encompass administrative removals[xiii], deportation, extradition, refoulement and other related practices. Removals within the context of the Caribbean dates to 1672, when St. Thomas was used to exile prominent

convicts, including religious dissenters (Heinsen, 2018). Removals, therefore, function as both forms of punishment and tools for social control in sending (Hasselberg, 2014) and receiving countries (Headley, Gordon, and MacIntosh, 2005).

The scale and frequency of removals have shifted over time, often in response to stricter immigration policies, legislative changes and international agreements (Morris-Francis, 2018). Additionally, public emergencies, such as COVID-19, have further influenced the dynamics of removals. Removal as a punitive tool, therefore, blurs the boundary between immigration enforcement and criminal justice (Bosworth et al., 2018). It also embeds itself as a critical yet often overlooked component of the broader system of punishment in the Caribbean region.

Methodology

This article draws on decoloniality to amplify the voices of Caribbean scholars, foreground local knowledge, and challenge dominant Western penal frameworks while highlighting the plural experiences of the independent Commonwealth Caribbean region. Decoloniality functions as an idea and a paradigm—while also serving as a theoretical framework, a critique, and a practice (Mignolo and Walsh, 2018). It emerged from postcolonial and decolonial studies to resist, interrogate and dismantle the lasting effects of colonialism on knowledge production (epistemic violence), power structures, and cultural identities (de Sousa Santos, 2021). As a transformative paradigm, decoloniality seeks to address and undo the impacts of colonialism in all its forms, including cultural subalternisation (Colpani et al., 2022). It, therefore, aims to replace power imbalances perpetuated by colonial legacies with equitable and inclusive structures while offering pathways to reimagine and reengineer systems that respect and integrate diverse forms of knowledge and experiences (Ndlovu-Gatsheni, 2015).

A literature-based observational analysis (Khan and Sultana, 2021) was employed to support the adopted decolonial framework, positioning Caribbean penology as an evolving field that actively challenges Western epistemologies of punishment. This method included a desk review of key documents, such as reports, scholarly articles, and archival materials, that focused on the history and evolution of the discipline. A purposive sample of the literature was also categorised thematically into areas such as “colonial influences”, “creolised punishment”, and “penal reforms before and after independence” to highlight significant trends and changes in the region’s penal practices. Recurring patterns and contradictions in the literature were then identified through thematic analysis guided by decoloniality.

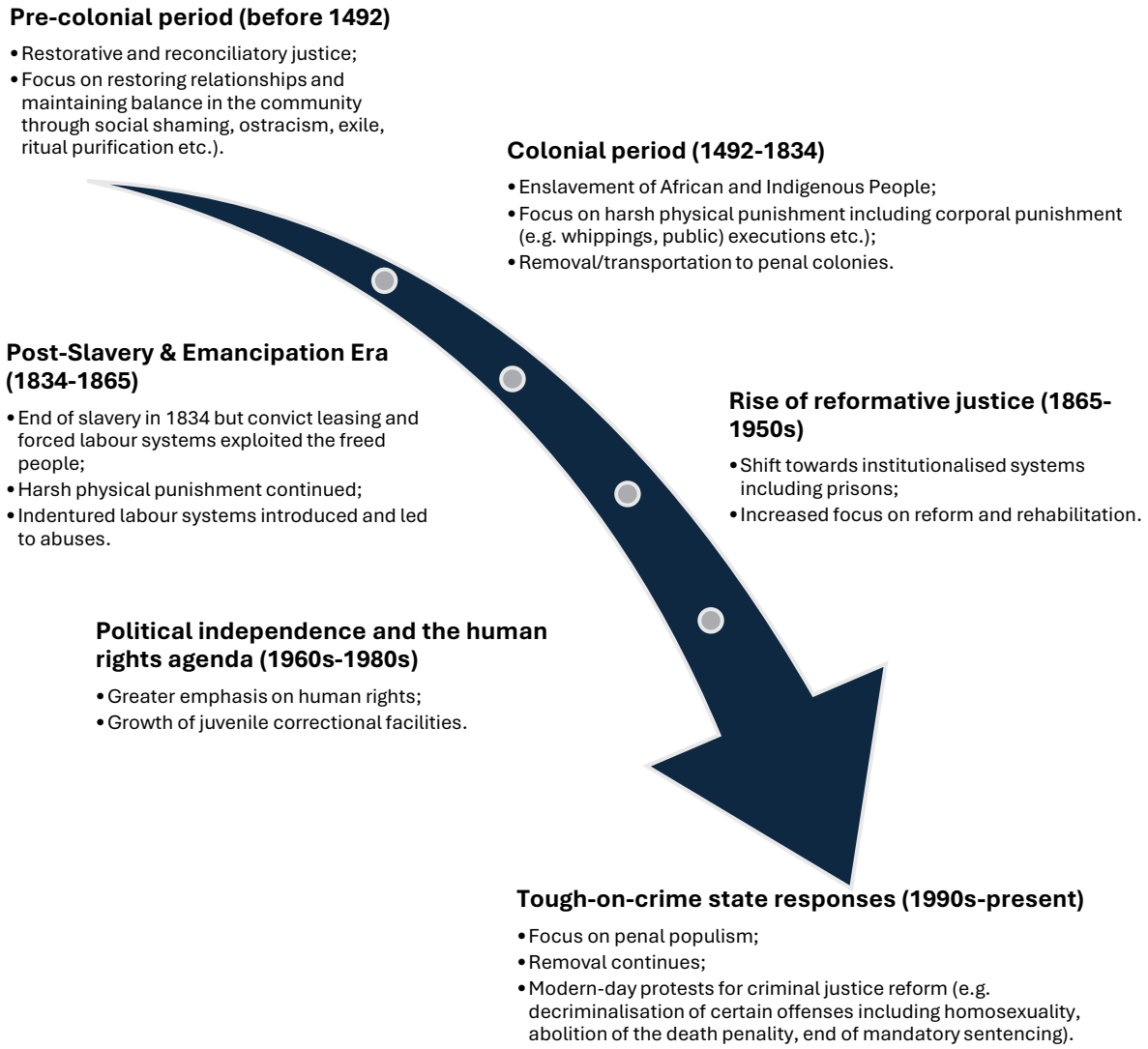
The study faced various limitations, including inconsistent secondary data formats and reporting practices, making comparisons and synthesis across regional penal systems

challenging. Reliance on secondary data also constrained the depth and theoretical generalisability of the findings. Despite these limitations, the article offers a nuanced perspective on the evolution of Caribbean penology. It also interrogates how the experiences, practices, and scholarship of independent Commonwealth Caribbean countries challenge Western epistemologies of punishment. It is to this discussion the article now turns.

Findings

Key insights regarding the scope and nature of Caribbean punishment, its historical development, contemporary practices, and how it diverges from traditional Western penal systems are presented in this section of the article. The evidence indicates that punishment[xiv] in the independent Commonwealth Caribbean has evolved in a non-linear manner, transitioning from brutal physical control to more complex systems encompassing exploitation, removal, incarceration, and maturing human rights legal frameworks (see Figure 2, below). Rehabilitation has also gained prominence as the core justification of correctional sentences, but carceral systems in many Caribbean nations remain predominantly punitive (Bergman et al., 2020). Large remand populations, high incarceration rates, overcrowded prisons, and limited capacity for rehabilitation (Lancaster-Ellis, 2017) suggest that punishment continues to serve more as a tool of social control. Although RJ practices have been introduced, they are largely peripheral to the criminal justice system in most Caribbean countries (UNDP, 2020). As such, the prevailing approach to punishment remains centred on deterrence and retribution, with RJ practices primarily applied in juvenile cases or specific community programmes.

Figure 2: The Evolution of Punishment in the Independent Commonwealth Caribbean



Source: Author

In Trinidad and Tobago, corporal punishment has been prohibited in schools since 2015, while in Jamaica, it has been banned in early childhood institutions since 2005 (Heekes et al., 2022). Corporal punishment, therefore, continues to be regarded as an acceptable form of discipline in the region and remains lawful in homes (Bailey, Robinson, and Coore-Desai, 2014). This acceptance persists despite all independent Commonwealth Caribbean countries being signatories to the Convention on the Rights of the Child, which, among other provisions, mandates all parties to prohibit and eliminate all forms of violence against minors (Morris-Francis, 2024). Indeed, misinterpretations of divine or moral knowledge of 'sparing the rod and spoiling the child'[xv] continue to justify the practice. This fixation on deterrence is also reflected

in debates around harsh sentencing, including the death penalty, which often resurfaces during periods of rising crime rates. These non-linear shifts in penality have involved relapses, overlapping stages, and variations in progress, with some Caribbean countries advancing further than others.

Evidence on how the experiences, practices, and academic contributions of independent Commonwealth Caribbean countries challenge Western epistemologies of punishment are presented next. These findings underscore postcolonial adaptations that reject colonial mimicry and prioritise culturally relevant solutions. Additionally, Caribbean countries have, in some ways, actively resisted carceral expansion. There is also a significant shift in focus from individual responsibility to structural accountability.

Shift towards structural accountability

The evolution of Caribbean penology reflects a gradual shift from the individualistic approach of Western penology, which focuses on punishment through retribution, deterrence, and rehabilitation, to a focus on structural accountability. This shift emphasises addressing the historical and postcolonial factors that shape crime and punishment in Caribbean contexts (Pryce, 2007). It also involves interrogating colonial legacies of punishment and taking tangible steps to advance social liberation and cultural resistance as means of addressing systemic inequities created by colonialism (Atiles-Osoria, 2018). At the core of this shift is the assumption that Caribbean penal systems can only be fully understood by examining the enduring impact of racial hierarchies established during colonial rule and their influence on the social, economic, and legal systems in contemporary Caribbean societies (Paton, 2004). Indeed, overlooking how colonial powers used law and punishment to control enslaved populations and Indigenous people in the region only serves to perpetuate epistemic violence (Berry, 2024) that supported the colonial system, which Caribbean philosophers like Aimé Césaire regard as the most inhuman system that has ever existed:

> *"[C]olonization works to decivilise the coloniser, to brutalise him in the true sense of the word, to degrade him, to awaken him to buried instincts, to covetousness, violence, race hatred, and moral relativism…"*
>
> *(Kelley, Césaire, and Pinkham, 2000, p.35)*

Aimé Césaire critiqued how colonial powers used violence to instil enduring racial hierarchies (Kelley, Césaire, and Pinkham, 2000). Punishment, in this sense, was a tool of both physical and psychological oppression which sought to dehumanise the colonised, who were not viewed as human subjects but objects of exploitation and punishment (Harris, 2017). For

Frantz Fanon, colonialism was a form of perpetual punishment, where colonisers used violence and oppression to maintain control, embed this violence within the social structure and inflict mental and emotional trauma on the colonised (Ahmed, 2024). This legacy of dehumanising punishment, the pathological process of colonisation and systemic oppression continue to shape social dynamics and perpetuate intergenerational cycles of violence and marginalisation (Thomas, 2016).

The 'pathological condition' resulting from colonial violence and oppression, which fosters feelings of alienation, inferiority, and internalised dehumanisation (Taib, 2019), has the potential to create a cycle where violence begets violence and perpetuates social unrest and crime in Caribbean societies. This cyclical effect has the potential to unfold within the context of youth crime, corporal punishment, and physical discipline in the Caribbean (Landon et al., 2017). Only about 10 of the 33 countries in Latin America and the Caribbean have enacted a complete ban on corporal punishment against children (Quintero, 2018), and in some Caribbean schools, this practice continues despite its legal prohibition (Bailey, Robinson, and Coore-Desai, 2014).

Caribbean historians like Shepherd (2006) challenge hegemonic epistemologies that pathologise Caribbean culture, particularly those that portray violent crime and brutal punishment as inherent aspects of Caribbean societies or as consequences of uncivilisation, moral failure, or underdevelopment. For this reason, Headley, Gordon, and MacIntosh (2005) challenged the findings of researchers whose exaggeration of the deportee-crime link reinforced moral panic by criminalising all instances of removal. Crime and violence in the region should, therefore, be viewed as enduring legacies of dehumanisation, systemic violence, and social trauma rather than being pathologised as inherent to specific ethnic or racial groups. Walter Rodney (2019, p.78) explains:

> *"Now we have gone through a historical experience through which, by all accounts, we should have been wiped out. We have been subjected to genocidal practices. Millions raped from the West African continent, a system of slavery in the West Indies which was designed to kill people"*

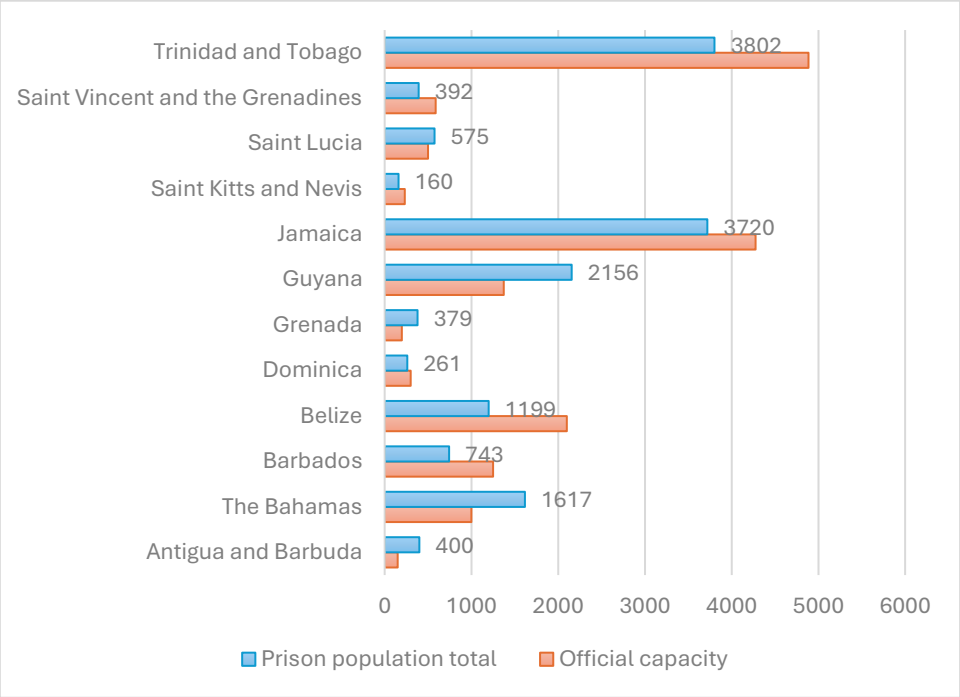
Caribbean criminologists like Kenneth Pryce (2017) also maintained that solutions to the region's crime challenge would remain unsustainable unless the structural inequalities and historical traumas shaping criminal behaviour are acknowledged and addressed. In "Endless Pressure", Pryce (1979) critiqued white intellectuals' romanticisation of African-Caribbean communities (Dresser, 2020). He also called for a focused study on law and social control, given the region's history of capitalist exploitation:

"a Caribbean Criminology would need to examine the reality of crime from a critical standpoint in the context of the region's history of capitalist repression and exploitation, and...cultural heritage of black working class styles of protest and modes of response to oppression, through slavery down to the present stage of neo-colonialism" (Pryce, 2007, p.5)

Resistances to carceral expansion

Carceral expansion in the Caribbean has increased in recent decades, marked by high prison population rates, the adoption of punitive measures, and continued reliance on incarceration, even for youth offences. Six independent Commonwealth Caribbean countries have prison populations exceeding the official capacity of their penal institutions, with Antigua and Barbuda and Grenada having the most overcrowded prisons based on occupancy levels (see Figure 3). The reasons for prison overcrowding in the region stem from a variety of factors, including poor governance, harsh sentencing practices (such as detention at pleasure), and the incarceration of children for disorderly conduct (Leslie, forthcoming). Other contributing factors include non-payment of court fines, delays in court proceedings, excessive use of pretrial detention, limited use of available alternatives to imprisonment, exceeded prison capacities, and ineffective prisoner classification (Leslie, forthcoming).

Figure 3: Prison Population Total and Official Capacity of Penal Institutions by Independent Commonwealth Caribbean Country, 2021 or the latest available year.



Sources: World Prison Brief (2024); Planning Institute of Jamaica (2024)

Approximately 15,243 individuals are held in about 38 regional penal institutions, either as pretrial detainees (averaging 40%) or convicted persons. In countries like Jamaica, the prolonged delays for children on remand remain a significant concern, with up to 68% of the child custodial population affected during the COVID-19 pandemic (Planning Institute of Jamaica [PIOJ], 2022). This expansion continues despite ongoing calls for alternatives from human rights organisations, academics, and grassroots movements.

Caribbean resistance to carceral expansion has involved the implementation of alternatives such as probation and diversion programmes. Many countries in the region have also avoided full-scale privatisation of their prison systems as well as the use of prison labour, both of which are profit-driven and raise concerns about human rights abuses and exploitation. Efforts to decriminalise marijuana use in countries like Jamaica and Barbados, despite international pressure, also reflect how Caribbean nations have largely rejected or adapted Western models of punishment. These models, particularly those linked to mass incarceration and the war on drugs, have been associated with high incarceration rates and social inequality (Bishop and Keriggan, 2022). Indeed, Caribbean societies, with their histories of aid dependency, are often compelled to adopt foreign legal and punitive systems that do not fully align with local realities and contribute to over-incarceration and the criminalisation of marginalised groups.

Post-independence adaptation versus colonial mimicry

Caribbean penal systems mirror British colonial laws and practices. Over time, there has been a shift toward justice systems that better reflect the Caribbean's post-independence realities. At times, this has involved the wholesale adoption of punitive, retributive models of punishment that did not align with Indigenous Caribbean justice systems or cultural norms. V.S. Naipaul criticised this process of replication as a form of mimicry that perpetuates dependence and alienation and is rooted in the psychological and cultural harm caused by colonialism (Dizayi, 2019). Antoine (2005) also criticises Caribbean nations for "mimicking" foreign legal frameworks, given that this is an inadequate and gradually evolving approach to legal development. She explains:

> *"We remain today, largely "mimic men" in terms of our legal development, an unhappy stance which is much lamented, but which is changing too slowly. Few proactive initiatives, from either our judges or our practitioners, are taken to rectify this situation. Unlike the United States, which took the*

English common law and created vibrant, sometimes radically new legal concepts, interpretations, and precedents, Commonwealth Caribbean courts and jurists still rely heavily, almost totally, on English precedent" (Antoine, 2005, p.5).

Global forces, therefore, continue to interact with local legacies of colonialism to shape crime and punishment in the region. Even so, significant efforts have been made to reform and adapt the bureaucratic structures, legal and penal systems inherited from the colonial period (Ryan, 2002). For example, the reform of outdated colonial laws, such as vagrancy statutes, has varied across the region and reflects a broader movement in the Caribbean to dismantle colonial-era legal frameworks that criminalise poverty and social marginalisation. However, Matthews and Robinson (2019) argue that the enduring presence of vagrancy legislation continues to negatively affect marginalised groups, particularly those who deviate from traditional gender norms. The authors emphasise that these colonial-era laws disproportionately affect women and gender non-conforming individuals, reinforce social hierarchies and perpetuate systemic inequalities (Matthews and Robinson, 2019).

Although mimicry continues to occur at various levels of governance, efforts to adapt to the region's post-independence realities should not be overlooked. The establishment of the CCJ in 2001 marked a significant step towards regional legal autonomy and, therefore, reflects post-independence adaptation and resistance. Indeed, the CCJ has fostered Caribbean jurisprudence through greater integration and addressed regional legal challenges (Caserta, 2018). However, various obstacles continue to challenge the CCJ's assertion, including limited public awareness and diverse national legal frameworks (Scobie, 2016). There is also resistance from certain member states regarding its jurisdiction and authority (Scobie, 2016).

Discussion & Conclusion

The independent Commonwealth Caribbean region has made few strides in adopting reformative and human rights agendas (see Figure 3). However, continued reliance on incarceration, large remand populations, and overcrowded prisons (Bergman et al., 2020) highlight the need for more transformative approaches. Increasing recognition of the role of systemic issues—poverty, inequality, and colonial legacies—in shaping criminal behaviour is, therefore, one step in the right direction (Pryce, 2017). Nevertheless, there is a need to prioritise alternatives to incarceration and expand Indigenous practices such as RJ, which seem to be underutilised (UNDP, 2020).

Decolonisation of Caribbean penal systems must, therefore, involve dismantling colonial structures that perpetuate inequality and replacing them with systems that reflect Caribbean cultural values and historical contexts. Achieving this will necessitate a holistic and integrated approach to penal reform. Such an approach should encompass legislative changes, enhanced public awareness, reassertion of the independent Commonwealth Caribbean presence and more significant investments in Indigenous knowledge production.

Knowledge production in the region must emphasise affirming and liberating methodologies that centre the voices and experiences of marginalised communities (Nakhid, 2022). These methodologies should also challenge punitive frameworks and advocate for justice practices centred on healing, reconciliation, and community empowerment. Additionally, international human rights law must undergo decolonisation to establish a more inclusive framework for human rights enforcement in the region (Biholar, 2023).

The work of Caribbean thinkers such as Kenneth Pryce, Frantz Fanon, Walter Rodney, V.S. Naipaul, and Aimé Césaire offer a foundation for these critical decolonial shifts. Fanon's critique of colonial violence and its psychological impact (Ahmed, 2024) calls for a justice system that prioritises healing. Rodney's (2019) and Pryce's (2017) work on the colonial exploitation of the Caribbean suggests that any reform must address the deep-seated economic inequalities that fuel crime. Indeed, Caribbean countries have historically ranked among the most heavily indebted nations globally, and this debt, along with related vulnerabilities, has hindered economic growth and progress in poverty reduction across the region (Mooney, Pratts, and Ronsenblatt, 2021). Nevertheless, Naipaul[xvi] and Césaire's[xvii] analysis of colonial mimicry stresses the importance of reimagining Caribbean models of justice, free from epistemic violence.

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[ii] see https://www.bbk.ac.uk/news/prison-populations-continue-to-rise-in-many-parts-of-the-world-with-11-5-million-held-in-prisons-worldwide/

[iii] A way to maintain order, deter crime, and instil fear often using religious justifications

[iv] https://worldpopulationreview.com/country-rankings/black-caribbean-countries

[v]https://caricom.org/our-community/who-we-are/our-people/

[vi] https://exceptionalcaribbean.com/2021/08/03/the-chinese-have-influenced-the-caribbean-in-a-powerful-way/

[vii] https://exceptionalcaribbean.com/2021/09/16/arabs-in-the-caribbean-small-in-number-but-tremendous-in-economic-power/

[viii] Construct adopted from the work of Girvan (2017) and Best (1968)

[ix] Read more about the creolisation process in the work of Girvan (2017)

[x] https://ccj.org/about-the-ccj/who-we-are/

[xi]https://opendocs.ids.ac.uk/articles/report/Donor_Work_on_Security_and_Justice_in_the_Eastern_Caribbean/26480365?file=48254689

[xii] See Beigel et al. (2023)

[xiii] This refers to individuals who have violated UK immigration laws, as well as those removed under other administrative or illegal entry powers who have refused to depart voluntarily.

[xiv] Canton (2007, 249) defines punishment as the "deliberate infliction of hardship or a loss of liberty or rights on wrongdoers by a recognised authority as censure for the wrong done".

[xv] The Bible, Proverbs 13:24

[xvi] Dizayi, 2019

[xvii] Kelley, Césaire, and Pinkham, 2000

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The Crime of Infanticide: To Be or Not to Be?
The Case of Sweden

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Abstract

When infanticide is discussed, it is often seen as either the result of mental health issues and the discussion regards whether a specific infanticide regulation is needed and whether general rules regarding mitigation can be applied instead, or it is seen as murder, arguing that women 'get away' with premeditated killings of their children by claiming they were insane. The latter group often argues for the repeal of infanticide laws. Building on an analysis of the verdicts in six cases of infanticide and one case of attempted infanticide in Sweden in the years 2000-2023 this paper argues for the retention of the Swedish child manslaughter crime on the grounds that it does not only provide mitigation for mentally disordered perpetrators, but it can also take the social circumstances into account in cases of 'severe distress.'

Key words: infanticide, Sweden, child manslaughter, 'severe distress', 'crisis pregnancy'

Introduction

The crime of infanticide covers a mother's killing of her child under one year of age and is debated around the world. Some see it as a crime committed due to mental health issues while others see it as murder. Some argue the crime should be not introduced where it is not presently legislated for – such as the USA (Osborne, 1987; Stangle, 2009) – or should be repealed where it exists (Norway, Finland, see below). A few argue for the retention of the

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crime on grounds of the cases where a mother kills her child without mental health issues, but where the circumstances are such that an infanticide crime is justified (Brennan and Milne, 2023).

In Sweden, the crime of infanticide enables the consideration of both the mother's mental health as well as the social circumstances, which, I will argue, is a reason why it should be retained. Another reason is because it enables a coherent legal approach to these cases, in contrast to many other countries where the judicial treatment spans from acquittal or mental health care to life sentences for murder (e.g. Milne, 2021 for England and Wales; Ayres, 2023 for the USA). This discussion is relevant to the debate whether there should be infanticide regulations as one justification for the Swedish section is that it encompasses more than just mental health issues: it can take both mitigating and aggravating circumstances into account, with forensic psychiatric care or imprisonment as the sanction, all under one legal heading.

In this paper I am using an analysis of verdicts in six cases of infanticide and one case of attempted infanticide in Sweden in the years 2000-2023 (Kaspersson, 2023) as the starting point. I first present the Swedish Child Manslaughter Section before moving on to discuss the cases in line with arguments put forward in the legal debate. Infanticide as the result of mental illness is discussed first and then newborn child killings without mental illness. Finally, the provisions in the Swedish law to consider not only mental illness, but also the social situation and circumstances, particularly in cases of newborn child killings, will be discussed to then conclude with an argument to retain the crime.

Background

The legal category of infanticide ('child manslaughter' in the Scandinavian languages) covers the killing by a mother of a child up to one year (Putkonen et al., 2016). The label neonaticide covers the killing by a mother of her newborn child within its first 24 hours of life and is a distinct subtype of infanticide (Brennan and Milne, 2023; Putkonen et al., 2016). Perpetrator mental illness is commonly present in child killings of children older than a day, while in newborn child killing perpetrator mental illness is usually not present as it takes time it to develop (Dobson and Sales, 2000; Friedman et al, 2012). The terminology used here is 'child manslaughter' for the Swedish legal category of infanticide, and 'newborn child killing' for the subtype of neonaticide.

The Swedish Child Manslaughter Section

The Swedish 1965 Criminal Code, Chapter 3, Section 3 states:

A woman who kills her child at birth or at some other time when she is in a disturbed state of mind or severe distress on account of giving birth to the child is guilty of *child manslaughter* and is sentenced to imprisonment for at most six years.

The section is similar to infanticide crimes in other countries (Brennan and Milne, 2023) in that it covers a killing by a mother in a disturbed state of mind due to childbirth. Important for the argument I will put forward here, is that it differs as it also explicitly covers 'severe distress' allowing for social and other circumstances to be considered (Kaspersson, 2023). Sweden also differs as it does not acquit on grounds of diminished accountability. Instead, an offender's eventual mental disorder is taken into account when deciding the sanction and if considered severe, forensic psychiatric care generally replaces imprisonment (Höglund et al, 2009).

An overview of the verdicts of child manslaughter in Sweden is presented below in Table 1 followed by an analysis of the cases. The verdicts contain a presentation of the evidence and material constituting the basis for the outcome, such as questioning of suspects, witness statements, autopsy reports and psychiatric assessments. Accounts of what the women (and witnesses) said in police interviews and in court are directly based on their own words but are retold in third person in the verdicts. Cases are anonymised, pseudonyms are used, and minimal information is provided to protect the women and their families. Citations are from the verdicts and referenced by the pseudonym only. The translation from Swedish was done by the author.

Table 1: Child Manslaughter Verdicts in Sweden 2000-2023

Name*	Age of victim	Type	Modus Operandi	Sentence
Valentina	6 hours	Newborn child killing	Suffocation	Forensic psychiatric care
Gunilla 1 Gunilla 2	At birth At birth	Newborn child killing x 2	Strangulation x 2	Prison 3 years
Klara	At birth	Newborn child killing	Physical violence, hypothermia	Forensic psychiatric care
Ulrika	At birth	Newborn child killing	Suffocation	Prison 3 years
Laura	11 weeks	Attempted child manslaughter	Drowning	Forensic psychiatric care
Natalie	10 weeks	Child manslaughter	Stabbing/cutting (knife)	Forensic psychiatric care with special discharge review

Olivia	5,5 weeks	Child manslaughter	Drowning	Forensic psychiatric care with special discharge review

Explanations: * = Pseudonym, x 2 = two counts

Child Manslaughter due to Mental Disorder

There is consensus amongst many scholars that mentally ill mothers who kill their children are less responsible and should therefore be granted mitigation (Schwartz and Isser, 2001; Spinelli, 2019). The question is how to deal with this mitigation – via a specific infanticide regulation or via rules on diminished responsibility due to mental illness?

As can be seen in Table 1, five out of seven women were considered to suffer from a severe mental disorder and were sentenced to forensic mental care instead of prison (Kaspersson, 2023). Of these cases, three were cases of killings or attempted killings of children older than a day and two were newborn child killings. In the cases where a child older than a day had been killed, the women were given different post-natal psychological diagnoses ranging from depression, attempted extended suicide and postpartum psychosis.

Olivia suffered from a postpartum psychosis and outlines:

> *Messages came from the TV "write to me about your childhood" and "about mum's death in the Nile". Now she doesn't know if it was real, but then she thought so. [---] She doesn't know if there was a connection between the messages and pressing Madicken into the bathtub. She doesn't understand herself why this has happened. She doesn't know why it turned out to be Madicken and not the other children. She got a bang, like a plank in her head, by these messages.*

Natalie became depressed after the birth of her second child. She struggled with breastfeeding and thought she passed her anxiety onto him via the milk. One day when she took baby Neil into the kitchen:

> *… she got an impulse that she had to liberate Neil and herself from the suffering she felt, and that she was convinced he also felt. She put him on the kitchen floor and cut him with a kitchen knife across the throat. She*

turned the knife on herself and cut her throat; they were going to die together.

In the two cases of newborn child killings, the mental disorders were more vaguely defined by the court. In Valentina's case it was stated her mental disorder was 'due to her mental state and personal circumstances in general.' Klara, who did not know that she was pregnant, even though she had had a child before, suffered a shock when she went out into the woods, thinking it was her period causing her pain:

> When she was hunched down in the wood, she could suddenly see how a head appeared between her legs and there was a lot of blood. [---] She held it away from her for a short moment and then dropped it to the ground. […] Her intention was not to hurt the baby, but she might have trodden on the baby when she tried to cover the blood. After that she returned to the lorry. She told Manuel [partner] she had lost blood and asked for a towel.

The fact that Klara had not realised she was pregnant – an undiscovered pregnancy (Vellut et al, 2012) – seems to indicate to the court that the shock at giving birth caused the behaviour that lead to the death of the baby, but also that she ought to have realised she was pregnant as she had been pregnant before and given birth. The psychiatric assessment found Klara to have suffered from an unspecified severe mental disorder, both at the time of the act and at the time of assessment, and she could therefore not be sentenced to imprisonment.

In these cases where the women were found to suffer from a severe mental disorder that precluded a prison sentence, it can be argued that general rules on insanity and mitigation can be applied, thereby making a specific child manslaughter crime superfluous (Dobson and Sales, 2000; Friedman et al 2012; Sveriges Offentliga Utredningar, 2014). However, it is when we look at the cases of newborn child killing without severe mental disorder, that the rationale for retaining the crime becomes clearer.

Newborn Child Killing

In the infanticide debate, newborn child killings are commonly considered to be murder and it is argued they should be treated as such (Brusca, 1990, Sitte-Durling, 2009). Consequently, the focus in these cases is on the absence or presence of mental illness and on the intentionality of the acts.

Claiming Insanity

One argument put forward is that women 'get away' with premeditated killings of their children by claiming they were insane even though they were not and are only trying to get out more lightly (Brusca, 1990; Stangle, 2008). When looking at the four Swedish cases of newborn child killing, in two cases the psychiatric assessments deemed the women to suffer from a severe mental disorder but neither of them clearly argued mental illness in court. Valentina could 'neither admit nor deny the act but admitted she had been in an upset condition or situation of severe distress'. Klara, who was unaware she was pregnant, 'denied child manslaughter invoking she had had no intention to kill the child'. It can therefore not be said that they got away with a more lenient charge by claiming insanity as a strategy – rather, it was the result of the outcome of the psychiatric assessments.

In the two other cases of newborn child killing a mental disorder was diagnosed, but as they were not considered severe – only a mental disorder considered severe precludes a prison sentence in Sweden (Kaspersson, 2023) – forensic psychiatric care was not an option. It might be said that Ulrika unsuccessfully tried to claim insanity when she admitted she put the child in a plastic bag but 'contested responsibility for child manslaughter with reference to having been in such a state she had not been aware she caused the child a lack of oxygen.' She tells how she panicked when labour started:

> *She intended to call for help but she felt there wasn't enough time for her to process the emotions and the questions she knew would follow. She understood she would have to answer questions from doctors and hospital staff, and she felt there wasn't enough time to compose herself and to get more into reality. It wasn't that she didn't want to call but that she needed to go through some mental readjustment.*

The psychiatric assessment found that she suffered from a mental disorder, both at the time of the act and at the time of the assessment, but it was not considered severe and therefore she was sentenced to three years' imprisonment.

In the case of Gunilla, she said it 'felt as if someone else was acting on her behalf' but freely admitted she had committed child manslaughter. Two psychiatric assessors found she had an intellectual disability but disagreed whether it was severe and eventually the court decided it was not, and she was therefore sentenced to three years' imprisonment.

Intentional Acts

Some scholars see newborn child killings as intentional, sometimes premeditated, acts that are the result of a conscious choice, and should be treated as murder (Osborne, 1987, Stangle, 2008). Focus is therefore on whether these acts are intentional.

In research on women who have committed newborn child killings, most were unable to state the exact reason why they acted as they did (Putkonen et al, 2007). Gunilla, who killed a newborn child on two occasions, six years apart, said about her first victim that she had 'a vague memory that she might have strangled the baby with the strap of the silk dressing gown she was wearing'. Regarding her second victim she said she 'decided to kill the child directly after the delivery. She doesn't know why she reasoned like that.' Similarly, Valentina said 'she has no clear memories from what happened, but she has "a picture within herself" where she put her hand on the blanket over the child's mouth and nose.' Ulrika said about the birth:

> *… she got very scared and she felt she couldn't manage to face what she had denied to herself for so long, but that was now really there in front of her. She doesn't remember putting the child in a bag.*

There is some intentionality in the actions of these women – and this is found in the cases where mental illness is involved as well – but are they completely rational and premeditated? Schwartz and Isser (2001) argue that newborn child killings are often not the result of a conscious choice, as in the cases above, but when they are, it is to avoid people finding out about the pregnancy. This leads us to consider the role of denial and concealment of pregnancy in newborn child killings.

Denial / Concealment

Milne (2021) points out how concealment and/or denial of pregnancy is often interpreted as signs of premeditation and culpability. Generally, denial can be seen as a continuum ranging from being open with the pregnancy, knowing about it but denying it to others – by concealment – and denying it to oneself (Dulit, 2000). When there is an undiscovered pregnancy – where the woman does not know or understand she is pregnant – there is no denial as she cannot deny what she does not know (Vellut et al, 2012). In cases of denial of pregnancy, the denial is often internal or unconscious – you deny to yourself you are pregnant or you repress it and do not think about it at all – while the concealment of the pregnancy is a more conscious process to deceive others (Amon et al, 2012, De Bortoli et al, 2013, Dulit, 2000). The process of denial /concealment might also vary during the pregnancy, where the

woman might go from one state to another, such as from an unconscious to a conscious denial, for example when the size of the bump makes concealment/denial impossible (Beier, 2006 cited in Milne, 2021).

De Bortoli et al (2013) observe that women killing a newborn child almost always conceal their pregnancy and of the four newborn child killings in Sweden, only Valentina did not conceal her pregnancy. Klara exemplifies an undiscovered pregnancy – despite a previous pregnancy and childbirth she had no realisation she was pregnant until labour (De Bortoli et al, 2013, Vellut et al, 2012). In cases of undiscovered pregnancies physical manifestations are either misinterpreted or absent (De Bortoli et al, 2013), which we can see in Klara's case:

> During the autumn she had some discharge of blood she thought was her period. Manuel [partner] had commented she had gained weight, but she could wear the same clothes she had worn before, and she didn't suffer morning sickness like she did when she expected Emma. She didn't feel any movements from the foetus either. If she had known she was pregnant she would have been happy.

De Bortoli et al (2013) point out that undiscovered pregnancies may involve the complicity of others, such as Klara's partner who noticed a weight gain but does not seem to have done anything beyond commenting.

When it comes to denial and concealment there is often a combination of active fear and cognitive denial of pregnancy. Oberman (2004) shows how any decisions about the pregnancy are postponed until it is too late, and they give birth alone. Labour takes woman by surprise, culminating in panic and the killing results from the fear and panic rather than anger (De Bortoli et al, 2013).

When Gunilla was expecting the child who would become her first victim, she 'didn't contact the antenatal clinic, but her girlfriends and the father of the child knew about the pregnancy. She had hoped she and the father were keeping the child, but he didn't want the child to be born.' Others were consequently aware of Gunilla's pregnancy – but what did they do? Research has found that others have some awareness of the woman's pregnancy in many cases of newborn child killing (Amon et al, 2012). In other instances, mothers, partners and friends do not notice the woman is pregnant when they reasonably should (Dulit, 2000, Klier et al, 2019) which, in turn, might make the people around the woman complicit in the denial and concealment of pregnancy (Oberman, 2004). For example, Ulrika's boyfriend wondered why they did not have sex and just accepted her answer that she did not want to.

Regarding her second victim, Gunilla says:

> *It was not until she was seven to eight months pregnant, she noticed she was pregnant. Her periods have always been irregular. She didn't want to become pregnant and therefore repressed it. [---] She didn't tell anyone she was pregnant. If anyone asked if she was with child, she denied it.*

Ulrika had a child that was given up for adoption when she was 18. She did not tell her parents or boyfriend about that pregnancy. Five years later, she finds she is pregnant again:

> *Just as last time she wanted to tell but she didn't manage to tell anyone or to contact anyone for help. [---] She wasn't unaware she was pregnant but since she didn't tell anyone and denied it to herself, she couldn't look like she was pregnant, hence her choice of clothing.*

Dulit (2000) discusses repression and how the pregnant woman is not thinking about the pregnancy and therefore delivery is not anticipated, and the birth comes as a shock. In the cases discussed here, the concealment and denial can be interpreted as a conscious, albeit constrained, choice by the woman but, as Milne (2021) points out, is the woman solely to blame for her behaviour when those around her might also have been complicit?

Inability to Talk

What was noticeable in the cases of Gunilla and Ulrika – and also, to some extent, in the case of Olivia who told her psychiatrist she 'felt fine' even though she did not – is the inability to talk. Neither Gunilla nor Ulrika were able to bring up the subject of their pregnancies to boyfriends, parents, friends or others (Putkonen et al, 2007). According to Klier et al. (2019) this inability may be related to personality disorders but also to a fear that previous childbirths would be detected. Gunilla, who had an intellectual disability, says about being pregnant with her first victim:

> *I felt stressed during this time as I fell out with my friend Pia. I did consider contacting [social worker] at the social services in [place] but kept postponing it. I visited the social services in September [year] but didn't tell*

the social workers about my pregnancy. My mother was with me, and I didn't want her to know I was expecting.

Gunilla had a son when she was 17 who was still living with her. Two further children were given up for adoption, two were killed at birth and a further pregnancy was terminated. When she was pregnant with her second victim six years after the first, she said she 'was scared and stressed in case her mother would find out she had given birth to so many children' because her mother had high demands on her.

In the case of Ulrika, the inability to talk was related to her repression of the pregnancy (Dulit, 2000):

…she wanted to tell but she didn't manage to tell anyone or to contact anyone for help. She doesn't know why she didn't manage to tell about the pregnancy. Instead, she denied it all to herself. In one way she knew she was pregnant but emotionally she didn't manage to handle it, it was as if the pregnancy itself didn't even exist.

In these situations, because they were unable to talk, the women had to find their own solution regarding the child (Klier et al, 2019). Likewise, Milne (2021:50) concludes that in such a context, 'the only possible outcome was to give birth in secret, resulting in panic; consequently, the women became victims of their own deception, and the babies died.'

When drawing the different aspects together discussed above – the deliberateness of the women's acts, their supposed trying to claim insanity to get away more lightly, the meaning of concealment and denial, the inability to talk – the intentionality of these women can be questioned. What rational a choice is it when, as Milne (2021:150) puts it, a 'woman's back is against the wall and she can see only bad options'? Stangle (2008:704) questions society's empathy towards these women when their acts can be a conscious choice – but if one, it is not one made in a vacuum, and the social context in which these killings occur also needs to be considered.

Social Context

Milne (2021:149) emphasises how women are held individually responsible for newborn child killings even though their actions 'are a result of wider social structures and discriminatory practices.' She introduces the concept of 'crisis pregnancy' as 'an instance where a woman feels unable to determine how to approach her pregnancy and what decisions to make about

the future of the pregnancy/foetus/child, causing her a crisis' (Milne, 2021: 36f). Women committing newborn child killing experience a high level of vulnerabilities and the context of the pregnancy causes both substantial stress and distress (Milne, 2021).

I would argue that the concept of 'severe distress' in the Swedish definition of child manslaughter encompasses the experience of a 'crisis pregnancy'. What 'severe distress' entails is not specified in any detail in the legal preparatory work but can be actual or perceived distress of economic or other kind caused by the birth (Kaspersson, 2023).

Looking at the cases of newborn child killings, signs of 'severe distress' and 'crisis pregnancies' are found. For example, Valentina 'had been in an upset condition or situation of severe distress' and at the time Gunilla was expecting her first victim 'she felt scared, stressed out and confused' and had financial difficulties. Ulrika's explanation exemplifies a crisis pregnancy:

> *She didn't have the energy to think about what she would do once the child was born because it was too mentally taxing to think further than to make it through one day at the time. [---] She wasn't afraid of anything specific; she just felt fear and couldn't handle the situation. She didn't want to have a child, and she didn't want to go through another adoption procedure. She also feared that someone would try to persuade her to do something else than give the child up for adoption because some had tried that the first time she was pregnant.*

In the case of Klara's undiscovered pregnancy, the crisis was not a fact until the birth when she 'was in shock over what had happened and just wanted to lie down'. The information regarding Valentina's pregnancy is limited, but we know she did not conceal it. Still, as in the case of Klara, the birth might have caused a crisis: She did not sleep before the birth, she gave birth alone unsupported by friends or family (she does not mention the father of the child), she was denied pain relief, she found delivery very hard, and she felt the midwife team was against her. Nesca and Dalby (2011) discuss traumatic childbirth and links to newborn child killing. Birth trauma, no matter whether the experience is subjective or objective, can cause traumatic stress reactions due to the severity of pain, the length of labour, feelings of powerlessness and the woman's feeling she is given inadequate social support – most factors present in Valentina's case.

My conclusion is that these women can be seen as experiencing a crisis pregnancy that resulted in the killing of their newborn child. Milne (2021) and Milne and Brennan (2023) argue that many of the circumstances in these cases are not due to the women individually but depending on social circumstances. The legal focus on establishing individual

responsibility means gendered experiences, such as pregnancy and birth, generally cannot be accounted for. They therefore argue for the retention of the Infanticide Act to enable the consideration of these circumstances. These considerations can be made in the Swedish child manslaughter section as well and it leads me to consider the arguments for retaining it.

Arguments to Retain the Child Manslaughter Section

After a discussion of the seven verdicts on manslaughter and attempted manslaughter in Sweden in line with the general issues in the debates around child manslaughter and infanticide, I will present arguments for the retaining of the Swedish child manslaughter section. The issues here concern the section's ability to take 'severe distress' into account, whether the separate section is needed when general rules on mitigation can be used instead and that it allows for a more coherent legal approach.

Taking 'Severe Distress' into Account

In Sweden, the provision in the child manslaughter section to take 'severe distress' into account means that circumstances other than severe mental disorder can be considered. Swedish legal commentators, such as Sitte-Durling (2009), argue that the concept of severe distress is outdated and refer to the availability of contraceptives, abortion, adoption, welfare support and the weakened stigma of unmarried mothers. In legal practice in Sweden, however, the concept of severe distress is not outdated, and the courts take such issues into consideration and accept them as mitigating. It enables the courts to consider crisis pregnancies (Milne, 2021) and other difficult social circumstances (Friedman et al, 2012). The social conditions are different today than when the concept of severe distress was coined in the 1965 Criminal Code, but the courts have adapted it to encompass modern day stressors – such as inability to take action, seek help or lack of social support (Klier et al, 2019) as well as 'crisis pregnancies' (Milne, 2021). The concept of severe distress is unique to the child manslaughter section which means these factors cannot be considered without it.

A Specific Infanticide Section is not Needed

Another part of the discussion around infanticide regards whether a specific section is needed. It is argued that the low prevalence and existing rules on mitigation and diminished responsibility make it superfluous (Dobson and Sales, 2000, Friedman et al, 2012). There is also a wish to protect the value of a child's life (Lambie, 2001, Sitte-Durling, 2009).

Sweden's neighbouring countries Norway and Finland have repealed or will repeal their infanticide crimes. In Norway, the child manslaughter section, which only covered

newborn child killing, was abolished in the new 2005 Penal Code which took effect in 2015. It was argued there is no need for a specific section as the prevalence is low, the importance of social factors has diminished and the general rules regarding mitigation can be applied in such cases (The Norwegian Government, 2008-2009). The child manslaughter crime in the Finnish Criminal Code will be repealed from 1 January 2025. The view is that the current lenient penalty is not justified on grounds of the protection of the life of a newborn child. In future, such crimes will be dealt with under the general legislation regarding intentional crimes against life (Ministry of Justice, Finland, 2024).

Rules on mitigating circumstances and diminished responsibility, however, mainly cover cases where mental disorder is present. Without the specific child manslaughter section, issues connected to childbirth, such as severe distress due to a crisis pregnancy, are not included. In line with Milne and Brennan (2023:153), an argument to retain the child manslaughter section is that it, to a certain extent at least, can 'base lenient treatment on the structural causes of the crime'.

Provides a Coherent Approach

It can also be argued that the Swedish child manslaughter section allows for a coherent approach towards mothers killing their children as it can take not only mental health issues into account but also the social circumstances. As Oberman (2004) shows, the general situation of these women is often similar, regardless of whether they are suffering from a mental illness or not. With the ability to take the whole situation – any mental illness and any severe distress – into account, the legal outcome ought to be less disparate and more predictable. Treating like cases alike also avoids the disparate outcome in cases of infanticide found in other countries (Ayres, 2023). It also allows for imprisonment in cases where there is no severe mental disturbance found and the range of up to six years' imprisonment allows for aggravating, as well as mitigating, circumstances to be considered.

Conclusions

The results of the analysis of the seven Swedish child manslaughter cases in combination with the general debate around infanticide and its regulation in Sweden and elsewhere have made me draw the conclusions that the Swedish child manslaughter section should be retained, instead of following the lead from neighbouring Norway and Finland in repealing it.

The main argument put forward for repealing the child manslaughter section is that mental health issues can be considered under general rules on mitigation. However, it is only a severe mental disturbance that is covered in the Swedish rules on mitigation and that

precludes imprisonment. In the cases analysed, less severe mental disturbances not precluding imprisonment were also found and without the section these circumstances would not be considered. A reason to retain the section is therefore that it allows for the consideration of both severe and less severe mental disturbance.

Another, in my view important, reason to retain the section is that it not only allows for mental health to be taken into account, but also the social context. The consideration of 'severe distress' – the social situation and related stressors which were found in several of the cases – is explicitly allowed and incorporates features identified in research, such as cases caused by women experiencing a 'crisis pregnancy' (Milne, 2021).

To treat all forms of child manslaughter under the same section, whether insane or not, enables a more coherent approach where mental health as well as the specific circumstances surrounding these killings are considered. Women do not need to make a decision what defence to go for – or claiming insanity as a strategy to 'get away' more lightly (Brusca, 1990). This allows for the holistic approach to infanticide advocated by, among others, Oberman (2004).

The fact that child manslaughter is a homicide offence and that aggravating as well as mitigating circumstances can be taken into account, counters the argument from commentators, such as Sitte-Durling (2009) in Sweden, that the value of a child's life is diminished when a woman is sentenced for it.

Others have argued against the singling out of mothers killing in connection to childbirth (e.g. Stangle, 2008) – why not cover all ages of children and fathers and step-parents as well? I do not see this argument necessarily as a call to repeal of the crime of infanticide but rather that other types of homicide should perhaps also be able to take 'severe distress' into account.

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Experiential learning on undergraduate Criminology degree programmes: óskilling upô students an

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Abstract

Traditionally, Criminology has been taught at higher education as a theoretical discipline, rather than being applied. However, Criminology programmes are increasingly seeking to place more emphasis on experiential learning opportunities (ELOs), to 'skill up' students. This approach seeks to improve specific work-place skills and to improve employability rates for graduates but is also in response to research which reports that students often choose to study Criminology because they are interested in a career in the Criminal Justice field. This paper explores the theoretical basis for experiential learning, how it has been implemented in other disciplines, and reviews how Criminology programmes apply experiential learning pedagogy. Utilising survey feedback data from 52 undergraduate Criminology students, a reflection is then provided on the Criminology programme at the University of Hertfordshire and how feasible it would be to embed similar experiential learning opportunities (ELOs) within the undergraduate degree.

Introduction

Potential careers within the Criminal Justice field may include working for: the police, the courts, the probation service, the prison estate, the youth justice system, non-profit organizations, and charities (Prospects, 2024). However, it has been argued that typically, undergraduate Criminology degree programmes "do not generally integrate experiential

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learning" (Bramford & Eason, 2021: 319), despite other disciplines placing a strong emphasis on this, namely degrees such as Nursing, Teaching and Engineering, and also more recently, with the introduction of Police Constable Degree Apprenticeships. Kolb (2014) argues that this may be the case because historically and more generally within higher education, there has been more of a focus on what students learn rather than how they learn. Furthermore, Hamilton (2013) argues that Criminology degree programmes differ from other professional disciplines as the curriculum is not determined by professional bodies or accreditation boards. However, the Quality Assurance Agency for Higher Education (QAA) sets out the subject benchmark statement for Criminology, which defines "what can be expected of a graduate in the subject, in terms of what they might know, do and understand at the end of their studies" (QAA, 2022: 1). In particular, the benchmark statement identifies the core areas of Criminology that "would be ordinarily covered" (2022: 4) by degree courses, so although there is a lot of discretion for academics in Criminology to determine the content and delivery, there is guidance available. Over the years, there has been a significant increase in the number of Criminology degrees on offer across the UK. As such, Universities are considering ways to make their own Criminology degree 'stand out' from the rest, offering unique or interesting elements to their course. One such approach, is to increase the amount of experiential learning opportunities (ELOs) that are available as part of the degree, to provide students with multiple opportunities to learn from both a theoretical and practical aspect.

Research undertaken by Bartels et al (2015) reviewed undergraduate Criminology degree programmes across Australia, to better understand the similarities and differences in course content offered. The main purpose of this research was as a preliminary step "towards a broader discussion about how our Criminal Justice education *should* look" (Bartels et al, 2015: 144). As such, the authors recommended that further research is needed to consider why students enroll on such programmes and what careers these students expect to have after graduating with a Criminology degree. Much of the research that has been conducted in the US, demonstrates a range of motivations for studying Criminology. Quantitative research conducted by Ridener et al (2020) in the US found that out of twenty possible factors considered influential in the student's decision to choose Criminal Justice as their major, the five most important were: "Interest in the subject, potential job opportunities, subject matter was relevant to real world, aptitude (skill) in the subject, and potential for career advancement" (Ridener et al, 2020: 11). Qualitative research conducted by Trebilcock and Griffiths (2021) in the UK found that students chose to study Criminology as a way of building on existing interests (love of crime media), to further understanding of the 'self' (based on experiences/exposures to crime) or wanting to secure 'justice' and to help others (a desire to work in a Criminal Justice career). As such, there is a strong case for exploring how to develop

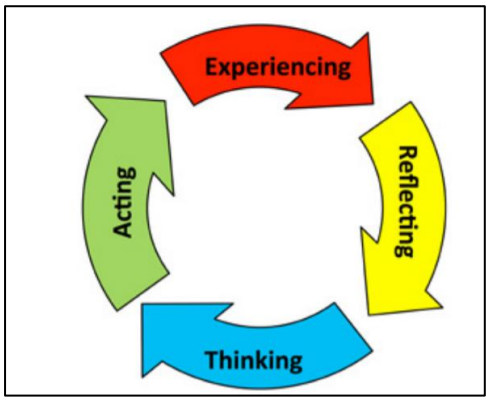
course content, which takes into consideration the reasons why students choose to study Criminology. One way this could be achieved, is by embedding more experiential learning opportunities (ELOs) into a Criminology undergraduate degree.

Theoretical basis for *experiential learning*

Yardley et al (2012) define 'experiential learning' as "constructing knowledge and meaning from real-life experience" (2012: 161), and their article explores this through curriculum design which focuses on providing experiences to learners through authentic workplaces. This approach for learning is developed from social learning theories and the philosophical principle of constructivism, whereby social interactions are central in the learning process. Kolb and Kolb (2018) developed the experiential learning cycle to demonstrate a practical way in which experiential learning theory (ELT) can be applied in an educational setting, such as on a University degree.

It is a four-stage process, which intends to "actively engage learners in the learning process" (Kolb & Kolb, 2018: 8). When applied within a University setting, the lecturer would provide students with an 'experiencing event' (such as a role play or guest speaker) which importantly facilitates 'real world' learning and experiences, rather than simply going through the motions of a class exercise. Reflecting on the experience is also considered important in this process, as is thinking, and acting on the reflection. Kolb and Kolb (2018) suggest that lecturers should structure their teaching as a "series of learning cycles to form a deepening spiral of learning" (2018: 9). Moon (2004) has previously written on the learning experience of the individual, and how it is mediated by the social surroundings. As such, learning is accumulated over time and through multiple learning experiences. From a social constructivist perspective, it is not necessarily the experience itself that is beneficial to the individual, but the learning that is acquired over time from the experiences (Little and ESCET Colleagues, 2006).

Figure 1: Four-stage process of Experiential Learning Theory (ELT) ï Kolb and Kolb (2018)



Although behaviourism, or behavioural learning theory, also focuses on how students learn, and the idea that the environment plays a crucial role in learning, it does take a different view of the learning process to experiential learning theory (Morris, 2020). Whereas behavioural learning theory places an emphasis on the reinforcement an individual receives, which may help or hinder the learning process, the experiential learning theory places an

emphasis on life experience more generally, as being central and necessary to the learning process. Importantly, the Association for Experiential Education (2024) identify the key elements of experiential learning as including: the learner being engaged (intellectually, emotionally, socially and/or physically), that the learning opportunities may be naturally occurring, and that the results of the initial learning form the basis for future learning to take place.

How it has been implemented in other disciplines

Experiential learning theory has been applied for centuries within the field of medical education, often providing a 'learning on the job' approach for medical students (Yardley et al, 2012). Murray (2018) states that "experiential learning centers on active pedagogical strategies that engage students in the learning process" (2018: 1), and in nursing education, these strategies may include simulations, clinical experiences, and role-playing. These strategies may involve a placement within the medical setting or may be replicated within the classroom setting. Social learning theories provide a framework for these types of strategies and experiential learning within nursing education. Grace et al (2019) draws on the work of Vygotsky, to explain how practical classes can support student's learning, through methods of 'scaffolding'. It is stated that students are first assisted by an expert so that eventually they can develop the skills themselves and carry out the activity or technique independently (Grace et al, 2019).

Like nursing education, teacher training degrees are designed with a large amount of time spent on placements within schools. Harfitt and Chow (2018) demonstrate the importance that is placed on these real-world experiences for trainee teachers, providing them with opportunities "to acquire rich and diverse learning experiences" (2018: 122). These experiences move the student's understanding beyond the theoretical, to the more practical and skills-based that is required of teachers. However, ongoing professional development of teachers once they have completed training is also greatly encouraged. Girvan et al (2016) suggest that the use of reflection as a tool is important and should be underpinned by the pedagogical framework of experiential learning theory (ELT); following the four-stage process that was explained by Kolb and Kolb (2018) (see figure 1). Specifically, for teachers, following this experiential learning framework is considered important, as it "can motivate teachers to try new practices and make desired changes to the curriculum a practical reality" (Girvan et al, 2016: 130). Therefore, emphasis is placed on the reflective aspect of experiential learning theory as a way of learning from experience, to develop new and innovative ways of teaching.

For engineering students, Gadola and Chindamo (2019) describe the application of experiential learning as 'active learning' or 'learning by doing'. One way this may be achieved specifically with engineering students, is through 'gamification'. This is described as a process whereby fun gaming elements which typically motivate people to continue playing, are used in non-game contexts to constructively encourage learning (Gadola and Chindamo, 2019). Using an elaborate role-play scenario, motor-engineering students are set a task by a hypothetical motoring company, to design and develop a new race car. Such a scenario encourages students to work collaboratively in teams, but also provides 'hands on' learning to build the car, and real-time reflection and feedback on their work as the car is actively tested (Hanh, 2020).

Whereas the Police Constable Degree Apprenticeship (PCDA) is studied over three years whilst employed full-time as a police constable, whereby "the programme of study is work-based and taught through partnerships established between higher education providers and police forces" (Pepper et al, 2021: 37). This approach fully embeds the experiential learning pedagogy, very similar to that of the Nursing and Teaching degrees, with practical policing and academia working alongside each other. In research conducted by Watkinson-Miley et al (2022), it was found that despite the move towards a 'professionalising' of the police career through academia, there was still much doubt in the mind of the students on the PCDA about how academic instruction could benefit them in front-line policing roles.

Review on how Criminology programmes apply experiential learning pedagogy

In 2022, the author conducted a UCAS website search for Criminology, undergraduate, full-time, bachelor degrees (with or without honours) and found 1127 courses from 140 providers, with many providing students the opportunity to extend the three-year course to a four-year course, to include a 'sandwich' placement year in industry. Despite this, there has been little published within the UK on the application of work-based learning or broader experiential learning opportunities for students enrolled on a Criminology undergraduate programme. Qualitative research conducted by Bramford and Eason (2021) considered the use of work-based placements on the Applied Criminology course at the University of Worcester. The authors state that the course "was designed to reflect the needs of the market" (Bramford & Eason, 2021: 319), where one of the most important elements when designing the programme, was the need for work experience in a range of sectors. This innovative approach saw University of Worcester embed more opportunities within the standard programme, for students to engage with real-world settings.

Much that has been published on the use of experiential learning on Criminology and Criminal Justice programmes, comes from the US. George et al (2015) adopted the experiential learning framework as created by Kolb, to implement four experiential learning opportunities (ELOs) at California Lutheran University. For students on the undergraduate Criminal Justice programme, they were provided with opportunities for: internships, field trips, service-learning and research projects, which were all recognized as being forms of experiential learning. Feedback was gathered from students on their experiences, and "the data reveal that respondents found internships to be the most useful in terms of professional influence" (George et al, 2015: 484). As such, it is argued that the Criminal Justice curriculum should be moving towards incorporating more experiential learning opportunities (ELOs) for their students.

Crandall et al (2021) have since expanded on this work, to also review guest speakers and shadowing, as further experiential learning opportunities (ELOs) that could be embedded as part of a Criminology and Criminal Justice programme. The use of guest speakers can bring real-world practitioner experience into an academic setting, to "critically challenge students' thinking and viewpoints, while providing stories that maintain student interest" (Crandall et al, 2021: 156); providing an important bridge between theory and practice. Furthermore, the ELO of 'shadowing' is described as a more short-term opportunity, in comparison to an internship or long-term work placement. Crandall et al (2021) argue that 'shadowing' can be a very useful ELO, which benefits the student in learning 'on the job' about certain duties, expectations and scenarios, but in a more condensed way.

More recently, Moxley (2024) explores the 'translatory role of the pracademic', whereby, the 'pracademic', a practitioner-academic hybrid, engages in flexible work within communities, with the intention of blending academic instruction with practical efforts. Moxley (2024) explains that Universities may legitimize this by supporting teaching in the community, where pracademics may contribute to initiatives like afterschool programs, crime prevention and health care. Their role focuses on addressing community needs while integrating both academic expertise and local insight. It is possible then, that this approach could be embedded into a Criminology undergraduate degree by incorporating community-based projects as part of course assessments, whereby students collaborate with local criminal justice organisations on real-world challenges. Through partnerships with law enforcement, social services and community initiatives, students would gain practical experience while applying criminological theories, enhancing their skills and understanding of the criminal justice system.

A reflection on the *BA (Hons) Criminology and Criminal Justice* programme at University of Hertfordshire

Currently on the undergraduate Criminology and Criminal Justice degree programme at University of Hertfordshire, the opportunity for completing a work placement is limited. If students wish to complete work experience or work placement, they can take a sandwich year between level five and level six to complete a work placement year. Alternatively, they can find a work experience opportunity to complete outside of the 'taught' university timetable. Other forms of experiential learning that are offered, are through optional co-curriculars, for example, working with offenders, being a detective, forensic psychology, and restorative justice. However, these are only short courses, which run for between 6-10 hours, and are limited in the maximum capacity of students/places. These activities take place outside the regular academic curriculum, but with the aim of complementing what students learn in the classroom. Students do not have to pay extra for these activities; however, majority of these activities are taught and are based on the University campus, requiring no degree of 'shadowing' of professionals or actual 'work placement' opportunities. Level five students also complete a compulsory module on 'career planning in Criminal Justice'. As part of this module, students participate in the Assessment Centre Experience (ACE), which provides them with invaluable experience, feedback, support, and guidance with the aim of increasing their confidence when entering the graduate recruitment process. Despite this, it is a generic experience and does not specifically provide any work placement or work experience.

Methodology

A digital feedback form was disseminated to students within the *Criminology and Criminal Justice* undergraduate programme, to explore the motivations behind the students' decision to pursue this degree and their potential career aspirations. This approach aligns with standard research practices in educational settings and leverages a combination of qualitative and quantitative data collection methods, allowing for a more comprehensive understanding of the students' perspectives (Cohen et al, 2017). The feedback form was designed to gather data on two key aspects (1) the reasons why students chose to study Criminology, and (2) whether they had any specific careers in mind when selecting to study in this field. The form included multiple-choice questions with tick boxes, as well as open-ended questions where they could provide additional thoughts in free-text format. The inclusion of both closed and open-ended questions is a common practice in feedback collection as it allows respondents to elaborate on their answers, enriching the dataset (May & Perry, 2022).

The feedback form was distributed digitally to all students enrolled on the Criminology programme at University of Hertfordshire, in the academic year 2021-22, through the University's online learning platform. This method was chosen due to its accessibility and ease of use, ensuring that students could complete the form at their convenience. Furthermore, digital online questionnaires are widely recognized as an efficient way to collect data from large groups of participants, particularly if they can access and complete the questionnaire on their mobile phones (Dillman et al, 2014). The form was anonymous to encourage honest and open responses, which is particularly important in educational research as it helps reduce response bias and encourages greater participation (Dillman et al, 2014).

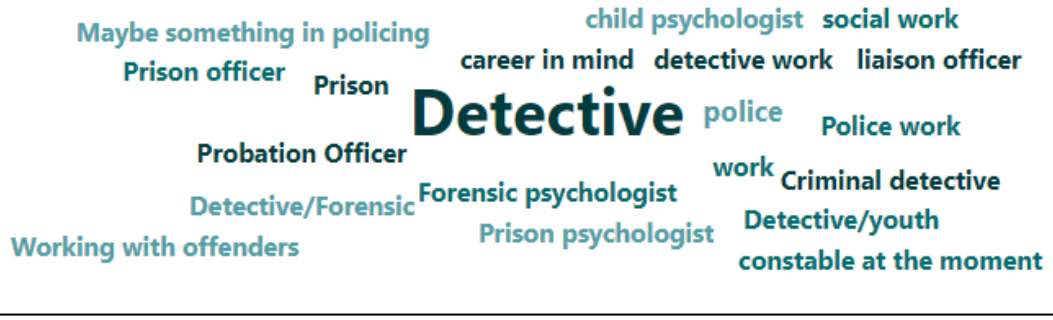
Although the research did not require formal ethical approval due to its integration into standard programme feedback, full transparency was provided to the participants. Prior to completing the form, students were given detailed information about the purpose of the data collection and how their responses would be used to inform curriculum development. This practice adheres to the ethical guidelines for research involving human participants, which stress the importance of informed consent and participant understanding (British Society of Criminology, 2015). By completing and submitting the feedback form, students provided implied consent for their responses to be used. Once the deadline had passed for completing the questionnaire, all 52 responses were collated into a spreadsheet for analysis. Descriptive graphs were generated to visually present the distribution of responses, which helped in identifying the most frequently cited reasons and career goals among students. These visualisations also made the data more accessible for use in the curriculum development discussions.

Findings

The survey asked, 'why did you choose to study a Criminology degree?' (options: I want to get a career within the Criminal Justice field; I was just interested in studying it, but with no real career in mind; I was interested in studying it, and hope that it will help me to choose a career path; other). Nearly 60% of the respondents indicated that they chose to study this course as they want to get a career within the Criminal Justice field. This supports findings from previous studies (Ridener et al, 2020; Griffiths and Trebilcock, 2021) that students are expecting the degree to help them achieve long-term career goals.

As a follow up, open-ended question, the survey asked students ‘what career did you have in mind when choosing to study a Criminology degree?’

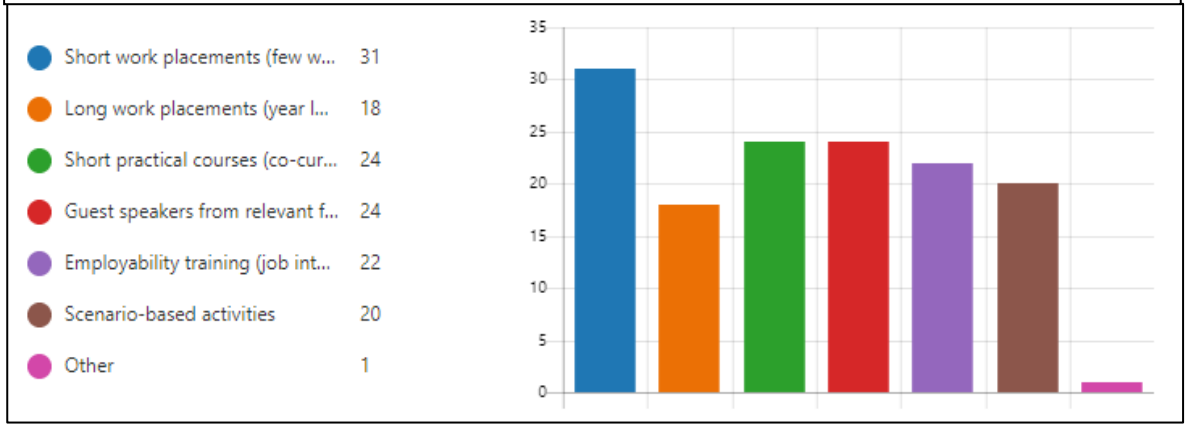
Figure 2: What career did you have in mind when chosen to study a Criminology degree?



33% of the respondents indicated that the specific career they had in mind when choosing to study a Criminology degree, was to become a detective. However, the range of careers that were mentioned in response to this question demonstrates the potential range of experiential learning opportunities (ELOs) that could be incorporated into the taught curriculum. Some of these opportunities are already provided to students, through optional and often very limited capacity, co-curriculars. However, if a large proportion of students are reporting specific career pathways, then this data could support the need to embed more experiential learning opportunities into the degree programme; rather than just as an optional extra.

The survey also asked students ‘what practical opportunities would you like to have access to as part of your degree?’ (options: short work placements (few weeks or months); long work placements (yearlong); short practical courses (co-curriculars); guest speakers from relevant fields; employability training (job interviews, CVS, etc.); scenario-based activities; other).

Figure 3: what practical opportunities would you like to have access to as part of your degree?



Nearly 60% of the respondents indicated that they would like to have access to short-term work placements, something which *is not* currently offered as part of the Criminology and Criminal Justice programme. There appeared to be much less interest in the long-term work placement opportunity, which is something that *is* currently offered as part of the four-year 'sandwich' programme. This indicates that more could be done to embed experiential learning opportunities (ELOs) into the current Criminology programme, in response to students' expectations about the course. This would be particularly beneficial for students who have chosen to study Criminology as they want to get a career within the Criminal Justice field.

Finally, the survey asked students 'what other events/opportunities would you like to see offered as part of your degree?' (open ended). Despite being a broad question, 15% replied 'work', indicating that this is considered an important outcome for their degree, and so should also form an integral part of their higher education. Additionally, as part of the University's student charter, they make the commitment to all students to provide an intellectually stimulating, supportive, and safe environment that fosters employability, lifelong learning, and personal development, while working collaboratively with students and embracing innovation (University of Hertfordshire, 2024).

Figure 4: what other events/opportunities would you like to see offered as part of your degree? ô

‘Field trips’ as a broad category appeared most popular, as did opportunities to learn about different careers in the Criminal Justice field. Crandall et al (2021) found that their students wanted more field trip opportunities to be offered as part of their Criminal Justice degree, and that 93% of their student respondents indicated that “field trips provide real-world experience” (2021: 162), further explaining that these types of experiences would be most beneficial for students who consider themselves more visual learners.

Summary of Reflections

The survey explored why students chose to study Criminology, revealing that nearly 60% aimed for a career in the Criminal Justice field, aligning with prior research. A follow-up question found that 33% of students aspired to become detectives, highlighting the need for more experiential learning opportunities (ELOs) in the curriculum, beyond the currently limited options. Nearly 60% of respondents expressed a preference for short-term work placements, suggesting a gap in the current programme that could better cater to students' career-focused expectations. Additionally, 15% emphasised the importance of work-related opportunities, with field trips being a particularly popular suggestion for real-world learning experiences. This feedback underscores the demand for a more practice-oriented Criminology programme to better prepare students for careers in the Criminal Justice sector.

Limitations of the Survey

While valuable in capturing student motivations and preferences, the survey conducted with Criminology students at the University of Hertfordshire has several limitations that may impact the generalizability and depth of its findings. One limitation is the reliance on self-reported data, which can be subject to response bias, where participants may answer in socially desirable ways or lack the introspection to accurately articulate their motivations (Dillman et al, 2014). Furthermore, the use of pre-defined response options in some questions may have constrained participants’ ability to fully express their perspectives. Additionally, since the survey did not include follow-up interviews or qualitative data validation methods, the open-ended responses were limited in depth, making it difficult to draw deeper insights into the complexities of students’ career aspirations (Creswell and Creswell, 2018). Finally, the findings may be context-specific and reflect the views of a particular cohort (students studying in academic year 2021-22), thus limiting the broader applicability to Criminology students in later years, or in other higher education institutions.

Conclusion

In summary, Criminology has historically been taught at higher education as a theoretical discipline, rather than being applied. However, Criminology programmes are increasingly seeking to place more emphasis on experiential learning opportunities (ELOs), to 'skill up' students. The aim of this paper sought to demonstrate the importance of this pedagogic approach, which seeks to improve specific work-place skills and to improve employability rates for graduates. It has reviewed the limited, but crucial research, which reports that students often choose to study Criminology because they are interested in a career in the Criminal Justice field. This finding was also replicated in curriculum feedback from students based at the University of Hertfordshire, who were studying on the Criminology and Criminal Justice undergraduate degree in 2021-22. This paper has also explored several ways in which other disciplines have successfully integrated experiential learning opportunities (ELOs) onto their undergraduate degree programmes, as well as the increasing number of Criminal Justice degrees that are also following this learning approach. As such, it is argued that the implementation of more experiential learning opportunities is feasible on the *BA (Hons) Criminology and Criminal Justice* programme at the University of Hertfordshire. This development of the 'taught' curriculum would further support the University's graduate attributes which focus on employability, (University of Hertfordshire, 2024). It would also reflect what the Quality Assurance Agency for Higher Education (2022) sets out as the subject benchmark for Criminology that the sustainability of Criminology degrees is closely tied to factors such as accessibility, employability and partnerships, particularly through collaboration with agencies within the Criminal Justice System. This has previously been recommended by Little and ESECT Colleagues (2006), who suggest that all degrees should seek to integrate academic knowledge, professional knowledge, and professional practice for the student's benefit.

As such, this paper concludes with some recommendations on how the *BA (Hons) Criminology and Criminal Justice* programme at the University of Hertfordshire could integrate experiential learning opportunities (ELOs) into the programme. Firstly, by responding to students' feedback on the curriculum development survey, which identified career progression as the main reason for choosing to study Criminology. If students are actively choosing to study Criminology as a way of securing a specific career within the Criminal Justice field, then the University should take responsibility in delivering on these expectations the students hold. Secondly, by embedding more experiential learning opportunities into the 'taught' curriculum, rather than simply offering these as additional opportunities, students will be better equipped with transferable career skills once they graduate. Crucially, as part of the learning experience, students should be explicitly shown how to showcase these skills through their written job

applications and oral job interviews. Finally, and in line with the most recent Criminology subject benchmark statement from the Quality Assurance Agency for Higher Education (2022), not only should a range of experiential learning opportunities be made more readily available to Criminology students, but that students should also be encouraged to reflect on these opportunities to further develop their learning experience.

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Comparing mock-juror guilty verdict rates in aggravated and base, hate crime offences

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Abstract

The CPS have the option of charging racial/religious hate crime offenders with the more serious, aggravated version of the offence and/or its less serious, base offence. The Law Commission (2020) proposed the option of aggravated offences be extended to disability, sexual orientation and transgender characteristics, for parity and extra protection as a deterrent. The Law Commission also acknowledged certain aggravated offences had disproportionately higher *sentence maxima* (sentence severity) but failed to review these. Very few mock jury studies have explored the impact of *sentence maxima* on guilty verdict rates. Jury-eligible participants (N=364) were randomly assigned to either one of two transphobically aggravated offences or their base offences. Chi-square analysis showed significantly more 'not guilty' verdicts in aggravated offences compared to their base offences. The main reason selected by 55% of participants for their 'not guilty' verdicts in the aggravated offences was because the *sentence maxima* was too high, corroborating sentence severity effects.

Key words: hate crimes, aggravated offences, sentence severity, transphobia.

Introduction

Under the current discriminatory two-tier system in England and Wales, racially and religiously aggravated hate crime offences (e.g. criminal damage, common assault, actual bodily harm, stalking) can be charged as racially/religiously aggravated offences and/or as their base offences. Aggravated offences have significantly higher maximum sentences or *sentence maxima* compared to their base offences. However, transgender, sexual orientation or

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disability hate crimes can only be charged under base offences, although the judge can enhance the sentence if there is evidence of hostility towards these characteristics.

Although the Law Commission (2020) proposed aggravated offences be extended to these three additional characteristics for parity they also acknowledged certain aggravated offences had disproportionately higher *sentence maxima*. Table 1 indicates that not only are the *sentence maxima* disproportionately high, but arguably are unnecessarily high when considering actual, average sentences. This study focussed on the base offences of common assault (CA) and actual bodily harm (ABH) and their aggravated counterparts, aggravated CA (ACA) and aggravated ABH (AABH). From Table 1 we can see despite the *sentence maxima* for ACA being 400% higher than its base offence CA, sentences only tend to be around 30% higher than for CA and whilst AABH has a 20% higher *sentence-maxima*, sentences tend to be less than 5% higher. There is no consistent, proportional difference between the different aggravated offences and their base offences to ensure a standardised, fair approach.

Table 1. Sentence maxima and actual average custodial sentences in 2018, for base offences and their corresponding aggravated offences, in months (Law Commission, 2020)

Offence	**Base version *sentence maxima* (actual average)**	**Aggravated version *sentence maxima* (actual average)**
Actual bodily harm	Max: 60 (13.6)	Max: 84 (14.1)
Common assault	Max: 6 (2.8)	Max: 24 (3.7)
Criminal damage	Max: 120 (6.0)	Max: 168 (3.1)
Fear or provocation of violence	Max: 6 (2.4)	Max: 24 (3.8)
Stalking involving fear of violence, serious alarm or distress	Max: 120 (16.1)	Max: 168 (5.3)

Furthermore, average aggravated sentences tend to be significantly lower than their maxima (e.g. ACA has a 2 year *sentence maxima* although sentences rarely ever exceed 6 months (LC, 2020). There is also little difference between the average sentences for hate crime base offences and non-hate crime base offences (Sentencing Council bulleting, 2019). This suggests the significantly and disproportionately higher *sentence maxima* of certain hate crime offences are unnecessary and not being made use of to send a stronger message to hate

crime offenders. There is no evidence that aggravated offences have any deterrent effect and as Jamel (2018) noted in England and Wales, sentences for transgender hate crimes are lower than sentences for racial or religious hate crimes.

I argue that aggravated offences with disproportionately high *sentence maxima* are more likely to predispose jurors to sentence severity bias which research shows can reduce conviction rates. Jurors should not be influenced by *sentence maxima* when deciding their verdicts, as sentence severity is an extra-legal factor and sentences are decided solely by judges. However, the literature search (including the term acquittal bias) returned just seven studies over the past 46 years.

Kerr, (1978) found conviction rates for individual mock jurors were inversely related to sentence severity. His dated study remains important as he first suggested that jurors are less likely to convict when the sentence maxima/charge is more severe. Kerr explained this in terms of a perceived increase in the cost of a Type I error (convicting an innocent person) resulting in a criterion shift in the amount of evidence jurors required to vote guilty. According to the severity–leniency hypothesis (Kerr, 1978), the more severe the *sentence maxima* for an offence, the lower the likelihood of a conviction, as jurors try to minimise the possibility of wrongful convictions. Six other studies have also reported indirect correlations between *sentence maxima* and conviction rates (Kaplan and Simon, 1972; Koch and Devine 1999; Lundrigan, Dhami and Mueller-Johnson, 2018; McComas and Noll, 1974; Myers, 1979; Werner et al., 1985). However, there remains both a lack of recent studies and a lack of UK based studies.

Lundrigan et al., (2018), showed mock jurors exhibited an acquittal bias (were judged to be unlikely to have committed the crime) when defendants were charged with relatively more serious offences with higher *sentence maxima*. Although Lundrigan et al., (2018) conducted a UK study and is the most recent study, they recruited a small sample size of just 118 jury-eligible members from a UK company. Furthermore, their sentence severity bias effects were based on two extreme crime scenarios (comparing common assault and attempted murder) where sentence severity may be expected to have more impact.

Mock jurors in their attempted murder condition considered the defendant significantly less likely to have committed the offence, (*m*ean of likelihood of having committed the offence, M = 65.37), compared to their common assault condition (*m*ean of likelihood of having committed the offence, M = 75.26). However, the effects were based on mock-jurors' probability ratings of the defendant having committed the offence, rather than guilty or not guilty verdicts and so lacked verisimilitude. The common assault and actual bodily harm offences used in this study were more similar. This research explored whether participants in

aggravated offences would deliver significantly fewer guilty verdicts compared to participants in base offence conditions and the reasons for their verdicts.

Participants were asked to choose the main reason for their verdict from one of six reasons to determine the influence of:

(1) *Sentence maxima.*

(2) Good character witness statements, which are worryingly common in hate crime trials. The Law Commission (2020) mentioned concerns regarding the impact of good character witnesses on jurors and are also currently considering whether jurors should be asked to provide a reason (*ratio decidendi*) for their verdicts albeit in sexual assault and rape cases (LC, 2023). Juror reluctance to convict in aggravated offences can also provide the defence with a tactical advantage by focusing on the question of whether the defendant is a racist for example. Several of the judges and barristers interviewed by Owusu-Bempah et al., (2019), mentioned cases descending into trials about character, where the defence called numerous character witnesses. The defence readily showed the defendant had many inter-racial friendships, was not racist and was acquitted on the aggravated offence and the base offence, even when there was strong evidence to support both charges (Owusu-Bempah et al., 2019).

(3) The defendant claiming to being provoked or angry. The study of aggravated offences by Owusu-Bempah et al., (2019) included interviews with lawyers and judges who were of the opinion that jurors do not like defendants being labelled as haters or racist, simply because they lost their temper and spurted offensive language, especially when provoked or angry.

(4) The transphobic slur ‘she-male’ as evidence of hate or hostility towards transgender people. The anti-bullying charity, Brandwatch, Ditch the label (Brandwatch, 2019) described such slurs as inhumane, hurtful and indicated ignorance and intolerance.

(5) The transphobic slur ‘she-male’ as normal or common language. The Law Commission (2020) mentioned that in court certain slurs may be excused on the grounds they are considered common or normal language. For increased authenticity the most common transphobic slur ‘she-male’ (Brandwatch, 2019) was used in the vignettes.

(6) Any other reason.

Aims:

(1) to determine whether percentage guilty verdict rates (%GVR) in the aggravated offences are significantly lower compared to %GVR in their corresponding base offences.

(2) to identify the main reasons for participants' not guilty verdicts in aggravated offences.

Hypothesis

Participants in the more serious aggravated offence groups will deliver significantly lower percentage guilty verdict rates (%GVR) compared to participants in the corresponding, less serious base offence groups.

Design

The design consisted of 4 groups (Table 2).

Table 2. Design showing 4 groups (N=364)

Offences x2: Common assault or Actual bodily harm	Offence-severity x2: Transphobically Aggravated or Base	Group (n)	Vignette
Common assault	Aggravated version (ACA)	1 (89)	1
Common assault	Base version (CA)	2 (90)	1
Actual bodily harm	Aggravated version (AABH)	3 (95)	2
Actual bodily harm	Base version (ABH)	4 (90)	2

Note: Sentence maxima: ACA (2-years), CA (6-months), AABH (7-years) and ABH (5-years).

Method

Step 1: 364 jury-eligible participants were randomly assigned to one of the four groups: the base version of common assault (CA) or aggravated common assault (ACA) or actual bodily harm (ABH) or aggravated actual bodily harm (AABH). The vignette for ABH and AABH varied slightly from the vignette for CA and ACA in that the vignette for ABH and AABH additionally included reference to mild injury: where the alleged victim claimed 'Mr Davis followed me outside (the cafe) and deliberately stepped on my left foot and pushed down on it causing me severe pain' and the defendant claimed as I was leaving 'I accidentally stepped on her foot, so I said sorry.'

Step 2: Participants read the 2-page vignette court case summary (based on the first author's real experience) relevant to their randomly assigned offence groups which included a good character witness statement for the defendant from a transgender work colleague. The alleged victim (Ms Vickers) was described as a 40-year old transgender female, assigned a

male gender at birth but who identifies herself as a transgender female, having had hormone therapy and a sex change operation. The Defendant (Mr Davis) was described as a 30-year old, white, heterosexual male, with no previous arrests and no history of being violent. The bespoke hate crime case scenarios were designed to show evidence of guilt based on UK hate crime laws e.g. for aggravated common assault the defendant demonstrated hostility towards the victim's transgender identity and caused the victim to fear violence (see juror guidance provided below).

Step 3: Participants were asked a manipulation check question: What is the gender of the alleged victim? Male, Female, or Transgender Female?

Step 4: Participants were then asked the verdict question, whether they considered the defendant guilty or not guilty for the specified offence.

Participants were provided with juror guidance to decide on their verdicts as shown in the example below.

Juror guidance (Crime and Disorder Act 1998, s.29)

Guilty of Common Assault if:

1. Defendant's behaviour caused the victim to fear violence.

Then the defendant shall be liable at the discretion of the judge to imprisonment for a term, not exceeding 6-months.

Guilty of Transphobic Aggravated Common Assault if:

1. Defendant's behaviour caused the victim to fear violence and
2. Defendant demonstrated hostility towards the victim's transgender identity

Then the defendant shall be liable at the discretion of the judge to imprisonment for a term, not exceeding 24-months.

Step 5: Additionally, in the aggravated offences, groups 1 and 3 (Table 2) participants were also asked to choose from one of five reasons or provide a 6th reason of their own for their verdict.

Reason for verdict measure (adapted from the methodology of Greene and Wade, 1988).

From the 6 reasons below please select which reason influenced your verdict most:

1) The sentence maxima of 2 years / 7 years is too high for aggravated common assault / aggravated actual bodily harm.
2) The fact that the defendant had a transgender work friend as a character witness saying the defendant has always been very good to him over the last 5 years, shows that he does not hate transgender people.
3) Just because the defendant said he was provoked and angry when he called the transgender woman a *tranny* or *she-boy*, is not a good enough excuse.
4) Calling a transgender person a *tranny* or *she-boy* should not be seen as evidence of hate or hostility towards a transgender person.
5) Calling a transgender person a *tranny* or *she-boy* should not be excusable just because it may be considered normal or common language.
6) Other (please state).

Participants

198 participants were recruited online via Facebook adverts and 171 participants recruited from Bournemouth University by approaching students with randomly assorted paper questionnaires. In total, 369 participants were recruited, of which 49.5% identified as female, 46.2% as males, 1.3% as other and 3% did not specify any gender. Two participants failed the manipulation test question and three were over the eligibility age for jury service, so were excluded from the analysis, leaving 364 participants, with a mean age of 31.07 years. As regards ethnicity, 58.0% were white-British, 14.6% European, 7.7% Asian, 11.8% Black British and 4.9% other (Table 3).

Table 3. Participant demographics, final sample size N=364

Characteristics	% (n) Mean	Missing cases % (n)
Age:	97.0% (364) Range18-70 Mean=31.07 years	3.0% (11)
Ethnicity: White British European Asian Black British Other	58.0% (211) 14.6% (53) 7.7% (28) 11.8% (43) 4.9% (18)	3.0% (11)
Gender: Male Female Other	46.2% (168) 49.5% (180) 1.3% (5)	3.0% (11)
Sexuality: Heterosexual Gay	80.4% (289) 4.6% (13)	8.4% (31)

Bisexual	4.7% (17)
Other	1.9% (7)

All assumptions were met for the chi-square test. Given the dichotomous nature of the verdict (guilty or not guilty) uncontrolled, chi square (X^2) analysis was conducted for verdicts in the aggravated and corresponding base offence groups to test the hypothesis.

Results

Table 4. X^2 showing the %GVR in the aggravated offence groups were significantly lower compared to their corresponding base offence groups

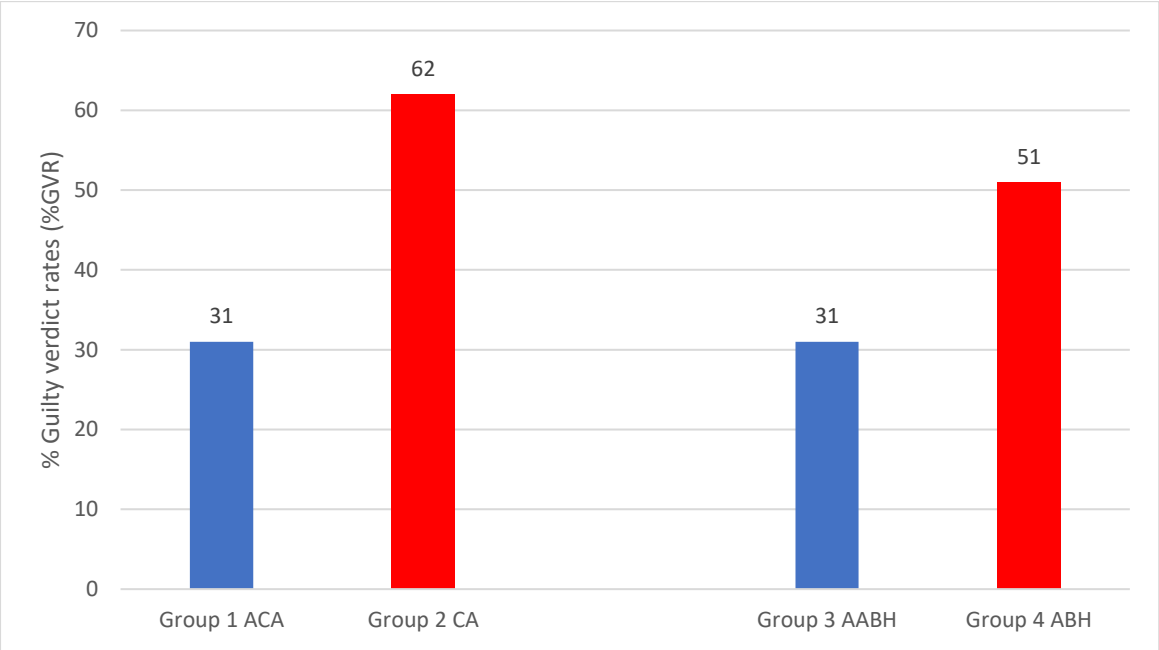
Offence severity Aggravated and Base	Number of guilty counts (N) and %GVR	Asymptotic Significance (two-sided p values)
Group 1 ACA (n=89) & Group 2 CA (n=90)	N=27 or 31% & N=55 or 62%	$\chi^2(1) = 17.23$, p =<.001, Φ = .312
Group 3 AABH (n=95) & Group 4 ABH (n=90)	N=28 or 31% & N=44 or 51%	$\chi^2(1) = 6.95$, p =.008, Φ = .198

Note: Φ indicates the strength of the correlation between the two groups, >0.1 is considered a small effect and >0.3 is considered a medium effect.

Findings

As predicted, %GVR in both the more serious aggravated offence groups were significantly lower compared to their corresponding less serious, base offence groups (Figure 1, below).

Figure 1. Showing % guilty verdict rates were significantly lower in the aggravated offences compared to their corresponding base offences



Note: ACA=aggravated common assault, CA=common assault, AABH=aggravated actual bodily harm and ABH=actual bodily harm.

Alternative verdicts for aggravated offences

Participants in the aggravated groups who delivered a not-guilty verdict for the aggravated offence, were also asked to decide a verdict for the alternative base offence. Where a not guilty verdict is returned for an aggravated offence, a jury can be instructed by the judge to return an alternative verdict for the base offence (Crime and Disorder Act, 1998) even if an alternative charge is not specified at the outset by the prosecution. Table 5 (below) shows the combined percentage guilty verdicts for the aggravated and alternative offences, compared to the base offences.

Table 5. Combined percentage guilty verdicts for aggravated offences and alternative offences compared to base offences only

Not guilty verdicts in Aggravated offences n / %	Guilty verdicts for Alternative offences n / %	Combined guilty verdicts N / %	Total guilty verdicts in Base offences only N / %
Group 1 Aggravated common assault n=61/89 or 69%	Group 1 n=35/61 or 57%	Group 1 N=63/89 or 71%	Group 2 Common assault N=56/90 or 62%
Group 3 Aggravated actual bodily harm n=62/95 or 65%	Group 3 n=31/62 or 50%	Group 3 N=64/95 or 67%	Group 4 Actual bodily harm N=46/90 or 51%

Identifying participantsô reasons for not guilty verdicts and further evidence of sentence severity bias

To determine the most common reason for participants' verdicts, the percentages for each of the six reasons chosen by participants for their not guilty verdicts was also computed (Table 6).

Table 6. Showing the number and % of participants according to the reasons chosen for their not guilty verdicts

Verdict reason	Number of participants	% of participants
1	67	54.6
2	24	19.6
3	6	5.0
4	14	11.5
5	9	7.4
6	1	0.8

Discussion

As predicted participants delivered significantly lower %GVR in both transphobically aggravated offence groups, compared to their corresponding base offence groups (Figure 1). This finding supports the recent sentence severity finding by Lundrigan et al., (2018). Given aggravated offences have yet to be extended to transphobic hate crimes, this is likely to be one of the first indications of their worryingly low %GVR, particularly in light of the guilty case

scenarios tested in this study. Such low conviction rates could also further exacerbate the under-reporting of transphobic hate crimes.

The second key aim of this study was to determine participants' reasons for their verdicts. Of the 121 participants who gave not-guilty verdicts in the aggravated groups (1 and 3) the main reason was reason 1: 'The *sentence maxima* is too high' chosen by 54.6% or n=67 participants (Table 6). This is strong evidence that sentence severity bias also occurs in transphobic aggravated offences. This corroborates the earlier finding of sentence severity bias based on guilty verdict rates, providing more direct evidence for this based on *sentence maxima*. The percentage of jurors voting not guilty because of reason 1 alone could result in an unfair, not-guilty verdict based on the extra-legal consideration of sentence severity, rather than the facts and evidence.

The second main reason for not-guilty verdicts was reason two: 'The fact that the defendant had a transgender work friend as a character witness saying the defendant has always been very good to him over the last 5 years, shows that he does not hate transgender people' chosen by 19.6% or n=24 participants. This equates to between two and three jurors voting not guilty due to the influence of the good character witness provided by the defence and could result in a hung jury or overall not guilty verdict as has been often observed in real trials in racial and religious hate crime cases (LC, 2020).

It would also be reasonable to assume that these two (most common reasons) for not guilty verdicts would be discussed more than other reasons during actual jury deliberations and therefore can be expected to have more influence on other jurors' verdicts. Moreover, the defence commonly produce multiple good character witnesses for the defendant and therefore this factor would also have an even greater detrimental impact on conviction rates. The impact of such extra-legal factors needs to be explored urgently for example by asking jurors to provide the main reasons for their verdict in pilot trials of sensitive hate crime cases. This would allow the CJS to monitor the size and frequency of this problem and its impact on not guilty verdict rates, acquittal rates, hung juries and jury nullification.

The prosecution can lay an aggravated offence together with its base offence as an alternative offence if the defendant is found not guilty for the aggravated offence. However, if the defendant is found not guilty for the aggravated offence the judge cannot enhance the alternative base offence sentence. In the event of a not guilty verdict for an aggravated offence, where no alternative base offence is included, a judge can also ask a jury to return an alternative verdict (for the alternative base version of the offence, Crime and Disorder Act, 1998).

Table 5 shows %GVR for the aggravated and alternative offences in groups 1 and 3 were on average 12.5% higher compared to their base offences in groups 2 and 4. Laying

both the aggravated offence and the alternative base offence as the Law Commission (2020) recommended in such cases could improve the probability of conviction for the alternative base offence, but at a big cost. Any conviction for the alternative base offence would not be eligible for sentence enhancement and therein more likely lead to relatively shorter sentences and would also not be recorded as a hate crime.

The other major concern when including alternative charges is the increased pressure for charge and plea bargaining they attract, where defendants offer/accept a guilty plea to the basic offence providing the aggravated charge is dropped (Owusu-Bempah et al., 2019). According to the Sentencing Guidelines Council (2004), judges are also required to grant defendants sentence reductions of up to 33% less than any post-trial sentence, if an early guilty plea (EGP) is entered (Flynn, 2011). Approximately 70% of guilty pleas are due to plea bargaining each year (Vogel, 2019), meaning 70% of defendants receive sentences up to 33% shorter than if they had not pleaded guilty and subsequently found guilty.

Generally, only 67% of a custodial sentence is served in prison and the remaining 33% on licence to probation (with recent proposals to increase this to 40% on licence due to prison overcrowding). Given sentence enhancements by judges are often around just 20% (Walters, et al., 2017), EGP sentence discounts can clearly off-set sentence uplifts, explaining why average aggravated sentences tend be similar to base offence averages (Table 1).

Laying alternative charges may also indicate to jurors, weakness and/or doubts in the prosecution's case (Owusu-Bempah et al., 2019). Furthermore, the CPS are not likely to be keen on including both offences just to increase the chance of conviction on the base offence, due to the large backlog of crown court cases and extra costs involved. Victims would also have much lengthier waits for trial dates, which can negatively affect trust and confidence in the Criminal Justice System (Gillen, 2019).

Garland and Funnell (2016) argued the Law Commission's proposals to extend aggravated offences would create a new hierarchy of protected characteristics and therefore fail to establish the parity they were originally asked to address. Chakraborti and Garland, (2012) have argued hate crime laws should be extended to additional groups to protect women and children, the elderly, alternative sub-cultures, philosophical thinkers, sex workers and the homeless. This has fuelled the continuing debate over which characteristics should be afforded extra protection under aggravated hate crime laws.

If transgender people finally receive any 'extra' protection under the Law Commission's proposal to extend aggravated offences to additional groups without the provision for any residual category, there will inevitably remain groups such as those mentioned above, denied this extra protection, violating equal protection laws. Opposition to hate crime laws are partially characterised by a lack of support for protecting certain minority groups, such as

disabled and transgender people (Cabeldue et al., 2018). Johnson and Byers (2003) showed that support for hate crime laws was greatly enhanced when LGBT+ persons were not among the protected groups due to the stigma towards LGBT+ people.

Furthermore, Jacobs and Potter (1998) argued hate crime laws reinforce social divisions and exacerbate social conflict in several ways. Firstly, by punishing ideas and attitudes in violation of freedom of speech rights. Secondly via elevating hate motives as more severe and above other criminal motives and thirdly by creating special victim hierarchies. Some consultees (Law Commission, 2020) were strongly of the opinion that both aggravated offences and enhanced sentencing laws are fundamentally unjust as they grant legal privileges to certain group and not others.

Schweppe (2012) also criticised the selection of specific groups eligible for hate crime protection, maintaining that such systems create victim hierarchies. Perceptions of unfairness amongst the public, particularly groups denied extra protection could further exacerbate symbolic stigma towards transgender people by; raising visibility; decreasing support for transgender civil rights and/or resulting in additional bias when those denied such 'extra protection' serve as jurors. Giving transgender people the same 'protection' as race and religion (whilst denying the elderly, homeless and sex workers etc) could further inflate existing social problems and lead to further marginalisation and exclusion. Iganski (1999) mentions incidents serving as triggers for intergroup violence and retaliation against innocent victims, rather than achieving the intended objectives of social cohesion. For these precise reasons, Piggott (2011) doubted the ability of hate crime laws to safely incorporate disabled people.

Unfortunately, the Law Commission (2020) subsequently abandoned their original proposal of having a general residual category for the protection of any victim identity where there was evidence a defendant was motivated by/demonstrated hostility towards a victim's identity. A residual category would make hate crimes fairer and more inclusive of vulnerable groups and help ease such tensions and disparities at least partially and avoid alienating excluded groups.

Aggravated offences remain open to manipulation and until they are reviewed fully, I agree with Owusu-Bempah, they should not be extended to other characteristics, as this is likely to assist defendants in securing unfair acquittals (Owusu-Bempah et al., 2019). I believe the disadvantages of aggravated offences outweigh any potential benefits. Failing to address the disproportionately higher *sentence maxima* could result in (transphobic) aggravated hate crime cases resulting in frequent acquittals and/or hung juries, denying victims a fair trial. These findings have implications for the characteristics of sexual orientation and disability.

Laying just the aggravated offence initially and reducing the disproportionately higher *sentence maxima* could not only reduce the problem of plea bargaining but also significantly

improve conviction rates. I therefore believe the disproportionately higher *sentence maxima* for aggravated common assault should be reduced from 2 years to a more practical and proportional level of one-year to help negate the impact of sentence severity bias on lower conviction rates. Increasing magistrate's powers from 6 months to 1 year, briefing jurors on actual, average sentences compared to *sentence maxima* are also likely to help reduce sentence severity bias. During the Law Commission's consultations (2020), LGBT+ representatives were also not in favour of stricter sentences, but rather more alternatives such as restorative justice.

There is also strong consensus amongst criminologists that the certainty of punishment is a better deterrent than the severity of punishment (Paternoster, 2019**;** Pratt and Turanovic, 2018) hence the focus should be on improving conviction rates. Walters, Paterson and Brown, (2021) recently investigated the attitudes of 709 LGBT+ people to enhanced sentencing and restorative justice interventions for hate crimes. They found a preference for the latter over the former, as this was perceived to be better for offenders in understanding the offence, for reducing re-offending and better for helping and supporting victims to recover and giving them a greater say.

Base offences and the two-tier system of enhanced sentencing also warrant a full review. Several consultees who contributed to the Law Commission (2020) report, especially LGBT+ and disabled people viewed the enhanced sentencing of base offences as an inferior model for hate crimes. These groups argued that enhanced sentencing is pursued more as an after-thought for the judge, whereas aggravated offences acknowledge from the outset for juries, the extra harm caused by hate crimes. Cases involving base offences only (potential enhanced sentencing cases) are not prepared for as thoroughly by the Police and CPS as their aggravated counterparts (Owusu-Bempah et al., 2019).

Furthermore, many judges have been reluctant to apply any enhanced sentences in cases where the demonstration of hostility appeared to be a minor or incidental component, rather than causal to the offence committed (Walters, 2014), especially for LGBT+ hate crimes (Law Commission, 2020). Sentence enhancements need to standardised and increased above early guilty plea discounts to have some deterrent effect and send a stronger message.

Limitations

Firstly, generalising the findings to other hate crime offences is limited given only the base and aggravated offences of common assault and actual bodily harm were investigated. Secondly, the court case summaries employed were relatively mild in terms of the threats and/or physical injuries described in the aggravated actual bodily harm scenario. Although the most common

transphobic slurs and threats of violence were incorporated in the offences, participants may have deemed such cases as relatively less serious compared to what they may have expected for a high court jury case or have knowledge of via the media.

Furthermore, some participants may have considered the cases as not sufficiently serious to justify a custodial sentence (but rather an alternative community sentence). Such considerations may have motivated more participants to deliver not guilty verdicts and make more participants feel the *sentence maxima* is too high. Participants are also likely to have reached their verdicts based on more than one reason, where these other/secondary reasons would also partially explain the reasons for their verdicts, rather than being attributed wholly to one reason e.g. sentence severity. Participants were given just six reasons to choose from for their verdict, where reason six, was other (please state). Greene and Wade (1988) asked mock-jurors to choose from just three listed reasons that most influenced their verdict (or reason four, Other…) and were mainly interested in how many participants would choose the eye-witness account as the reason for their verdicts.

The case summaries were arguably brief, and participants were expected to deliver their verdicts without deliberating with other participants, although Bornstein et al. (2017) showed mock-juror decisions do not differ much from real juries. Individual mock-juror verdicts have also been shown to be similar to those predicted by mock-jury verdicts (Bornstein and Greene, 2011). Moreover, research has shown the strongest predictor of jury verdicts is the distribution of individual, pre-deliberation verdicts such that in almost 90% of trials, the majority pre-deliberation verdict tends to be the same as the final post-deliberation verdict (Baron and Kerr, 2003).

Critics may argue mock-jury studies lack verisimilitude, especially those based on undergraduate mock-jurors and that this limits generalisation of the findings. Bornstein et al., (2017) meta-analysis of 53 mock-jury studies (N=17,716) compared effects with student and community samples and found guilty verdict rates, defendant blame and victim blame ratings did not vary with student or community sample type. An earlier 20-year meta-analysis by Bornstein (1999) further showed that the type of trial media (e.g. providing written court case summaries or video testimonies) also had very little impact on verdicts.

Future studies

This study showed the unfair impact of the disproportionately higher *sentence maxima* of aggravated common assault (ACA) and aggravated actual bodily harm on conviction rates in transphobic hate crime cases. Future studies could further compare conviction rates in transphobic and homophobic/bi-phobic cases. It would also be interesting in a future solution-

focussed study to explore the impact of ACA with a lower *sentence maxima* (1 year) compared to the current 2 year *sentence maxima*, on conviction rates. This could help off-set sentence severity bias effects, at least partially and improve the worryingly low conviction rates. Finally, it would also be important to compare verdict rates in scenarios where only the aggravated offence is laid, compared to when the aggravated and alternative base offence are laid simultaneously, to determine the impact on verdicts and any advantages and/or disadvantages.

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