Key Issues in Criminology

JANUS III

Edited by

Jacqueline Azzopardi, Saviour Formosa, Sandra Scicluna and Andrew Willis

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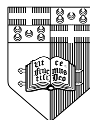

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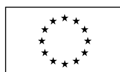

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INTRODUCTION

What is Criminology? and Why Criminology?

Andrew Willis

Criminology is an elusive quarry but an exciting and worthwhile pursuit. We can usefully start with eliminating some of the things that it is not. The CBS crime drama television series *CSI: Crime Scene Investigation* premiered in late 2000 and quickly secured cult status with *CSI: Miami* and *CSI: New York* rapidly following. The so-called police procedural is not new to cinema or television. Quite the opposite, it is an entertainment staple – not least because it offers a compelling combination of awful and awesome violence, the intellectual and emotional thrill of the 'whodunit' chase and a reassuring ending that restores moral equilibrium. What CSI offered, however, was a new emphasis on forensic science as a primary part of the drama. The common denominator here is science – hard science. The older world of fingerprints has given way to blood-pattern analysis, DNA profiling, forensic pathology and digital forensics. None of this is criminology. This is forensic science or criminalistics. It is concerned with finding evidence that points to criminal responsibility. Criminology must not be confused with criminalistics or crime science.

The so-called CSI effect has not been helpful. It conjures up images of extravagantly outrageous and implausible crimes in high-gloss settings with high-gloss characterisations that are invariably solved. It pushes the 'willing suspension of disbelief' to its limits. It is good entertainment. The reality of criminal victimisation is mostly more mundane (as in car theft), sometimes frightening (as in street robbery), sometimes astonishingly brutal but common (as in domestic violence), sometimes so inhuman as to stretch credulity (as in paedophilia or child trafficking) and sometimes utterly chilling – as in the 2012 Delhi gang-rape which exposed suffering and wasted human potential, and violence and evil. They differ in scale and intensity but all stand as tragic examples of the frailty of the human condition. The common denominator here is pain – real pain – through criminal victimisation.

So, what is criminology? Criminology is a social science not a physical science. It faces the dark and chilling side of psycho-social aberrations as a professional norm and sometimes its sheer depravity – generically called 'man's inhumanity to man' – beggars belief. On such occasions academic and personal responses coalesce in a confusion of

sentiment and sympathy, blind rage and a struggle to make sense of the gravest and most iniquitous violations. Criminology tries to cut a scientific path of enlightenment and understanding through a complex thicket of social aberrations and moral transgressions.

Although criminology uses social science it is arguably not a social science *per se* – such as psychology or anthropology. It does not claim discipline status for itself though the number and range of academic journals devoted exclusively to it would suggest otherwise. It is probably better thought of as a subject area or focus of attention – one that draws on all the mainstream areas of social science, including: anthropology, community studies, cyber studies and information technology, demography, development and reconstruction, economics, education, geography and geo-spatial studies, management and business studies, history, law and socio-legal studies, media and communications, philosophy, political science, psychology, public administration and social policy, security and risk management, social work, sociology, terrorism studies, women's studies and youth studies. Even here, the distinguishing lines between these sub-disciplines is often arbitrary and rather confused – and changes over time. Forty years ago sociology was the dominant social science and criminology a fledging subject area; today the positions are reversed. Women's studies did not figure much until the 1970s but now they are (rightly) core social science, as are youth and community studies. Terrorism studies are a post-9/11 phenomenon. Media and communication studies in the internet age are even newer. Social science is a dynamic and changing discipline of which criminology is a major part.

The best way to understand criminology is to see it as both multi-disciplinary and inter-disciplinary. It draws of the wide range of thinking (above) and sometimes more than one. There is no set 'template' for 'doing' criminology'. This makes it both attractive but that much more demanding. It also allows those with an interest in the general area to find a niche that suits them either by way of intellectual approach (psychology rather than youth studies) or by subject area (understanding crime rates, victimisation and the causes of crime, or particular types of crime) or by place within the criminal justice system (police, courts and prisons). The makes for a rich repertoire of academic approaches that can be deployed in a variety of ways and settings.

The contributions below are arranged under three thematic sub-headings – 'The Eclecticism of Criminology', 'Understanding Crime: Social Cultural and Spatial Variations' and 'Responding to Crime: Punishment and Prison'. These indicate the breadth and depth of the criminological enterprise. They also reflect the current research interests of the staff at the University of Malta, Department of Criminology and allied departments; and they mostly include a Malta perspective. They should not, however, be seen as a parochial perspective on crime and punishment. Rather they reflect the now global criminological enterprise but additionally explore the theoretical and empirical contours, together with policy implications, for the localised context of a small island state in the Mediterranean

basin. The chapters include thinking that crosses international, Mediterranean and Malta-specific boundaries.

The Eclecticism of Criminology

Chapter 1 by Jacqueline Azzoparadi illustrates to fickle and changing ways in which sexual behaviour can be seen as normal and healthy, abnormal and unhealthy and, in some case, both delinquent and criminal. She charts sexual activity in the Mediterranean from its Greek roots and Roman expression (which licensed and endorsed homosexuality, bisexuality and sexual relations for the purposes of both procreation and pleasure) to a more repressive era dating from the time of the Emperor Constatine. By now the Roman Catholic Church had adopted a more moralistic procreation-only attitude to sexual expression and activity underpinned by the concepts of love and fidelity. More recently, the paradigm changes somewhat with greater emphasis on the pleasurable component in sexual activity for both men and women. The same diversity over time is reflected in the changing pattern of paraphilia – the range of bizarre and abnormal sexual activity deemed acceptable or unacceptable. The main point here is that seemingly straightforward distinctions between that which is normal or delinquent and criminal are illusory, and that the chronological, geographical and cultural boundaries are in a state of constant flux. The means the criminological agenda has to change to reflect new and emerging forms of culturally-defined deviance and socially-defined illegality.

Chapter 2 by Trevor Calafato reminds us that in the post 9/11 world the study of terrorism has both academic relevance and social protection salience. Although there is a general consensus that terrorist activity involves cruel, aggressive and violent acts, there is rather less agreement about concepts relating to its political purpose and instrumentality, or whether terrorism can be terrorism *per se*, or state-sponsored terrorism or state-terrorism; or all of these, and more. The seemingly incontrovertible and straightforward meaning of the term betrays an underlying complexity. As a consequence, this means that simple sounding proposals such as 'fighting' terrorism' or 'combating' terrorism or the 'war on terror' are infused with a rhetoric that might conceal awkward or even inappropriate reasoning so that major responses (for example, the US-led invasion of Iraq or military intervention in Afghanistan) become predicated more on rhetoric than reason. If questions relating to defining terrorism are not properly asked and answered, then the organised social response (say) through the International Criminal Police Organization (Interpol) or the European Police Office (Europol) become at best ill considered and at worst misguided. Clear thinking about terror is a prerequisite for taking appropriate action against it.

David Zammit in Chapter 3 also shows the underlying need for theorising in the use of legal anthropology for studying the legal profession in Malta. His observational

studies lead to the conclusion that there is an overarching formal commitment to legal professionalism that endorses independent thinking and legal expertise– the lawyer as 'separate' from the case and those involved init. This is buttressed by the trapping of law (the layout of legal offices and the panoply of legal textbooks) and even by the way lawyers comport themselves and walk in public. In interaction with clients, however, the paradigm becomes rather more occluded – some lawyers pay more attention to the 'human side' of their clients' predicament whilst others resist this form of engagement. Again, that which seems superficially straightforward is in practice more complex and differentiated. The researcher's task is to unpick these complexities, in this case drawing on the discipline of legal anthropology. Its usefulness is transferable and one could well imagine interesting local studies on (say) policing using much the same approach.

Understanding Crime: Social Cultural and Spatial Variations

Chapter 4 by JosAnn Cutajar explores social class and crime in Malta debunking the myth of a lower class preying mercilessly on mainstream society. She rightly argues that so-called right realist and conservative criminologist have tended to view crime predominantly through the lens of class – with a consequent demonization of crimes committed by those on low income and / or dependent on welfare, sometimes referred to as the criminal underclass. Although the focus on lower-class criminality is not without justification the academic discourse has (until fairly recently) tended to neglect crimes of the powerful, specifically white collar or business-related crime and corporate criminality, including corruption. The chapter draws usefully on Maltese examples that serve to place white collar crime more firmly on the political agenda. She points out that the criminal justice system in general, and prisons in particular, traditionally draw their clients from the lower classes. As one famous title put it, 'The rich get richer and the poor get prison'. With clear social policy implications, the chapter ruthlessly exposes the ways in which both the criminal justice system and the media over concentrate on crimes-in-the-streets to the neglect of crimes-in-the-suites.

Marilyn Clark in Chapter 5 then unpicks the social construction of youth and crime usefully pointing out that any and every representation of youth is not a neutral activity. It comes loaded with layers of cultural meaning and always takes place in a specific context. Understanding crime is therefore requires an appreciation of who is defining it and in what, and why. Of the factors associated with criminality she explores age, gender and class in some detail. Where there is probably most support for an age-related correlation with crime, there is far less in relation to gender and class. The seeming under-representation of the former needs to take into account the 'social scripts' imposed on girls and young women in their upbringing, just as they need to look at socially-constructed opportunity (too little) and supervision (too much) . In relation to class the structurally vulnerable,

or the least powerful, seem to attract disproportionate interest from the criminal justice system. Clark might add that the same profile of social disadvantage and exclusion that prompts the criminal justice system to take an over-interest in young persons as offenders will also act to promote and under-interest in them as victims.

In Chapter 6 Janice Formosa Pace takes as her theme the psycho-social variable associated with the transition from juvenile delinquency to adult status offender. Her chapter reviews the theoretical contours before exploring them empirically in a small-scale study of six adult offenders in Corradino Correctional Facility, chosen because all of them had a prior record as a juvenile. The findings show that transition from juvenile offender to adult incarcerated offender is a complex amalgam of individual factors such as school failure, reasoning deficits and inability to defer gratification; family factors, including broken homes, erratic discipline and parental conflict; and cultural factors such as peer pressure. This study is important at two levels. The criminological enterprise demonstrates the range and interrelatedness of causal factors. It also shows policy makers that addressing these variables is far from easy and that it will require an interdisciplinary and multidisciplinary approach, the cost implications of which they are unlikely to want to have to be made to think about.

Albert Bell in Chapter 7 explores subcultures which traditionally have been taken to mean an 'alternative' culture to compensate for blocked opportunities and marginalisation but with an underlying commitment to the values and goals of the superordinate mainstream culture in society. However, a more recent neo-Marxian approach – sometimes called leftist criminology – sees the subculture if far more oppositional terms – a challenge and threat to the prevailing moral order. Bell argues that this dichotomy is an over simplification and suggests that youth in the increasingly differentiated world of contemporary society and digitised communications, are open to membership of a variety of subcultural memberships with partial, selective and transient affiliations – a more fluid concept than the within or without society models with different levels of identity, commitment, distinctiveness and autonomy. This is illustrated with results from ethnographic work of heavy metal culture in Malta. The thinking demonstrates that the classic formulation of subculture still has currency, as does the more politicised variation, but that the rather more sophisticated recent reworking to include diversity and dynamism offers more. It also demonstrates that theory-driven research is not a luxury but an absolute essential.

Chapter 8 by Saviour Formosa offers an analysis of crime that draws on the rapidly expanding field of geo-spatial analysis. He correctly points out that this has a strong tradition from Quetelet, Guerry and Mayhew in the nineteenth century, the Chicago School of the1930s and more recent studies in London a generation later. What gives the contemporary approach its salience, however, is so-called environmental criminology – the

study of crime based on the interactions between incidence (crime), space (relationship) and place (geographical location). This is sometimes referred to an ecological approach to criminology. The theorising in recent years has been strengthened by the incorporation of offender and offence relationships, including opportunity- enhancing and opportunity-restricting variables. This makes the enterprise all the more dynamic. This is illustrated with mind map examples. The value of the new approach is that is allows the criminologist, and the social planner, to combine variables that might previously have been ignored – for example, single parenthood, socio-economic status, geographical location and crime. The implications for might what be called 'narrow crime control' (such as policing) are great; but those for 'broad crime reduction (such as social policy and planning writ large) are all the greater.

Responding to Crime: Punishment and Prison

In Chapter 9 Andrew Willis offers a sombre analysis of the seemingly inexorable and global 'rise and rise' of custody over the last 50 years, and shows that the same trend is also evident in Malta. It has been mainly predicated on retributive penal thinking (prison works) allied with incapacitation (two strikes and you're out). Prison populations have soared and the lifetime chance of being incarcerated in the US is now around 1 in 37 members of the entire population. Although the high costs of custody push in the direction of restricting the use of imprisonment there are other far less reassuring factors at work. Persistent but petty offenders continue to receive custodial sentences as the option of first resort. Although the severity of offending counsels against custody this is more than compensated for by the frequency of offending and the velocity of repetition. These offenders are the 'flotsam and jetsam' of society often with multiple social disadvantages, including deficits in social skills, the absence of literacy and numeracy, a history of abuse and mental health difficulties. They return to prison again and again because it is both easier and cheaper to do this than to properly address the catalogue of social disadvantage that would have a genuine crime reduction and life-enhancing impact.

Drawing on this analysis, in Chapter 10 Andrew Willis moves to address the parlous state of the prisons in Malta showing that the same disproportionate representation of the petty but persistent offender beset with intractable social problems. The prospects for meaningful intervention are poor. The prisoners themselves offer a searing indictment of the lack of correctional opportunities and institutional indifference at Corradino Correctional Facility. This is supported by recent examples of dysfunctional management. The way forward is to assert and deliver of the 'promise' of rehabilitation that underpins the thinking of the Restorative Justice Act, together with legislative reform and making prison management fit for purpose. Without this corrections in Malta remains as unwholesome and unproductive retribution combined with a naked indifference on to part of government

to match the verbal commitment to restorative justice with rehabilitation in practice.

Finally, in Chapter 11, Sandra Scicluna considers the place of non-custodial supervision of offenders in the community under probation orders as the cornerstone of an approach to corrections in Malta that is underpinned by a commitment to rehabilitation and restorative justice. This makes the chapter stand in marked contrast to the penal pessimism of the previous two chapters. She rightly insists that penal policy is properly predicated on thinking though the principles of punishment and a clear articulation of what is most defensible, and why. Retribution, general and individual deterrence and incapacitation are all found wanting leaving rehabilitation (sometimes known as treatment) as the most attractive option – both in terms of social utility and in relation to the underlying morality that streusels the successful restoration of the offender to law abiding society on completion of sentence. The opportunities for doing this in prison are at best limited, and at worst near non-existent. The failure to properly implement parole in Malta is cited. A better and more informed option is to make greater use of alternatives to custody, such as probation, with supervision in the community that allows the offender to maintain contact with civil society, including both its benefits and its responsibilities. At the same time probation imposes the discipline of supervision to inhibit further criminality, and offers structured support to address and eliminate the social factors that gave rise to involvement in crime – for example, drug abuse and theft or robbery, or anger management problems and domestic violence.

The variety of approaches and range of the themes addressed must be seen as strength not a weakness. It reflects the 'broad church' that is criminology drawing on different disciplines and approaches for different purposes and focusing on a wide range of areas across the spectrum of crime, victimisation, policing, courts and sentencing, offender risk management and corrections in custody and in the community, and wider community engagement in crime prevention.

Within this healthy, invigorating and eclectic differentiation there is an important common denominator that answers the question, Why criminology? Whatever crime phenomenon is explored or whichever intellectual approach adopted, what all the chapters in this volume have in common is an underlying sense that the end-product of criminological enquiry should be something that can be used to purposeful and good effect in the real world of criminal justice policy and practice. This makes criminology an applied social science.

This needs elaboration. It is not the job of the criminologist to make or determine public policy (say in policing or corrections, or anywhere else in the field) and still less the job of the criminologist to implement policy and criminal justice practice. Those responsibilities belong to government and its ministries, respectively. It is the job of the criminologist, however, to offer government theory-driven and research-led knowledge that can

properly and usefully inform policy developments and practice implementation. This is part of the role of the university sector and most certainly a major part of the role of the University of Malta's Faculty for Social Wellbeing. Criminology provides the raw material of thinking and research that underpins (or should underpin) criminal justice policy and practice. Government can take the credit for successes (say) in an enlightened approach to the social management of substance abuse, or domestic violence crime prevention initiatives, or rehabilitation programmes in prison. But the criminologists can take prior credit for having thought-through and researched the areas and their complexities so as to enable others to 'deliver' meaningful and effective policy implementation. It points to the importance of university-based independent academic thinking and research.

Although this adds significantly to the real-life appeal of criminology there are a couple of important caveats that make this criminological ambition a little bit more difficult, even problematic. To begin with, politicians are notorious and infamous for working-up policies on a whim – the so-called 'back of an envelope' approach to social planning. They are mostly well intentioned but all-too-often they are ill-informed about the underlying social realities that underpin a problem area. Sometimes they 'don't listen' which usually reflects pride and / or ignorance, and sometimes they 'won't listen' because they would prefer to bend to the whim of personal prejudice or to the visceral instincts of what they think a vengeful public might be expecting of them. This is usually a recipe for failure. For example, as hypothetical examples, if new-style 'community policing' is grafted on to a police force that is wholly corrupt, it will scarcely be surprising when the initiative fails. The same would be true of setting-up rehabilitation programmes introduced in a prison where management and staff working practices were out-of-date and dysfunctional. Or in introducing a parole system that was ill-founded theoretically and then unsupported by a procedure that was fit for purpose. This directs attention to the need for independent criminological thinking and enquiry at the front-end of criminal justice policy and planning. And all too often it is absent.

In addition, politicians have an in-built anathema to research after-the-event. They love it when independent enquiry confirms that what they have done is strikingly successful but they hate it when policy and practice is exposed as limited in impact or even detrimental in its effects. The safest way to avoid 'falsification' of policy outcomes is simply to claim success without any independent research and corroboration, or otherwise. Where social science is all about making progress through theorising that is then put to empirical test, social policy often depends more on the 'quick fix' without evaluation. A strategic approach to social policy requires that there is consistency between aims and objectives and the resources that are committed to implementation and the way they are used, but also consistency between the aims and objectives and the final outputs and outcomes; and the only way to ensure the link between these three key components is by evaluation. This

directs attention to the need for independent criminological thinking and enquiry at the rear-end of criminal justice policy and planning. Again, all too often it is absent.

When these points are taken together, the (sad) corollary is that frequently criminal justice policy and planning takes place in what might be called a theory and research vacuum – with interventions that are not research-led and subsequently not subject to evaluation. This is massively at odds with what criminology 'does' or should be doing. It leaves the criminologist in a difficult position – someone who wants to engage with government and make things research-led but where the would-be partner is often seen as a dismissive, even disrespectful. This is an unavoidable tension. It needs to be recognised as such and then turned to advantage – to be seen as something that is energising rather than compromising of the criminologist's position. Part of the role of the criminologist is do the thinking and research that can lay the foundation for improved criminal justice policy and planning; but an equal part of the role is to engage with a sometimes not-so-willing government and its ministerial infrastructures to insist that what is done in the name of the body politic and the commonweal is firmly rooted in strong thinking and solid evidence. The latter adds an important dimension to the criminological enterprise. This is what criminology does.

Criminology is inter-disciplinary and multi-disciplinary but it is rooted in the traditions of social science that demand strong theorising and verification (or not) through subsequent empirical exploration. The research-led 'what works' and 'what fails' elements can be disseminated in both the academic and the policy arenas. The social science component on its own is 'ivory tower' academic work wholly unrelated to the real world of crime risk management in relation to (say) domestic violence, sexual offending or combating terrorism; and it is incomplete. The social policy component on its own without the benefit of theorising and research is no more than 'hunch' or 'instinct' policy; and it, too, is incomplete. The rounded criminological contribution requires both. The chapters below are to be seen as reflecting this double-barrelled contribution – thinking and research that has both academic rigour and policy usefulness. This is what makes criminology as demanding as it is satisfying.

As the contributors' research interests broaden and deepen, and as collaborative work within and beyond the European Union expands, the editors are committed to exploring further how the distinctive characteristics of small island states such as Malta influence the types of crime that are committed and the ability of the police, customs and other security services to detect, tackle and reduce crime. Particular attention could be paid to how factors such as location, population size, tourism, land use, accessibility to other islands and larger neighbours, insularity, culture and governance influence crime opportunities and the capacity to respond. The prevalence of offences often associated with islands (drugs and people trafficking, money laundering, organised crime, violent crime)

are ripe for exploration, as are rapidly expanding crime opportunities associated with globalisation, including cyber crime in relation to individuals (bullying, blackmail and fraud) and risks posed to the business environments of banking, commerce and gaming.. There are also specific features related to desistance and offender crime risk management that may be related to Malta's size, location and culture. These are indicative options for future publications. They show the criminological agenda is far from exhausted, and that the University of Malta is determined to sustain and develop an international role in the criminological enterprise.

CHAPTER 1

Sex in the Mediterranean: When Sex Degenerates into Deviance and Crime

Jacqueline Azzopardi

'Every society from the Renaissance to the Enlightenment' controlled sexual activities (Naphy, 2002, p. 15). There was a general agreement: sex was only permissible within marriage and even then, in the missionary position. Outside marriage, it was undesirable at best and illegal at worst (Naphy, 2002, p. 15). 'The primary purpose of sex was the procreation of the human race. Acts which did not promote this goal were unnatural' (Naphy, 2002, p. 15) ... and clearly, this view of sex reverberates in the Roman Catholic faith, which is particularly strong in the Mediterranean.

So, especially for Mediterraneans who have been mainly indoctrinated by the Roman Catholic Church, sexual acts that vary from the conventional, heterosexual man-over-woman position, motivated solely by the intention to procreate, even if performed in the marital bed (between spouses), may be considered deviant. Few could even have the audacity to consider them crime, confusing the uneducated. Indeed, the words "deviancy" and "crime" might be used interchangeably – as though they are synonyms. But they are not.

Durkheim (1973 cited in Lawson and Heaton, 1999) explains the difference between deviance and crime. According to him, deviance constitutes behaviour that tends to be condemned by society in an informal way. Conversely, crime evokes official sanctioning from society. Siegal (2010, p. 4) explains that deviancy refers to 'actions that depart from social norms, values and beliefs... many ... are neither illegal nor criminal'. Conversely, Siegal (2010, p. 18) defines crime as 'a violation of societal rules of behaviour as interpreted and expressed by a criminal legal code...'. This implies that, only acts which violate the criminal code can be considered as crime. It can then be deduced that, only sexual acts that are listed as crimes in the criminal code can be considered as sex crimes. The rest might be considered as either conventional (conforming to societal norms) or deviant (not adhering to social norms) (Siegal, 2010, p. 5).

All this might have explained the distinction between deviant sex and sex crimes

however, it is not enough. Since it is society that decides what is acceptable (the norms), or not acceptable and this is dictated by its dominant culture which tends to change over time. Then to understand the notion of sexual deviance in the Mediterranean, one needs to be familiar with Mediterranean culture over time (Terry, 2006, p. 20). Similarly, it is society – its representatives ... 'people holding social and political positions' (Siegal, 2010, p. 18) … that decides which acts get listed in the criminal code as crimes. And these representatives express the general will ... that is also animated by the dominant social culture which tends to be chronologically mutable. Thus, a historic-cultural overview of the Mediterranean region is warranted, if one is to understand the idea of sex ... the deviant and criminal type.... in the Mediterranean. Perhaps it would shock some to learn that ancient Mediterranean cultures have actually promoted sexual practices/orientations, such as: 'homosexuality, bestiality, sadomasochism, adultery, masturbation, and pederasty' (Terry, 2006, p. 20).

Ancient Greeks (before Christ) had a somewhat practical view of sex. The importance of heterosexual sex lied in its potential to bring about procreation...and the enrichment prospects it offered men – in the form of dowry and acquired status (Holmes and Holmes, 2009, p. 51). However, a fact that might have shocked the Catholic St Paul speechless was their 'strong public and communal encouragement of homosexuality' (Holmes and Holmes, 2009, p. 51). In fact, many Greeks considered homosexual love as the highest quality of romantic love especially if expressed between an adult man and a pubescent boy. And this was expressed in detail, artistically. Terry (2006, p. 20) mentions Plato's 'Symposium' which recounts reflectively, 'the nature of a relationship between Socrates and a young, attractive male'. Thus, clearly, the ancient Greeks not only condoned, but encouraged homosexuality and paedophilia. In fact, these two types of sex were actually institutionalized in Greek society (Holmes and Holmes, 2009, p. 51). They fitted societal norms consequently, in ancient Greece, they were considered neither criminal nor deviant.

In ancient Greece, bi-sexual men seem to have been the norm. In fact, it was actually 'acceptable for men to have relationships with both men and women, and same-sex relationships were common to supplement the sexual relationship with a wife' (Terry, 2006, p. 21). Women, in ancient Greek society, ranked low. Their importance lay in motherhood and in being good wives. In fact, their education was restricted to these topics and consequently, only a few could maintain conversations about anything else (Holmes and Holmes, 2009, p. 51). For this reason, they were rarely observed in public with their husbands because their lack of academic knowledge could have rendered Greek women dull and uninteresting. But not all Greek women were considered boring. The *hetaerae* were a group of Greek women – prostitutes who acquired scholarly knowledge and bedroom skills – a curriculum meant to produce prostitutes that could satisfy men both physically and intellectually (Holmes and Holmes, 2009, p. 51). So, clearly, prostitution

was accepted. And although most sexual behaviour concerned and involved men, 'there were also women who were involved in homosexual practices. The most famous of these is Sappho, resident of Lesbos (from which the word *lesbian* is derived), who wrote love poems to women' (Terry, 2006, p. 21)

Although it was very difficult, if not impossible, for Greek wives to obtain divorce, it was conceded to Greek men. The ancient Greek family was patriarchal and sons were required for family-name longevity, inheritance-maintenance and transmission as well as for warfare. Holmes and Holmes (2009, p. 52) insist that ancient Greeks valued sex both for procreation and recreation reasons. In fact, 'Homosexuality, lesbianism, hedonism, polytheism, and a warlike and monogamous family structure were all traits that typified the ancient Greek family (Holmes and Holmes, 2009, p. 52).

Roman culture also promoted 'homosexuality, pederasty, and the importance of the male figure….Boy brothels were … found in Rome… and the Romans believed that sexual relationships with young boys would aid their mental development' (Terry, 2006, p. 21). Unlike the Greeks, who considered man-boy relationships as beautiful and to be cherished lovingly, the Romans were frequently violent and abusive with their young, male lovers … especially with their slave boys (Terry, 2006, p. 21). Sadistic activities, like 'watching women and children being raped and having sex with animals' was commonly enjoyed and considered as entertaining (Terry, 2006, p. 21).

Like the Romans and the Greeks, the Egyptians admired the male figure and accepted homosexuality. Besides homosexuality, the Egyptians practised: 'polygamy, incest, sexual play among children, and sexual touching of children by adults' (Terry, 2006, p. 21). Egyptian children engaged in sexual play early on in their lives as this was considered as an educational experience that would assist them in their adult lives (Terry, 2006, p. 21). Terry (2006, p. 21) explains that: by the year A.D. 200, marriages between siblings were frequent, particularly among middle class people; intercourse between adults and children was frowned upon, yet it was common practise for adults to suck the penises of boys, to prepare them for later sexual activity; adult Egyptians practised sex openly and extensively and the Pharaoh was expected to lead by example in this area.

Sex in the Mediterranean was practised freely and openly until the Middle Ages… until, thanks to emperor Constantine (313 A.D.), the Roman Catholic Church took over, imposing beliefs and altering the culture of that time, in a way that demonized sex outside the marital bed, excusing sex between a man and his wife …man-over-woman (no other position) and this exclusively for procreation purposes… marriage was reserved for those who could not control their sexual appetite….otherwise, it was advisable to remain single and practise celibacy like St Paul … in his very words (Terry, 2006, p. 22; Holmes and Holmes, 2009, p. 54-57).

Not surprisingly, in the Middle Ages, homosexuality became a crime in Europe (Terry,

2006, p. 22). Clearly, this negative swing in the moral consideration of homosexuality was brought about by Christianity, the religion that could only accept sexual acts that led to procreation…not enjoyment (Terry, 2006, p. 22). In fact, all sexual acts that were motivated by reasons other than procreation were considered sinful (Terry, 2006, p. 22). Terry (2006, p. 22) explains how sodomy headed the list of 'unnatural sexual acts', and how this list included 'masturbation, bestiality, anal intercourse, fellatio, and heterosexual intercourse in anything other than the missionary position.' By the 14th century, sodomy became a crime all over Europe and those who were found engaging in it could be punished by death…so could those found guilty of engaging in bestiality and having sex with prepubescent children (Terry, 2006, p. 22). Homosexuals were vigorously dejected… in fact, in 1326, King Edward II of England was viciously assassinated because he had a male lover (Terry, 2006, p. 22).

Homosexuality was not the only sexual practice that was sanctioned by the Roman Catholic Church. The Church came up with a list of sexual activities branded sinful and in breach of both natural and Church law (Holmes and Holmes, 2009, p. 56). This list included masturbation (Terry, 2006, p. 22) – 'considered to be a sin punishable by a year of penance' that could have involved the humiliation of the sinner who could be forced to confess his 'sin' to passers-by (Holmes and Holmes, 2009, p. 56). Holmes and Holmes (2009, p. 56-57) explain how the Church: restricted women from wandering around the church after midnight by considering them sinners, if they did so. The Church punished people for engaging in sex with their spouses on days that were considered holy and for 40 days prior and after Easter…and for engaging in homosexual acts (Holmes and Holmes, 2009, p. 56-57). Naturally, since the only justification for sex was procreation, anti-conception measures were deemed unacceptable/punishable and abortion was considered an atrocity (Holmes and Holmes, 2009, p. 57).

Surprisingly, however, 'transgenerational sexual acts became socially acceptable in 16th – and 17th – century Europe' (Terry, 2006, p. 22). This meant that, it was considered as normal and acceptable for adults to 'fondle the genitals of their prepubertal children', provided this stopped when their young became adolescents (Terry, 2006, p. 22). So, to an extent, unlike today, this behaviour was not considered as paedophilia/sexual molestation of children… and if it were, this behaviour was not considered a crime. Terry (2006, p. 22) explains how, in those times, children were more prone to fall prey of sexual predators within their homes, than to be sexually victimized by strangers. Incest was an issue. Although it had been practised in ancient cultures, 'the church declared incest an ecclesiastical offense, and incestuous marriages were invalidated' (Terry, 2006, p. 22).

Although fingers are frequently pointed towards the Roman Catholic Church for taking over matters concerned with sexual behaviour in Europe…deciding what was acceptable and what was not…and sanctioning sexual behaviour it deemed unnatural…other

religions exerted their power too, when it came to morality and sex in the Mediterranean. In fact, Terry (2006, p. 22) points out that, although the Roman Catholic Church strongly dejected polygamy, the tradition of marrying more than one woman was (and still is) common practice and legal to Muslims, Mormons and Hebrews. However, even these religions vehemently oppose homosexuality and masturbation (Terry, 2006, p. 22)…in fact, it is not rare for homosexuals to be publically executed in extreme Islamic countries.

Terry (2006, p. 22) claims that, in contrast to established religions, Native American and primitive cultures condoned, if not encouraged, sexual practices similar to those engaged in by the ancient Greeks. In fact, it seems homosexuality was practised in North and South American tribes and sexual play among children, even between them and adults, was not only tolerated, but even considered as sex education. Mondimore (1996 in Terry, 2006, p. 23) explains how, boys were expected to experience sex with older men if they were to develop masculine qualities. Terry (2006, p. 23) adds that African tribes had analogous customs and that women were circumcised – and still are circumcised, in Africa. The fact that these, and other sexual acts, are habitually practised in other traditions but are condemned in Western societies, highlights the extent of the control exerted by social ideologies over accepted sexual practices (Terry, 2006, p. 23). So, in actual fact, objective criterion to decide what types of sexual acts are acceptable, do not exist. The decision seems to have always been based on sexual customs and these tend to change over time.

Holmes and Holmes (2009, p. 58) describe how, by the 20th century, Western society started increasingly considering sex as being a right for both men and women. In fact, equal rights for women started to be recognized and women 'have won the right to exercise their freedom in the area of sex and sexuality', assisted by the invention of contraception pills/measures, which removed the looming danger of unwanted pregnancies when engaging in recreational sex (Holmes and Holmes, 2009, p. 58). However, despite all this, Holmes and Holmes (2009, p. 58) stress that, echoes of the old, traditional views on sex can still be heard, for example in axioms such as: 'It is permissible for men to sow wild oats but not for women'.

Sexual standards are dictated by societal needs. So, the 'relatively liberal attitudes toward homosexuality, birth control and abortion' emerge from the fact that modern society evidently does not perceive the need to increase its birth rate – if it did, it would not be so receptive of these practices (Holmes and Holmes, 2009, p. 58). So, today, sex is not perceived as being reserved for males and for procreation purposes, solely within marriage. Modern society has moved away from the 'traditional repressive asceticism of early family forms', wherein sex was restricted to married, heterosexual couples, towards a more progressive stance, wherein, ideally, sex is a strong expression of love or strong affection between two individuals, who may plan to get married, but not necessarily (Holmes and Holmes, 2009, p. 59). However, there is also the 'sexual fun philosophy

in which sex is viewed as recreational or even athletic' – and is expressed, for example in 'swinging' (swapping partners) (Holmes and Holmes, 2009, p. 59). Advocates of this hedonistic sexual philosophy believe that 'virginity, chastity, and monogamy are outdated and... nonsensical' (Holmes and Holmes, 2009, p. 59).

Even the above cursory, historic-cultural overview of the Mediterranean region shows that, sexual behaviour here has changed considerably and steadily over the ages. However, even from today's perspective, with today's progressive philosophy of sex, 'there are many who operated outside what are now considered acceptable parameters of sex and violate the law in the process' (Holmes and Holmes, 2009, p. 61). Examples of these are the Roman Catholic clergy members who engaged in child-abuse/molestation. Siegel (2010, p. 430) reports how 'as the scandal spread, clergy... in the United States and abroad resigned amid allegations that they had abused children or failed to stop abuse of which they had knowledge' and list notorious cases. Pope John Paul II did not tolerate priests who molested/abused children and referred to their behaviour as an 'appalling sin' and crime (Siegel, 2010, p. 430). One must add here that sexual offences and deviant sexual acts are certainly not solely indulged in by the followers or leaders of the Roman Catholic religion.

So, according to Durkheim (1973 cited in Lawson and Heaton, 1999), deviance comprises conduct that is scorned by society in a non-official manner. On the other hand, criminal acts are officially penalized (by being listed in criminal codes together with a list of matching sanctions) by society. Since crime is 'a violation of societal rules of behaviour as interpreted and expressed by a criminal legal code ...' (Siegal, 2010, p. 18), solely actions that breach the criminal code can be considered as crime. Therefore, only sexual acts that are listed in the criminal code can be regarded as sex crimes. The rest might be considered to be either conforming to societal norms or to be deviant. Thus, at this point, one might be curious to find out what sexual practices constitute offence. This leads to a brief discussion of what are called paraphilias. The word paraphilia stems from two Greek words that mean: 'outside of' and 'friendship-love' (Frey, www.healthline.com/galecontent/exhibitionism as accessed on 29th May, 2013). Siegel (2010, p. 430) describe paraphilias as:

> bizarre or abnormal sexual practices involving recurrent sexual urges focused on (a) nonhuman objects (such as underwear, shoes, or leather), (b) humiliation or the experience of receiving or giving pain (such as sadomasochism or bondage), or (c) children or others who cannot grant consent'.

Another type of paraphilia is the practice of cross-dressing – in other words, wearing attire that is usual worn by the opposite sex. Clearly, especially when practised in private, this does not concern the law. However, there are other sexual practices which are considered as dangerous (to self and/or others) and are subject to legal sanctions. Siegel (2010, p. 430) lists examples of these behaviours, as follows:

- Asphyxiophilia (autoerotic ashphyxia) – Oxygen deprivation to the brain to enhance sexual gratification. Almost all cases of asphyxiophilia involve males.
- Frotteurism – Rubbing against or touching a nonconsenting person in a ... public area.
- Voyeurism – Obtaining sexual pleasure from spying on a stranger while he or she disrobes or engages in sexual behaviour with another.
- Exhibitionism – Deriving sexual pleasure from exposing the genitals to surprise or shock a stranger.
- Sadomasochism – Deriving pleasure from receiving pain or inflicting pain on another.
- Pedophilia – Attaining sexual pleasure through sexual activity with prepubescent children.

Hucker (http://www.forensicpsychiatry.ca/paraphilia/aea.htm as accessed on 29th April, 2013) explains that asphyxiophilia (or hypoxphilia or auto-erotic asphyxia) has been known and practised, possibly since ancient times. Although it can be engaged in with partners, he claims that it is usually a solo act, wherein the person (usually but not exclusively, a male under 40 years of age) self-induces hypoxia (asphyxia/strangulation, using, for example, ligatures/ropes, plastic bags, masks, anaesthetics, gases, chemicals...) in usually elaborate rituals (usually mimicking torture chamber scenes), during which the person masturbates, usually in the nude. Hucker claims that autoerotic asphyxia death scenes usually present evidence (like mirrors and/or cameras) that the person actually enjoys viewing him/herself in action (thus, they could also be referred to as 'triolists' because they 'gain sexual arousal and gratification from seeing themselves in some form of sexual scene' [Holmes and Holmes, 2009, p. 72]). People, who do not engage in this or any other deviant sexual activity, may consider persons who practise autoerotic asphyxia as mentally infirm and/or suicidal. However, Hucker, (2012) insists that they are neither. In fact, according to him, practitioners are usually involved in healthy, committed relationships and do not show signs of depression. He claims that, the fact that one usually finds escape mechanisms (that have obviously failed) on autoerotic asphyxia death scenes is proof that suicide is not the aim of this activity – sexual pleasure is. Terry (2006, p. 89) explains that autoerotic asphyxia creates 'a higher level of sexual excitement through the restriction of oxygen to the brain' but the 'sexual excitement does not just occur through the restriction of oxygen, but as a combination of ritualistic behaviour,

oxygen deprivation, danger, and fantasy.' So, is auto-erotic asphyxia a crime? It is certainly not specifically listed in the criminal code (at least not in the Maltese one). One could claim that suicide and euthanasia are not legal, and classify this paraphilia with these two acts. However, auto-erotic asphyxia is not practiced by suicidal individuals... but by those seeking sexual pleasure in this extreme way. Only those whose solo-sex-adventure goes bad are discovered ... dead and possibly classified as suicides and, in modern times, in developed countries, although considered as having breached the law, suicides are not sanctioned. One could argue that the other individuals, that successfully practise auto-erotic asphyxia, do not seem to be breaching the criminal code. Naturally, this could be a gray area, as others would insist that, exposing oneself to such evident danger could jeopardize one's family and possibly, if things go bad, cost tax-payers' money (in welfare benefits). However, the same could be said of those who practise dangerous sports – that are, however, legal.

Griffiths (2010) explains that frotteurism is 'a sexual paraphilia in which individuals (typically male and occasionally females) derive sexual pleasure and arousal from non-consensually rubbing up against other people (typically but not always female strangers) particularly with their erect penis and/or pelvis'. Since frotteurs enjoy practicing their paraphilia rather unobserved, they roam heavily crowded areas, where they can select victims, go behind them (to avoid looking their victims in the eye) and rub against them without attracting too much attention. In most western cultures, frotteurism is considered a crime (sexual assault) however, most criminal justice systems merely categorise it as a misdemeanour. This paraphilia does constitute a crime as is specified in Chapter 9, section 209 of the Maltese Criminal Code (under the heading: 'Of Crimes Affecting the Good Order of Families').

Frey (2002) defines the paraphilia of exhibitionism as 'a mental disorder characterized by a compulsion to display one's genitals to an unsuspecting stranger'. In the United States and Canada, exhibitionists are also referred to as 'flashers'. Frey claims that this bizarre behaviour has been studied, but so far, 'psychiatrists disagree whether exhibitionism should be considered a disorder of impulse control or whether it falls within the spectrum of obsessive-compulsive disorders (OCDs)'. This paraphilia does constitute a crime as is specified in Chapter 9, section 209 of the Maltese criminal code (under the heading: 'Of Crimes Affecting the Good Order of Families').

Baumeister (1995) explains that sadomasochism (or S&M) – the acting out of 'fantasies of sexual domination and submission', involving getting 'tied up, handcuffed, gagged, or bound in uncomfortable positions' with one's intimate partner or an especially hired one – is really the act of shedding one's own identity, having a break from one's needy self, which is 'an unending project ... that constantly needs to be built up and defended... to prove capable and autonomous and attractive... it is a source of stress ... worry and pressure'.

His research indicates that it is the powerful, the privileged and the most educated that tend to engage in S&M, implying that 'it is often the rich, powerful, and successful, the people with the heaviest burdens of selfhood, who need the escape of masochism'. One understands that, as long as this paraphilia only involves role-play between consenting adults in private, and no-one's rights and/or laws are breached, then engaging in S&M might be considered deviant but does not necessary constitute a crime. Once it gets violent and abusive (that is: once it can no longer be classified as a sex game), it is sanctioned by the criminal code, not necessarily under some section specifically dedicated to S&M, but under assault and possibly, murder.

This brings to mind the lust murderer (Holmes and Holmes, 2009, p. 206-207) who is motivated to kill by lust – a combination of unrestrained sexual desire and the need to feel in control and powerful. Holmes and Holmes (2009, p. 206) explain that lust murderers (who can be both men and women) use weapons that require skin-to-skin contact, like, for example: 'knives, fists or hands…' although women-lust-killers tend to prefer: 'poisons, suffocation, and lethal injections'. Lust murderers equate sexual gratification with fatal violence (Holmes and Holmes, 2009, p. 206). Clearly, this act is illegal as it constitutes violent murder and, as such, is heavily sanctioned. Lust killers get sexually aroused by their murders. However, homicidal necrophiles (Terry, 2006, p. 91) actually kill 'to have intercourse with dead bodies'. This paraphilia is even more extreme than necrophilia which involves 'sexual intercourse with dead bodies' (Terry, 2006, p. 90). Whereas homicidal necrophilia is clearly a crime, it is also illegal to treat dead bodies with disrespect.

Fleming Fallon (2002) explains that pedophilia is 'a paraphilia that involves an abnormal interest in children... Pedophilia is also a psychosexual disorder in which the fantasy or actual act of engaging in sexual activity with prepubertal children is the preferred or exclusive means of achieving sexual excitement and gratification.' Fleming Fallon claims that pedophiles may be attracted to children of their same gender, or to children of the opposite gender... or to both girls and boys. He explicates that, whereas some pedophiles are exclusively attracted to children, others are also attracted to adults. Pedophiles indulge themselves in a range of sexual activities with children (some use force, others do not), such as: 'exposing themselves or masturbating in front of the child … fondling or undressing the child, but without genital contact…compel[ling] the child to participate in oral sex or full genital intercourse'. What could be of concern is the fact that there is no typical profile of a pedophile: 'Pedophiles may be young or old, male or female, although the great majorities are males … some … are professionals who are entrusted with educating or maintaining the health and well-being of young persons, while others are entrusted with children to whom they are related by blood or marriage'. Since the core element of pedophilia is engaging in sexual activity with a minor (under 18 years of age), particularly with prepubescent children (that is: from 13 years of age, downwards), pedophilia clearly constitutes a sex

crime as is specified in Chapter 9, section 203 of the Maltese criminal code (under the heading: 'Of Crimes Affecting the Good Order of Families').

If pedophilia is considered a heinous sex crime, one would expect incest to be considered as even more atrocious. Holmes and Holmes (2009, p. 95) define incest as: 'any use of a minor child to meet the sexual or sexual/emotional needs of one or more persons whose authority is derived through ongoing emotional bonding with that child.' Incest can take the form of physical ('kissing, fondling, touching of the genitals, rape …') and non-physical ('such as saying things that arouse the interest of the child, exhibitionism, voyeurism, and patterns of sex play where the child is a viewer of the sex act') abuse (Holmes and Holmes, 2009, p. 95-96). Not surprisingly, the 'sexual abuse of one's own child is for most people the most despicable of all crimes' (Holmes and Holmes, 2009, p. 105). Incest is definitely considered a crime in modern society, in the civilized, developed world. Clearly, the Maltese criminal code lists it as such and sanctions it (Chapter 9, sections 198-203, under the heading: 'Of Crimes Affecting the Good Order of Families').

By now, a person who has never ventured so far into the world of the sexually perverted would be possibly feeling queasy and s/he could be tempted to believe that surely only animals could indulge in the above behaviour. Sadly, this individual would be wrong. Without getting immersed in the argument of whether or not humans are animals too, when it comes to sexual acts/intercourse, one could expect humans to differentiate between species and prefer a human sex-partner, rather than a non-human one. Again, such a person would be wrong. In fact, Terry (2006, p. 90) reveals that another 'deviant sexual act that occurs more often than previously believed is bestiality [sometimes referred to as zoophilia], or sexual activity with animals,' such as 'rabbits, hens, goats, dogs, and other domestic animals'– and seems to commonly happen, particularly in rural areas. Zoophilia/bestiality constitutes animal cruelty and is thus, a crime.

Rape is another sexual activity that is clearly a crime and punishable by criminal codes, including the Maltese criminal code (Chapter 9, under the heading: 'Of Crimes Affecting the Good Order of Families', sections 198 – 202). Salter (2003, p. 81) claims that rape statistics depict a picture of reality that could be quite puzzling: 'Women are least safe at home ... with friends, acquaintances, and family ... women are better off with strangers and being anywhere but ... homes ... [as long as they stay] ... away from streets and parking garages'...and the best thing women can do to protect themselves from rapists is 'to grow old'. In fact, Riedel and Welsh (2008, p. 121) claim that the 'frequency of prior relationships between victims and offenders has led to increased concern with date rape'. Allison and Wrightsman (1993, p. 3, 98) claim that 'rape is a misunderstood crime' and it could be mainly because, among 'all the imaginable crimes, rape holds a unique status' which is sustained by 'the profusion of myths and incorrect stereotypes about rape, rapists, and rape victims' which 'take three general forms: (1) women cannot be raped against their will, (2)

women secretly wish to be raped, and (3) most accusations of rape are faked' thus, one might understand why rape victims seem to get or share the blame of their victimization and consequently, might prefer to suffer in silence and conceal their predicament.

A stereotypical consideration of this sex crime would, commonly present a picture of a crime scene, wherein the rapist is a man and the victim, a woman. However, as clearly shown by Mezey and King (2000: v-vii) 'Male rape is a taboo subject; it happens but it is concealed by the victims who are too ashamed to speak out and by a society that is not prepared to listen ... [that has] ... traditionally regarded men as the perpetrators of abuse against women and these stereotypes and prejudices are hard to combat.' Male rape is sometimes referred to as sodomy. Riedel and Welsh (2008, p. 119) refer to rape as 'forced sexual intercourse in which the victim may be either male or female and the offender may be of the same sex or a different sex from the victim.' They (Riedel and Welsh, 2008, p. 123) admit that, it was once 'assumed that rape was motivated mainly by sexual desire' but now experts stress that 'rape is usually a crime of violence, not passion. It uses the sexual act for its fulfilment, but its instigation ... frequently is not sexual tension' since, evidence points to the fact that most perpetrators are not even sexually deprived (Allison and Wrightsman, 1993, p. 3). Rape seems to be mainly about power and dominance (Allison and Wrightsman, 1993, p. 31). And this insight perhaps helps one to understand its association with wars and conquerors. Rapes can be categorised under different headings, according to the circumstances in which they unfold. For example, there are: stranger rapes (wherein the perpetrator is unknown by the victim); gang rapes (sexual attacks by more than one aggressor, on a victim); anger rape (when the aggressor expresses pent-up wrath with a victim who might represent the person/s who caused the aggressor's anger in the first place); sadistic rape (when the aggressor eroticizes violence, enjoying, even getting sexually aroused, by witnessing the victim suffering); date rape (when the aggression happens while the victim and the aggressor are actually on a date); acquaintance rape (when the aggressor is known and familiar to the victim); and spousal/marital/partner rape (when a spouse/life-partner inflicts the abuse on the other spouse/life-partner) (Allison and Wrightsman, 1993, p. 46-85).

Allison and Wrightsman (1993, p. 37) claim that, societies/ individuals might be negatively influenced by attitudes that degrade human beings and that these attitudes can very well be echoed in pornography (or porn). Conversely, this idea has been challenged by Holmes and Holmes (2009, p. 153) who insist that 'such exposure [to porn] does not necessarily lead to the commission of sex crimes by someone who is otherwise a socialized human being'. 'Pornography is material produced for the manifest purpose of arousing erotic feelings' and has been around since ancient times, even since prehistory, as can be deduced from erotic paintings found on the walls of caves (Holmes and Holmes, 2009, p. 154). Naturally, developments in communication – the media explosion that resulted

in a multitude of new electronic devices and easy communication through the internet – facilitated pornography. Porn shifted from cave walls, to art, to centre-folds on newspapers and magazines, to videos and blue films, to the internet.... rendering it accessible by all and sundry. Opposition to censorship and the vehement defence of personal freedom and the right to read/view any material one deems fit, seems to place pornography in a gray area of legality. It seems to be legal, as long as it does not deeply offend morality/decency, pointing to one, crucial setback: 'The problem of controlling pornography centers on this definition of obscenity... [but] ... what is obscene today may be considered socially acceptable at a future time' (Siegel 2010, p. 438). Therefore, even in Malta, although pornography is clearly mentioned in the criminal code (under Chapter 9, Title VII, Of Crimes Affecting the Good Order of Families), one could be under the impression that little, if any, attention is given to it – especially since the internet made it so readily available. However, the tune changes when it comes to child pornography, which 'has become widespread on the internet' (Siegel 2010, p. 439). Criminal codes (such as the Maltese one Chapter 9, Title VII, Of Crimes Affecting the Good Order of Families) defend children, imposing hefty sanctions on those who abuse them in this way.

This leads to yet another type of sex deviance ... or sex crime: McEachern, McEachern-Ciattoni and Martin (2011) claim that advances in communication technologies has 'made it easier for adolescents to expose themselves to sexually explicit material through ... cell phones, digital cameras, and the internet ... Sexting, or sextexting, is a relatively new teen phenomenon ... and refers to youth transmitting sexually explicit messages and/or sexually explicit photographs of oneself or others via electronic devices.' Is sexting a crime? In Malta, such seems to be the case, even though 'young people are misled into believing that the law doesn't prosecute against sexting.... although there are currently no regulations against sexting, pornography and indecent exposure are both offences punishable under the criminal code, and ... sexting can fall within the paramenters of these laws' (Mangion cited in the Sunday Circle, May 2013). However, although it seems that sexting is strongly associated with the young, one could be wrong in assuming that older people (even middle-aged and older) do not engage in this activity. A perhaps older version of sexting could be scatophilia: when people make obscene telephone calls (Holmes and Holmes, 2009, p. 81). However, this does in no way imply that scatophilia is no longer practised. In fact, modern telephony might have rendered it even easier to practise.

No discussion on sexual deviance and sex crime would be complete without, at least, a very brief overview of the salient points on prostitution. Siegal (2010, p. 432) defines prostitution as: 'granting nonmarital sexual access, established by mutual agreement of the prostitutes, their clients, and their employers, for remuneration' ...and does so in gender-neutral terms, because as he stresses, 'prostitutes can be straight or gay and male or female'. Prostitution has been around for thousands of years – in fact, it is frequently referred

to as the oldest profession (Naphy, 2002, p. 55). Prostitutes today can be: streetwalkers (loitering and enticing customers on the outside, clearly where they can be seen by all, including by police officers); bar girls/maids (bars become their offices – or show-case. They wait there to be picked up by customers); brothel prostitutes (they have their own private premises where clients join them, to enjoy and pay for their services); call girls (they are the *crème-de-la-crème* of prostitutes. They are called and hired against very high fees); escorts (very similar to call girls – they can be both women and men – who claim to be specialised in social companionship, rather than sex); circuit travellers (they travel in couples or groups, offering and rendering their services against payment, to crews/ labourers working on some site); skeezers (these are prostitutes who barter sex for drugs) and massage parlour/photo studio prostitutes (who are based in these businesses, but are clearly neither masseurs nor photographers) (Siegal, 2010, p. 433-436).

At this point, one could start wondering whether prostitution constitutes sex crime. Siegal (2010, p. 438) explains how in 'some countries, especially in the Muslim world, prostitution carries the death penalty. In others, such as Holland, prostitutes pay taxes and belong to a union. Some countries, such as Australia, allow adults to engage in prostitution but regulate their activities ... other countries, such as Brazil, allow women to become prostitutes but criminalize earning money from the work of prostitutes ... In the United States, prostitution is illegal in all states, though brothels are legal in a number of counties in Nevada.' In Malta, prostitution (provided it is not the prostituting of an underage descendant/or any minor/or spouse, as this is clearly specified in Chapter 9, under the heading: 'Of Crimes Affecting the Good Order of Families', section 197) is not a crime. Loitering and soliciting is. It could be interesting to follow the age-old debate of whether prostitution should be legalized, however, although one could find compelling arguments on both sides, it is not the scope of this chapter to delve any further.

Conclusion

The first few paragraphs of this chapter described how homosexuality (in the wide sense of the word that is, including lesbians), particularly in the Mediterranean, passed from being, perhaps considered, the norm (at least something a man should experience, even if only once) condoned ... to being branded an abomination. Terry (2006, p. 24-26) explains how, way back in the 1930s, 'homosexuality ... [was] ... blamed on hereditary factors, or ... [that it was claimed that]... it could be acquired from the practice of mustarbation', homosexuals were considered as sexual deviants and 'mentally ill, pathological, loathsome, and a threat to social hygiene.' One would have expected a liberal, progressive, tolerant outlook to be predominant in modern times, but evidently, one could be wrong. In fact, Siegal (2010, p. 429) reports 'moral crusades' against 'gay lifestyle, with the goal of preventing states from legalizing gay marriage', taking place in the United States of America in 2008. However, one

does not need to go that far back because, even today (26th May, 2013), as this chapter is being written, as Paris celebrates its first gay marriage, protestors are taking to the Parisian streets, condemning homosexuals ("Gay Marriages," 2013).

Is homosexuality a crime? No, it is not... at least in western society (Malta included). However, the same cannot be said of: Islamic countries, Africa, China, Cuba, India and Soviet Russia (Mezey and King, 2000, p. 28). Mezey and King (2000, p. 28) claim that, even though New York, Chicago and San Francisco are known for their significant gay communities, 'over a third of state jurisdictions continue to cirminalize all male homosexual acts and the powerful fundamentalist religious lobby maintains an unremitting moral diatribe.' The story is different when it comes to the UK, where nowadays, 'homosexuality has become a commonly discussed topic ... [where]... Previously unthinkable issues, such as same-sex marriage and the adoption of children by gay couples, are now seriously debated' to the benefit of male and female homosexuals who may now find it easier to live a healthier, 'guilt-free gay life-style'(Mezey and King, 2000, p. 28). However, this does not mean that the lives of gay/bi-sexual people, anywhere in the world, are necessarily smooth and easy. In fact, Mezey and King (2000, p. 28-31) describe what living under homophobia (anti-gay sentiments) is like, mentioning reactions to gays that range from: prosecution and execution (in the developing world) to: verbal abuse, harassment, financial blackmail, and gay bashing as well as bomb attacks (in the west).

This chapter explored the notion of sex, how it changed over time and how it differs geographically and culturally. Particular attention was given to the Mediterranean – where the Roman Catholic faith seems to be predominant. Thus, the 'primary purpose of sex was the procreation of the human race. Acts which did not promote this goal were unnatural' (Naphy, 2002, p. 15). So, especially since the birth of Christianity, extramarital sex was considered undesirable and even illegal (Naphy, 2002, p. 15) so was unconventional sexual acts. Therefore, by Christian terms, only heterosexual intercourse between husband and wife (performed in the marital bed and only in the missionary sexual position), motivated solely by the intention to procreate, became acceptable – and marriage was reserved for those who found it impossible to remain celibate (because celibacy was considered the ideal) (Terry, 2006, p. 22; Holmes and Holmes, 2009, p. 54-57). However, this chapter demonstrates that, this ultra-conservative idea of sex only emerged with Christianity. Before that, things were completely different. In fact, ancient Mediterranean cultures actually promoted sexual practices, like, for example: 'homosexuality, bestiality, sadomasochism, adultery, masturbation, and pederasty' (Terry, 2006, p. 20). Sex in the Mediterranean was practised freely and openly until the Middle Ages, when Emperor Constantine (313 A.D.), facilitated the Roman Catholic Church to take over, and to impose beliefs and alter the culture of that time, in a way that demonized sex outside the marital bed.

This chapter's brief historic-cultural overview of sex in the Mediterranean clearly

indicates that the concept of sex – what is normal, acceptable, deviant and/or criminal – changes chronologically, geographically and culturally. And, based on Durkheim's (1973 cited in Lawson and Heaton, 1999) and Siegal's (2010, p. 18) reasoning, it was deduced that, only sexual acts that are listed in criminal codes can be regarded as sex crimes. The rest might be deemed to be either conforming to societal norms or to be deviant.

The chapter then presented a list of paraphilias. The author then defined and briefly discussed this list of paraphilias: cross-dressing, asphyxiophilia (autoerotic ashphyxia), frotteurism, voyeurism, exhibitionism, bestiality [sometimes referred to as zoophilia], sadomasochism (S&M), lust murders, necrophilia, homicidal necrophilia and pedophilia. Then, the discussion turned to incest, rape, sodomy, pornography, sexting (or sextexting), prostitution and homosexuality. As the chapter unfolded, it became clear that it is society that decides which sexual behaviour is acceptable (the norm), or not acceptable – even to the extent of branding this sexual conduct as a crime and listing it in a country's criminal code. However, a country's attitude towards different sexual orientations, tastes, games, habits, seems to be dictated by its dominant culture, which tends to change over time and from one country to another, according to culture, traditions, customs and religions. Therefore, clearly the concept of sex, in the Mediterranean, changed over time, and was moulded by Christianity – its new customs, traditions and values. Some harmless acts became branded as deviant, when in fact; they came naturally to the actors. Some people found themselves at best marginalised and ostracised, and at worst, persecuted, condemned and sanctioned (even killed), after being labelled as criminals. Sex can be an intimate expression of love, even if expressed in a fun/playful way, yet, when sex degenerates into abuse, especially of the vulnerable and voiceless, it clearly deserves its place in criminal codes.

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The Maltese Criminal Code, Chapter 9, Title VII, *Of Crimes Affecting the Good Order of Families.*

CHAPTER 2

Terrorism: a Thousand Year Occurrence

Trevor Calafato

Terrorism is not a novel phenomenon. Fear and menace of extreme violent actions have put political pressures from ancient times. Through time, authorities labelled these actions as 'terrorism'. Authorities always aimed to develop different approaches to mitigate the phenomenon of terrorism improving science and technology and design appropriate policies. Terrorism incorporates a myriad of criminal acts, such as: bombings, assassinations, armed assaults, kidnappings, hijackings and embassy seizures others. Fuelled by political objectives, these actions are not committed to serve as an end but to serve the terrorist 'just cause'. Various socio-political issues fuel the scourge of terrorism and this makes it more difficult to define let alone prevent or counter (Balayogi, 2002). The chapter briefly presents four different discussions on terrorism: the definition of terrorism, the history of terrorism, theories on terrorism and policing of terrorism.

Defining terrorism

The word 'terrorism' does not have a meaning in most countries but portrays negative connotations of cruel, aggressive and violent acts (Hoffman, 2006). Mentioning terrorism in the 80's, the IRA would come to people's mind but after the incidents at the beginning of the 21st century in the United States, Spain and London the stereotypical image of the terrorists changed to a Muslim like terrorists that is somehow connected with Al Qaeda and extremist fundamental Islamic beliefs. Terror aims at modifying politics and is linked to extreme terrifying emotions (Lambert, 1990). However, general misinterpretations of the term, loosely label violent acts as acts of terrorism. 'People have a vague idea or impression of what terrorism is but lack a more precise, concrete, and truly explanatory definition of the word' (Hoffman, 2006:1).

A broad definition of terrorism indicates the complexity to define what people perceive as terrorism through ages and cultures. The term 'terrorism' was originally associated with the *regime du terreur* (Reign of Terror) in the French Revolution. During this regime, the word terrorism had a positive overtone in these uprisings. The ideologies behind the revolutionary leader, Robespierre, were closely knit with democracy as it was asserted

'terror is nothing but justice, prompt, severe and flexible; it is therefore an emanation of virtue' (Palmer, 1970:126). The intention was to create a better society and this was repeatedly copied in declarations of other extremist factions later in history (Hoffman, 2006).

Terrorism has a metonym for 'rebellion, street battles, civil strife, insurrection, rural guerrilla war, *coups d'etat* and a dozen other things' (Laqueur, 1979). Hence, the abuse of the term 'terrorism' labelled events do not necessarily characterise terrorist acts. Yonah (1976) described terrorism as 'the use of violence against random civilian targets in order to intimidate or to create generalised pervasive fear for the purpose of achieving political goals'. While Harmon (2000:1) defined terrorism as 'the deliberate and systematic murder, maiming, and menacing of the innocent to inspire fear for political ends'. No formal definition of terrorism was ever accepted and various researchers continued and continue to look for an appropriate answer to 'what is terrorism?' Different countries, departments and agencies provide various definitions that suit individual political needs hindering the possibility of creating a general definition.

The definition 'varies from society to society, from government to government and, to lesser degree, even from academic author to academic author' (Schmid, 1993:7). Diversity hindered the creation of a common definition and consequently of universal policies that address this phenomenon. Schmid (1993:7) identified academics, state officials, media representatives and the actual violent actors as four discourse arenas that influence the definition problem from different perspectives. In 1985, Schmid (1988:207) mailed almost 200 questionnaires to professionals from different fields inquiring various issues on terrorism including the definition issue. From the answers, Schmid (1988:1) concluded that these experts adopted a 'we-know-it-when-we-see-it' attitude that affected science and policies. Following this exercise, Schmid issued the following definition:

> Terrorism is a method of combat in which random or symbolic victims serve as an instrumental *target of violence*. The instrumental victims share groups or class characteristics which form the basis for their selection for victimization. Through previous use of violence or the credible threat of violence other members of that group or class are put in a *state of chronic fear (terror)*. This group or class, whose members" sense of security is purposively undermined, is the *target of terror*. The victimization of the target of violence is considered extranormal by most observers from the witnessing audience on the basis of its atrocity; the time (e.g. peacetime) or place (not a battlefield) of victimization or the disregard for rules of combat accepted in conventional warfare. The norm violation creates an attentive audience beyond the target of terror; sectors of this audience might in

> turn form the main object of manipulation. The purpose of this indirect method of combat is either to immobilize the target of terror in order to produce disorientation and/or compliance, or to mobilize secondary *targets of demand* (e.g. a government) or *targets of attention* (e.g. public opinion) to changes of attitude or behaviour favouring the short or long-term interests of the users of this method of combat. (Schmid, 1988, p. 1-2)

Though this definition incorporates various aspects from the mosaic of terrorism, this definition was not fully acceptable (Schmid, 1988). While an implicit definition like 'violence of which we do not approve' Vought and Fraser (1986) stressed the nonsensical stance by governments that aimed to create a definition that integrates the various terrorist activities. R. P. Hoffman (1984) devoted his Ph.D. study inquiring for a universal definition and defined terrorism as;

> a purposeful human political activity which is directed toward the creation of a general climate of fear, and is designed to influence, in ways desired by the protagonist, other human beings and, through them, some course of events (Hoffman, 1984, in Schmid, 1988:19).

Twenty years later Schmid (2011: 86) consulted 90 experts to re-examine his definition of terrorism, which stated:

> Terrorism refers on the one hand to a **doctrine** about the presumed effectiveness of a special form or tactic of fear-generating, coercive political violence and, on the other hand, to a conspiratorial **practice** of calculated, demonstrative, direct violent action without legal or moral restraints, performed for its propagandistic and psychological effects on various audiences and conflict parties ...

Another method to define what is 'terrorism' is to differentiate it from what is not terrorism. Often terrorists and guerrillas are categorised under the same umbrella because both employ hit-and-run strategies and similar *modus operandi* (Hoffman 2006). However, guerrillas are 'larger groups, operate as military unit, attack military forces, and seize, hold and control geographical territories its population (Hoffman 2006). Hoffman distinguished terrorists from the everyday offender, criminal or crazy assassin. Terrorists follow ideologies that are

> ... not driven by the wish to line his own pocket or satisfy some personal need or grievance. The terrorist is fundamentally an *altruist*: he believes that he is serving a "good" cause designed to achieve a greater good for a wider constituency - whether real or imagined – that the terrorist and his organization purport to represent (Hoffman 2006:37).

This reflected Kellen's (1982:10) statement, 'a terrorist without a cause (at least in his own mind) is not a terrorist'. A criminal's deed is purely egoistic and does not have any cause to serve the terrorist is a 'violent intellectual' ready to use force and violence aiming at extreme goals with extreme acts (Hoffman, 2006:38). New age terrorist groups form a new genre, which is harder to describe or define. These groups form part of 'phantom cell networks [with] autonomous leadership units and cells' or 'lone wolves' (Hoffman, 2006:39). These situations made society to perceive the terrorist to be omnipresent. In fact, terrorism is figuratively described as 'acephalous (headless) and polycephalous (Hydra-headed)' (Arquilla and Ronfeldt, n.d.: 9).

'Terrorist organizations almost without exception now regularly select names for themselves that consciously eschew the word 'terrorism' in any of its forms' (Hoffman, 2006: 21) wrapping up the negative connotations into noble ideologies. For example the name 'Al Qaeda' is a neutral name that has a myriad of meanings varying from 'home', 'camp' or 'foundation' or the meaning of concepts such as 'precept, rule, principle, maxim, formula, method, model or pattern' (Burke, 2004:1). Terry Anderson, a journalist who held hostage by Hezbollah for more than 5 years recounts a discussion with one of the guards that objected to the fact that Hezbollah were called terrorists and claimed, 'we are fighters' (Hoffman, 2006: 23). The spiritual leader and the mind behind this kidnap declared, 'we don't see ourselves as terrorists … because we don't believe in terrorism. We don't see resisting the occupier as a terrorist action. We see ourselves as *mujahadeen* [holy warriors] who fight a Holy War for the people' (Jamieson, 1991, cited in Hoffman 2006).

The use of the term terrorism 'implies a moral judgement; and if one party can successfully attach the label *terrorist* to its opponent, then it has indirectly persuaded others to adopt its moral viewpoint' (Jenkins, 1980; in Hoffman, 2006:23). To label someone or an organization as terrorist is subjective on whether a person is a sympathizer or an opponent of the cause. It is important to see with whom one identifies, whether with the victims or with the actors and their extremist ideologies. Sympathisers fighting the oppression of the government or the socio-economic problems do not perceive violent acts as terrorist but only as desperate means to deal with the situation (Hoffman, 2006).

'No definition of terrorism can possibly cover all the varieties of terrorism…' (Laqueur, 1987: 11). In numerous occasions of disputes, wars and revolutions terrorism was one of the strategies to improve societies. Everyone experiences terrorism differently and this

portrays the different definitions of this term. This lack of understanding and dynamism in terrorism and political violence also lies in historical incidents that reflect the continuous change in the occurrence of incidents motivated by a socio-political catalyst.

Terrorism: The Historical Perspective

'Terrorism … emerged in many different forms and out of such various motivations as religious protest movements, political revolts and social uprisings' (Laqueur, 1987:12). History illustrates terrorism as a dynamic phenomenon, which varies according to the culture and geography. Though perceived to be the product of the twentieth century, terrorism evolved through years; adapted to cultures, geography and social dynamics. This section discusses historical episodes of violence that exerted political pressure on state and authorities.

In 356BC, Herostratos, an arsonist, destroyed the Temple of Artemis one of the Seven Wonders of the Ancient World. Herostratos considered the first terrorist in history, was 'a shadowy figure of whose life nothing is know before he was apprehended, tortured, and executed' (Borowitz, 2005: xi). Herostratos' death sentence included the *domnatio memoriae*. This clause implied a damnation of the person's memory imposing a ban on the mention of the name of that particular person. 'Herostratos became paradigmatic of the morbid quest for eternal fame through crimes of violence' (Borowitz, 2005: xi). Herostratos was an example of destructive political violence and his acts encouraged attacks on lives and monuments, creating the 'Herostratos syndrome' (Borowitz, 2005).

The Herostratic criminal manifested self-destructive desires aiming to achieve goals with any means while simultaneously generating 'self-glorification' and feelings of insecurity among the public (Borowitz, 2005). Herostratos' motivations paralleled contemporary terrorist motivations, who aspire to seek fame and improve his social situation from an suffered experiences (Lacqueur, 1999; Borowitz, 2005). In a Herostratic approach, sympathisers worship contemporary suicide bombers as martyrs. Leung (2003) reported, 'It is something to aspire to be, a martyr … In all my teenage time, my symbols were body-builders and movie stars and singers and people like that. Then it changed ... the guerrilla, the fighter, then it was the stone thrower, and today it is the martyr.'

Following Herostratos, the Sicarii, Assassins and the Indian Thugs engraved their names in the history of terror. These groups used rudimentary methods of attacks such as knives or strangulations to spread terror. Weapons evolved and new methods of attack evolved. In nineteenth century Europe new ideologies and new technologies such as the nitro-glycerine emerged, creating a glimpse of future methods of attack. Carlo Pisacane, an extremist republican Italian and known as progenitor of the theory of 'propaganda by deed' (Hoffman, 2006:5), venerated the use of violence as the ultimate means to attract attention and to publicise the acts of a revolutionary group. Pisacane wrote, 'the idea

of propaganda is a chimera … Ideas result from deeds, not the latter from the former, and the people will not be free when they are educated, but educated when they are free' (Woodcock, 1977:43-44).

The group *Narodnaya Volya*[1] put into practice Pisacane's dictum (Hoffman, 2006:5) confronted the Russian czar, senior officials and their tyrannical ruling methods. Creating terror and horror to catch the attention of the public realised the theory of 'propaganda by deed'. After numerous failed attempts, the czar was blown up in St. Petersburg in a suicide attack (Caslon, 2007). The assassination of Czar Alexander II led to the demise of this group because the police arrested most of the conspirators and executed some of them bringing the extinction of *Narodnaya Volya* (Hoffman 2006).

Soon other revolutionary groups motivated by anarchism spread over Europe and America. Jean-Jacques Rousseau was an aspiration for this new political doctrine. Rousseau's quote 'man was born free and is everywhere in chains' is one of the primary anarchists' principles. Anarchists adopted the perspectives of a primitive world and considered institutions the catalysts of corrupted human ideas (Joll, 1979). Revolutionary anarchist thinkers spread over Europe and the Americas invoking fear through propaganda by deed and established the Anarchist International (or Black International) (Gearson, 2002). Anarchist International aimed to spread 'a myth of global revolutionary pretensions, stimulating fears and suspicions disproportionate to its actual impact or political achievements' (Hoffman, 2006:7). This movement annotated the move from tyrannicide to terrorism, from the dagger to the bomb (Rapoport, 1971). Anarchists exploited bombs to indiscriminately attack and use fear as a political tool. This modus operandi and formed 'the impression of a giant international conspiracy … which in actual fact never existed' (Laqueur, 1987:18). This wave of terror made nineteenth century anarchism the progenitor of modern day terrorism, even through it 'made little tangible impact on both the domestic and the international politics of the countries affected' (Hoffman, 2006:7).

The political violence initiated in the 19th century instigated the working class to fight and 'terrorism became endemic' (Laqueur, 1987:19). Laqueur (1987:19) claims that Spain was a cove for 'all sort of anarchists' and also rippled into Latin America. Attacks, prior to the First World War, and were associated with extreme left-wing dogma. However, in subsequent years terrorist manoeuvres were supported by right-wing and separatist groups, which were often associated with Fascist groups in various parts of Europe. 'Anarchism had long outgrown its terrorist phase' (Laqueur, 1987:20) as from both right and left focused on mass parties. After WWII terrorism seemed to be a factor of indigenous nationalist groups that emerged from various anti-colonial campaigns such

1 Narodnaya Volya means "People's Will" or "People's Freedom" was a Russian group of constitutionalists founded in the late 19th century (Hoffman, 2006)

as Israel, Cyprus and Algeria. These campaigns supported wars for the liberation of their nation and formed the idea that 'one man's terrorist is another man's freedom fighter'.

Among the terrorist activities outside Europe, the 1940's witness the activities of the Muslim Brotherhood and other extremist groups by killing two prime ministers and a number of officials (Laqueur, 1987). In the 1960s and 1970s, the radical left ideologies predominated the scenes, such as, the German Red Army Faction (*Rote Armee Fraktion* commonly known as *Baader-Meinhof Group*), Italy's Red Brigades (*Brigate Rosse* abbreviated as the BR), and the French Direct Action (*Action Directe* abbreviated as the AD). In recent years, the ideological terrorist flames of some groups were still alive, as the Red Brigades were involved in the assassinations (Gearson 2002). However, ethno-separatist groups also started to emerge in this period, which included groups like the Spanish ETA (*Euskadi Ta Askatasuna* meaning 'Basque Homeland and Freedom'). Terrorism in the 1970s and 1980s involved the activities of various groups associated with the struggle against Israel. Among the activities of these groups, aircraft hijacks and hostage-takings crossing their nation's borders resulting in international terrorism. An aura surrounded international terrorism indicated that some terrorist acts were state-sponsored with the scope of affecting foreign policies. Terrorist methods of attack continued to develop and started to employ suicide terrorism. Groups from various nations such as Chechnya, Sri Lanka, Yemen, Lebanon and Israel, adopted this modus operandi. The LTTE's (Liberation Tigers of Tamil Eelam) suicide attacks provided significant evidence that in extreme political and psychological circumstances groups can resort to suicide terrorism even if they do not pertain to fundamental religious terrorist groups (Hoffman, 2006).

Al-Qaeda's simultaneous attacks in September 11, 2001, in Madrid and later on in London demonstrated the dynamism of this group in exploiting suicide terrorism besides other tactics. Al-Qaeda resorted 'to the internet to disseminate their views to a wider public, and they have come to the realization that establishing their presence in cyberspace is nearly just as critical to their long-term success as any military triumph' (Weimann 2006: 63). This innovative aspect of terrorism indicated the continuous dynamism of terrorists, which security forces are not always able to anticipate. Chief of staff of President Bush's Critical Infrastructure Protection Board, stated 'we were underestimating the amount of attention [al Qaeda] was paying to the Internet' (Gellen, 2002, cited in Weimann 2006:64). U.S. Officials tried to control al Qaeda by hacking the original website but this group managed to open this webpage in more than fifty websites (Weimann, 2006). The transition from the dagger to the bomb, to suicide attacks and to the use internet indicates how terrorists evolve their methods according to the surrounding circumstances. Authorities cannot impede this continuous evolution and research can only help to understand better this phenomenon and provide methods to curb it without the use of violence.

Theories on terrorism

Numerous academic fields showed interest in terrorism and applied respective theories to understand core issues in extremist behaviour, its rationale and the surrounding social contexts. Sociological, psychological and criminological perspectives are salient theories in understanding concepts and models of terrorism. As in crime it is essential that to identify the root causes of terrorism rather than seeking immediate results, 'deep alienation and hatred that can provide the foundation for individual acts of terrorism' (Frost, 2008:21-22). Understanding the characteristics of terrorism from other violent crimes affects the practical inferences employed by national and international security demanding distinctive tailor-made policies and strategies to control this insurgent violence.

Terrorists apply aggression as a mean to a political end. Durkheim's anomie theory discussed the strains and deprivations that affect individuals. In strain-deprivation theories, people are inclined towards criminality because of poverty and stigmatisation that indelibly result in frustration and engage in criminal activities (Cloward and Ohlin, 1960; Cohen, 1955). In some cases, terrorism served as a form of remuneration, for instance in Iraq increased suicide bombings reflected the increased payments of families of suicide bombers (Keller, 2002). However, terrorist groups are composed of individuals coming from different social strata. From interviews with Palestinian militants Hassan (2001) observed that suicide bombers 'were middle class and, unless they were fugitives, held paying jobs. More than half of them were refugees from what is now Israel. Two were the sons of millionaires.' Research on suicide bombers indicated that recruits have a higher education and better social economic standard from the surrounding community (Barro, 2002; Krueger, 2007).

Theories in psychology explored the ideologies, rationale and motivations of terrorists. There is no such thing as a terrorist personality. Terrorists 'suffer from low self-esteem, [and] are attracted to groups with charismatic leaders, and enjoy risk-taking' (Long, 1990). Merari (1990) highlighted that political agendas fuel terrorists, their motivations, the intended outcomes, but no theory can completely answer, 'Why do they do this?' Extremists' perspectives are difficult to understand and consequently are often associated with psychopathological problems. Yet, only through secondary sourced research identified these personality issues (Silke, 1998). When studying the psychological development that leads to terrorism, Taylor and Horgan (2006: 585) remarked that 'if we think of terrorism as something conducted by evil people whose intention is to destroy 'our' way of life, we are vulnerable to making serious errors of analysis that may consequently deflect policy down flawed paths.'

Understanding why persons participate in terrorism entails understanding the social, political and historical contexts that cocoon the psychology and the personal qualities of extremist actors (Taylor and Horgan, 2006). Terrorism is not a unique violent crime

and shares similarities with aggressive behaviour found in other crimes (Schmid, 1996). However, political indoctrination is instrumental to create a unique trajectory for terrorism (Sampson and Laub, 1993; Taylor and Horgan, 2006). As trajectories, influence the predisposition of developing criminals and the same happens in modify the trajectory that results in terrorist behaviour.

Though being topical subject social scientist look at terrorism from different angles and criminology can surely contribute in understanding this phenomenon more thoroughly. In the same vein with other crimes, terrorism is bound to social frameworks that develop with society (Deflem, 2010). Thus, as psychologists rationalize the criminal acts committed by terrorists, criminologists conjugate theories like Rational Choice Theory (Walsh, 1980; Bennet and Wright, 1984), Routine Activity Theory (Cohen and Felson, 1979) and Crime Prevention Through Environmental Design (CPTED) (Newman, 1972) to research terrorism, among other theories to manage better the hazards of terrorism. Nonetheless, some researchers criticize the contribution of criminology on different fronts particularly, the different motivations between crime and terrorism, as well as the heightened determination and thorough planning of terrorists in contrast with less resolute and more opportunistic criminals (Clarke and Newman, 2006: 4, 5). Yet the eclectic nature of criminology adds the possibility to identify vulnerabilities as well as suggest preventive measures to tackle terrorism using situational and social strategies.

Frey (2004) assimilated the pre-emptive and deterrence approach with the use of either the 'stick' or the 'carrot.' The *stick* or forcible negative sanctions and enforcements, aim to control and punish terrorists. These aggressive actions involve imprisonment, torture and even capital punishment. Resorting to force expects deterrence to overspill making potential offenders desist from committing terrorist acts. As Frey (2004: 28) stated, 'the difference between deterrence and brute force tends to vanish, because deterrence is only credible and … effective if it is regularly used.' This approach does not consider the dynamism and flexibility of terrorist network and consequently this approach does not guarantee the eradication of the extremist ideologies. Wilkinson (2000:115) stated, 'repressive overreactions play into the hands of terrorists and, if prolonged, become totally counterproductive.' The *carrot* approach addresses the roots of the problem without the use of violence (Frey, 2004). In providing incentives to discontinue from their violent movement and providing superior alternatives than those derived from terrorist acts, government will implement long-term reforms that tackle the grievances suffered by terrorist. Governments allocate higher budgetary costs for deterrent strategies rather than the pre-emptive ones. However, pre-emptive strategies may be considered as 'cowardly' response by citizens and consequently affect the political future of the government (Frey, 2004).

Policing Terrorism

The threat of terrorism is a common problem for different countries. As a reaction the police build their own networks to deal with national and international terrorist threats. The International Anti-Anarchist Conference in 1898 was the first international police meeting against the common threat of anarchist terrorism and it took place in Rome. The Conference discussed issues of anarchism and how it could be stopped (Jensen, 1981). European governments collaborated on national and international levels with the sole objective to control the terror spread by anarchism. This trans-European conference was the genesis of communication between police of different countries, launched the extradition practices (*attentat* clause) in case of political crimes and disseminated of the *portrait parlé*[2] technique (Jensen, 1981).

International police cooperation proved to be an indispensable tool in controlling the anarchist movement. In 1906, Sir Howard Vincent interviewed by the London Times stated that international cooperation was effective in preventing a series of anarchist outrages. Some police forces were averse in exchanging secret information with foreign police forces but the majority of Europe wanted to boost this cooperation. Italy also created a special anarchist office that aimed at better coordination between local and foreign police. The death of US President McKinley prompted a revival of the Rome Conference under the auspicious of Russia and Germany. The United States declined the offer to participate but employed other methods of surveillance on anarchists in America. The measures were the forerunners of what the present worldwide police organization and Interpol (Jensen, 1981).

In 1923, was founded the International Criminal Police Commission (ICPC). The ICPC improved the inter-communication on criminals and suspects. Normal diplomatic channels were so unmanageable that suspects would escape arrests. The effectiveness of this commission encouraged 17 European states, Japan, the USA and Egypt to concord on a central office in Vienna that managed the communications between intercontinental law enforcement forces. The ICPC continued to grow until 1938, when Hitler occupied Austria. Interrupted by the Second World War, the 17 police entities reunited in Paris and created the new headquarters creating the International Criminal Police Organization, better known as the Interpol (Jensen, 1981). International police cooperation existed for numerous years and keeps on developing with the different threats encountered. When analysing the efforts of the International Criminal Police Organization (Interpol) and the European Police Office (Europol) in the fight against terrorism in the last years, Deflem (2007: 17) declared,

2 *Portrait Parlé* - "speaking likeness" commonly known as anthropometry or Bertillonge

> … police bureaucracies achieve institutional autonomy on the basis of a purposive-rational logic to employ the most efficient means (professional expertise) given certain objectives that are rationalized on the basis of professional systems of knowledge (official information). However, periods of societal upheaval are seen to affect the institutional autonomy of police institutions in functional and organizational ways.

To create a pan-police network system, police are institutionally autonomous from the governments of their states. Institutional independence or bureaucratic autonomy allows police institutions to independently plan and execute crime control strategies and maintain order. Without being detached from politics, police would not be able to be involved in international cooperation on a multilateral scale because politics limit cooperation among politically analogous states. In 19th century Europe, police cooperation was limited because of political motivation of autocratic governments. These political matters indulged the police to develop other ways of cooperation. Pursuing the rationalization theory of Weber, Deflem (2007) described how the increasing need for efficiency made the police gain a relative independence in the execution of their duties. This was a trend that Weber associated with modernity.

Formal bureaucratic autonomy was essential for police to widen their expertise and share it with other professionals in the field from different nationalities. International meetings converged the concern of different international crime that traversed the borders and national jurisdictions. Sharing counterterrorism knowledge across police corps from different nations helped to understand better the nature and development of international terrorism. Police maintain international collaboration through regular meetings, communication networks, and a central office that supplies the essential information to corporate partners (Deflem, 2007).

The Interpol and Europol are amongst the major international police organisations that focus on counterterrorism. Interpol provides and promotes assistance between criminal police authorities within the limits of national laws and the Universal Declaration of Human Rights. Formed in 1923 in Vienna, this organization grew substantially without changing in form or objectives. This organization promotes 'collaboration and provide assistance in police work across nations' (Deflem, 2007, p. 19). The Interpol conceded numerous decrees related to terrorist activities and countering measures. In the 1970's, Interpol conceded resolutions related to crimes that could be associated with terrorism such as, criminal acts against international civil aviation or the holding of hostages. With the adoption of neutrality (Article 3 of the Interpol Constitution) such crime were not considered valid. After 1951 a new resolution hindered Interpol from getting involved in matters of a political, racial or religious nature. In 1984, the resolution 'Violent Crime

Commonly Referred to as Terrorism' promoted the corporate members to cooperate and combat terrorism as indicated in their respective national legislations. The dedication in the conflict against terrorism progressed in the 1990's especially after the propaganda launched following the first attempt on the World Trade Centre in 1993. In 1998, Interpol issued the 'Declaration against Terrorism'.

Interpol passed the resolution 'Terrorist Attack of 11 September 2001' (AG-2001-RES-05) few weeks after the events of 9/11. These attacks led the Interpol leadership to implement new and more effective policies in countering terrorism and organised crime. As from these events, Interpol is particularly interested in the financing of terrorism (Deflem, 2007). International liaison among the different member is a cardinal criterion and in November 2001, Interpol entered in agreement with Europol to increase further the cooperation and policing of terrorism and other intercontinental crimes. In 2002, Interpol agreed to facilitate information exchange with the Arab police community.

On parallel lines, Europol's counterterrorism contribution commenced from the 'Terrorism, Radicalism, Extremism and International Violence' (TREVI) group formed in 1975. In this group, police representatives exchange information on terrorism and other international crimes. Almost twenty years later the TREVI group, together with other European criminal justice and border control institutions were brought together under Title VI of the Treaty of European Union due to the numerous concerns that rose in the removal of borders between the EU member states. In 1997, Europol formed a preparatory group that determined Europol's role in countering terrorism. Subsequently, the Amsterdam Treaty approved an addition of the Europol's directives to include counter-terrorism. As from January 2002, this mandate expanded further to include all serious forms of international crimes. According to Deflem (2007: 21), Europol employed, the following programs against terrorism:

- 1992, 7 February, in the Treaty on European Union or the Maastricht Treaty;
- 1994, Europol started operating in The Hague, The Netherlands, as the Europol Drugs Unit;
- 1995, Europol Convention was drawn up in Brussels;
- 1998, EU member states ratified the convention;
- 1999, Europol commenced its full range of activities.

'Europol is the result of a decision by the political and legislative bodies … its activities are legally frames and bound to certain areas of investigation. Europol's operations are also supervised by the political representatives of the EU' (Deflem, 2007: 21). The autonomous framework of Europol embodies the means and objectives of its policing activities, counterterrorism programs and aims at efficient information sharing among police on professional standards. Similar to the Interpol, Europol is not a supranational

police force but another international cooperative network coordinating policing among EU member states. Limited to the EU region, Europol has a stronger nationality resolution, which ingrains and harmonises common European concerns on terrorism or other crimes even though there are national variations of counterterrorism policies. The 9/11 events motivated Europol to improve legislations against terrorism. Few months after these attacks, Europol created a division specialised in counterterrorism task force, which soon became part of the Serious Crime Department. This task force became again a separate entity after the Madrid bombings in 2004. In 2002 the EU Council defined terrorist offences as:

> …various criminal activities, such as attacks upon a person's life, kidnappings, and the destructions of public facilities, that are committed with the aim of seriously intimidating a population, unduly compelling a government or international organization from performing or abstaining from any act, and/or seriously destabilizing or destroying the fundamental structures of a country or of an international organization' (Deflem, 2007: 21-22).

This framework permitted security forces of EU member states to join forces and create investigation teams. The same decision frameworks endorsed an elaboration of Europol's international counterterrorism cooperation with police and security forces outside the EU. Other measures included provisions like the European Arrest Warrant (EAW), which allowed the giving out of wanted persons directly from one judicial authority to another of any of the EU states.

A number of difficulties affect the effectiveness Europol in particular cases the cross cooperation between intelligence and police (Deflem 2007). Police look for information that enables the prosecution of the suspects. Meanwhile intelligence agencies are interested at a different kind of information without any intention for prosecuting the individuals. Difficulties arise because of language barriers and jargons when the police try to infiltrate particular groups that may be of concern (Kupchinsky, 2004). However, the multicultural organisation confronts problems related to linguistics, culture, jurisdictions and politics form part of the EU countries identity (Tak, 2000). 'Islamic extremist terrorism' or 'fundamentalist jihadist terrorism' are at the centre of attention and Europol is aware that this inclination of extremism varies across nations and how countries confront problems created by terrorists (Deflem, 2007). However, being prepared to mitigate different typologies of terrorism indicates the resoluteness of policing at a national and international level.

Conclusion

Aiming to oust the government and seize power, terrorism uses violence as its political mallet. Terrorist organisations have repeatedly comprised individuals from different social and educational backgrounds. This indicates that terror can be rooted from different social classes as a reaction to political failure or an over-reaction of militant groups. These variables affect the search for a definition of terrorism, which remains a subject of endless discussions and controversies. 'It can be predicted with confidence that the disputes about a comprehensive, detailed definition of terrorism will continue for a long time … and they will make no notable contribution towards the understanding of terrorism' (Laqueur, 1987:72). Lacqueur's observation is valid for today's perspective on terrorism studies.

Sociological, psychological and criminological studies explored different theories and perspectives to find out common denominators that researchers can generalize to terrorism. However, the insularity of terrorist groups and individuals makes it more difficult to predict future moves. Intelligence, collaboration and networking, particularly between international law enforcement entities, remain the resources to find out the possible terrorist moves and react accordingly in a controlled and timely manner. As for academics, it is important to keep in contact with grievances expressed by different communities and research how and why people feel the need to kill for a cause. Pragmatic research provides realistic pathways that enable the reduction and eventual cessation of these hostilities without resorting to excessive mitigating policies (Pyszczynski, et al. 2009).

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CHAPTER 3

Balancing between Patronage and Professionalism: an ethnographic account of lawyering in Malta

David E. Zammit

1. Introduction

Legal anthropology, the so-called 'centaur discipline' (Geertz, 1983) which uses the insights and research methodology of social anthropology as its privileged medium for studying 'law', has increasingly been converging with criminology. This convergence is revealed by the increasing number of studies which seek to explore the *terra incognita* between the two disciplines (Parnell & Kane, 2003; Penglase, Kane & Parnell, 2009). This involves reciprocal learning and cross-fertilisation not only in terms of theoretical frameworks and in the crafting of research agendas, but also in developing more sophisticated methodological approaches; which draw upon the subtle and versatile armoury of ethnographic research techniques to develop new and enhanced ways to study crime. This chapter draws upon my fieldwork among Maltese lawyers operating mainly in the private law field and conducted in the mid-1990s in order to: (1) show how anthropological research can be usefully employed in order to explore how legal professionals carry out their work in the context of a modern Mediterranean society with a complex bureaucratic state apparatus and (2) suggest, mainly by way of insinuation, that similar research should be conducted in relation to the key actors in the field of criminal law, including particularly: "criminal" lawyers, adjudicators and police officers.

Although it is a professional activity which is regulated by a code of ethics and which is the subject of intense scrutiny by lawyers themselves, this chapter aims to explore how lawyers perceive and construct their role in 'legal representation'; itself understood as a series of activities which must be contextualised to be properly understood. The power of the ethnographic methodology is shown to lie precisely in its ability to contextualise the performance of professional activity in terms of what Malinowski (1961) called the "imponderabilia of actual life", which can only be witnessed by the participant observer in a specific local setting. Thus this chapter shows how a set of practical dispositions (Bourdieu, 1990) motivates how Maltese advocates symbolically organise the space

of their offices, craft their professional personas, present themselves to clients, move about the law-courts and interact with their clients. By focusing on these dispositions, it is possible to show how values of professionally autonomy are practically interpreted, embodied and mediated and how in the process lawyers compromise with the need to live up to other values based on clients' expectations that they act as their patrons. This finding helps explain information derived from semi-structured interviews with lawyers, which suggests that the way in which they understand and respond to clients' narrative accounts of 'the facts' is profoundly influenced by the perceived 'Patron/Professional' dichotomy; indicating that these dispositions might influence the process by which lawyers elicit and interpret the 'facts' and perhaps even the legal rules themselves. Finally the uses of such ethnographic research methods for criminological research are outlined.

2. The Professional Ideal

Codes of professional ethics and laws regulating advocates' fees help constitute the public face of the legal profession. It is here that the professional ideal finds its purest and most abstract expression. This takes the shape of an emphasis on detaching lawyers from clients' pressures by ensuring that the interests involved remain distinct. Thus lawyers' fees are regulated by an official system of tariffs.[1] In terms of this system, the fee is fixed automatically according to such factors as the value of the object of the suit, the procedural acts filed and the number of decisions contained in the judgement. It makes no difference to the fee whether a favourable decision for the client is obtained or not. While there are certain exceptions to this system,[2] the general principle is maintained and this serves to detach lawyers from their clients since they do not have a direct financial interest in winning the case and often do not determine the amount of their own fees.[3]

Similar principles are enshrined in the 'Code of Ethics and Conduct for Advocates' published by the Commission for the Administration of Justice. Particularly significant for the purposes of this thesis is how this code prescribes the task of legal representation in civil litigation:

"An advocate who appears in court or in chambers in civil proceedings is under a duty to say on behalf of the client what the client should *properly* say for himself or herself if the client were allowed to plead for himself or herself and possessed the requisite skill, knowledge and legal training" (Rule 11, Part IV, Cap 1).

1 Contained in Schedule A of the Code of Organisation and Civil Procedure (Laws of Malta: Cap 12).

2 No tariff regulates the giving of legal advice. Also, since 1996, lawyers and clients may opt out of the tariff system if they agree on a different fee. However, the fee charged remains subject to revision by a special Committee if the client considers it unreasonable and demands review within a month.

3 It is forbidden to agree to share in the profits of litigation by both the Maltese Civil Code and the Code of Ethics and Conduct for Advocates.

By requiring advocates to restrict their representation to what clients should 'properly' say, this code prevents their complete identification with clients; requiring them to exclude what clients would like to say but properly should not.[4] This institutionalises the professional separation of lawyers from clients, obliging them to decide how far to go in their representation.

This stress on professional detachment affects the way lawyers view clients and their stories. This was made clear when in 1996 I interviewed the then President of the Maltese Lawyers' Association, the: '*Camera degli Avvocati*'. He made a distinction between the 'case', which the lawyer is duty bound to present to the court as effectively as possible, and 'facts', which are 'in the hands of the client' to prove. He observed that the stories clients tell under oath and in the courtroom context are often very different from the ones they originally told their lawyers. Consequently facts should emerge in the court-room setting of a '*viva voce*' hearing; which he called a 'search for truth' undertaken before the judge. He therefore objected to the use of written affidavits as an alternative;[5] claiming that they tempted lawyers to write their clients' stories for them and risk perjuring themselves. He asked: "Why should a lawyer be placed in an intolerable position where he knows that changing a word in a clients' affidavit would lead him to win the case?" He also observed that he had never witnessed a signature in the absence of the person concerned.

Thus the professional ideal sees legal representation as a process where the lawyer's version of the issues involved is separated from that of the client. Lawyers are concerned solely with the 'case'; consisting of the legal arguments and claims to be made.[6] The proof of the 'facts', on the basis of which these legal arguments are raised, is the clients' job. This distinction draws a conceptual boundary between the domain of the client, which is one of potentially changeable oral stories of dubious credibility, and the domain of the lawyer, which is one of legally valid writing. By drawing such a boundary, lawyers escape responsibility for proving their clients' stories, confining their role to legal argumentation. Maltese lawyers asserted their detachment through expressions like: 'trying to win the case for the client', implying they have no personal interest in the outcome. They described a good client as one who leaves matters in his lawyer's hands; allowing him to 'guide his walk', or direct the progress of litigation.

This ideal of professional independence is widely shared by lawyers. Thus, other lawyers to whom I spoke claimed to be unconcerned with whether clients tell them the truth or

4 This principle is somewhat diluted in criminal matters, where the Maltese text states that a lawyer should say all that the client would have said in his defence, without including the word 'properly'. However the situation is unclear, since the English text still contains the term.

5 An affidavit is a written statement of the client's version of the facts. They are supposed to be precise reproductions of their stories and clients must confirm them on oath. In the past decade judges are increasingly request the presentation of affidavits instead of hearing testimony '*viva voce*'.

6 Lawyers are prepared to accept more involvement with the facts in criminal cases.

not; as they must represent them on the basis of what they are told, not of what really happened. Detachment from clients' stories implies detachment from clients themselves. Judges, whose role requires them to take this detachment to its logical extreme, claim that:

> "The prudent judge must keep himself detached from friendships and close relationships with persons who are not members of his family."[7]

This ideal is ceremonially invoked when lawyers graduate. In this respect a speech given by Professor Xuereb to law graduands in 1898 resembles those given nowadays. In this speech, the orator emphasises advocates' freedom. He even compares them to: "man in his original dignity" (Ullo-Xuereb, 1898: 9), since they are neither patrons nor dependents. Advocacy is described as '*la professione libera*', or 'the free profession'; a phrase still used by lawyers I interviewed. Thorough legal study is the pre-condition for this freedom:

> "A numerous clientele will come without any difficulty, but only to those who are well prepared, not to those who are most solicitous, to those who show that they are deserving" (*ibid.* p. 11).

Lawyers should not easily trust their clients, nor allow themselves to be guided by them (*ibid.* p. 18). Particularly despicable are lawyers who:

> "induced by need, or by sole love of gain, run after affairs and bewail the loss of their daily bread when the success of a law-suit does not correspond to their desires. This has always been a cause of corruption" (*ibid.* p. 13).

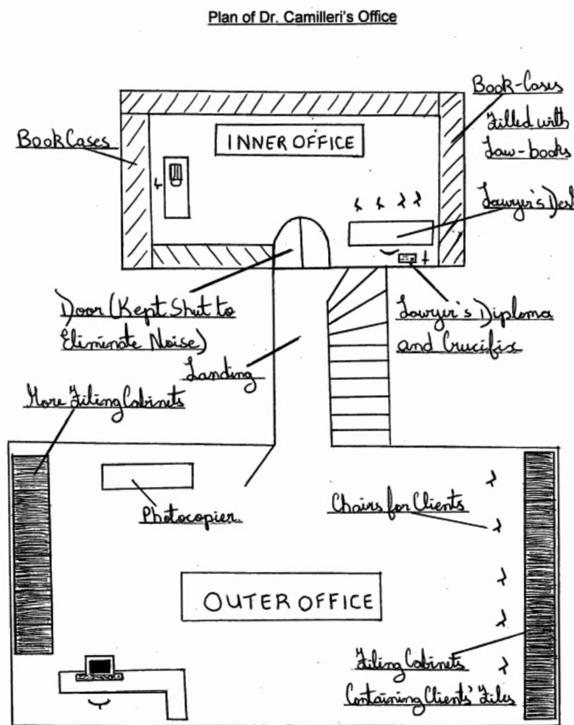
These quotations are enlightening because they give a clue as to the ways in which lawyers seek to live up to their ideals when interacting with clients. This can be seen by focusing on legal offices and court corridors, which are the two domains where lawyer/client interaction mostly occurs.

The organisation of space within legal offices can only be understood if one keeps in mind the desire of lawyers to instil a recognition of their professional autonomy in their clients. This point can be illustrated by the plan of the office of Dr. Camilleri,[8] an established middle aged lawyer with whom I conducted much of my fieldwork. The diagram on this page shows how his professional detachment is spatially encoded through the physical

7 This quotation is taken from an interview with Mr. Justice Victor Caruana Colombo carried on the Maltese newspaper, '*Il-Mument*' in 1997.

8 A pseudonym designed to protect my informants.

separation between the outer office, where clients and their files reside until allowed to present themselves for his inspection, and the inner office; where he sits surrounded by law-books. This institutionalises the distinction between the 'law' and the 'facts', by means of a spatial separation, which must be traversed by clients in order to bring the 'facts' they bear to the lawyer. Lawyers wait in their inner offices and clients must knock and request entry. Also, when Dr. Camilleri needed to look at a client's file, he would ask his secretary to bring it to him through the intercom. Rarely would he go to the outer office to bring it in himself before clients. The arbitrary nature of this division is also revealed when one realises that an established lawyer like Dr. Camilleri needs to refer to clients' files at least as often, if not more, than he does law books. Yet he filled his inner office with law-books and consigned the files to the outer office.[9]



9 An emphasis on clients having to *come* to lawyers, conceived as repositories of legal knowledge, also marks the first steps made by a young lawyer opening an office. It is the pactice for him to sit and wait in the empty office until the first clients appear (Pullicino 1989). While this can take months, the professional ideals do not allow him to do much else to solicit clients.

If the outer office is the domain of clients and their files, everything in the inner office testifies to its role as the domain of the law. There are, first of all, various symbolic barriers which must be traversed on entry. These range from the shut door, which also prevents eaves-dropping, to the paper-loaded desk, which continues to separate clients from lawyers. The symbolic importance of the desk was revealed to me by the insistence of certain lawyers that I should sit on their side of the desk while they introduced me to clients as a young lawyer.[10] Clients have to hand their papers to lawyers across this desk which is often quite wide and forces them to reach across it.

Moreover, the inner office is replete with objects which make powerful statements of legality, testifying to the extent of the lawyer's legal knowledge and authority. Indeed, the various components of the inner office can be shown to reflect different aspects of the professional identity they convey to clients. Pre-eminent among these are the statute books of the Laws of Malta. These are generally displayed in a cupboard resting against the wall behind the lawyer and above his head. Next to them, are usually framed copies of the diplomas obtained and the professional warrant. Also behind the lawyer, or sometimes on his desk itself, one generally finds a crucifix. As can be seen from the plan of Dr. Camilleri's office, inner offices often contain a number of other book shelves, replete with case-books and old and dusty text-books. The symbolic purpose of these objects is clear from their nature, positioning and use. The framed certificates are, of course, the professional symbols '*par excellence*', which literally inscribe the lawyer's self within the textual domain of the law and officially endow him with the authority to mediate between this written domain and the oral one of clients. The plethora of dusty books reflect the vastness, antiquity and authority of the laws consulted by the lawyer. Their strategic value was manifested when Dr Borg[11] another lawyer who allowed me to conduct fieldwork in his office, pointed to them in response to an attempt by the client to call his authority into question and said: "the reason (why I am giving this advice) is to be found in that big fat book over there."[12] Significantly too, while Dr. Camilleri gets his secretary to bring clients' files over, he often walks over to his book shelves to consult the law-books. Often, he does this solely to symbolically buttress advice already given to clients by showing that it is based on the law.

This symbolic use of law-books indicates that when lawyers present themselves to clients, they invert the theory/practice dichotomy which practising lawyers inculcate into law-students. During my fieldwork I observed how, in the theoretical field of the

10 Indeed, when subjecting law students to an oral examination, lawyers always make sure that a desk stands in between and I have observed them fill it with books and papers in order to further distance themselves from the student, who thus becomes, from their perspective, another client.

11 Another pseudonym has been employed here.

12 As shown by a professional 'in-joke' about a law professor who came to assist another lawyer staggering under the weight of several legal tomes. When told that the case did not require detailed study, the professor said he had not brought the books for consultation, but to impress clients!

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University, lawyer lecturers elevate the importance of practical knowledge over the theoretical knowledge their students possess. When facing clients, however, they emphasise the superiority of the theoretical knowledge contained in the law books above the practical knowledge of the clients. Similarly the crucifix functions to symbolically align the legal realm to the religious one. This endows the lawyer with the quasi-priestly authority of the '*avukat tar-ruh*', making it easier for clients to confide secrets to him and more difficult for them to lie. The presence of the crucifix next to the law-books evokes the same continuum between legal and moral rules which clients evoke in their stories and which lawyers selectively confirm, ignore and deny.

The positioning of these objects is also revealing. By placing the statute books immediately behind and above them, lawyers portray legal knowledge as flowing down from a hierarchically superior position towards the lawyer, who then transmits this knowledge across the desk to his client. This point is confirmed by the poses lawyers favour when they take photographs for public consumption. They almost always make sure that they are either seated at their desk, with the statute books behind them or else have a book in hand, which they are gravely consulting.[13] Thus, the public '*persona*' of the advocate is derived from his professional role as an interpreter of the law.

13 The photos on the following page show lawyers in each of these poses.

3. Crafting the Professional Persona: "A Learned Profession"

Il-Ġens, 8th December 1995

This privileged position as the mediators transmitting hierarchically superior legal knowledge in turn endows lawyers with the ability to produce authoritative descriptions of social reality. Given the explicit recognition of the sovereign status of legal knowledge supplied by the doctrine of the rule of law, lawyers have little doubt about their ability to create superior descriptions of the inferior realm of social facts.[14] Maltese lawyers often double as all-purpose writers cum social scientists.[15] Moreover, the relationship between lawyerly identity and legal texts is so close that the two are often presented as emerging from one another. Indeed, lawyers often present themselves, as part of their presentation of the law.[16]

If lawyers' identity is often conflated with legal texts, this implies they might construct their own physical presence in a manner continuous with the way they organise their offices. Here the analysis follows recent anthropological theory, which explores how the body is trained to unconsciously enact a 'political mythology' (Bourdieu 1997: 69).

14 Bonello (1996) observes: "advocates make a point of knowing everything and learning nothing."

15 The link between the literary activities of advocates and their professional role is made clear by the existence of a "bridging genre" between strictly legal writing and literary compositions, such as autobiographies mixing personal professional life and Maltese social history (Pullicino: 1989).

16 Thus one lawyer inserted a full length colour photograph of himself and his family, accompanied by a c.v. into a set of legal volumes he had compiled and glossed. Also, many Maltese law firms now publish articles and papers giving information about the law on their web-sites, thus simultaneously introducing the firm and the law to the reader.

As Bourdieu observes:

> "One could endlessly enumerate the values given body, made body, by the hidden persuasion of an implicit pedagogy which can instil a whole cosmology, through injunctions as insignificant as 'sit up straight' or 'don't hold your knife in your left hand,' and inscribe the most fundamental principles of the arbitrary content of a culture in seemingly innocuous details of bearing or physical and verbal manners, so putting them beyond the reach of consciousness and explicit statement" (*ibid.*).

It is possible to identify a series of ways by which lawyers seek to incorporate and live up to a professional '*persona*' modelled on the law itself. Particularly noticeable are the clothes lawyers wear in offices and other public settings. They almost always wear suits. The traditional colour scheme, which is still favoured by many lawyers, is a black or dark gey suit, white shirt and grey tie. This colour scheme, which is also maintained in Summer despite its impracticality in a hot climate, serves to visibly distinguish lawyers from laymen. One layman observed that: "you can spot a lawyer from seven miles away."[17] During my fieldwork, I grew so used to looking out for the dark suits of lawyers that often I unconsciously ignored lay acquaintances who were dressed differently and who therefore fell outside the legal field of vision! Thus the lawyer's dark suit evokes the serious and traditionally authoritative nature of law. Similar motives also explain the serious facial expressions lawyers usually favour. All these devices are meant to endow the lawyer with the authority and dignity of the law, ensuring that he conforms to a particular image of the legal system as conservative, learned and serious.

Lawyers seemingly ignore the strategic potential of their dress and office. Sometimes they even joke about them, as when they laughingly refer to their 'dusty' or 'paper-filled' office. However the relaxed ease with which they treat what are for many clients solemn symbols of authority, itself tends to de-familiarise them. Moreover, the strategic potential of the legal office and professional '*persona*' form part of the advocate's stylistic repertoire, to be utilised when necessary. Indeed, one lawyer told me that he was buying particularly dark-rimmed glasses so as to be able to give those 'sudden sharp glances' which serve to discipline clients. Thus these devices enable lawyers to rapidly shift from 'humane' to 'legalistic' client-handling styles.

Professional detachment is also clearly incorporated by lawyers through their posture and gait. Lawyers spend a lot of time walking; either in the context of the court-corridors, or between the court-room, other public institutions and their offices.[18] During these

17 Similarly, a law-student joked that he was tired with having: 'all this blackness shoved in my face'.

18 All of which are usually located in the city of Valletta.

walks, their professional '*persona*' is subject to the scrutiny of a larger and more critical audience than occurs in their offices. In these contexts lawyers adopt a special style of movement which serves to dramatise their autonomy. On weekday mornings, lawyers and notaries can be seen making their way down the streets of Valletta towards the courts or their offices. They generally occupy the centre of the street and look straight ahead, walking rapidly forward and avoiding the possibility of catching anyone's eyes. This style of movement often means that the greetings of friends or clients are ignored. Laymen are accustomed to such behaviour from lawyers, and explain it as a result of their 'busy work' or their 'bad manners', depending on the informant. Thus the professional detachment of lawyers is incorporated through adopting a style of movement which makes it difficult to engage them with the ordinary greetings employed in social life.[19]

This style of movement is so characteristic that it is used to distinguish lawyers from laymen when entering the court. People entering the courts are usually frisked by a court usher, while lawyers are not subjected to this examination. As I personally discovered during my fieldwork, this examination is avoided by marching straight through the entrance, ignoring both the court ushers as well as any queues of 'ordinary people' which might exist. The resentment this can cause is revealed by one letter recently published in a local newspapers, which complains about the way lawyers: "simply walked in through a side-door, their heads high in the air *as if they belonged to a different species*."[20]

To understand why lawyers incorporate professional autonomy through their 'straight walk', one has to keep in mind that the Maltese metaphors used to portray upright professional lawyers are premised upon a conceptual opposition between corrupting social entanglement and honourable moral autonomy.[21] Lawyers face this threat of entanglement

19 However, its contrived nature is revealed by the reaction of a client to one young lawyer I know who waved at this client on seeing him in the street. Apparently, a look of incredulous amazement passed across this man's face and he backed away in a flustered manner.

20 A reference is lacking, since I tore out this letter and did not record the date. However, the newspaper is the 'Times of Malta' and the writer: 'Alex Caruana' from St. Julian's. The text runs: "Recently I had to visit the court. On entering I had to walk through a detector and undergo physical frisking by court employees. Had this procedure been applied to everyone, I would not object but all lawyers, except one, simply walked in through a side-door, some carrying heavy bundles of papers or bulging brief-cases, their heads high in the air as if they belonged to a different species. Dozens of police officers followed suit and nobody dared stop them. My advice to any would-be terrorist: Find a hard-up lawyer to carry whatever you want to carry inside for you -- your only problem would be to find a hard-up one!"

21 The link between honourable moral purity and individual autonomy is explicitly made in metaphors such as that of '*il-mixja*' (the walk). This can be used to refer to a person's 'walk through life', (i.e. her life-course as shaped by herself) or to the way a person 'walks with others' (i.e. the way in which she treats others). The significance of talking about an individual's walk in the context of a morality of autonomous self-directed behaviour lies in the way this metaphor highlights individual liberty, the ability to choose one's own route, as a precondition for morally correct action. Not surprisingly, entanglement in social obligations is described by the passive verb: '*inqabad*', which means that one has "got caught" and refers to such other socially disapproved states as falling foul of the law, being caught in a lie or being an unmarried mother. Thus one

Clutching the Lawyer/Politician:
"The Malta Independent": 17th November 1996

in the shape of clients' efforts to involve them in patronage relationships. This is not just a matter of words, as some clients actually clutch at their lawyers; physically impeding their movement so as to ensure that they are listened to.[22] Moreover, the lawyer's walk is comparable to that of other Mediterranean 'men of honour' observed by anthropologists.[23] In such ways, lawyers project their honourable refusal of social entanglement. Their honour is based on a dramatic display of single-minded allegiance to the law, even if it leads them to ignore their own clients. Thus, when a lawyer encounters a client, he generally strides ahead, while the latter strives to catch up with him. This also emphasises the client's role as a follower who has to tread in his lawyer's footsteps, conforming perfectly to the way in which legal representation is usually imagined. Indeed, clients complain that they have to 'run after' lawyers to get their attention, while lawyers claim that the lawyer should '*imexxi l-kljent*', or 'guide his client's walk.'[24]

contradiction which runs through Maltese culture is that between honourable individual autonomy and the acknowledged social utility of creating networks of personalised obligations with others

22 The photo on the next page shows the previous Prime Minister and Leader of the Nationalist Party, a lawyer/politician, being 'clutched at' by an elderly woman who is one of his supporters. The posture of both parties is typical of that of many lawyer/client encounters I observed. Note that the woman's affectionate gesture still interrupts her lawyer's forward walk.

23 Compare the gait of Kabyle men of honour analysed by Pierre Bourdieu: "The man of honour walks at a steady, determined pace. His walk, that of a man who knows where he is going and knows he will get there on time, whatever the obstacles, expresses strength and resolution, as opposed to the hesitant gait (*thikli thamahmahth*) announcing indecision, half-hearted promises (*awal amahmah*), the fear of commitments and inability to fulfil them" (Bourdieu 1997: 70).

24 The only case I know in which the client appeared to direct his lawyer's walk occurred during the recent

While lawyers try to convey a sense of their professional autonomy, they are also aware of the need to avoid alienating clients. Their attempts to simultaneously achieve both aims are revealed by the way lawyers move in the corridors of the court building.[25] Lawyers emerge from court-rooms, head straight towards particular clients or other lawyers with whom they have some business. After a very short time talking, they abruptly depart, heading straight towards another encounter. Alternatively, they might go towards a particular court-room, to see which stage proceedings have reached, or look at the notice-board of one of the courts or leave the court building altogether. What seems significant about this style of movement is that interactions are so drastically reduced that it is very easy even for close friends to take offence at what they feel is highhanded treatment. This contrasts with the relaxed behaviour of lawyers on entering the 'Advocates Chambers', which are the lawyers' quarters to which the public has no access. Once they enter these rooms, lawyers sink contentedly into sofas and start gossiping about the latest football results or Italian politics. Yet, if the same lawyers meet in the court corridors a moment before, they exchange a few short words and then depart.

This interactional style seems to be an intentional compromise between lawyers' need to service relationships with clients and the desire to display their professional independence before them. Lawyers make a point of talking to clients, but they are also quick to cut off the conversation in order to 'walk straight' towards their work; emphasising their professional detachment. This shows how lawyers are obliged to compromise between the opposed demands of patronage and professional detachment; a point which will be further explored in the next part of this chapter.

4. Two Styles of Representation

While the lawyers interviewed all proclaimed the ideal of professional autonomy, they also had to cope with their client's efforts to create patronage relationships with them through story-telling. To comprehend their reactions, the way lawyers talked about their work will now be discussed in the context of my own observations of lawyer-client interaction.

Lawyers related variations in story-telling to the nature of the case and clients' social backgrounds. They said family law cases generate the longest and frankest stories. One experienced lawyer told me that in such cases she was expected to be a confessor since clients wanted advice about intimate personal matters. She derived this from the loneliness

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trial of an alleged major drug dealer. Television footage of his entry into court showed this man walking behind his lawyer with his hand placed imperiously on her shoulder. However it is clear, in the context of this analysis, why this gesture was used to indicate the clients' superior power.

25 This is because of the liminal position occupied by the court corridors within the overall organisational structure of the courts. Court corridors are public spaces which are clearly distinct from the controlled environment of the court-room, while they do not have the anonymous informality of a public street, or the secrecy of legal offices.

of these clients who had no one else to confide in, especially because certain matters could not be shared with family or friends. She also distinguished 'business' or 'more educated'[26] clients from others; arguing that the latter are readier to confide:

> "You've got to remember that here in Malta being a lawyer still carries quite a lot of weight. There is a difference between what I call the general public and, for example, businessmen. Socially, if they are the general public, they feel that if you're not superior, at least you're more knowledgeable. A business person wouldn't feel that way; especially a person who has more than a grocer, if you know what I mean, who has a certain level of business. So when a client comes for an opinion, you're his lawyer. I've noticed that even the fact that I'm a woman comes secondary with the general public. With business people, it's different. With them, it's more like it's the other way round and with professional classes."

This lawyer confirmed my observations that rural/working class clients are keenest to tell stories placing themselves in a morally positive light. However because they interpret these stories as attempts to confide reflecting a vulnerable social position, lawyers do not always perceive that they might form part of the strategies by which their clients try to control them. However, lawyers explicitly spoke about the threats stories posed to their detachment. The lawyer quoted earlier observed that this is necessary:

> "Because if you're not detached, first of all you become too emotional and you are not crystal clear when you are pleading in court. Secondly, clients sometimes lie to you and you've got to be careful not to fall into the trap of feeling offended, or stuff like that. It's all a question that if you're detached, you work better. You see lies. You see your way ahead of you clear. You can deal with the other person. For instance, in family law, let's say she says that her husband beat her. This is something which me, personally, I suppose most people... It's not something which you enjoy hearing. Now, often, in law, if you want things to turn out well for your client, you have to know how to compromise. For example, if you're owed a hundred pounds and you manage to get eighty out of court, take the eighty and be happy with it. So, with my clients, I try to remain detached. Because let's say its my client and I know he beat her up. That would make me really angry... Whilst if you're detached, you look at things from a different angle and say: 'no, it's better if you get eighty instead of a hundred and miss out on all that aggro."

26 I place business and educated people in separate categories. Yet lawyers conflated the two.

One should here note that this lawyer attempted to legitimise her detachment on the grounds of the unreliable character of clients' stories and their best interests. Other lawyers to whom I spoke also stressed the difficulty and importance of detaching oneself from the client's view of the case. A lawyer with a rural practice told me that clients often don't understand the purpose of their own law-suits; going to court against the advice of their lawyers and then blaming the latter when they lose them. This illustrates the difference between clients' perceptions and those of their lawyers; since most clients do not imagine that lawyers would defend their cases unless they believe a successful outcome to be probable. By contrast lawyers insisted that the law-suit belongs to the client, arguing that one should let particularly unreasonable clients do as they please, without paying attention to them.[27]

While lawyers accepted the necessity of making some concessions towards confirming clients' narratives, they usually presented this as a matter of paying lip-service to the client. Thus one lawyer observed that: "you have to know how to put things to clients so as to avoid offending them." When asked how clients reacted to her attempts to detach herself, another one claimed she lived up to their expectations by staging an aggressive court performance; which is how she learned to 'play the game':

> "You notice that your clients enjoy having you act a pantomime. So you act a pantomime, although you know that you're not making sense legally."

The most significant disagreement among lawyers concerned the extent to which they should listen to clients' stories. While some claimed that it was necessary to cut clients short, others argued that one should dedicate extra time to listen to them. One interviewee who favoured the former approach, observed that a client he had charged for this extra time had filed a complaint against him for over-charging. By contrast, the earlier quoted lawyer said:

> "I have problems with that, personally. I tend to spend too much time on these individual clients. But I find that although it looks like a waste of time, long-term it usually pays. Because they look on you with a certain amount of ... respect. Because you give them respect. I think basically there are two different styles. Because, for example, Dr X (here she mentioned another lawyer who worked in the same law-firm), that's the way he does

27 The way lawyers refer to cases illustrate their distance from client's stories. In fact, lawyers never evoke these stories, referring instead to: (i) the legal issues involved (i.e. a 'separation' case); or (ii) the financial rewards they would get from them (i.e. a "LM1000 case); or (iii) their political implications (i.e. a politically 'hot' case); or (iv) the name of the client.

> it. He doesn't take time. He does this, then that and the other. I tend to do a lot of family stuff. Those, you can't. You have to give them their time. In fact, we give appointments of a quarter of an hour or half an hour. Those, immediately we give them half an hour. Because otherwise forget it. They have a real lot to tell you anyway. And you can't chuck them out, you know. By contrast, traffic cases...and even with those you have to be careful."

This confirms my own observations. I have noted two main styles by which lawyers seek to handle their clients' stories. Adherents of the first style stress their position as independent professionals. They do not waste time in listening to all the niceties of their clients' stories, but tend to cut them short with a few abrupt questions. Such lawyers avoid small-talk and casual conversation with their clients and emphasise speed and efficiency in handling cases. They are more likely to assert their own authority as persons who know the law and expect clients to acknowledge this by respecting their silences and allowing them to do the questioning. Lawyers who adopt the second style are more gregarious; dedicating time to listening to clients' stories and being prepared to confirm them when necessary. They do not emphasise the difference between themselves and their clients and are more sympathetic to them. These two styles broadly correspond to the distinction between 'humane' and 'legalistic' advocacy. They express different ways of understanding the task of representation. While 'legalistic' advocacy emphasises the professional autonomy of the lawyer, 'humane' advocates act more like their clients' patrons. Thus the tension between patronage and professionalism seems to explain lawyers' characteristic attitudes to client story-telling.

Here I must observe that, despite my efforts to do so, it often proved difficult to definitively classify lawyers in terms of the client-handling style they adopt. It seems most lawyers select characteristics of both styles and mix them together in varying proportions; so that the differences between them are more a matter of degree than of kind. Both 'professional' and 'patron' lawyers deny that it makes any legal difference whether the lawyer devotes much time to listening to the client or not. The claimed advantage of listening to clients' stories is that this satisfies them. Moreover, adherents of both styles assume that their occupational role endows them '*a priori*' with the honour of the legal system itself. They both react negatively when clients try to display their own knowledge of the law before them.[28]

Even 'professional' lawyers often waive payment for their legal services, ensuring that

28 As a rule, clients' efforts to 'wave the law' at lawyers are quickly countered. At best, lawyers will qualify their agreement with the clients' views by stating that they are 'obvious' or 'natural', implying that they are not saying anything particularly brilliant. Often they ignore clients' attempts to assert legal knowledge, or point to defects in their reasoning which invalidate their arguments. A common strategy is replying with jokes or proverbs to clients' efforts to speak in a legally correct manner.

clients feel personally obliged towards them. Moreover they also use narratives to create a shared moral consensus with their clients, when this is necessary to ensure they follow their advice. Conversely, 'patron' lawyers at times display incredulity to their clients' stories. I have observed the most 'humane' lawyers suddenly assume a sharp, questioning, tone of voice in order to discipline their clients. As one young lawyer put it:

> "The older lawyers don't want to get to know clients and listen to their stories. They want to get rid of them and try to put them off. I'm different. I enjoy talking and I've discovered that clients feel relieved when they realise that their lawyer takes an interest in their lives and their hobbies. The problem I have is that my clients put more pressure on me than they do on the others. But I'm learning how to shout at clients who are too intrusive."

Thus 'patron' lawyers maintain an ability to assume a professional '*persona*' implying distance from and superiority over their clients. In order to do so, they employ all the techniques of self-presentation previously analysed. This confirms that most lawyers strategically balance between the opposed demands of patronage and professionalism.[29]

This raises the question of the costs and benefits which guide the selection of either of these styles of handling clients. Clearly the benefits of the 'professional' style are efficiency and speed. 'Professional' lawyers run less risk of getting entangled in their clients' stories and are freer from pressures which take up their time and threaten their freedom to organise their work as they deem fit. Such lawyers do not have to justify themselves before their clients and can easily give them unwelcome advice. Given the advantages of this style, it may seem strange that lawyers do not always adopt it.

However important considerations militate against the adoption of this style in its full purity. Firstly, clients want nothing more than to enjoy a personal relationship with their lawyers. Thus lawyers who are too professional risk alienating their clientele. The drawbacks of such an approach are illustrated by one case I observed, in which a notary's efforts to avoid endorsing his client's story led him to couch his advice so abstractly that his client did not understand it. The difference between clients' desires and the professional ideal is revealed by attitudes to affidavits. As has been seen, Maltese lawyers complain about being over-involved in the drafting of affidavits. By contrast, clients grumble that lawyers do not pay

29 I heard both lawyers and clients pass ironic comments about the discourse of honour/patronage. One old man told his daughter, who was Dr. Camilleri's client: "listen to the lawyer, because he will take proper care of your case *in order for him to make more money*." When I asked another lawyer what it means to be an '*avukat tar-ruh*', he said: "it means that you ask your clients for your fees straight away." In both cases the irony plays on the discrepancy between the outward affectation of concern for clients required by the 'patron' style and the actual distance from clients engendered by professional detachment, reflecting lawyers' efforts to cope with both.

enough attention to the affidavits they write. One client observed that this should be drafted between lawyer and client. Another said that after she had spent a whole night writing her affidavit, her lawyer had barely glanced at it. Thus lawyers must provide some confirmation of their narratives if they wish to satisfy their clients and to persuade them to follow their advice.

Another motive which forces lawyers to compromise their stylistic purity is that in Malta, as in Greece (Du Boulay 1974), there is a very tightly controlled economy of secrecy. Knowledge about personal matters is only told to a few individuals with whom one enjoys a close relationship. For this reason, lawyers who emphasise their professional distance from their clients risk being obliged to operate in ignorance of the real facts of the situation. Although lawyers claim not to be concerned with the truth of their stories, in practice the biggest confirmation of their honour and power is their clients' readiness to confide their secrets in his care. A lawyer who is misled by his clients risks being made to look ridiculous in court. It becomes impossible for him to fulfil his professional role of controlling the evolution of legal proceedings. This is why lawyers who want to be 'respected' by their clients have to give them 'respect' by listening to their stories.[30]

There are also pull factors which encourage lawyers to create patronage relationships. Certain rewards of patronage are inherent in the relationship itself. For instance, in his autobiography, one Maltese lawyer remarked that:

> "The clients who come the way of a newly fledged lawyer are not the sort that bring him lucrative work, but they start to give him some practical experience and also, gradually, some very much needed self-confidence and encouragement" (Pullicino 1989: 43).

Thus patronage can supply the self-confidence on which a successful court performance is based. Lawyers may also desire to create patronage relationships in order to convert them into social power in other, non-legal, spheres of life. The standard case is that of party politics, where successful professionals use their network of clients to win the necessary votes for election to Parliament.[31] One should also observe that the lawyer/patron's reputation may be greater the lower the position occupied by his clients in the social spectrum.[32] Consequently, it is not surprising that even the most dedicatedly

30 See the interview with the female lawyer quoted earlier on in this section.

31 Paul Sant Cassia has described this as the double process of the politics of 'professionalisation' and the professionalisation of 'politics'.

32 Mary Douglas has argued that areas where the social structure is poorly articulated are also those from which informal powers which create disorder are thought to derive (Douglas 1988: 101). She contrasts these powers to the explicit and articulate powers wielded by those occupying clearly defined positions of dominance in the formal social structure. Thus a lawyer/patron who attracts criminal clients located outside

professional lawyers adopt features of the 'patron' style.

However patronage also carries its own cost for the lawyer. Apart from the increased time that has to be spent to listen to their stories, lawyers who act as their clients' patrons run the risk of becoming overly subject to their pressures to act unprofessionally. Rather than being '*avukati imqabbdin*', or 'lawyers who have caught on to a large clientele,' they find that they themselves '*jinqabdu*', or 'get caught' by their clients. Increasingly such lawyers become associated with their clients in the popular view. After all, patronage forces the patron to pay lip-service to the discourse of mutual honour on which his relationship with his client is based. This exposes him to the accusation that he is as corrupt/evil as his client. Indeed Maltese lawyers often find it impossible to express an opinion about some alleged wrongdoing, because a client might be involved.

These considerations explain why most lawyers cannot afford to adopt a client-handling style based wholly on patronage or professionalism, but must attempt to balance between the two. Thus both lawyers and clients have to try to square a circle in order to achieve their respective purposes. Clients who want to act autonomously feel that they have to create a personal relationship of dependence on lawyers to do so, while lawyers who want to act as independent professionals have to adopt many of the traits of patrons.

There also appears to be a relationship between the client-handling strategy adopted by lawyers and their occupational status. While the lawyers whom I observed adopting the 'patron' style were all sole practitioners, those who belonged to large law-firms tended to adopt a more 'professional' approach to clients' narratives. Here it is useful to refer to an analysis I had carried out of the occupational distribution of Maltese legal professionals back in 2001 (Zammit, 2001). This showed a growing division between those lawyers who are employed in firms, specialising in various branches of the law and sole practitioners who mostly specialise in social networking. The latter focus on attracting a heterogeneous clientele by penetrating various peripheral regions. The greater attentiveness sole practitioners display towards clients' stories seems to be a consequence of the importance they give to satisfying the diverse expectations of different clients, whom they seek to attract on the basis of their personal qualities. By contrast, firm lawyers cater for a more standardised clientele, which reflects their more specialised legal practice. They are therefore less inclined to act as their clients' patrons.

5. Ethnographic methodology and how it could help criminologists

This chapter has drawn upon anthropological research in order to seek to understand how Maltese lawyers perceive and project their role in legal representation. In order to do so, it initially focused on the professional ideal which is the official self-description produced

formal social hierarchies is also tapping the invisible and inarticulate power which they possess and uniting them to the explicit and formal powers he already has.

by lawyers. Particular attention was paid to the way this ideal is reflected in the spatial organisation of legal offices and conveyed through various practices by which lawyers present themselves as incorporating the law when interacting with clients. The strengths of such an approach to the social role of lawyers are, firstly, that it clarifies the non-verbal backdrop in which most lawyer-client interaction occurs, complementing accounts of clients' story-telling. Secondly, such an approach exploits the unique anthropological capacity to analyse symbolism. The organisation of legal offices, in particular, provides a useful vehicle for reflection on the various components of lawyers' identity and how they are combined in practice. Having outlined the professional ideal, the next section looked at how the compromises, which the practical exigencies of legal practice compel lawyers to adopt, lead them to re-interpret this ideal. This analysis revolved around extracts from my interviews with lawyers together with my own observations. Two distinct representational

Depiction of lawyers taken from Malta Chamber of Advocates webpage in 2013. http://www.avukati.org/home.aspx

styles were identified, which reflect different reactions to clients' narratives characterising different types of lawyers. The costs and benefits of each style were discussed and it was argued that most lawyers strategically balance between them; in the process walking the tightrope between patronage and professional detachment.

While this chapter has argued in favour of greater resort to ethnographic research methods within criminology, it is important to point out that in the writer's opinion these methods work best if their limitations are understood and they are employed in conjunction with (and not as a replacement for) other research methods, particularly historical, sociological and statistical ones. Thus one of the biggest drawbacks of an

exclusive reliance on the ethnographic perspective is that in its traditional form it tends to exclude historical processes from its field of vision, replacing them with a reliance on the "ethnographic present". Thus one of the historical processes which could only be hinted at in the context of this chapter is the feminization of the profession, which was already well under way in the period when fieldwork was conducted (Zammit: 2001). In the mid-90's, female lawyers in Malta tended to practise in relatively restricted fields, such as family law and the public image of the legal profession was still dominated by a few high-profile male professionals. In the intervening twenty years, the professional context has changed radically and female lawyers now have a much higher profile than they did back then. This is also suggested by a still photo shot taken from a flash animation which forms part of the Malta Chamber of Advocates, website[33] and which shows a male and female lawyer, standing side by side and facing the future in solidarity.

Another methodological drawback of the ethnographic methods employed in this chapter is that, due to the time required and the ethical issues at stake, intensive participant observation on lawyers and clients could only be carried out in the context of two or three legal offices. The resulting account can easily be accused of over-generalising in the sense that: (1) it is premised on the existence of a relatively homogenous group of Maltese lawyers who all share similar ways of understanding their professional role and ignores the internal differentiation of the Maltese legal profession and (2) it is not clear to what extent the attitudes and dispositions described in this chapter are characteristic only of Maltese lawyers or of lawyers throughout the world. A proper response to these criticisms would require a much more thorough discussion of legal sociological, historical and comparative law issues than could be provided here. However one should note that the main aim of this chapter is to show how, in the context of Maltese lawyering, particular professional understandings of their social role are reflected in the dispositions with which lawyers approach such tasks as the organisation of their office space, the crafting of professional personas and their interaction with their clients. It is only after such a connection has been made that one can question whether this model is generalizable beyond the narrow context in which it was observed.

Ethnographic methods are helpful because they can facilitate a kind of tectonic study of the legal system, revealing hidden faults and stress-points beneath the formal façade. Criminologists could employ such methods in order to explore the gap between the formal and informal aspects of the legal system, between the 'law in the books' and the 'law in practice'. By using these methods to contextualise discourses and practices within institutional settings such as the prison, the court and the police station, it should be possible to match what people say with what they actually do and in the process obtain a kind of social understanding which is impossible to obtain purely on the basis of research which is textual, statistical or even interview-based. To give just one example

33 http://www.avukati.org/

of the possible uses of this approach, Daniel T. Linger (2003) has used these methods to bring out the hidden parallels between gang rapes in modern post-military Brazil and the repressive practices in which the police engaged under the dictatorship. He argues that:

> "*wild power*, the cardinal repressive practice of the dictatorship, survives in *zones of transgression* located on the margins of the Brazilian state's authority and in the recesses of everyday Brazilian life" (Linger, 2003: 100).

Linger succeeds in revealing disturbing similarities between legal and illegal modes of punishment because he tries to reach a dispassionate understanding of the symbolism behind the practices involved in each case and in the process also explores the iconography of popular Brazilian songs. This attempt to understand the symbolic meanings which motivate practical actions is what lies at the heart of ethnographic research and connects Linger's analysis to the one conducted in this chapter.

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CHAPTER 4

Social Class and Crime in Malta

JosAnn Cutajar

Introduction

Croall (2011) sustains that crime and victimization are often associated with lower class people in certain branches of criminology and popular discourse. This behaviour is often blamed on individual pathologies and deviant subcultures. Criminological studies and the media sometimes tend to forget that different social classes have the opportunity to commit different types of crime. At the same time, not all social groups are made to answer for their actions, as will be argued in this paper. Scientific and media discourses tend to associate crime with one class, neglecting the crime of the middle classes, the wealthy and the powerful.

This chapter will set out to debunk the myth that there is a criminal lower class preying on the rest of society. We will start by taking a cursory look at some of the theories which drew a connection between crime and the lower social classes. In the second section of this chapter we will then move on to analyse different forms of white collar and corporate crime. The third section will focus on delineating which social groups end up in prison, and for which type of crime. This is followed by a section which will look at what type of crime is reported to have been committed in different parts of the Maltese Islands, with a short analysis as to why different types of crime take place in different social milieus. Another section will take a look at the role the media plays in generating, sustaining, shaping or changing the relationship between social divisions, inequality, crime and victim status.

The objective of this chapter will be to demonstrate that the definition of certain types of crime is contested, and this contestation is often reflected by the media when discussing "signal" crimes. Greer (2007, p. 28) defines signal crimes as those crimes which affect participants (namely victims, offenders and witnesses) as well as society. Signal crimes tend to be revisited, reactivated and recreated in the media since they are taken to signal failures in key institutions and agencies whose responsibility it is to ensure "public protection".

Greer (2007) maintains that news reporting is selective and tends to represent certain social groups over others. The news production process tends to focus on certain victims and not others, but in so doing, it has an important role to play on the prevailing cultural and political environment. News media might reflect the prevailing cultural and political environment of the day, but at the same time it can change it, as will be shown. News media plays a crucial role in delineating which acts and social groups are "ideal" criminals or victims. In this chapter alleged crimes reported by the Maltese online newspapers published in English will be mainly discussed, and sometimes the readers' comments to certain newspaper articles will be also included.

News coverage of crime tends to reflect and reinforce social divisions and inequalities because it tends to feed on the wider strucures of power, dominance and subjection (Greer, 2007, p. 42). Media debates, as we shall demonstrate in this chapter, are central in shaping popular notions of who can be a criminal or a victim of crime, as well as the definition of what is crime. Media discourse in turn feeds into official discourses of crime. While it helps to shape this official discourse of crime, it also sometimes helps to change how it is defined, as we shall see in the penultimate section of this chapter.

Social class and crime

Social class is given a lot of importance in sociological theories of criminality (Ring & Svensson, 2007). Crime and victimization are rooted in the network of relationships in which people interact, which implicates the structured social inequalities of race/ethnicity, sexual orientation, age, gender as well as social class (among others). Crime however, cannot be linked with one particular social class, gender, race, or individuals with a particular sexual orientation.

Theories of crime try to answer why certain crimes are more likely to be committed by certain individuals and not others; why some categories of people are more likely to commit crime; or why crime is more common in certain locations than others. Biological and psychological theories try to answer the first question, while sociological theories attempt to answer the last two questions (Carrabine, Iganski, Lee, Plummer & South, 2004). Biology and psychology place the causes of crime *inside* the individual, while sociological explanations locate crime in the *social environment*.

In classical theories of criminology, social class was used to explain differences in crime rates between one social category and another. These theories of criminality tend to associate people from the lower social strata with "traditional criminality" (Carrabine et al. 2004). Early criminological theories of crime that linked the lower classes with crime (Croall, 2011) included the Positivist school of thought, which links certain body types with crime (Carrabine *et al*. 2004). Positivism was an early strand of criminology. It has characteristics, namely, that the criminal is perceived to be a certain type of person,

different from the rest of society through body parts, personality, chromosome typing, etc. This school of thought pertains to the idea that factors outside the individual's control drive him or her to crime. These can include unsuccessful socialisation, or genes. More modern biological theories of crime include Sheldon's *Theory of Somatypes* (cited by Putwain & Sammons, 2005). This theory links certain body types with the propensity to crime. Individual characteristics such as low intelligence, low socialization or low educational achievement are often used by this school of thought to explain crime among the lower classes (Croall, 2011).

As has been underlined above, the Positivist model assumes that people are affected by forces outside their control. At the same time, this school of thought tends to exaggerate the difference between criminal and non-criminal individuals. Classic theories of crime (for example, Anomie Theory, Social Disorganisation Theory, Relative Deprivation Theory, Rational Choice Theory, Neutralisation Theory, together with the Strain Model) maintain that certain social factors push people into committing crime. These theories promote the idea that crime is more likely to be committed by social groups that suffer from social, cultural, political and economic marginalization (Scot, 2003). Scot (2003) cites studies which suggest that those who are unemployed, have low household incomes, those who suffer discrimination and institutional barriers when it comes to housing, education, career opportunities, and politicial participation, are more likely to resort to criminal activity.

The Strain Model together with classic theories of crime maintain that criminal behaviour is correlated with poverty, frustration and hopelessness. Poverty, stigma, and discrimination, however, do not always push the majority of socially excluded and materially deprived individuals into a world of crime. Most of the people who suffer from these three factors do not commit crime; they are, however, more likely to be victims of crime, sustains Croall (2007).

Other criminological studies show that people from all walks of life are as likely to engage in illegal activities (see Croall, 2011). Parents' social status and income have little direct effect on pushing children into delinquency. Poorer people though are more likely to be arrested, charged by police, denied bail, appear in court without adequate legal representation, and so end up with custodial sentence (Shiell & Zhang, 2004). This explains why they tend to be proportionally overrepresented in official crime data.

Classical theories of crime do not grapple with middle class and corporate crime. The idea of middle class and corporate crime was more thoroughly explored in the 1970s. British criminological theories which were discussed in this era focused on the disparate application of criminal labels to certain social groups and not others (Croall, 2011). Labelling theories study the role of social control agencies and the media, among others, to see how these social structures shape the "definition" of crime. These theories regard labelling as a political act since a small group of people decide which rules to enforce,

which behaviour to regard as deviant, and which people to label as outsiders. Labelling theories were concerned with delineating the political bias in the apprehension and adjudication of deviants. The labelling school of criminology studied media texts to see which acts are defined as criminal, or which behaviour is perceived as a social problem.

Conflict theories on the other hand studied the politics of law formation. Conflict theorists maintain that the people who create laws, interpret them, apprehend and punish violators tend to create laws that promote the interests of the powerful, and punish behaviour which threatens this interest (Taylor, Walton & Young, 1973). Left realists, however, accuse exponents of this school of thought of denying that there is lower class crime since they mainly focus on the crimes of the powerful.

Croall (2011) sustains that right realist and conservative criminologists also tend to associate crime with people on low income and/or dependent on welfare. These criminologists link crime with "sub"-cultures, "dis"organization and urban decay. These theories help to stigmatize, demonize and criminalize marginalized groups. Since these theories focus on materially deprived groups as criminals, they tend to neglect white-collar and corporate crime. Croall sustains that while condemnatory language is addressed at welfare scroungers and petty thieves, middle class deviant actions such as tax evasion, cybercrime, fraud and other everyday crime is visibly tolerated. Power inequalities lead to the criminalization of the crimes of the most marginal, while the actions of others are tolerated and not construed as crime.

More recent theories underline that crime is in no way linked with one particular social category, while at the same time try to explain why certain social groups such as young, non-white, able bodied men are over-represented in official crime statistics. These theories attempt to understand how social class intersects with race or ethnicity, gender, age, immigration status, religion, language and sexual orientation with regards to criminal offending, victimisation and access to justice (Scot, 2003).

Characteristics of white-collar and corporate crime

The focus in this section of the chapter will be on the type of white-collar and corporate crime is discussed in Maltese media. The focus on this type of crime that emerged from the fact that surveys published by the European Commission in 2011 and 2012 demonstrate that the Maltese are more concerned about this type of crime than the traditional type.

In a survey conducted by the European Commission among 500 Maltese respondents in 2010 (European Commission, 2011), the researchers found that respondents were more concerned with corruption (27%), which they felt was an endemic aspect of public life and business, than organised crime (20%), petty crime (12%) or cybercrime (9%). In 2011 another survey was conducted by the European Commission on corruption among the same amount of respondents (European Commission, 2012). In this survey,

88 percent of the Maltese respondents felt that corruption was a major problem in Malta, even though half of them stated that they did not believe they were affected directly by it. In this survey they blamed corruption on light sentencing given by the judicial system. Maltese respondents in this survey tended to associate the giving and taking of bribes together with the abuse of position of power mainly with officials issuing building permits (60%) or public tenders (53%), together with national politicians (52%). Among this set of respondents, trust in the judicial system, officials issuing business permits, custom officers and police was lower than the EU27 average. As we shall see in the subsequent sections of this chapter, the people who ended up in prison, however, committed "traditional" rather than white collar or corporate crime.

Sutherland (as cited by Croall, 2011, p. 333) describes white-collar crime as 'crime committed by persons of high social status and respectability in the course of their occupations'. While white-collar and corporate crime are more likely to affect a wider portion of the population (even though the victims might not be aware of this, see above), this type of crime is less likely to be regarded as "real crime". Steven Box (1983) maintains that the powerful are rarely taken to court when they victimize the powerless. Examples of white collar and corporate crime may include criminal negligence at the workplace, health and safety offences, environmental offences, manufacturing of unsafe products, financial fraud, misconduct of corporations, politicians and/or the state.

What distinguishes white-collar crime and corporate crime from other crimes is the fact that offences tend to be difficult to detect and prosecute since the victims tend to be unaware that they are being harmed (Croall, 2011, p. 336). The invisibility and complexity of offences makes them difficult to detect, sustains Croall. The oil procurement scandal which emerged in 2013 is a case in point. In this case, Tancred Tabone and petrochemist Frank Sammut were charged with bribery, corruption and money laundering. They were also charged with committing a crime when they were public officers, a crime that they should have prevented from happening. The victims were the Maltese general public (Dalli, 2013). One of the issues raised during the investigation was that as former Enemalta consultants/employees and/or Mediterranean Offshore Bunkering Co. Ltd. chief executive those arrested were believed to have been recipient of kickbacks from an international petrochemical firm to supply oil to Enemalta, the Maltese energy supplier.

Nobody was aware what was happening until investigative journalism (see, for example, Maltastar.com, 2013) helped uncover this misdemeanour. As the case unfolded, evidence showed how difficult it was to establish who was guilty. Considerable legal, scientific and financial expertise was needed to find out who the culprits were, and the extent of their culpability. In cases similar to the oil procurment scandal it is very difficult to ascertain who is responsible since organisations tend to have a diffusion of responsibility, as this case has demonstrated.

Croall (2011, p. 337) maintains that ideological issues tend to influence what governments choose to count as crime. Some corporate behaviour is seen as normal "business" procedures and not criminal, such as when companies cut corners to make profit, and these result in deaths, injuries, diseases or emotional trauma. A case that featured in 2012 was the death of a construction worker at the Sea Bank Hotel on 6 March 2012 (Peregrin, 2012). Another "incident" on the same site occurred on 11 April 2012, this time fortunately, the workers were only slightly injured. The second incident was not investigated by a magistrate because it had no serious consequences. These "incidents" could have been avoided if regulations had been followed (Micallef, 2012). Croall (2011, p. 334) underlines that when death or injury are sustained because companies do not pay enough attention to regulations, these occurrences are described as an incident, accident or disaster but not as a crime by the media.

As has been noted above, corporate negligence often leads to death or non-fatal injuries. According to the Maltese National Statistics Office (2013), accidents in the last quarter of 2012 were more likely to occur in manufacturing (25% of accidents), construction (15.8% of accidents), and transportation and storage (11.1%) industries, rather than in other sectors. These statistics underline which organisations are crime prone. While in the UK construction companies were considered by Croall (2011, p. 346) as crimogenic since they tended to have the highest fatality rates, in Malta manufacturing seems to head the list since it has the highest rate of non-fatal accidents, but construction companies head the list since fatal accidents tend to occur in this sector. Fatal and non-fatal victims involved in occupational "accidents" tended to be mainly male, and employed in elementary occupations or crafts and related trade sectors in medium-to-large-sized enterprises. There was one fatal death mentioned during this period, but the socio-demographic details of the person who died were not included in the National Statistics Office report cited above. Croall (2011, p. 343) maintains that deaths and non-fatal injuries at work tend to be higher than those caused by "real crime" in the UK. In Malta, however, the rate of homicides for 2009 (National Office of Statistics, 2011) and 2010 (National Office of Statistics, 2010) were four per year, while occupational deaths amounted to three in 2009 and four in 2010. The rates for work-related fatalities and homocide-induced deaths is similar in Malta.

The media, however, is more likely to report work-related issues when people are killed or when a substantial amount of money is rewarded to the victim by the court. Victoria Cassar (Malta Court of Justice, 2012), for example, was given some publicity when the Maltese courts felt that she had been discriminated against by the Port Workers Board in the 1990s. As the eldest of three daughters of Carmelo Abela, who had retired from the post of port worker, Victoria Cassar was within her legal rights to apply and to be officially registered as a port worker. When the Port Workers Boards did not allow her to apply for this post, she took the case to the Maltese courts, and was eventually awarded damages for

the financial loss suffered amounting to EUR799,168. The substantial amount of money awarded in this case helped bring this incident to the media's attention.

One needs, however, to underline that fatalities are more likely to be reported by the Maltese media than incidents of discrimination suffered at the hands of management or administrators. Croall (2011, p. 346) maintains that fatalities are more likely to occur on construction sites because these crime-prone industries are characterized by casual employment, lack of unionization, as well as a culture of machismo where workers see precautions as a hindrance. In Malta this is also the industry which depends heavily on casual workers, some of whom tend to be foreign. In the Seabank Hotel incident, the victim turned out to be Latvian. Sub-Saharan migrants are more likely to be employed as casual labour in this sector (Gauci & The People for Change Foundation, 2012), but accidents that happen to this type of workers tend to be underplayed.

Production pressures or speed targets tend to cause companies to give more importance to profit to the detriment of safety regulations. This behaviour leads to workplace fatalities in male-based industries. In the workplace women are more likely to be vulnerable to low pay, harassment or illegal discrimination (Croall, 2011, p. 353). These cases tend to be tried by the Industrial Tribunal, and only a few of these cases are reported by the media. In 2012 a number of female employees turned to the Industrial Tribunal when they were dismissed after they informed management that they were pregnant. The case of Tracey Camilleri v. John's Garage Ltd and Travel Smart Ltd. is a case in point (Industrial Tribunal, 2012). Incidents involving exploitation and discrimination at work are, however, rarely reported by the media.

For-profit white-collar crime is more likely to hit the headlines. In September of 2009 around 20 businessmen and department officials were arraigned after a scheme to fraudulently siphon 10 million euros from the Value Added Tax Department (Xuereb, 2010) came to the authority's attention. Seven of the businessmen charged with this offence were given suspended jail terms. What is interesting is that the alleged VAT fraud mastermind and his accomplices at the VAT department were not given suspended sentences (Johnston, 2013).

As Croall (2011) points out, some white-collar and corporate offences tend to be dealt with by enforcement agencies rather than the police. With regards to white-collar and corporate crime it is difficult to identify who is guilty when it comes to adjudicating individual guilt and *mens rea*. Some managers may intentionally break the law and take risks, but sometimes accidents and other fatalities may be due to incompetence, sustains Croall.

The Malta Financial Services Tribunal, another Maltese enforcement agency, was, for example, involved in the case concerned with the mismanagement of the La Valette Property Fund (Maltastar.com, 2012). The Bank of Valletta tried to put pressure on this

enforcement agency to ensure that "no publicity is given of the fact that the appeal has been filed and that the appeal procedures be held behind closed doors and all documents remain secret" (Maltastar.com, 2012). This is an example where those in power use their high status to influence indirectly the impact of the criminological investigation, and indirectly to avoid the criminalization of their activities. They can do this because they have the money and hence the power to influence the investigation.

When the justice system is involved in adjudicating a case, and the white-collar or coporate perpetrators are found guilty and sent to jail, there have been instances where those concerned never spent a day in prison, or if they did, they were segregated from the rest of the prison inmates. This, for example, happened in the case of Noel Arrigo, a former chief justice, who in 2009 was found guilty of bribery, trading in influence and revealing official secrets (Times of Malta, 2009), together with his accomplice, Dr. Vella, another ex-judge. As Caruana Galizia (2011) notes, this former chief justice spent his time at the "Forensics Unit" – a special division meant for insane prisoners but in reality a sort of special-treatment holding-pen for the privileged – at Mount Carmel Psychiatric Hospital. He served 22 months of an already ridiculously brief 33-month prison term, for a crime so serious that it beggars belief ... . A petty thief or junkie who relapses and steals a handbag off a beach gets pretty much the same length of time, and it is served behind bars.

His accomplice, another judge, was given a two-year prison sentence, "when the maximum was four, and he walked out of the Corradino Correctional Facility where he was held in a secure unit after serving 16 months" (Micallef & Borg, 2011).

Croall (2007, p. 79) maintains that classic white collar crime involves personal gain at the expense of employees, government or clients. Organised or corporate crime may be directly linked with the economic survival of an organisation. The media is more likely to focus on economic crime, rather than environmental crime. For example, the incident concerning the illegal dumping of Mercaptan gas in the limits of Mgarr in 2009 (Dalli, 2012) was investigated by a government-appointed board of inquiry, but few articles were devoted to this topic when one takes into consideration the amount of space devoted to the oil procurement scandal. The board investigating the illegal dumping of Mercaptan found Enemalta guilty for improperly disposing of the material, and for carrying this out without the necessary permits. The board, however, concluded that any possible criminal action against the company could not be taken since it was time-barred "by a lapse of presciption" since there was no precedent. Croall (2011, p. 334) sustains that offences involving health or environmental law are depicted by the media as 'quasi' or 'technical' crime rather than 'real' crime. She adds that when companies break the law, the language used defines the act as a violation or breaching of the law, rather than as a crime. Another article linked with this incident underlined that while nobody was found to be politically responsible for this misdemeanour, "the direct health and safety of the workers who were

contracted" (Zammit, 2012) were not discussed by the media. This is what rendered this a crime, and why this act should have been investigated by the police rather than a board concerned with health and safety regulations.

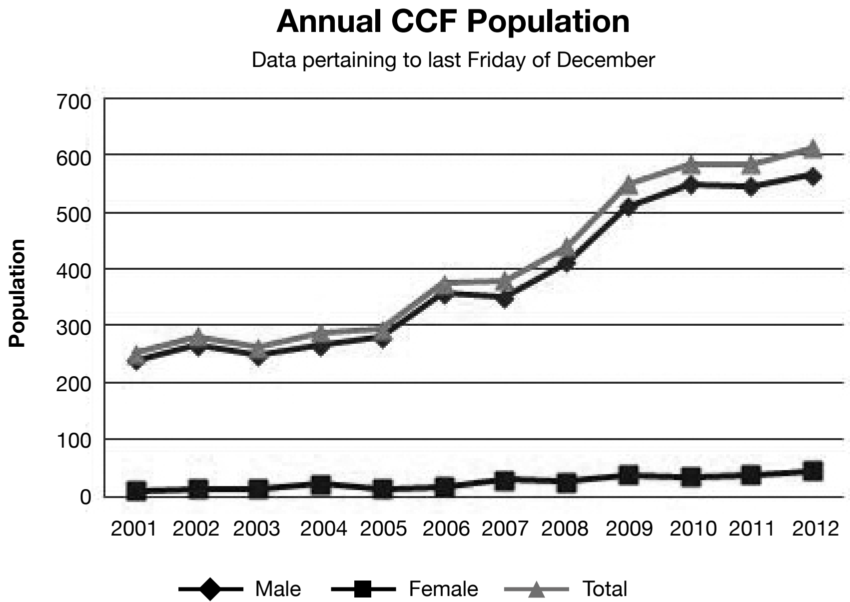
As we have seen above, white-collar and corporate crime are less obvious since sometimes the victims are not aware that they have been harmed. Somebody has to investigate the link between the actions and decisions made by indviduals on their often unintended victims.

Who ends up in jail and for which offence?

Croall (2011, P. 137) maintains that the prison population consists of a small proportion of convicted offenders. She adds that the lower classes are more likely to be policed, to be suspected, arrested and convicted of crime. In this section we will analyse whether this is true of Malta. As we have already seen in the previous section, Maltese high status offenders are more likely to face administrative penalties when caught breaking legal technicalities, and if convicted, are less likely to spend time in prison; if sent to prison, the more powerful are less likely to rub shoulders with 'traditional' offenders.

On 29 March 2013, the Corradino Correctional Facility (Formosa, 2013a) facility hosted 576 male and 46 female prisoners, a total of 622 inmates. As Figure 1 demonstrates, male prisoners outnumbered female ones within the 2001 and 2012 timeframe. One can also note that while the female prison population was 11 on 28 December 2001, it reached 46 by 15 March 2013 (Formosa, 2013a); that is, it increased fourfold. The male prison population on 28 December 2001 stood at 240, but increased to reach 575 by15 March 2013. The male prison population doubled in size between 2001 and 2013. These statistics indicate that either Maltese women commit less crime, or else if arrested, they were less likely to be convicted.

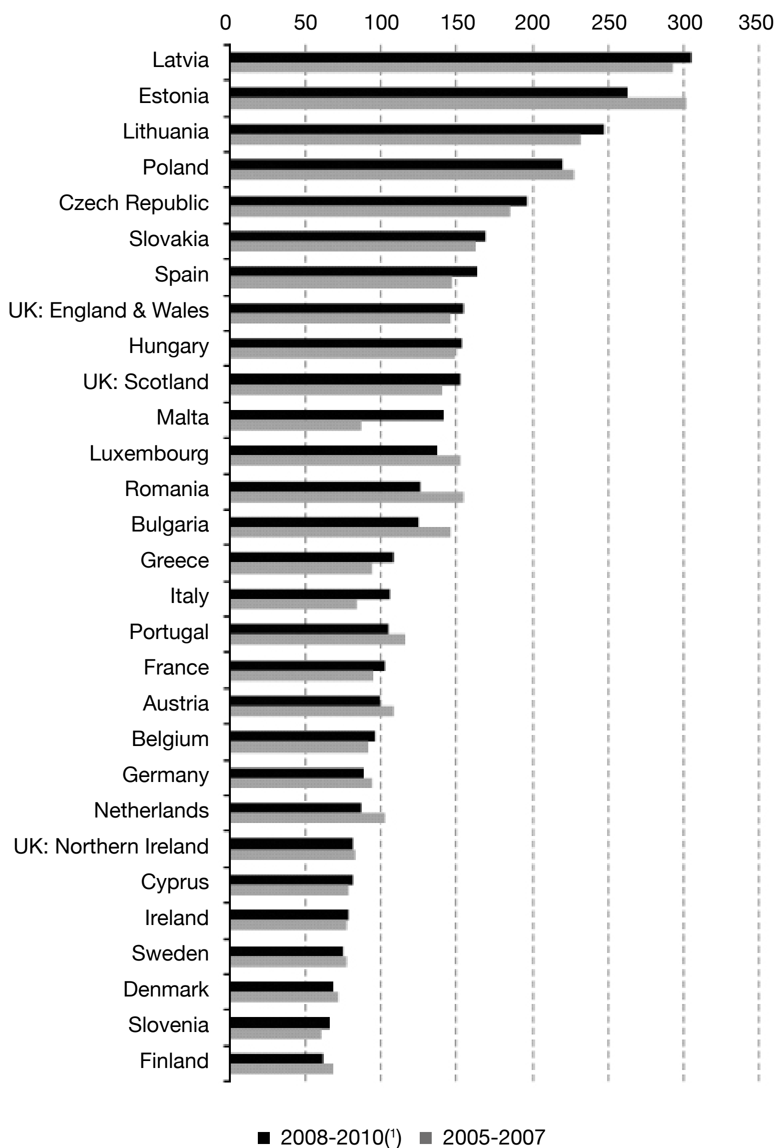
Figure 1. Prison population in Malta by gender, 2001-2012



Source: Formosa, 2013a.

At this stage one also needs to point out that Malta's prison population is quite high when compared to other EU countries, as Figure 1b attests. While the Baltic countries had the highest prison rates, the Nordic countries and Slovenia had the lowest rates per 100,000 population between 2005-2010. Malta's prison population rates are closer to the Baltic than the Nordic countries. This figure also demonstrates that between 2005 to 2010 the prison population in Malta almost doubled.

Figure 1b. Prison population rate per 100,000 population, average per year, 2005-2007 and 2008-2010



Source: Clarke (2013, p. 5).

Going back to Maltese prison statistics covering the period for 2001 up to 2006 (see Table 1), these demonstrate that male offenders were more likely to be convicted for crimes related to homicide, violence against the person, arson, sexual offences, immigration, escape from custody, grevious and slight bodily harm, forgery, possession of prohibited articles, illegal arrest and/or wilful damage. Male and female inmates were sentenced for crimes related to breach of bail, theft, drugs, fraud, falsification and crime listed under the category 'others'. Women, however, were more likely to be sent to prison for prostitution even though male prostitutes also exist in Malta. Men therefore were convicted of a wider range of crimes, while women were linked to a narrower range of crimes. These statistics also demonstrate that different genders commit different crimes.

Table 1 – Sentenced prisoners by offence

	2001		2002		2003		2004		2005		2006	
	M	F	M	F	M	F	M	F	M	F	M	F
Attempted homicide - homicide	6	0	5	0	12	0	12	0	9	0	8	1
Violence against the person	4	1	0	0	1	0	0	0	0	0	1	0
Breach of bail	1	0	8	0	4	0	5	0	4	1	17	1
Theft - Aggravated theft	34	0	55	0	59	1	64	10	67	2	89	4
Arson	0	0	3	1	3	0	1	0	0	0	0	0
Sexual offences: rape, *etc*	5	0	7	0	5	0	2	0	5	0	17	0
Drug related	69	5	61	4	34	0	41	7	43	2	52	2
Immigration	22	3	10	0	0	0	5	0	1	0	11	0
Prostitution	0	1	1	3	0	3	1	2	0	0	4	0
Escape from custody	2	0	16	0	6	1	1	0	4	0	5	0
Grievous Bodily Harm (GBH)	0	0	2	0	5	0	7	0	1	0	7	0
Slight Bodily Harm (SBH)	1	0	3	0	6	0	2	0	2	0	0	0
Forgery	0	0	1	0	0	0	0	0	0	0	0	0
Fraud	5	0	2	0	4	5	8	1	0	0	4	0
Conversion of multa, fine and/or court expenses	46	3	46	1	21	2	97	6	168	17	143	17
Falsification	3	0	6	2	5	0	0	0	2	0	7	0
Possession of prohibited articles	4	0	1	0	0	0	5	0	2	0	3	0
Illegal arrest of someone else	0	0	1	0	0	0	1	0	1	0	2	0
Wilful damage	0	0	7	0	5	0	9	0	0	0	16	0
Others	29	2	34	0	41	1	48	0	25	3	32	1

Source: Mid-Dlam għad-Dawl, 2008a.

The majority of sentenced prisoners in the time period between 2001 to 2007 were aged between 25-29 years (Table 2). As the data in Table 2 demonstrates, male prisoners tended to be sentenced to prison at a younger age than female ones. An article which appeared in 2011 states that Malta has the highest percentage of juvenile offenders in prison among all EU countries (Grech, 2011). This emerges from the fact that young offenders tend to be incarcerated with older ones which is not the case in other EU countries. Statistics cited in Table 2 also tend to sustain Croall's (2011, p. 139) conclusion that the majority of convicted offenders tend to be younger, especially male inmates, when compared to the average age of the general population.

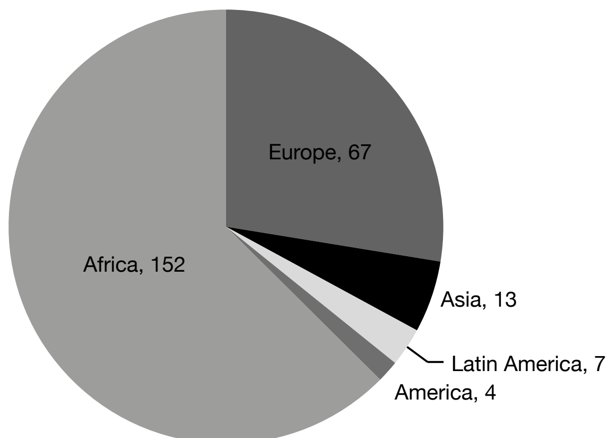
Table 2 – Sentenced prisoners by age and gender, 2001-2006

Sentenced prisoners by age- and sex-groups													
	Age:	**14**	**15-17**	**18-20**	**21-24**	**25-29**	**30-34**	**35-39**	**40-49**	**50-59**	**60+**	**Totals**	**Totals**
2001	**Male**	0	2	17	23	50	60	23	44	11	2	232	247
	Female	0	0	0	0	8	2	1	2	2	0	15	
2002	**Male**	0	1	19	39	71	59	35	32	10	3	269	280
	Female	0	1	0	1	3	2	0	4	0	0	11	
2003	**Male**	0	0	9	19	59	29	48	33	14	2	213	234
	Female	0	0	1	1	6	5	6	1	1	0	21	
2004	**Male**	0	3	9	42	75	50	40	59	25	6	309	336
	Female	0	0	0	6	3	5	7	4	0	1	26	
2005	**Male**	0	4	10	50	83	68	36	47	30	6	334	359
	Female	0	0	2	0	6	4	6	0	5	2	25	
2006	**Male**	1	7	32	55	91	95	57	49	29	3	419	445
	Female	0	0	0	9	2	6	4	3	0	2	26	
Total		1	18	99	245	457	385	263	278	127	27	1900	

Source: Mid-Dlam għad-Dawl, 2008b.

Maltese prison inmates tend to derive from various areas of Malta and the world. Statistics provided by the Ministry of Justice and Home Affairs (Mifsud Bonnici, 2010) demonstrate that the majority of the persons in prison in 2010 were Maltese (346) while 243 were foreigners. Debono (2009) maintains that in 2009, foreign inmates represented 40% of prison population. A good portion of these detainees derived from Libya, Nigeria, and Somalia. The number of African detainees in Malta's correctional facilities supercedes the number of European inmates (Figure 2). A smaller proportion of prison inmates derived from Asia, and the Americas.

Figure 2 – Number of foreign prisoners in CCF per continent, 10 October 2010



Source: Mifsud Bonnici, 2010.

Formosa, Scicluna and Formosa Pace (2012) maintain that Malta has a high concentration of foreign prisoners in comparison to other EU countries. Foreign inmates in 2010 accounted for nearly 40% of total prison population (Debono, 2010). The majority of these inmates derived from Africa, followed by Europe (Figure 2). Formosa *et al.* (2012) sustain that foreign offenders tended to be male, aged between 21 and 30 years, had a secondary level of education, single and unemployed. Debono (2010) stated that while Sub-Saharan African prisoners were serving prison sentences for being caught residing in Malta illegally, a larger number of foreign prisoners were incarcerated for their involvement in drug-related crimes. This data therefore indicates that different nationalities are arrested for different crimes.

Debono in a newspaper article sustains that many of the foreign prison inmates end

> "*up in prison because they cannot pay their bail, sometimes because they do not have a fixed residence*" (Debono, 2009, n.p.). *Another reason why they end up in prison - something they share with some of their more unfortunate Maltese inmates - is that many of these prisoners rely on legal aid provided by the state when their case is being tried. A good portion of sub-Saharan irregular migrants are incarcerated after being caught residing illegally in Malta. Some of these spend months in detention before they are tried and sentenced. In an editorial which appeared in The Times of Malta (2012a), the editor underlined that each prisoner costs Maltese taxpayers around 18,000*

> *euros per year, and this editor therefore suggested that it madw more sense to repatriate foreign prisoners since it would ease overcrowding in Maltese prisons and as a consequence help solve understaffing. The editor was here mainly referring to prison inmates deriving from the Western world, since the repatriation of irregular migrants can lead to their imprisonment and torture (Times of Malta, 2011b).*

The majority of Maltese prison inmates on the other hand tended to derive from the Southern Harbour district, followed by the Northern Harbour one (Table 3). The Statistics on Income and Living Conditions (National Statistics Office, 2012, p. 33) underlines that the Southern Harbour district has the highest percentage of persons at risk-of-poverty residing there. In 2010 the rate of persons at risk-of-poverty in the Southern Harbour district stood at 17.2%, followed by the Gozo and Comino district which stood at 16.4%. What is interesting about this data is that even though the standard of living in Gozo and Comino is low when compared to the other districts of Malta, this material lack did not push these residents to crime.

Table 3 – Number of prisoners resident in Malta per district, 10 October 2010

Districts	**Number of prisoners**
Southern Harbour	143
Northern Harbour	125
South Eastern	49
Western	31
Northern	64
Gozo & Comino	12

Source: Mifsud Bonnici, 2010.

Debono (2010) underlines that 20% of prison inmates derive mainly from the towns of Valletta, Marsa, Floriana, Bormla, Birgu, Isla, Kalkara and Xaghjra (all of these localities are found in the Southern Harbour District). These are the localities where a higher proportion of the population, when compared to the national average, live in poor, private, rented and social housing (Cutajar, forthcoming). The residents of the area, mainly skilled and semi-skilled workers, were mainly affected by the socio-economic changes which occurred in the Maltese Islands in the last twenty to thirty years. The tertiarization of the economy, privatization of state assets such as the dockyard which was located in the Southern Harbour

District and employed thousands of people from the area, coupled with de-industrialisation (Cutajar, 2009) have hit badly the people living in these areas. Socio-economic change, among other factors, has led to the social exclusion and stigmatization of some of the localities mentioned above. This mainly emanated from the fact that a higher portion of residents living in this area faced unemployment, or casual employment with the liberalization and de-industrialisation of the economy (Cutajar, 2013). The tertiarization of the economy on the other hand led to the shrinkage of the so-called working-classes (Cutajar, 2009).

Although some of the unemployed, those in casual employment and/or those employed in low-income sectors might resort to crime to augment a meagre income and/or make a living, the majority do not do so even though in the general mindset, crime in general is mainly associated with the lower classes. This association is prevalent not only among people in general, but even among people who form part of the legal system, such as probation officers, police, social workers and judges. The idea of using crime to make an 'easy buck' or profit is not the prerogative of the lower classes, however. For others, breaking the law is a source of entertainment or excitement, but it does not preclude those from the so-called upper classes from dabbling their hands in this.

In the compilation of data for this chapter it was very difficult to find information on the social class derivation of inmates. The data discussed in this paragraph derives from an assessment exercise conducted in 2009 among 421 newly admitted inmates at the Corradino Correctional Facility (Sammut Henwood, 2012). This exercise found that 104 cases (one fourth) of the new inmates were beset by persistent unemployment, recidivism, lack of support and an unstructured lifestyle. Camilleri's (2011) research on the job prospects of former Maltese prison inmates found that these were less likely to find employment and more likely to return to prison if they were not helped by family members and friends to find employment. The assessment exercise cited above also sustained that 49.6% of these inmates were dependent on drugs, while 15% had a psychiatric history or had undergone past psychological care. These are further indications that individuals who spent a period in their life in an institution were more likely to relapse. This factor emerged in informal conversations held with probation officers and prison guards.

Information about the educational background of inmates was gleaned from a newspaper article which appeared in 2012. In this article, Mifsud Bonnici, the Minister for Justice and Home Affairs at the time, was cited as saying that the inmates' level of education was improving since only 45 out of the 600 inmates at the Corradino Correctional Facility were illiterate (Caruana, 2012). The Maltese Minister for Justice and Home Affairs was also cited as stating that the "level of crime nowadays has become more intelligent and does not simply include fistfights, homicides and the like (Caruana, 2012). This statement might mean that the definition of crime is changing, and so are the socio-demographic details of those who end up in prison.

Clarke (2013, p. 8), who compared the total recorded crime trends across the EU member states, noted that according to EU statistics, Malta's crime rate in 2010 was one of the lowest. The homicide rate for Malta was quite low when compared to that found in Lithuania, which stood at 7.70 per 100,000 inhabitants in 2008-2010. Malta's homicide rate was, however, not the lowest in that period. Domestic burglary and violent Maltese recorded crime rates were also low when one compared these with the EU 27 average (see Table 4). The average crime rate in Malta for drug trafficking, robbery and motor vehicle theft was, however, higher than the EU 27 average for 2008-2010. At this stage one should note that the crimes mentioned in Tables 4 and 5 are in no way the prerogative of individuals deriving from one particular class.

Table 4 – Offences recorded by the police, EU-27, 2008-2010

Year/crime	EU27 2008	Malta 2008	EU27 2009	Malta 2009	EU27 2010	Malta 2010
Domestic burglary	101.0	92	103.8	91	108.8	96
Drug trafficking	101.6	121	100.8	125	98.3	121
Violent crime	94.9	91	93.1	89	90.9	88
Robbery	89.9	74	88.0	101	87.5	98
Motor vehicle theft	81.1	103	74.5	103	68.1	96

Sources: Eurostat (online data code: crim_gen); Clarke (2013).

Table 5– Number and types of crimes reported to the police, 2004-2010

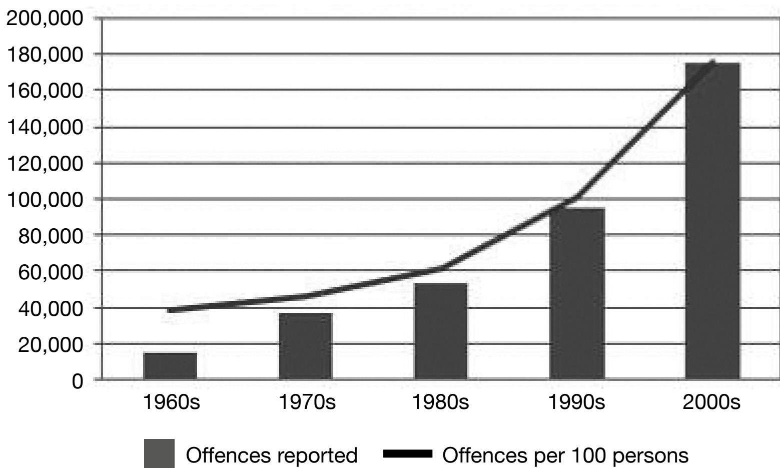
	2004	2005	2006	2007	2008	2009	2010
Abortion/supply of pois. Subt	0	0	1	0	0	0	0
Abuse of public authority	3	0	0	2	0	1	2
Abuses relating to prisons	2	0	0	0	0	0	0
Against morals/honour - family	36	30	19	27	0	0	0
Arson	120	124	123	109	92	106	112
Attempted offences	1259	1377	1281	829	774	595	586
Bigamy	1	0	0	0	0	0	0
Bodily harm	829	858	830	1141	1006	955	1043
Computer misuse	11	11	29	40	87	92	153
Crimes against religious sentiment	0	1	4	0	0	2	0
Crimes against public safety	0	2	0	3	4	2	1
Crimes against public peace	1	0	0	0	5	4	0
Crimes vs admin of justice etc	6	9	4	3	2	4	1
Damage	3634	3666	2916	2937	2316	1796	1933
Domestic violence	236	234	279	113	450	543	659
Drugs	78	113	123	149	180	187	181
Forgery	91	55	116	50	63	28	46
Fraud	160	179	174	120	245	283	234
Homicide	7	3	0	4	6	4	4
Immigration	123	189	181	147	105	69	48
Infanticide/abandonment of child	5	1	1	5	0	8	9
Perjury & false swearing	2	1	3	7	4	5	6
Pornography	0	0	0	1	6	1	7
Prostitution	16	46	49	58	27	35	102
Sexual offence	61	70	94	69	112	120	123
Theft	11360	11304	10106	8969	8127	6843	7769
Threats and private violence	104	84	61	88	63	85	106
Trafficking of person	0	1	1	0	1	0	0
Violation of places of confine	3	9	11	2	3	4	3
Violence against pub. Officer	111	94	136	117	125	181	168
Total	18259	18461	16542	14990	13803	11953	13296

Source: Mifsud Bonnici, 2011.

Croall (2011, p. 146) believes that there is a link between the type and rate of crime and the economic cycle. A cursory look at Figure 3 demonstrates that in the period between 1960-1980 the number of offences reported ranged between 10 to 15 per 1000 persons. Once the Maltese economy started picking up (from around the 1980s onward, see Figure 3; see Cutajar, 2009), the number of reported offences shot up from 15 to 44 per 1000 persons. According to Formosa (2013b), theft, fraud, computer-related crime, drug-related crime, abandonment of children/infanticide, prostitution, domestic violence and violence against public officers have increased when compared to figures for the same types of crime reported in the first decade of the 21st century. The only crime which remained consistent was bodily harm. Formosa links this increase in crime to "economic improvement" although he subsequently adds "more efficient policing".

Croall (2011, p. 148) underlines that property crime tends to rise during a recession, while some forms of violence fall. Violence falls, this criminologist insists, because the young cannot afford to buy alcohol during a recession. She also underlines that property crime rates tend to increase during a recession. This is because casual work among the working poor does not always provide them with enough income to sustain a living. In such economic conditions, small businesses are also more likely to scrimp on safety or health regulations to survive economically. During economic booms, financial fraud tends to flourish as people scamper to find means of becoming rich overnight.

Figure 3 – Offences between 1960s-2000s



Source: Formosa, 2013c.

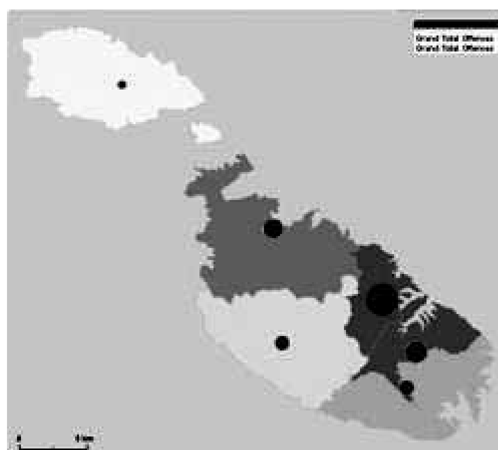
Crime is still, however, associated with the lower classes, even by the media. In spite of the global economic slump (Chossudovsky & Marshall, 2010) caused by fraud and financial manipulation in the financial sector, which led to mass unemployment, the collapse of state social programmes and the impoverishment of millions of people worldwide - a classic example of corporate crime - the less affluent are still more likely to be associated with crime in criminological and popular discourse. The media gives scant attention to the structural problems caused by de-industrialization, and the culture of irresponsibility within the financial sector, which have had a destructive effect on the employment opportunities of millions. The increase of casual employment, the exploitation of the vulnerable (women, young people with low educational qualifications who are more likely to be male and/or migrants) never make headlines in the news (for further reading on the exploitation of these disparate groups see reports drawn by National Commission for the Promotion of Equality, 2011; European Foundation for the Improvement of Living and Working Conditions, 2011; Commission for Human Rights, 2011). Crime is more likely to be linked with those who are socially excluded, especially those who lack a stable home, depend on state handouts and/or are not citizens.

Crimogenic locations in Malta

Croall (2011, p. 159) maintains that the lower classes are more likely to be the victims of crime, rather than the perpetrators. When we look at the crime hotspots in Malta, it is very clear that most crime reported to the police takes place in business areas (Figure 4). The highest concentration of crime in 2013 was in St. Julian's, a location which had 5 times the national rate of offences recorded. Other localities of Malta with a very high overall crime rate then included Mdina, Sliema, St. Paul's Bay, Floriana and Valletta. Although the last three localities have a concentration of retail outlets, a large portion of the residents who live there are at risk of poverty (Cardona, 2010). Although literature tries to draw a link between crime and material deprivation, there are other factors that push individuals to commit a crime, as has been underlined above. The fact that business areas seem to have the highest concentration of reported crime rates in Malta also indicates that areas with a unilateral use of space give potential criminals a wider window of opportunity to commit crime.

Thefts from residences were more likely to occur in St. Julian's, Swieqi, Pembroke, Msida and St. Paul's, according to Formosa (2013d, see Figure 5). The first three localities are perceived as prestigious residential areas. Residents living in these areas can afford to use expensive security systems, but these did not seem to act as a deterrent where home thefts were concerned. Msida and St. Paul's are, however, areas where the constant turnover population rate surpasses that of other areas. This prevents collective efficacy from prevailing in these areas. In areas where residents have been living there for

Figure 4 RISC Model Map – Grand total offences by local council, 2012



Source: Formosa, 2013d.

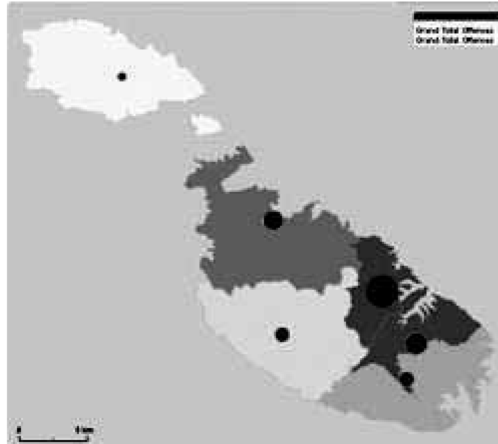
generations, they were more likely to look after each other's interest (Cutajar, Formosa & Calafato, 2013).

Thefts of and from vehicles were more likely to be reported in St. Julian's, Floriana and Sliema (Figure 6). These are areas with a high proportion of business outlets and population turnover. The constant population turnover and unilateral use of space makes it easier for perpetrators to go into action.

These figures underline that crime in Malta is more likely to occur in areas with a higher concentration of retail outlets, even though three of the locations (see Figure 4) are linked with high levels of deprivation, social housing and rented accommodation. Croall (2011, p. 140) adds that those living in areas of high levels of physical disorder are more at risk of violent offences. RISC Model Maps for this type of crime is not available, however, which seems to underline that criminologists are more likely to focus on crime related to property, rather than on crime linked with bodily harm, which the minister cited above seemed to link with the lower classes. Cutajar (2013) found that this type of crime was higher in a particular socially excluded locality in Malta.

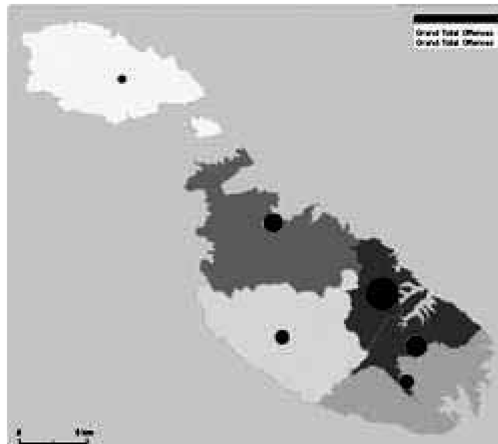
Croall (2011, p. 142) is also of the opinion that those living in socially excluded areas are more concerned about crime and safety. This was not true of Bormla residents who took part in a needs assessment exercise in 2009 (Cutajar, 2013). Bormla is often associated in popular discourse with poverty and crime. The Bormla residents who took part in this

Figure 5 RISC Model Map – Theft from residences by local council, 2012



Source: Formosa, 2013e.

Figure 6 RISC Model Map – Theft of and from vehicles by local council, 2012



Source: Formosa, 2013f.

research were worried about the extent of drug-related crime in the area where they lived, but felt relatively safe living in Bormla since they felt that with the help of their neighbours they could look after their own interests. With regards to the police, they felt that they could do more to tackle crime in their area. They felt less safe, however, in areas with unilateral use of space (Cutajar, Formosa & Calafato, 2013). The residents were, however, displeased by the fact that the local media was too ready to link crime with people residing in the area, an issue which residents felt helped to draw a negative picture of the locality in question (Cutajar, 2013).

Croall (2011, p. 143), however, notes that crime has a greater impact on the relatively less better off. This is because they are less able to replace goods or damaged property when crime occurs. They are also less likely to be insured since not everybody can afford to buy an insurance policy which covers movable and immovable property.

Ideal victims? Social class, age, gender, race, sexual identity and orientation

From evidence cited in the previous sections it has been demonstrated that crime is not the prerogative of one social class, gender, age group and/or racial or ethnic group. Croall (2011) and Scot (2003) among others maintain that age, gender and racial inequalities are as, or more important than socio-economic inequalities where crime is concerned. Scot writes about the intersection of race, social class, age and gender, and how these inequalities are closely inter-related in criminology.

As we have seen above, women tend to opt for gender-specific crimes. Gender tends to influence how we define deviant and/or criminal behaviour. The behaviour of men and women is judged differently. For example, men are more likely to be reported by the media as having been found guilty and jailed for not having paid alimony (Times of Malta, 2011b), maintenance or not allowing their former partner access to the children (Times of Malta, 2010). Their gender was alluded to in these reports, but not their social class. In 2012, a mother was sent to prison for not persuading her 16 year old son to see his estranged father. The son was interviewed by the media and he insisted that his mother should not be sent to prison because he associated prison "with drugs and physical violence" (Massa, 2012). What was interesting about this case was that this was the first time the public protested against a mother being sent to prison for not facilitating access between father and son. The media underlined the fact that this middle class parent should not stay in prison since the son was old enough to decide on his own whether or not he should see his father. It subsequently evolved that the lawyer who represented the estranged father was the son of the President of the Republic and he used his familial links to obtain a presidential pardon for the ex-wife of the person he was representing (Vella, 2012)! This particular story incorporates issues relating to gender, motherhood, social class, age and nepotism.

While some women are more likely to be seen as victims of the judicial system, irregular migrants are more likely to be portrayed as perpetrators by the local media. According to Sammut (2011), the Maltese public is divided between those who regard foreigners, especially those from Africa, as potential criminals (the case of the Somali men accused of raping an Italian woman in 2013 is a case in point, see Ameen, 2013) and those who criticise Maltese institutions for the way they treat African migrants. Sammut feels that public opinion is polarised on these two issues.

The main issue raised by the Maltese media where irregular migrants are concerned is that they pose a problem for the Maltese (Sammut, 2011). According to Sammut, the media tends to depict African migrants as a burden on the already limited resources in Malta with regards to labour market opportunities, social security benefits and services, the police and the army. This subsection of the media underlines that these migrants never intended to come to Malta, and that the Maltese are obliged to take care of them until they are repatriated or other EU countries participate in burden sharing. Exponents pertaining to this point of view want the government to take a 'harsher' stand in order to send a clear message to other migrants who might be interested in making their way to Malta.

When this harsh treatment is effected, it often leads to the death of an asylum seeker. The death of the Malian asylum seeker at the hands of two soldiers who were transporting him to a detention facility raised again the issue of institutional racism which another subsection of the Maltese media feels is rampant in Malta (Nielsen, 2012). This was one of a series of attacks by security officers on African migrants in Malta in 2012 (Borg, 2012). In 2012 another Mali person, Suleiman Samake, who had been living in a cave, was shot at by two policemen when they went to apprehend him after they alleged that he had tried to attack them with a knife (Cooke, 2012). If one was to look at the online comments to this article, these incidents were not perceived as examples of institutional racism, but as a tough stance taken by the state against "potential" criminals:

> Biker Man: You escape from your country because it is difficult to live there ..... and illegally come to a place with an area of only 121 square miles and a population of over 400,000 - that is like an overcrowded chicken cage. Then you expect to be made welcome and comfortable and integrated in this already overcompressed society. And over and above all that, you break our country's rules and attack the authorities! I believe that you cannot generalise and I'm sure that many of immigrants are good people, but these should therefore turn against their friends who are not so docile and make them obey the rules.

In the quote cited above the victim is perceived as a social misfit, irresponsible, provocative and easily provoked. While this social group tends to be over-policed as problem populations, they tend to be under-policed as victims. This emerged from research conducted by the National Commission for the Promotion of Equality (2010). This research found that racial and ethnic minorities (together with other minorities) are less likely to report their discriminatory experience to the police.

Another social group which tends to be under-policed as victims consists of gays, lesbians, intersexuals and transsexuals. Joanne Cassar, a person who has undergone gender reassignment surgery, explains to the media that she is constantly exposed to physical and verbal abuse (Calleja, 2013). She describes how she is constantly physically attacked but refrains from making a report because this would mean "having to go to court repeatedly ... and if I had to file a report each time I'm insulted, I might as well move into the police station" (Calleja, 2013). Joanne Cassar's case is constantly receiving attention from the Maltese media. This is because in spite of having the gender on her birth certificate rectified after having received gender reassignment surgery, the Marriage Registrar refused to issue marriage banns when she and her former partner tried to get married. After she lost her right to get married in Malta, she took her case to the European Court of Human Rights. Eventually an out-of-court settlement was reached between the Maltese government and Joanne Cassar (Malta Today, 2013).

In 2012-2012 the Malta Gay Rights Movement (MGRM) made good use of the media to highlight the extent of gay bashing and to deliver the message that it should be considered by the state as hate crime. A number of incidents were reported by the media during this timeframe. These included the failed protest outside an evangelical church where the pastor described homosexuality as a mental illness (Abela Mercieca, 2011). Widespread coverage was given to the attack on two young women in Hamrun, who were attacked by a group of youths because they were lesbians. This and the reporting of similar incidents by the media put pressure on the government in 2012 to introduce legislation which covered hate crime and to extend the remit of the National Commission for the Promotion of Equality to cover sexual orientation and gender identity (Times of Malta, 2012b).

The social media was also used on a number of times to render the public aware of who was being victimised. Videos of heinious attacks uploaded on <youtube> were often given wide publicity by the national press, and these helped the police to identify and apprehend the perpetrator. A case in point was the video posted by Bulgarian Soulja on 22 January 2011. This video shows a middle-aged man kicking a woman lying on the floor, then dragging her by the hair and slamming her against a car. The authority's attention was drawn to this case when individuals complained to the police about the language being used in this video (and incidentally not about the acts being displayed). Eventually the identity of the victim and the perpetrator were ascertained, and the latter was arrested.

The victim subsequently "renounced" the charges filed against her boyfriend (Times of Malta, 2011c). One of the commentaries posted beneath this report stated that Maltese jurisprudence needs to change to ensure that victims of domestic violence are given a fair deal (Times of Malta, 2011c):

> Charles Caruana: What an ass the law is! So everything hangs on the woman's refusal to press charges, even when there is flagrant filmed evidence of the law being broken with a human being physically assaulted and emotionally abused and degraded, evidence for all the world to see? And '€175 each for disturbing the peace, offending public morals and being drunk' is supposed to make amends for the woman and society's outraged sense of justice?

The comments cited above underline that the general public felt that the law should be changed where domestic violence was concerned so that the police can take action against perpetrators even if they do not have the collaboration of the victim.

Conclusion

As we have seen in this chapter, crime is committed by people from all walks of life, gender, race, age or ethnic background. Whether an act is defined as crime tends to depend on who does what, where, when, how that society defines that behaviour, and whether or not it is interested in putting a stop to that type of behaviour. The type and rate of crime also depend on the economic situation of the country where it takes place, and whether the situation is opportune for the person to commit crime. Victims also come from all walks of life, but not all of them have the opportunity to draw attention to their plight and to use the justice system to redress the situation in which they find themselves.

The media, in turn, is also selective and unrepresentative on the types of crimes or victims it gives attention to. Greer (2008, p. 21) sustains that the media is less likely to give attention to lower-level property offences which tend to form the bulk of the crime recorded by the police. It is more likely to focus on white-collar corporate offences which in turn are society's major and social burden.

The 'ideal' victim, on the other hand, has to be perceived as 'vulnerable', 'defenceless' and "worthy of sympathy and compassion" to be given media attention, or else they will virtually pass unnoticed (Greer, 2008, p. 22). In the previous section we focused on signal crime, crime which resulted in the reconfiguration of behaviour, beliefs or legislation. The incidents cited included examples of institutional racism, domestic violence, the incarceration of a middle class mother, and hate crime. Greer (2008, p. 33) underlines that the media plays a major "role in generating, sustaining, and shaping the preceding debate". It also plays a crucial role in defining the cases, familiarising the public with the victim's or

perpetrator's image, keeping the stories alive in political and popular consciousness and promoting support for change.

News items maintain a high profile presence in the news when institutions assigned with the role of providing public protection fail to carry out this remit. In this chapter the institutions cited were mainly the justice system, and the authorities dealing with health and safety, companies, society or particular individuals. Crime victims or perpetrators in some of the news stories mentioned crime to symbolically represent a problem. Through the sustained barrage of critical media coverage, these stories led to a collective moral outrage (Greer, 2008, p. 31). Some of these incidents, namely, the <youtube> video story and the gay hate crime episodes mentioned above led to a criminal enquiry as well as changes in legislation.

Non-white people tend to be under-represented as victims (Greer, 2008, p. 34). As has been underlined in this chapter, racial and ethnic minorities are more likely to be demonized by media discourse, where the relationship between race and crime is forcefully established through the pervasive racialized discourse surrounding asylum and immigration issues.

Greer (2008, p. 40) sustains that women make ideal victims when they are white, victims of violence and middle-class (as in the cases cited above). Incidentally, the stories mentioned help maintain traditional patriarchal stereotypes of the 'weak' woman who has to be protected – against the vagaries of the state, homophobic males or abusive partners. It is very interesting, for example, to note how the media chose to promote a male-to-female transexual (who is visually attractive) and two young lesbians, instead of a female-to-male transexual or male victims of gay bashing. As men, these probably would not have engendered as much public sympathy since men in our society are supposed to take care of themselves, to be perpetrators of physical abuse, and not at the receiving end of this abuse. In this case, news coverage reflects and reinforces social divisions and inequalities, as has been seen.

At the same time, 'traditional' or 'conventional' crime is more likely to come to public attention than white-collar and corporate crime. This is because, as Greer (2008, p. 36) underlines, corporate and white-collar crime unfold slowly, it is morally ambigious whether there is a crime and who the victims are, and when similar criminal cases are cited, these do not end in a resolution. Traditional crime, Greer insists, involves a degree of proximity between victim and offender. Victims involved in corporate and white-collar crime may never realize they have been victimized, and may never encounter the offender. This was evident in the cases concerning environmental crime (mercaptan case) or embezzlement (oil procurement case).

Greer (2008, p. 37) sustains that white-collar and corporate crime does not arouse the same level of moral indignation as offences of interpersonal violence. This of course

depends on time and place. The myriad incidents of bribery and corruption which appeared in the news in the last five years, could have helped bring about changes in government. This constant bombardment of stories dealing with the same issue drove the electorate to vote for a change, and this explains the landslide victory of the Maltese Labour Party in 2013 (Borg, 2013). In this case it was not an issue of the victimised "state" as in the VAT scandal, but the "victimised" population.

Greer (2008, p. 43) maintains that media debates help shape popular notions of who can claim victim status, inform 'victim policy formation and help shape the structures of training, accountability and professional practice directed at protecting the public and responding to victims of crime'.

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CHAPTER 5

Young People, Crime and Society: Some Critical Insights

Marilyn Clark

Introduction: Representations of Youth

"I would there were no age between ten and three and twenty, or that youth would sleep out the rest, for there is nothing in the between but getting wenches with child, wronging the ancientry, stealing, fighting" Shakespeare: The Winter's Tale

This chapter critically unpacks the social construction of youth and youth crime. It examines how the perceived strong relationship between young people and offending has developed and proposes alternative explanations for this purported association.

Representations of young people set them apart from both children and adults, and depict adolescence and youth as a transition point between two separate and stable age stages (Clark, 2009). However both the concept of transition and the nature of the representations of this transition have not gone uncontested. Representing youth is not a neutral project and such representations often distinguish between groups of young people in terms of discourses of deviance, disaffection and risk. Difference is constructed in discourse (Edwards and Potter, 1992). From Stanley Hall's seminal work on adolescence in 1904 onwards, dominant academic representations of young people have treated this life stage as a period of inevitable upheaval (*Sturm und Drang*) and as a time to find one's place in 'normal' life – the search for identity (Santrock, 2010). Many academic researchers and policy makers continue to view young people through the conceptual lens exemplified by this storm and stress model (Te Reile, 2010). Consequently, mainstream academic research and theorising operates, together with social welfare policies to target specific groups of youth as in need of either care or control. Representations of young people in academia and policy utilise discourse that is also commonly found in popular cultural domains such as soaps, newspaper articles and films (Giroux, 2009). Such discourses then continue to shape policy, practice and research.

The Social Construction of Youth Crime

A social constructionist framework emphasises the meaning attributed to social phenomena and events. Reality is mediated though meaning and the end effect of the meaning given to any action is to produce an institutionalized social order (Berger, and Luckmann 1966). The objective reality of youth crime is mediated through the institutionalised practices of politics, through criminal justice procedures, through media documentation and through research endeavours. While science may be promoted as providing objective evidence to societal phenomena, the choice of research agendas and methodologies are imbued with hidden meaning. Thus Latour and Woolgar (1979, p.180-182) on the subject of scientific 'facts' state:

> "We do not wish to say that facts do not exist nor that there is no such thing as reality….Our point is that "out there ness" is a consequence of scientific work rather than its cause".

Social constructionists make a distinction between claims that are directed at things and those that are directed at beliefs (Moussa, 1992). Thus the issue to be explored here is not only that youth crime may be created or 'caused' by society, that is, as a consequence of social events, such as poverty and social exclusion or by the status of young people in society. Rather the aim is also to expose the way in which a particular belief, in this case, that youth are more likely to commit crimes than adults, has been shaped by social forces such as the media and/or academic research. Youth in general, and categories of young people more specifically, then become singled out for special attention consequently 'proving' that they are more likely to offend in the first place.

Aries (1962) discusses how what are nowadays considered to be essential differences between children and adults are in fact (relatively) contemporary social constructions. During the Middle Ages, children were viewed as miniature adults, evidenced for example, by art works depicting them in adult dress and adult expressions. Many children worked at a young age and there was no separate justice system for the young. This does not mean that there was no emotional commitment to children, but rather that children and young people were simply not considered as a separate category. The concept of childhood emerged among the upper classes in the 18th century, and in the late 19th century and early 20th century, spread throughout the class structure. Before this, the notion of childhood or adolescence as a distinct stage of life was absent (Mintz, 2004) and as a category, children and adolescents did not have separate political and social rights. In the early nineteenth century extensive populations congregated in cities, the middle class became larger and industrialization resulted in new attitudes about children and their treatment (Feld 1999). Childhood became associated with learning and development, as well as a

kind of innocence and vulnerability. The early 20th century saw the emergence of interest in the period of adolescence, with Stanley Hall (1904) proclaiming its biological base. This perspective was contested by Mead (1928) who emphasised socio cultural influences. The idea that the construct of adolescence is influenced by socio historical conditions has been termed the inventionist view (Santrock, 2010). At the start of the twentieth century legislation was enacted in Europe and the United States that ensured the continued dependency of youth and managed their move into the economic sphere. Compulsory schooling was very important in this regard. Laws were also passed that excluded young people from employment. The creation of a juvenile justice system, with the first juvenile court being instituted in Chicago in 1891 radically altered the status of young people in society. The 'stage' of youth is not immutable and 'has its basis in the changing and unequal political transactions of the industrial capitalist order.' (Mizen, 2004: 5)

Youth as 'Transition' and the Preoccupation with Risk

Youth have been defined as not yet adult, as a period of transition, a being 'in – between' (Bradford and Clark, 2011). During this period young people negotiate, amongst others, three interrelated transitions: the transition from education to employment; the domestic transition - the move from one's family of origin to the family of destination; and the housing transition -a change in residence away from ones parents (Coles, 1995). In late modernity youth transitions have become more protracted and complex to work through. All of this has implications for the negotiation of identity. Transitions are now more protracted with youth researchers beginning to conceptualise a new life phase – that of emerging adulthood (Arnett, 2004). Youth continue however, to be conceptualised as other and otherness is often interpreted as threatening and risky. With social representations of young people emphasising engagement in risk, control emerges as a means to deal with youth. While not without its problems, the metaphor of transition

> "draws valuable attention to young people's *liminal* status as they occupy the borderlands between childhood and adulthood (although the problematic nature of these categories must be recognised). Like Van Gennep's *liminar*, young people are "between two worlds" departing one status and awaiting redemption to another (1960: p. 18). As liminal figures, young people are neither part of one category nor embedded completely in another. They are, in Mary Douglas's words (1966: p. 47–49), a cultural anomaly "… which does not fit a given set or series …" and, as such, often regarded as polluting and dangerous." (Bradford and Clark, 2011: 182-3)

Young people are conceptualised as having a predilection for experimentation, growing independence, sexual awakenings, and other hallmarks deemed characteristic of the life stage. Their vulnerability is also stressed. Consequently the juvenile justice system is concerned not only with control but also with care emphasising either welfare based approaches or more coercive attempts at control (Barry, 2000). For example in Malta the Juvenile Court hears cases both where the young person is being prosecuted as well as where the young person is being taken into care.

The age crime curve

> "Trends in young people's offending behaviour broadly mirrored the steady increase in both the volume and rate of offending more generally characteristic of the last decades of the twentieth century, to the point where offending became well established as a majority activity among the young. At its high point, those aged between 10 and 20 years accounted for four in all 10 of all convicted offenders, with some groups, notably the very poor and young black people, facing acute levels of criminalisation". (Mizen, 2004: 124)

Young people continue to be overrepresented in crime statistics and the existence of the age-crime curve is said to have become one of the lesser contested issues within criminology (Fagan & Western 2005: 59). According to the Cambridge Study (Farrington, 1986), one of the most notable longitudinal studies of delinquent development, the peak age for the prevalence of convictions is 17; the peak age of increase for the prevalence of offending is 14, while the peak age of decrease 23. The most common age for the start of offending is 14 while desistance is commonest at 23. Gottfredson and Hirshi (1990) have argued that the age-crime curve remains constant through time, population and gender. McVie (2009) writes how official data continue to show there to be a rapid increase in criminal behaviour during early adolescence, reaching a peak during the mid to late adolescent years and then declining very rapidly in the mid 20s and, following this, less rapidly. Official statistics are often used to help formulate theories and test research hypothesis. While official statistics may be useful because they are easy to access and indicate trends in behaviour, some sociologists, such as Hindess (1973), have argued that they are a social production with serious deficiencies. He alerts us to two 'instruments of production': technical instruments and conceptual instruments. Technical instruments refer to technical errors and gaps, for example the erroneous location written on a charge sheet. Conceptual instruments are more subtle and more problematic and involve the assignment of statistics to conceptually derived categories. Radical theorists (eg Miles and

Irvine, 1979) view conceptual instruments as products of structural and historical forces. Other reasons account for deficiencies associated with official statistics: for example, the public may not report all crimes to the police because they may not realise they are a victim, they may be embarrassed, or they may fear being implicated in some offence themselves. The police, because of time constraints, may need to prioritize interventions (Holdaway, 1983). Holdaway discusses how the police occupational culture encourages police discretion, with officers coming to adhere to a set of norms and values learnt through the occupational culture. Sociologists and social historians purport that there is always a 'dark figure' of crime and warn about the validity of official statistics on youth crime. Hindess (1973) argues how the use of official statistics tend to bias researchers into thinking that the social laws governing crime and deviance can be discovered through statistics. Making sense of the age-crime curve is not easy because as Farrington (1986) points out it is a product of several types of offences, but which are often aggregated into a single statistic. Soothill et al (2004) also found that the patterns and trends for different offences were very different.

Until the 1970's, the literature on juvenile delinquency was profuse in comparison to that on white collar crime, corporate crime, gender and crime and police crime (Brown, 1998). Youth became linked with concepts of deviance and otherness and "is contemporaneously expected to be an age of deviance, disruption and wickedness" (Brown 1998:3). This implicit association is often made explicit in media, most notably in news coverage. According to Giroux (1996:27)

> "Youth have once again become the object of public analysis. Headlines proliferate like dispatches from a combat zone, frequently coupling youth and violence in the interests of promoting a new kind of common sense relationship".

Youth is not a homogenous category, and within this category males, ethnic minorities and working class youth are mostly associated with the delinquency phenomenon. Unpacking the often taken for granted relationship between categories of young people and delinquent involvement is a worthwhile endeavour. Siegel and Welsh (2012) identify gender, race, social class and age as the correlates that are highly associated with delinquency. While these relationships are borne out by official statistics, self report data and victim surveys, alternative explanations for the relationships abound. Besides, an establishment of correlation does not imply causality. In more practical terms, for example, interpreting the fact that there is a strong relationship between low SES and crime as evidence that poverty causes crime is erroneous since the relationship may be just as well explained by the fact that police are more likely to monitor and notice and arrest

individuals in neighbourhoods characterised by poverty and social problems. One may then ask why it is that the profiles of 'young offenders' within the criminal justice system are similar in most modern societies. It is true that in official statistics one finds mainly young men from minority ethnic communities and having low socioeconomic status. This is true for Australia (Cunneen and White, 2002), England and Wales (Goldson, 2002; Muncie, 2004), Canada (Schissel, 2002) or the USA (Krisberg, 2005). However Cunneen and White (2002) argue that disadvantaged youth receive too much attention from the justice system. The intrusiveness of the state is, in turn, biased toward some groups of young people more than others. Goldson and Muncie explain this eloquently:

> "The labelling of some communities and identifiable groups of young people as 'no hopers', an 'underclass', 'dangerous' and/or 'criminal', feeds back into the very problems of marginalisation and unemployment which lie at the heart of much youthful criminality" (2006:19)

Thus being a young ethnic male with a low SES does not necessarily make one more likely to commit crime, but it makes it more likely that one will become a crime statistic. This paper will now critically examine these correlates in turn.

Age and Delinquency

Criminal career researchers have discussed how offending behaviour often begins at around 15 and 17 years of age (Elliot, 1994). Some individuals have an earlier or later onset but it is relatively uncommon for individuals to start a criminal career after the period of emerging adulthood, defined by Arnett as the mid twenties (Arnett, 2005). The career duration of most offenders, that is, the time when they are actively offending, is most often short lived and most desist by the age of 23 (Blumstein, Cohen, Roth, & Visher, 1986). With a general consensus among criminologists that an age crime curve exists they have set out to develop theories attempting to explain it. Many of these theoretical frameworks locate the source of the problem in the biological, social or economic nature of adolescence. It is assumed that it is something about this age period that brings about offending behaviour. Explanations abound: identity confusion, insufficiently developed prefrontal cortex, rebellion, experimentation, peer pressure. However one might alternatively argue that while different age groups are also likely to be involved in criminal behaviour, youth crime is more likely to be visible and hence come to the attention of the authorities than say, middle age crime. Young people are more likely to be living out their social life in the public sphere than children or older adults, making their behaviour more amenable to public scrutiny and apprehension. The association between age and crime is then seen as a consequence of youth crime being more visible and not

necessarily more pervasive. Not only are young people likely to be in the public sphere but furthermore they are more accessible for study than for example the powerful and often invisible domains of the business sector. Youth scholars have, for some time, examined the deep division in terms of power and authority, between adults and young people in research settings (Best, 2007). Crucial to consideration of a critical interpretation of the age crime curve is the opportunity for criminal behaviour available to the young. For example, while young people may have opportunities for petty easily detected criminality, they have less opportunity for employment-related crimes because young people are not often in a position of authority; on the other hand, older people have more opportunities for less visible work-related crime for which they are less likely to be apprehended. Young people's positions in organisations tend to be subordinate by virtue of their age (Thio, 2005). Piquero & Benson (2004: 161) note that:

> "In a number of ways, white-collar crime is different from ordinary street crime. Involvement in it occurs at a different point in the life course. It has a dramatically different opportunity structure. Those who participate in it are drawn from a different sector of the American social structure. Finally, it may have significantly different motivations from those who engage in street crime."

According to these same authors, while young males are more likely to be involved in street crime, one may argue that more damaging behaviours (i.e. white-collar and corporate crime) are engaged in by much older people, often within the context of their work environment. Piquero and Benson (2004:158) write that "white-collar offenders tend to have a brief flirtation with delinquency during adolescence that ends in the late teens or early 20s. However, after a period of conformity during their 20s and 30s, they begin to offend again later in life by committing white-collar crimes." This may be explained by increased opportunity to offend that is impacted by their work positions.

Many of the arrests that involve young people are for acts that have been termed 'status' offences, acts, that if committed by an adult - truanting, running away from home, underage drinking, driving without a licence - would not be classified as criminal (Siegal and Welsh, 2012). Moreover, because much youth crime, especially early on in the criminal career, is unsophisticated and unplanned (Clark, 1999) it is less likely to go undetected. In Malta, Bell (1994), Haber (2003) and Calleja (2010) document how a large proportion of cases brought before the Juvenile Court involve defiance of authority and offences against the person as opposed to acquisitive crime. Police behaviour may also account for higher arrest rates among the young most notably through the operation of stereotypes. Like people generally, the police use their mental maps to guide them in their

work. When the association between youth and crime becomes commonplace, a process of deviance amplification (Wilkins, 1964) occurs. Those places youth hang around in are more heavily policed because of the police perception that youth are involved in crime; the more youth are policed, the more any involvement in illicit behaviour is noticed. If one's behaviour is more closely monitored, an attribution of deviance is more likely. A well established business man defaulting on his taxes is less likely to be defined as deviant. Youth activities like clubbing are also more likely to provide opportunities for involvement in deviance and are more-likely to be witnessed. One may also consider the perceptions of the judiciary. Young people have fewer social commitments which means any conviction will be perceived by the judiciary to have less negative impact on others. Youth, especially those with less economic capital, are less able to access the services of expensive lawyers. In these ways young people come to find themselves as a criminal statistic.

Criminal career research clearly indicates that as young people enter adulthood the majority who may have been tentatively flirting with criminal behaviour often desist (Clark, 1999), with the majority of youth who fall foul with the law failing to remain criminal in their adult years (Maruna, 1999. As young people make the transition to adult status, they make commitments that reduce peer group influence. Such commitments include stable partnerships, children and occupations which are incompatible with involvement in criminality. Desistance may be explained by a change in the person's role and status in society (Maruna, 1999). Lacking a clear role in society, youth experience 'status ambiguity' (Coleman and Warren-Adamson, 1992). Coleman and Warren-Adamson also discuss how "the uncertainty of status often serves to place young people in positions where they have very little power, and where damaging stereotypes can flourish easily" (1992:21). The fact that the beginning and the end of the complex transitional period of adolescence are not clearly defined brings with it a host of difficulties for the young person, mostly emanating from lack of power and equality (Minaker & Hogeveen, 2009).

Age, Gender and Delinquency

The association between gender and delinquency is profound and persistent (Nagel and Hagan, 1983) and although female crime is on the increase the gender gap continues to exist (Doob and Cessaroni, 2004). In Malta, Bell (1994) found that in the juvenile court the ratio of male to female offending was 6 to 1. In 2003, Haber shows how this changed to 4 to 1. Males and females contrast in their rates of offending and also differ in their patterns of criminal involvement and in their likelihood of becoming victimised. Braithwaite claims that crime, "is committed disproportionately by males" (1989: 44). Research document how females are implicated in a smaller proportion of crimes; commit less severe crimes, which are often less professional and less likely to be repeated. Women are also less likely to be found in penal institutions (Dell et al, 2001). Public perceptions about female crime

are however changing and it is generally viewed as being on the increase (Minaker & Hogeveen, 2009).

Girls who have run ins with the criminal justice system are doubly stigmatised because not only are they being deviant in terms of the norms of society but are also challenging traditional gender roles by being 'naughty' and are consequently viewed more negatively than boys who engage in rule breaking. Such girls are seen as pathological and capable of extreme behaviour (Heidensohn, 1985; Minaker & Hogeveen, 2009). However the reality of female crime is such that most youth crime among females is relatively minor with girls being more likely to be apprehended for shoplifting, cheque fraud and prostitution related offences.

Minaker & Hogeveen, (2009: 120) write how 'criminology has always been predominantly androcentric'. While some explanations have been put forward to understand female delinquency and the underrepresentation of women in criminal statistics, generally criminology has ignored and misrepresented the female delinquent. Early criminologists tended to see female delinquents as pathological or as sexual delinquents focusing on biological explanations linking female crime, for example to the menstrual cycle and ignoring the social contexts in which female criminal careers developed (Minaker & Hogeveen, 2009). In contrast, Adler's seminal liberation hypothesis posits that as the social positioning of women in society becomes more akin to that of men, so their crime rates will become more similar. The idea here is that females who offend are emulating males. The masculisation hypothesis has not gone uncontested and some go do far as to call it 'misdirected (Minaker & Hogeveen, 2009: 123) since female aggression is explained as a reflection of increased empowerment. Gender role theory argues that opportunities for crime differ for males and females. In attempting to explain why burglary is engaged in predominantly by males one might consider that it is inconsistent with female gender roles for women to be out alone at night. The same holds for employment related crime with young women being less likely to occupy powerful positions within business setups and more likely to have their work closely supervised. Pollak, in 1950, was the first to suggest that women manipulate men in the criminal justice system to get lighter sentences. The chivalry thesis proposes that the criminal justice system is more lenient towards women. While feminists such as Heidensohn (1985) criticise the depiction of women as dishonest and caculating, she still contends that women are treated more leniently by the criminal justice system and this is borne out by official statistics. Campbell (1981) interviewed 66 girls and found that 1.33 offences were committed by males for every 1 committed by a woman. This may be contrasted to widely disparate ratios for male female offending found in official statistics. Thus the chivalry theory claims that while women probably do not commit much less crime than males they are less likely to become a criminal statistic. This leniency is not however extended to ethnic minority and low SES females (McGee and Baker 2003). Heidensohn (1985) has been critical of this hypothesis and claims that

especially in relation to sexual offences females are treated more harshly than males and experience double jeopardy.

A differential socialisation hypothesis is supported by Agnew who writes:

> "These differences partly stem from biological differences… they also stem from differences in the socialization and social position of males and females… males [are thought] to be assertive, risk-taking, independent and competitive… females [are thought] to be submissive, cautious, dependent and concerned with the welfare of others" (2005, p. 162).

While society in the 21st century presents females with a wider scope of scripts than it did in the past, dominant representations of femininity continue to be characterized by attributes such as emotionality and domesticity which may be difficult to reconcile with criminality. Gottfredson and Hirschi explain this as consequence of different opportunity structures and more supervision over females (1990, p. 148). Budd et al propose that:

"Girls and young women are more likely to be involved in certain property offences and less likely to commit more serious burglary and robbery… it appears that the offending behaviour of young females is little different to their male counterparts according to their own accounts, but is simply of lesser intensity" (2005, p. 14).

Age, Class and Locality

Class refers to a complex of several variables including but not limited to lifestyle, occupation, income, education and housing. Importantly class is understood by theorists as a social relation (White and van der Velden, 1995) and a lived experience (White and Wyn, 2004). In delinquency research, parental social class is used to determine the social class into which the juvenile falls (West, 1982). According to White and Cuneen (2006:19) "It is the most disadvantaged and structurally vulnerable young people who tend to receive the most attention from youth justice officials at all points of the system".

Key criminologists have identified class as a significant influence on delinquent involvement (Cloward and Ohlin, 1960; Cohen, 1955; Merton, 1997; Shelden and Brown, 2003). However, class has been singled out as a contributing factor not necessarily in the commission of crime but rather in the process of criminalisation (Hall et al, 1978). In fact "studies of self-reported delinquency have shown little or no difference by social class in the actual commission of delinquent acts" (Cox et al, 2003 p. 56). While research shows how there are variances in the types of offences engaged in by people with different class backgrounds, there is little agreement among sociologists as to why this is the case. For Miller (1958) for example, working class culture is the root cause, while Cohen (1955) contended that working class adolescents experience social strain through blocked access

to opportunities for advancement in society. The involvement of some young people in crime is reflected in but may be also an outcome of, social inequality (White and Cuneen, 2006) For example working class adolescents are disadvantaged when it comes to school attainment - the pathway to middle class status – when compared to middle-class boys. Working class boys are deprived of the means to achieve middle-class success goals and eventually may lose sight of middle-class goals. Juvenile delinquent subcultures thus develop as collective albeit magical solution to the status frustration that working class adolescents experience and provide them with an alternative form of status. While street crime may be more pervasive among the poorer sectors of society, it is also true that the wealthy have more opportunity to commit white-collar crime because they hold jobs that allow them to do so. The equation is further compounded by age and it has also been argued above that young people are less likely to encounter opportunities for corporate crime.

The processes of criminalisation, through the working of the criminal justice system is also significant in linking offending to structural inequality. White and Cuneen (2006:19) discuss how "The state is more likely to be intrusive in the lives of the poor. The labelling of some communities and identifiable groups of young people as 'no hopers', an 'underclass', 'dangerous' and/or 'criminal', feeds back into the very problems of marginalisation and unemployment which lie at the heart of much youthful criminality". Chambliss concluded that some delinquents' activities are seen as less serious than others as a consequence of their positioning in society:

> "No representative of the upper class drew up the operations chart for the police which led them to look in ghettoes and on street corners – which led them to see the demeanour of lower class youth as troublesome and that of upper middle class youth as tolerable. Rather, the procedures simply developed from experience – experience with irate and influential upper middle class parents insisting that their son's vandalism was simply a prank and his drunkenness only a momentary sowing of wild oats – experience with cooperative or indifferent, powerless lower class parents who acquiesced to the law's definition of their son's behaviour" (1973, p. 30).

Offences committed by poor children may be perceived to be far more serious than that engaged in by more affluent youth. Chambliss (1973: 31) asked: "Why did the community, the school and the police react to the Saints as though they were good, upstanding, non-delinquent youths with bright futures but to the Roughnecks as though they were tough, young criminals who were headed for trouble?" Police efforts are also dictated by a practice called 'spatial targeting' (Weisburd e tal, 2001) whereby the police focus their resources

on areas and individuals where crime rates have historically been highest and which are often occupied by the working class because property is cheaper because of their negative reputation. Concentric Zone theory (Park, Burgess and McKenzie, 1925) contends that the development of urban centres follows a pattern of radial outgrowths from the city centre, namely (a) the business centre, (b) the interstitial/transition zone, (c) the working class area, (d) the residential zone and (e) the commuter zone. Each of these concentric zones possesses specific arrangements of community life with the zone of transition characterised by slum conditions and social disorganisation. Spatial targeting is subject to a self fulfilling prophecy in that areas that are more heavily policed will have higher arrest rates.

Age, Race and Ethnicity

The issue of power and its unequal distribution in society is an important consideration in conflict theory suggesting that law enforcement is biased against those with less power in society. Do young people from ethnic minorities, who have considerably less power in society, receive harsher treatment by the police and the courts? Are minority offenders more likely to be arrested, prosecuted, and imprisoned? According to Siegel and Welsh (2012), both arrest and imprisonment data give support to the notion that minority groups are overrepresented at several stages of the criminal justice system.

Social disorganization theorists predict that because minorities are likely to reside in poor neighbourhoods which find themselves in transition, they are likely to experience opportunity for crime. Above the author has already discussed how locality is influenced by class and class is in turn influenced by ethnicity. The relationship is rather complex. He documents how it was not ethnicity alone that influences influence police decisions to arrest. Rather these individuals manifested more hostile attitudes towards the police and more negative interactions with them. This has been shown to be likely to lead to arrest (Clark, 2005).

In their summary to a 2006 report to the House of Commons Home Affairs Committee Inquiry, Bowling and Phillips write:

> "Public perceptions of ethnicity and crime are shaped by many factors and are subject to distortion and stereotype. Research and statistics show that the overwhelming majority of offenders in England & Wales are white. Nonetheless, police statistics and victim surveys show that black people commit a disproportionate share of relatively rare crime (e.g. robbery and homicide). Research on victimisation, offending and socio-economic data suggests that this is a result of entrenched disadvantage and social exclusion.

> Discrimination in the criminal process has, over time, compounded this to yield much higher rates of criminalisation within black communities. The long-term result is a growing adult black prison population". (2006:1)

The authors of this important report also document how ethnic minority youth are stereotyped as being predisposed to crime. Holdaway's (1996) seminal study on police culture and Genders and Player's (1989) study on race relations in prison also attest to this. With the increase in migration from sub-Saharan Africa to Malta since 2002 (Bradford and Clark, in press), this issue is one deserving of further research.

Conclusion

This chapter has documented how the taken for granted associations between crime and age, class and ethnicity need to be unpacked and explored from a more critical perspective. While many criminological perspectives have focused on reductionist explanations of how age, ethnicity, poverty and gender are direct causes of criminal involvement, more critical perspectives have contested these and attempt to explore how criminal justice processes and outcomes, most notably policing, prosecution and sentencing contribute to the increased likelihood of young, black, working class, males becoming a criminal statistic. While the social exclusion that such youth experience continues to be a principle cause of offending behaviour, this is compounded by discrimination within the criminal justice processes that results in a disproportionate criminalisation of such individuals.

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CHAPTER 6

Juveniles in Jeopardy

Janice Formosa Pace

Adolescence is defined as a transitional period (Hurlock, 1980) where what happened during childhood leaves a significant mark on one's life and future. This includes emotional and physical difficulties and pressures, and involvement in anti-social activities including crime (Newburn, 1997). Criminal behaviour is perceived to be one of "a larger syndrome of anti-social behaviour" arising in childhood and at times persisting in adulthood (Farrington, 1997, p. 363). For most juveniles, according to Moffitt (1993, p. 674) activities tend to be temporary and situational whilst for a small minority this is "stable and persistent". Moffitt (1993, p. 682) claims that if a child "steps off on the wrong foot" and remains on this unconventional path, the consequences may be perpetuated by persistent offending. In such a situation, it is difficult to make up for lost opportunities in acquiring conventional skills such as academic skills.

The underlying risk factors that render one susceptible to antisocial behaviour when young are carried into adulthood. Together with the accumulating problems, the options for change and the possibility of resorting to conventional methods are limited (Moffitt, 1993). The consequences following one's antisocial behaviour may narrow opportunities for change. This can be compounded by the resulting labelling that could play a significant role as once a bad reputation is gained the opportunities for conventional behaviour is narrowed further. On the other hand, youths who manifest early onset conduct problems could follow two paths; their conduct problems could be restricted to their childhood years or else these conduct problems persist (Barker and Maughan, 2009; Moffitt, Areseneault, Jaffee, Kim-Cohen, Koenen, Odgers et al. 2008).

Unrevealing juvenile crime

Researchers have been interested in studying the prevalence of offending among juveniles. In Malta, juvenile crime is relatively small amounting to 0.7% (of all crimes committed) in 1986 and increasing to 1.4% in 1994 (Central Office of Statistics, 1986; 1994).

The number of juveniles brought before the Juvenile Court increased from 14 in 1986[1]

1 Malta has one juvenile court which was set up in 1986. Maltese juveniles are subject to the same laws and

to 122 in 1999 (Formosa Pace, 2003) and to 412 between July 2008 and March 2012 (Testa, 2012). Also, 49.8% of the 412 adjudicated juveniles were 15 year olds, followed by a 26.5% representing crimes committed by 14 year olds whilst 0.5 of adjudicated juvenile crimes were committed by 10 year olds (Testa, 2012).

A risk factor approach

A series of studies adopting the criminal career genre as well as desistance research are more inclined towards the studying risk factors (Bottoms, 2006). Giddens (1990) emphasises the concept of *risk society* and the criminological work of Kemshall (2003) highlights the increased societal interest in risks along with a penal policy with a welfare orientation thanks to the restructuring of rehabilitation and the increase of punitive sanctions, which concepts are at heart to politicians. This has contributed to the increase of risk assessments on samples of offenders (Bottoms& Shapland, 2010). However, research does attest that hardened offenders do desist (Bottoms & Shapland, 2010; Ezell & Cohen, 2005; Laub & Sampson, 2003) but it's very difficult to predict the potential desisters on an individual level.

The underlying risk factors pertaining to persistent offending of male youths are investigated in this Malta study adopting a risk-factor approach focusing primarily on the individual, family and social/peer factors. These are analysed in further detail in the following sections.

Individual risk factors

Individual risk factors such as academic achievement and self-control are analysed in the light of delinquency tendencies as well as one's probability of following conventional paths. Various longitudinal studies have observed an association between delinquency and schooling failure (Farrington, 1996; Polk, Alder, Bazemore, Blake, Cordray, Coventry, Galvin & Temple, 1981; Wolfgang, Figlio & Sellin, 1972). Factors associated with criminal behaviour include an inability to delay gratification, low frustration tolerance, adventure/risk taking, inability to sustain long term relationships, impulsivity and unconcern about the feelings of others (Brownfield & Sorenson, 1999). The need for excitement and antisocial behaviour is crucial to delinquent peer groups (Coleman & Hendry, 1990) where studies show that sensation seeking activities have been linked with delinquency (Farell & Sewell, 1976; White, Labouvie & Bates, 1985). Delinquency is perceived as an exciting activity relieving one from boredom and providing personal satisfaction. However, findings in this area have been laden by two main problems. The offender population has been assumed

sanctions as adult offenders. Offenders less than 16 years are prosecuted before the Juvenile Court where they are treated differently, guaranteed special protection with hearings closed to the public (Juvenile Court Act: Chapter 287 of the Laws of Malta, 1980).

to be homogenous whereas the locus of control may vary across races. Moreover, impulse control is vaguely defined, a concept "loosely tied to observable behaviour" (Blackburn, 1993, p. 191).

On the other hand, Pratt & Cullen's meta-analysis (2010) which tested the empirical validity of Gottfredson and Hirschi's (1990) general theory of crime shows that results provide significant and robust empirical support for the general theory of crime proposed by Gottfredson and Hirschi (1990) with low self-control being a solid predictor and could be classified as the "strongest correlate" of crime and that low-self control predisposes engagement in criminal activities and subsequent analogous activities (Pratt and Cullen, 2000, p. 952).

Family Risk Factors

A long standing hypothesis is that offenders are more likely to come from a broken home environment where one or both of the natural parents is/are absent (Blackburn, 1993), as attested by earlier studies carried out by Chilton & Markle (1972) in Florida. These studies have been criticised since the broken home concept is ambiguous and misleading (Wells & Rankin, 1986), as this phenomenon is not the major criminogenic factor. Research has also focused on discipline (Bandura & Walters, 1959; Hoffman, 1977), supervision (Hirschi, 1969), and warmth of relationships between parents and children (Bandura & Walters, 1959; Glueck & Glueck, 1950) and psychological presence of parents' vis-a-vis juvenile delinquency (Chilton & Markle, 1972). Delinquents' parents have each been observed to adopt erratic disciplinary techniques and manifest inconsistency in the application of such techniques (Hetherington & Martin, 1979). Families of delinquent juveniles tend to be harsh, punitive, lax, and erratic and show "poor mothering ability", however such claims are criticised as they tend to be value-laden failing to distinguish the "parameters of rearing techniques" contributing to delinquency (Blackburn, 1993, p. 161).

Another important factor is the amount of time parents dedicate to their children and their involvement in leisure activities. Delinquents' families seem to share less recreational activities (Bandura & Walters, 1959; Cortes & Giatti, 1972; Currie, 2000). Parental conflict, cruelty, passivity, neglect/aggression and harsh discipline are amongst the factors which have been identified as predictors of later delinquency and convictions. The Cambridge study highlights that later juvenile delinquency is predisposed by "harsh/erratic discipline, cruel, passive or neglecting parents, poor parental supervision and parental conflict with all factors being measured at age eight (Farrington, 1996, p.32-33). However, studies in this area have been burdened by a "profusion of loose terminology" (Blackburn, 1993, p.161), terms like lax, harsh and punitive are rather subjective descriptions. Also, these factors have most often been studied in isolation. Also, since crime is a complex behavioural activity such findings do not provide a complete explanation of criminal behaviour.

The Cambridge study sample originally designed as a longitudinal criminal career study was also used to adopt a intergenerational approach featuring research in the cycle of disadvantages and studies primarily concerned to study to what extent lives are linked across generations and decades. A series of studies carried out in the UK, US, Netherlands and Scandinavia highlight that crime runs in families claiming that offending concentrates in families and tends to be transmitted across generations. However, the nature vs. nurture debate is still much alive.

Social/Peer Risk Factors

Humans, other than biological beings, are social beings who live in a social environment within which they interact. Peer groups are highly significant for adolescents (Jackson & Rodrigues-Tome, 1993) as serve as fertile grounds for experimentation (Sherif & Sherif, 1964). Peer conformity could result into anti-social tendencies including, drug use and misuse of alcohol (Coleman & Hendry, 1990). Hanging around with delinquent peers increases one's frequency of delinquency, such as taking joy rides) Hirschi, 1969; Agnew & Petersen, 1989). Delinquent peers in turn approve one's conforming behaviour to group norms making one feel accepted (Akers, Krohn, Lanza-Kaduce & Radesovich, 1979). Glueck & Glueck (1950) describe the association of delinquents with delinquent peers as "birds of a feather flock together". Parker & Asher (1987) claim that peer rejection in childhood predicts later delinquency. "Rejected" juveniles are unpopular with conforming peers whilst popular and accepted in delinquent peer groups. This scenario is shared in Malta as revealed by a study investigating the criminal careers amongst male Maltese inmates (Clark, 1999).

Studies indicate that most juveniles do not commit crime on their own (Aultman, 1980) where co-offending is more common with younger adolescents (Farrington & West, 1990). However, a cause and effect relationship has not been clearly established as there seems to be disagreement about the peer group effects and one's criminal acts (Blackburn, 1993). Peer influence is an important factor, but peer pressure is not the only driving force pushing juveniles towards crime (Hollin, 1992). Research studies have observed a relationship between drugs and crime (Tonry & Wilson, 1990) which activities could represent sensation seeking activities. Empirical data suggests that drug use has both a direct and indirect effect on crime (Hser, Longshore & Anglin, 1994). Lack of local data does not allow one to distinguish between offender and non-offender samples; however drug use is part of this anti-social syndrome (Clark, 1999). Also, drug users engage in property crimes in order to sustain their costly habit (De La Rosa, Lambert & Gropper, 1990) and criminal behaviour increases as their drug habit escalates (Chaiken, 1986; Chaiken & Chaiken, 1982; Collins, Hubbard & Rachal, 1985; Speckart & Anglin, 1986a; 1986b). Failing access to legitimate income, juveniles have to resort to illegitimate means

to acquire money (Greenwood, 1992; Johnson, Williams, Dei & Sanabria, 1990).

This retrospective study adopts a risk factor approach in studying the "career" of Maltese male juveniles whose offending behavioural patterns persisted towards adulthood as attested by the incarceration records at Corradino Correctional Facility (CCF). The focus is one three categories of risk factors in this case study:

- Individual risk factors: education and conduct behaviour;
- Family risk factors: home conditions and relationship with parents, child rearing practices & bonding and parental deviation;
- Social/peer risk factors: peer influence, misuse of substances, socio-economic conditions, employment and street/community life.

Methodology

In this retrospective study, male participants who had criminal records at the Juvenile Court and at the local prisons were identified. The multiple case-study approach[2] was adopted based on a sample of six case studies[3]. Data analysis was carried out qualitatively through the use of archived documents and interviews. All participants of Maltese origin were referred by the police to the Socio-Legal Unit. All subjects were criminally charged for offences committed before the age of sixteen between 1986 and 1999 and subsequently had criminal records as adults (16+) at CCF.

Data was collected from official documents archived in the Socio-legal Unit, Criminal Records (CCF database) as well as through interviews with social workers and probation officers. Official documents covered a wide range of recorded materials that included family case history, academic records, police records, indictment bills, case conference/s reports, reports provided by court appointed experts[4], reports provided by other agencies such as drug rehabilitation agencies, Magistrate Court sittings[5], newspaper reports and digital data of CCF records. As the case studies were identified, analysis of documented information followed. Archived Juvenile Court documents and personal files of subjects were used to identify the risk factors outlined above. Other documents such as data archived at the Education Welfare Unit were used to consolidate information related to educational background, truancy, school-drop outs and behaviour at school. This was followed by analysis of incarceration records per case based on a GIS exercise carried out by Formosa (2007) as part of a PhD dissertation.

2 This technique involves selecting samples from previously-selected samples carried out in a series of progressive stages.
3 Purposive sampling was used so as to complement with the case-study approach and analysis of data.
4 Probation Officers, Social Workers, Doctors, Psychologists, Psychiatrists
5 Sittings in which a minor is prosecuted as a co-offender with an adult (16+)

Results

A meta-matrix ordered by cases (Table 1) summarises the risk factors and group instances of individual activity occurrences by type indicating where an occurrence is found across the case studies. The mind maps (Figure 1 & 2) give a graphic description of the identified indicators.

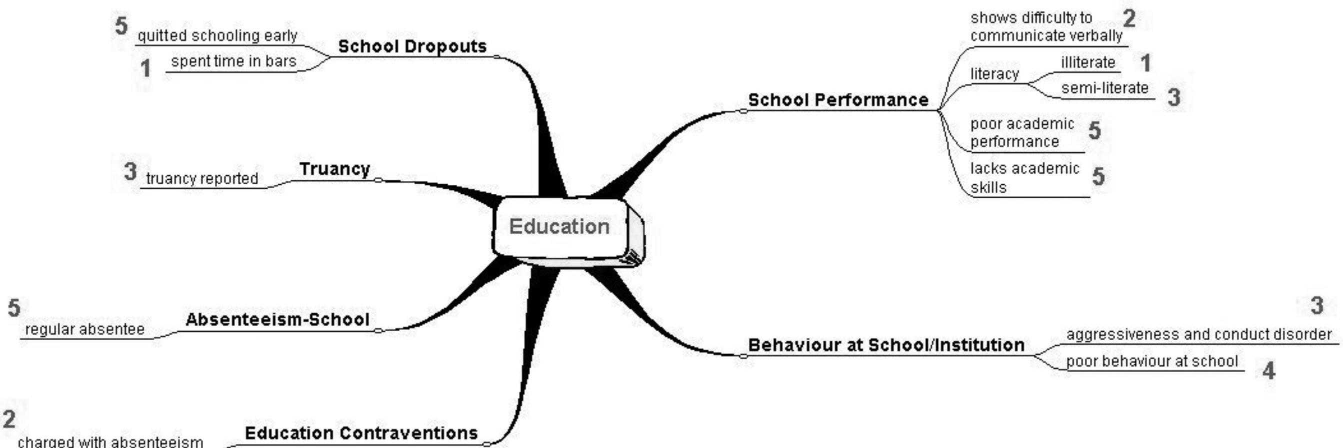
Education (Figure 1)

Figure 3 shows that the main risk conditions with regards to education, shared by the majority of persistent juvenile offenders are that juveniles' behaviour is rather poor at school. Also their academic performance tends to be poor. As a result, the majority lacked academic skills having absented themselves from school and quitting schooling early. In this study, however illiteracy, truancy, aggressive behaviour and education contraventions regarding court charges related to absenteeism were not shared by the majority. This may be attributed to the fact that a small pool of juveniles were analysed where larger studies could show otherwise. The mind map illustrates visually that school attendance wasn't regular; however charges for absenteeism did not follow similar patterns.

Ability to delay gratification; Ability to foresee the consequences of one's behaviour; concern for others; sensation seeking activities (Figure 2)

Figure 2 illustrates the risk factors related to conduct behaviour. The Mind Map illustrates that lack of concern for the feelings of others particularly victims are common to all cases indicating a major risk condition related to locus of control. Similarly the majority manifest inability to delay gratification and inability to outweigh the consequences following their actions that is illegal in nature. This could be explained in the light of the fact, which all cases engaged in illegal activities and gave importance to street life. However, lack of self-control, low frustration tolerance and impulsivity were identified in a minority.

Figure 1: Education



The numbers signify factor occurrences manifested by individuals.

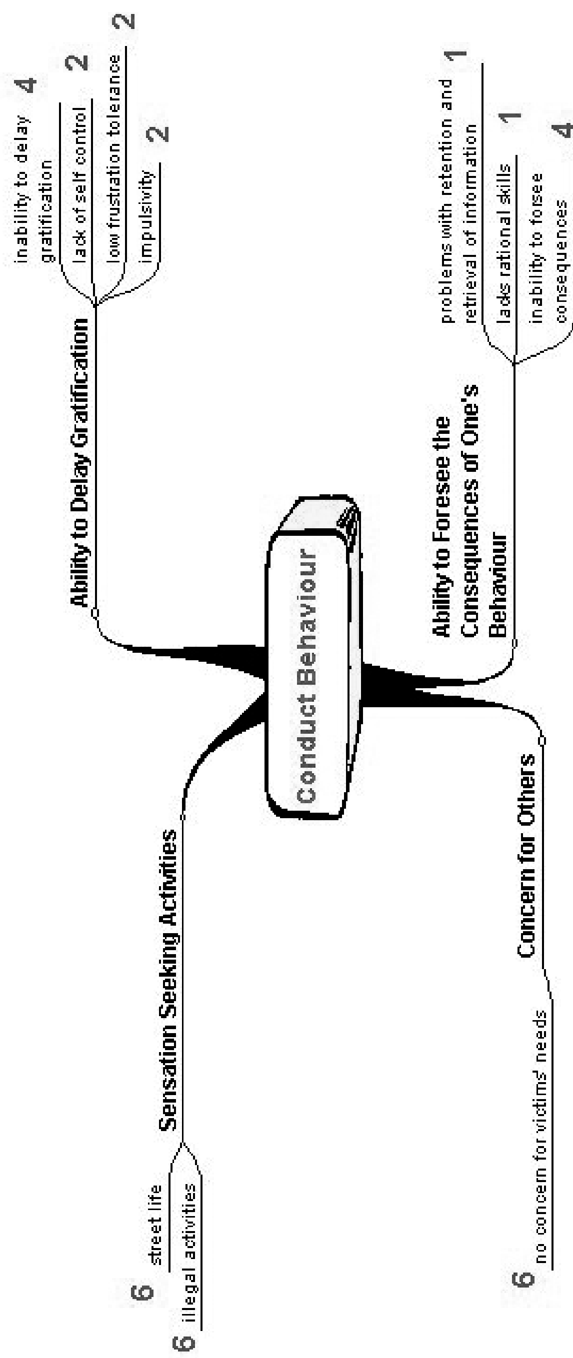


Figure 2: Conduct Behaviour

Family Risk Factors (Figure 3)

This analysis looks at family risk factors that have been identified from the case by case study. This is based on the analysis of the Mind Map (Figure 3) and a meta-matrix ordered by cases (Table 2).

The phenomenon of a single parenthood either by separation, desertion or natural death posits to be a risk factor. However, this could have been worsened by another risk factor conditions presented in Figure 3 including lax parenting style, lack of parenting skills and a laissez-faire attitude towards discipline. Whilst the majority abdicated from their parental responsibilities, institutionalisation was deemed necessary as a temporary alternative in 4 cases. Another risk factor directs one's direction to potential crime continuity through belonging to a family with a criminogenic background particularly through parental offending.

The Mind Map (Figure 3) illustrates that family dysfunctions resulting due to problems within the household are a major risk condition. Also, poor relationships with parents were shared by the majority and all cases did not consider their parents as role models. Also, Figure 3 illustrates that parents dedicated minimal time to their children. This is linked to the fact that the majority of cases opted to partake to street life rather than staying with their parents.

Social/Peer risk factors (Figure 4)

The final group of indicators in this study covered the issue of social/peer risk factors. This is depicted through a Mind Map (Figure 4) and a meta-matrix ordered by cases (Table 3).

The Mind Map (Figure 4) illustrates that substance misuse particularly hard drugs are risk indicators, however, personal involvement in drug trafficking is not an indicator. Figure 4 indicates that involvement in delinquent circles and having peers involved in criminal activity including substance misuse and drug trafficking are major indicators. Also, co-offending particularly theft-related was common to all subjects as indicated in the map. Another important indicator is the issue of street life as evidenced across all cases.

As regards to neighbourhood, interestingly, the map illustrates that the majority of cases resided in areas renowned for criminal activities. Such areas are frequently burdened with other social problems. This could be explained in the light of evidence indicating that all cases faced socio-economic difficulties and had to resort to welfare benefits provided by the state as an income. The Mind Map also shows that all subjects faced unemployment and had family unemployment history. Thus peer related activities particularly theft and misuse of drugs, together with undesired neighbourhoods and the related socio-economic constraints are major risk indicators.

Figure 3: Family Risk Factors

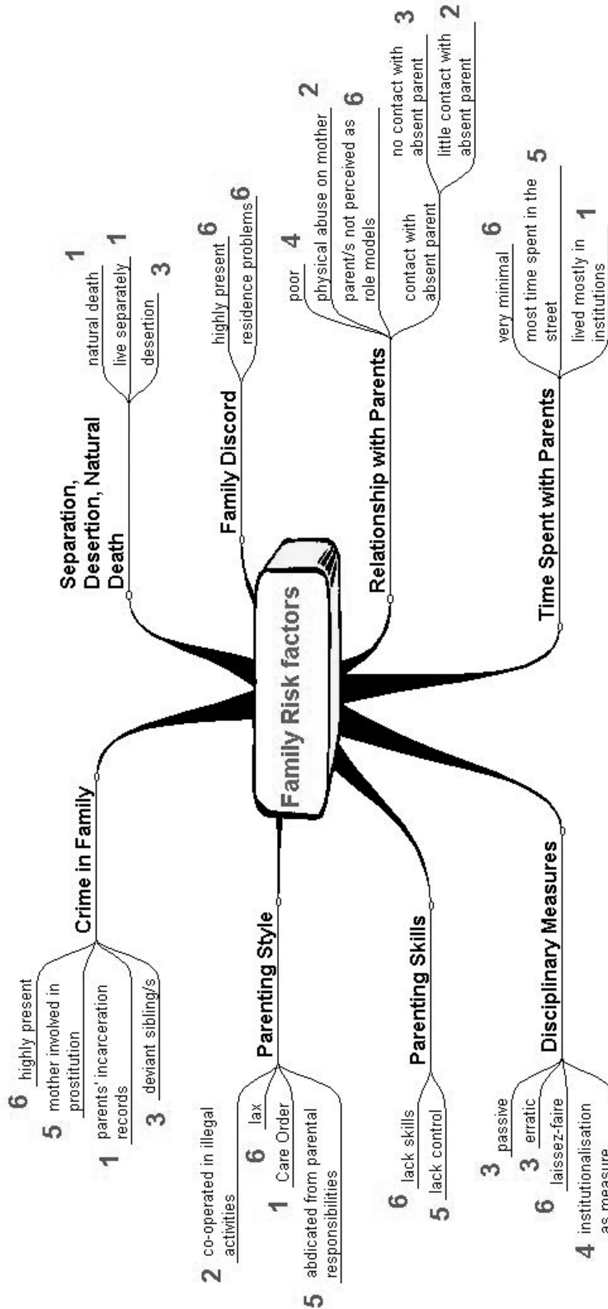
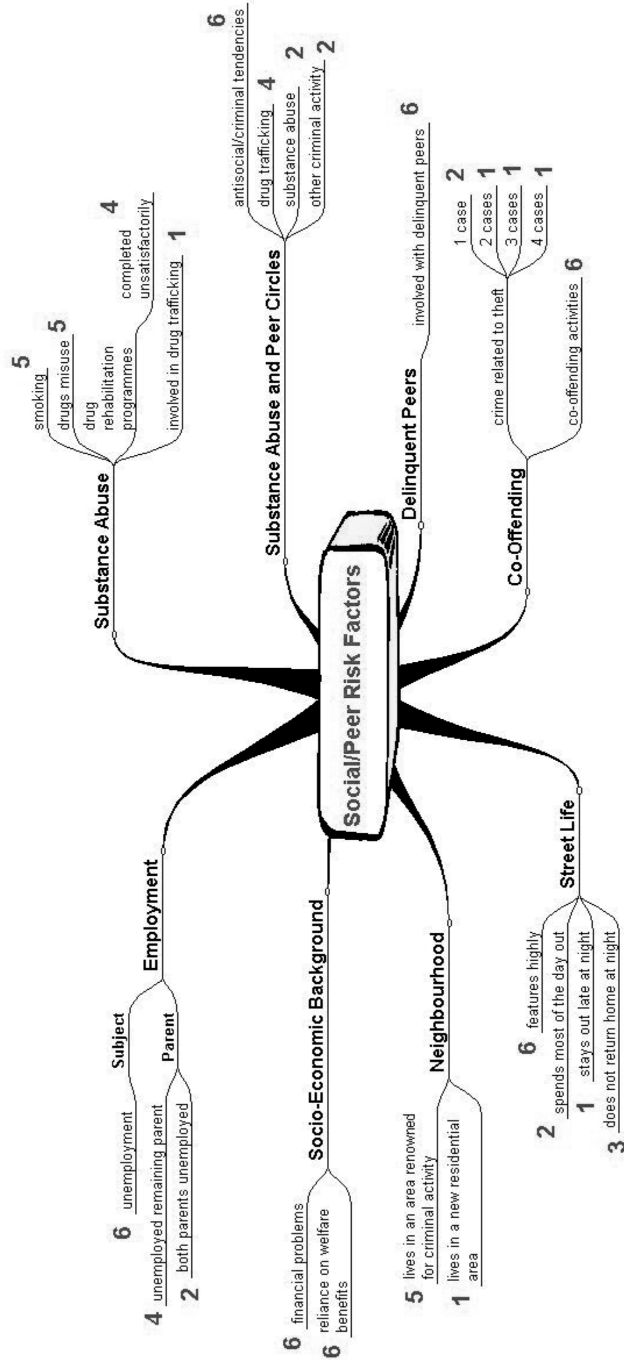


Figure 4: Social/Peer Risk Factors:



Conclusion

Subjects investigated in this Malta research developed what Farrington (1997) defined as criminal careers since criminal behaviour persisted from adolescence to adulthood. Also, their criminal career escalated as they approached adulthood leading them to adult prisons. As Moffitt (1993) explained if one remains on the wrong footpath the consequences may be maintained by persistent offending. Also, the risk factors that got them into trouble at a young age together with the accumulating consequences narrowed their opportunities for change (Moffitt, 1993).

Subjects failed to acquire the necessary skills such as academic skills that could guarantee employment (Moffitt, 1993). Their experience of school failure (Blackburn, 1993) has hindered acquisition of academic skills and could also explain the value given to street life. Also, deficiencies related to locus of control explain their inability to outweigh the consequences of their actions and redirect their lifestyle (Gottfredson and Hirschi, 1990; Mischel, Shoda and Rodriguez, 1989; Wilson and Herrnstein, 1985). Since unconcern for others and exciting street life (Coleman and Hendry, 1990; Patrick, 1973) prevailed their criminal career escalated. Also their later misuse of drugs and involvement with drug circles limited their opportunities for change. These risk factors and the resulting consequences have had a lasting impact on their deviant lifestyle.

Families failed to provide guidance towards conventional behaviour. Also, their lack of parenting skills, their laissez faire attitude, lax parenting, parental conflict, and their criminal background have significantly exerted their constraints on the sons' lifestyle. This could be explained in the light of the socio-economic constraints they faced as according to Sampson and Laub (1994) these indirectly influence crime through their effect on parental skills. Also, theft-related crime being the most frequent illegal activity could have been triggered by financial constraints (Farrington and West, 1990; Patterson, 1982). The broken home situation laden by lack of parenting skills and disciplinary measures adopted have influenced juveniles' delinquency. In addition, due to lack of funds parents were constrained to reside in affordable neighbourhoods where according to Sultana (1994), crime and drugs were commonplace.

Consequently, befriending delinquent peers and drug use were also found. Also, as studies indicate, co-offending (Aultman, 1980; Farrington and West, 1990) is particular to juvenile delinquents. They resort to street life when the relationships with parents is poor, where subsequently their involvement in delinquent peer group activities persists. This accounts for their persistence in criminal behaviour towards adulthood, as avoidance of delinquent peers according to Farrington et al. (1975) and Robins et al. (1975) stimulates reform. Also, as Medinnus (1965) claimed juveniles' delinquent behaviour could result since parents were not perceived as role models. This was deteriorated by the minimal amount of time spent with their parents. In addition, incarceration could worsen

one's possibility to change due to labelling, where once a bad reputation is achieved, reintegration in the social context is significantly threatened.

Limitations of the Study

Documentary-content archival analyses are "unobtrusive measures" or "indirect observations". However, since the raw data exists in a permanent documented structure it caters for replication to validate reliability. Such a study is "a low cost" and less time consuming type of a retrospective design (Robson, 2000, p.280).

Such techniques do not fall short of criticisms since they are limited, discontinuous or episodic, partial at times or experience data unavailability (Shaughnessy and Zechmeister, 1990). Also, the archived documents used were compiled for a purpose other than that for this investigation (Robson, 2000). Consequently, inconsistent recording of data was inevitable.

Recommendations for Future Research

Future research should aim at addressing what causes onset, persistence and escalation of offending as well as the role played by institutions such as welfare, education and probation services. In addition, the factors that foster desistence are worth future investigation, since as attested by the findings herein only a small percentage of juvenile offenders persist in offending and have to serve incarceration as adults. Other studies may include related issues such as maternal prostitution, its 'dark figure' scenario, as well as the relationship of juvenile crime and the relationship to parent prostitutes.

Another issue relates to the way the Maltese Court system imposes fines, probation-orders and even prison sentences amongst other sanctions to juveniles. Prison sentences are served in the National Adult Prison and specialised rehabilitation programmes for juvenile offenders such as institutional/residential and community programmes are not comprehensive. Future research should aim at addressing 'what works' with juveniles whose criminal behaviour reaches a peak in adolescence. Are these sanctions effective in terms of reducing recidivism? 'What works and for whom'? Since local research in the forensic field is still in its embryonic stage, future research studies should target and evaluate the current sentencing approach. The nature and quality of service juvenile offenders receive needs to be examined and evaluated as well as the move towards effective policy making and recording processes.

Table 1 - Individual Risk Factors

Condition	**Case-1**	**Case-2**	**Case-3**	**Case-4**	**Case-5**	**Case-6**
School performance		Poor	Poor	Poor	Poor	Poor
Academic Skills		Lacking	Lacking	Lacking	Lacking	Lacking
Literacy	Semi-literate		Semi-literate	Semi-literate		Illiterate
Verbal-communication		Difficulty		Difficulty		
Wechsler			IQ:98			Verbal:IQ:72 Non-verbal:IQ:71 Global:IQ:70
Behaviour:school/ institutions	N/A	• Pilfering • Fights • Befriends troublesome boys • Blackmailing • Vandalism	-Bullying -Trafficked ecstasy -Vandalism	-Trouble maker -Attempted-theft -Expelled	N/A	Misbehaviour
Diagnosis: aggressiveness/conduct-disorder		Diagnosed	Diagnosed	Diagnosed		
Absenteeism School	N/A	Absentee	Absentee	Absentee	Absentee	Absentee since primary
Attendance						
School drop outs	N/A Bar-hopping	Yes	Yes	Yes (Exemption)	Yes	Yes
Education contraventions	N/A	N/A	Charged	Charged	N/A	N/A

Condition	**Case-1**	**Case-2**	**Case-3**	**Case-4**	**Case-5**	**Case-6**
Truancy	N/A	Reported	Reported	Reported	N/A	Left rehabilitation-centre
Ability to delay gratification	Inability				Inability	
Diagnosis		•low frustration tolerance •difficulty: controlling actions	-inability -symptoms of over activity/ impulsivity	-inability - low frustration tolerance		-symptoms impulsivity/ conduct disorder
MMPI:Scores			hyperactivity/ lacks self-control			
Condition	**Case-1 Aldo**	**Case-2 Carl**	**Case-3 Mark**	**Case-4 Simon**	**Case-5 Ralph**	**Case-6 Thomas**
Ability to foresee the consequences of one's behaviour	Unable	Unable	Lacks rational skills	Unable	Unable	Retention/ retrieval information problems
Concern for others (victim)	No	No	No	No	No	No
Sensation-seeking activities	Illegal activity	Antisocial behaviour	Illegal activity/ peer-activities/ theft	Thefts: cars/ joy-rides	Property theft	Shoplifting
Street life	Yes	Yes	Yes	Yes	Yes	Yes

Table 2 - Family Risk Factors

Condition	**Case-1**	**Case-2**	**Case-3**	**Case-4**	**Case-5**	**Case-6**
Separation; desertion; natural death	Mother: desertion	Never met biological-father	Father: deserted	Absent	Parents live separately	Father: deceased
Family discord	Features	Features	Features	Between parents; parents and siblings	Between mother/sibling	Between subject/ mother and subject/
	Father: thrown out	Unwanted: at home	Rejects: mother's partner		Parents:good contacts	grandparents
Relationships with parents	Poor	Poor: Mother calls him "bastard"	Poor:mother			Poor:mother
		- Neglect/ Rejection				
Role-models	No	No	No	No	No	No
Physical abuse	Towards mother		Towards mother			
Contacts with father			None		Few	

Condition	Case-1	Case-2	Case-3	Case-4	Case-5	Case-6
Parenting skills	Absent	Absent	Absent	Absent	Absent	Absent
Guidance/Support	No	No	No	No	No	No
Control	Lacking		Mother: lacking	Lacking	Lacking	Grandparents- Mother:lacking
Disciplinary measures	Passive Laissez-faire	Passive Laissez-faire	Erratic Laissez-faire	Erratic Laissez-faire	Mother – erratic Laissez-faire	Passive Laissez-faire (mother)
Institutionalisation	Yes	Yes/homeless	Yes	Yes		
Other			Physical-punishment	Held stolen property		
Time spent with parents	Minimal	Minimal	Minimal	Minimal	Minimal	Minimal
Condition	**Case-1**	**Case-2**	**Case-3**	**Case-4**	**Case-5**	**Case-6**
Parenting style	Lax	Lax	Lax	Lax	Lax	Lax
Abdicated roles- to authorities grandparents	Yes	Yes	Yes	Yes		Yes
Other		3-year Care-Order		Allowed subject to drive car	Mother: provided urine for son's drug-tests	
Crime in family	Yes	Legal father (pimp)	Yes	Incarcerated parents		
Mother prostitution	Yes	Yes	Yes		Yes	Yes
Sibling behaviour	Deviant			Deviant	Deviant	

Table 3 - Social/Peer Risk Factors

Condition	Case-1	Case-2	Case-3	Case-4	Case-5	Case-6
Smoking	Smoker	N/A	Heavy smoker	Heavy smoker	Smoker	Smoker
Alcohol consumption	N/A	N/A	N/A	N/A	N/A	N/A
Drug misuse	Abuser	Drug trafficking	Abuser/ Overdose	Abuser	Abuser	Abuser
Drug-rehabilitation programmes completion	Unsatisfactorily	N/A	Unsatisfactorily	N/A	Unsatisfactorily/ Recommenced-2002	Unsatisfactorily
Delinquent peers	Involved	Involved	Involved/older peers	Involved	Involved	Involved
Substance abuse/peer circles	Criminal activity Yes	Gang member Yes – drug trafficking	Yes– drug trafficking	Criminal activity	Yes– drug trafficking	Yes– drug trafficking
Street Life	Evident	Evident	Evident	Evident	Evident	Evident
day	Bar-hopping			Roaming		
night		Out-late	Out-late		All-night	All-night
Condition	**Case-1**	**Case-2**	**Case-3**	**Case-4**	**Case-5**	**Case-6**
Co-offending: cases	1	2	1	4	3	2
Unemployment: Subject	Features	Features	Features	Features	Features	Features
Father	Unemployed	Unemployed		Unemployed	Employed	
Mother	Unemployed	Unemployed	Unemployed	Unemployed	Unemployed	Unemployed
Financial problems	Evident	Evident	Evident	Evident	Evident	Evident
Reliance on welfare/ benefits	Present	Present	Present	Present	Present	Present
Neighbourhood: high crime	Evident	Evident	New area	Evident	Evident	Evident

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CHAPTER 7

Beyond Oppositional Subcultures and the Post-Subculture: New Directions in Subculture Theory

Albert Bell

In the long and tumultuous history of the application of the subculture concept by criminologists, sociologists, cultural theorists and other academicians, subcultures have often been explained as subordinate and separant cultural cohorts resisting and standing directly in opposition to the dominant ideology in an attempt to legitimise an alternative world view. The separant nature of subcultures and other collectivities is held to be even more pronounced in North-Western 'first world' countries, which as Shoham (2001) explains, are characterised by a "social character" that valorises *inter alia* action, plurality, reason and object manipulation versus the "participant" cultural characteristics of less developed countries where constancy, unity and resignation remain more strongly pronounced. In the case of the academic discourse on more radical, proto-political subcultures, this subversive and separant character intensifies. The emphasis in the neo-Marxian paradigm or tradition of subcultures on opposition and resistance to the dominant culture has helped to shed light on the counter-hegemonic potential and propulsion that subcultures may possess, and proto-political subcultures still persist today[1]. However, the tendency to equate subcultures *a priori* with oppositionality is problematic in various ways.

This chapter shall examine how the neo-Marxists inflected a singular form of subculture and neglected the kaleidoscopic nature of subcultural behaviour. Secondly, we shall also see how the neo-Marxian hyperbole amplifying the radical politics of subcultures acted as the requisite platform for the rise of post-subculture theory and the increasing disaffection towards the continued use of subculture as an analytical concept in the social sciences. This chapter shall thus also attempt to forward an articulation of the subculture concept that attempts to over-ride the limitations of both neo-Marxist and post-modern subculture theory. In doing so, amongst others, I shall be referring to Hodkinson's (2002, 2004) and Brown's (2003, 2004) ideas on the elements needed for a refined conception of subculture. I shall also be making reference to this author's studies

1 See for example Clark (2004) and St.John (2004).

on heavy metal subculture in Malta (Bell, 2009) to exemplify the relevance and application of such a conceptual framework.

Subcultures as distinctive milieux

Subcultures may be best defined as distinctive cultural groups or "milieux" (Webb, 2007) created by individuals who converge on a shared moral or material concern. (Bell, 2009) The group upholds conduct norms and practices that communicate difference and maintain the subculture's boundaries while retaining some form of relationship with their wider milieu (Katz, 1988; Wood, 2000). However, despite such cultural specificity, that is, the tendency for individuals to come together "along a variety of habit trajectories because of similar or different experiences, social positioning, and aspects of the self" (Turino, 2008, p.111), involvement in subcultures does not intrinsically imply direct confrontation and opposition to the dominant culture. Subcultures, often, still share and retain dominant culture characteristics.

This culture within culture perspective of subculture draws heavily from the original articulations of the concept. Two important American sociological traditions spearheaded subculture studies - the Chicago School and the Functionalist-leaning cultural deviance perspective (Blackman, 2005; Williams, 2011). The term was first used in American sociology by the urban ecologists of the Chicago school to describe and explain cultural dissonance and slippage. For example, Palmer (1929, p.73 cited in Blackman, 2005, p.4) – a Chicagoan Ethnographer – describes subcultures as "variations in the prevailing culture". This early use of the term was rearticulated by Milton Gordon after WWII (1947/1997) and popularised in a more refined format by Albert K. Cohen (1955) (Blackman, 2005; Bell, 2010; Williams, 2011). For Gordon and the Chicagoan ethnographers, subcultures were based and caused by demographic factors including age, ethnicity and social class. Cohen saw subcultures as behaviourally based (Williams, 2011). Together with other proponents of cultural deviance theory like Cloward and Ohlin (1961), Cohen conceptualised subcultures as group solutions for the problems that young working-class males encounter in their surrounding social milieu – a context where their life-chances are impaired through a differential-opportunity structure that limits the possibilities of self-advancement. Within this scenario, deviant and delinquent subcultural behaviours develop as the requisite backdrop for the negotiation of blocked opportunities and marginalisation (Bell, 2010; Williams, 2011) but are not inherently oppositional or counter-cultural.

These early uses of the subculture concept contrast heavily with the culture versus culture subculture paradigm promulgated and advanced by the neo-Marxian or "new wave" (Callouri, 1985) tradition that emerged in response to cultural deviance theory. The extent of emphasis by leftist subculture theory on subcultural resistance and opposition was such that the boundaries between the 'subculture' and 'counter-culture' concepts

became defused and interchangeable. While subcultures may take various forms, the counterculture, as the term implies directly opposes the prevailing culture. Yinger (1982, p.41) for example defines countercultures "as expressions of norms and values sharply at variance with those of society at large...defined both by themselves and by others, as much as what they are set against as by their own normative system". Cushman's (1995, p. 5-7) "counterculture" analogously entails "a community of similarly situated social actors who share values, perceptions, beliefs, and cultural symbols and codes which *stand in opposition* to the dominant, 'normal' culture of a society" (emphasis added). I contend that retaining the boundaries between 'subculture' and 'counterculture' (or 'oppositional subculture') is useful to better understand and appraise the prismatic nature of subcultures – an important characteristic of subcultures that was overlooked by neo-Marxian subculture theory.

As Johnston and Snow (1998) contend, subcultures may exist on a continuum from "traditionally conceived subcultures" to oppositional subcultures or countercultures. Most subcultures happily occupy their own small niches without posing direct threats or challenges to the socio-political and moral order (*ibid.*). "Traditionally conceived subcultures" or subcultural groups that "adopt some of the dominant society's core values while preserving some of their own" are able to co-exist within normative culture and at the very worse only encounter outsiders' "benign disregard" (p.476). "Shadow subcultures", such as biker subcultures comprise groups that display incongruence to prescribed behavioural patterns but share the fundamental and core values of the dominant culture, and thus also do not meet reprisal from conventional forces (*ibid.*). However, other subcultural forms, particularly those that negate the dominant culture's core values and whose behavioural repertoire is disengaged from normative prescriptions have dissimilar fates. For Johnston and Snow (*ibid.*) these subcultures exist on a plane of conflicting relations to the prevalent culture. At one end one may find "accommodational subcultures" denoting some sort of behavioural congruence to the norm but "little value congruence". "Subcultures of opposition", characterised by the disavowal and rejection of both normative values and behavioural expectations, exist at the other end of the spectrum. Here the establishment's response, particularly when some sort of real or imaginary threat to the value blueprint of the ruling hegemony is identified, is pronounced and vitriolic. Johnston and Snow argue that there are two forms that this reprisal may take. First, in the wake of direct norm violation, the dominant culture may shift into top gear the agents of forced coercion and repression, including prisons and mental asylums, which take on the responsibility for normalising, de-programming or rehabilitating purveyors of incongruent behaviours and value systems. Alternatively, the system may pursue more subtle, yet, similarly coercive responses to the oppositional subculture, particularly when the latter's threat to the normative structure is less overt and ominous.

Subcultures as resistance

The typology delineated above establishes the meandering and multi-faceted plane on which subcultures may exist. Neo-Marxian subculture theory with its understanding of subculture styles as rupturing conventional moral codes inflected the idea of oppositional subcultures and failed to take adequate cognisance of other subcultural types. The romantic and dramatised idea of subcultures as structurally subordinate groups, upholding oppositional worldviews or ways of life, and that are engaged in resisting attempts at normalisation by the dominant culture is ubiquitous in the neo-Marxist reconstruction of subculture.

Neo-Marxist subculture theory arose primarily in response to the post-war US cultural deviance model of subculture. I have already identified the cultural deviance perspective as one of the main progenitors of subculture theory in the foregoing pages. However, it is opportune to dwell upon this tradition in some more detail to better appraise how it contrasts to the neo-Marxian subculture paradigm. Cultural deviance theory combined myriad influences, including the varying strands of anomie theory (as first elaborated by Durkheim and the re-shaped by Robert K. Merton) and the Chicago School's trailblazing ethnographies on various marginal groups colouring the socio-cultural landscape of cosmopolitan Chicago, including Anderson's hobos (1923), Cressey's taxi dancers (1932), Whyte's (1943/1993) corner boys and Zorbaugh's (1929) Gold Coast slum neighbourhoods (Bell, 2009, 2010). Cultural deviance subculture theory contended that success goals are defined by middle-class standards of achievement. As working class kids (essentially boys) are unable to compete on the same level playing field as their middle class counterparts and experience blocked opportunities to status advancement they form delinquent subcultures where status, respect and self-esteem are more possible. In doing so, however, the dominant ideology remains unchallenged. Much like Merton's (1968) "cultural innovators", delinquent subculturalists may adopt illegitimate means to success goals, but they still strive after the same goals (e.g. wealth, money) valued and pushed by the dominant culture. Within the cultural deviance perspective, while delinquent subcultural formations may express particularistic 'focal concerns' or even seek to invert established moral codes that define what is appropriate or inappropriate[2], subcultures do not essentially resist dominant ideologies. The latter are consensual and pervasive and moreover, cement all cultural variations, even delinquent groups.

Uprooting "subculture" from cultural deviance theory's emphasis on adolescent delinquent behaviour and politicising the concept away from functionalist consensus-based conceptions of society, for neo-Marxian subculture theory subcultures were forms of "ideological resistance to class contradictions" (Brown, 2003, p.5) and were symptomatic of the class conflict and power relations that permeate modern capitalist society (Callouri,

2 Albert K. Cohen (1955) refers to this process as "reaction formation".

1985; Macdonald, 2001). This more radical conception of subculture was first articulated by radical British criminology in the late 1960s (Blackman, 2005) and archetypically so by the Centre for Contemporary Cultural Studies (CCCS) sprouting from the University of Birmingham in England. Refuting traditional positivistic criminology's understanding of criminal behaviour as 'social pathology' and American subculture theory's ideas on delinquent subcultures as solutions to problems of social strain, status frustration and role ambiguity, radical British criminology examined how the state structures supporting capitalist forces generate crime and deviance. Deviant behaviour and delinquent subcultures emerged as rational, retaliatory responses to a brutalising state. British leftist criminology as epitomised by Taylor, Walton, and Young's (1972) *The New Criminology* also saw the manipulation of subordinate groupings by the ruling hegemonic alliance as the key factor in the construction of the societal response to crime. They argued that both the emphasis in penal systems on retribution (at one extreme) and rehabilitation (at the other) are indicative of an oppressive, fraudulent social order, which seeks to incapacitate and eradicate dissent. For 70s radical criminology 'rehabilitative' non-custodial measures were explained as attempt to pacify and to re-mould personalities within the normative and functional frameworks of society. Social workers, probation officers and their ilk emerged as controlling agents of the state. For this perspective, the societal reaction to crime and deviance should should have primarily been based on acceptance of alternative, subcultural life-styles. Crime prevention policies should have aimed at economically empowering the individual to overcome limited life chances resulting from underprivileged class status, versus preying on the structurally subordinate.

This same radical thread was pursued by the CCCS, with the focus now shifting to spectacular, consumer youth subcultures rather than delinquent groups. Moving away from the restraints of orthodox Marxism the CCCS drew significantly from Gramscian hegemony theory. Like Gramsci, Birmingham's subcultural theorists contended that the ruling classes in society use hegemonic, ideological forces rather than brute force and coercion to ascertain the longevity of their domination and primacy (Bell, 2009, 2010, 2013). In the eyes of the CCCS subcultures resisted and opposed dominant ideologies through subcultural style and ritual and possessed counter-hegemonic potential (*ibid.*). *Resistance through Ritual* (1975/2000) edited by Stanley Hall and Tony Jefferson and comprising a series of theoretical and "ethnographic" papers by a host of Birmingham-based cultural theorists can be considered as the CCCS' *tour-de-force* and a landmark in neo-Marxist subculture theory. Most of the pieces in the volume emphasise the oppositionality of subcultures. For Clark, Hall, Jefferson and Roberts for example (2000, p.62) subcultures signify "a weakening of the bonds of social attachment" and "the crisis of hegemony or general crisis of the state". Hebdige's (2000, p.87-98) Mods emerge as expropriators of "dominant consumer culture" (p.87), and "a parody of the consumer society" (p.93). Clark's (2000, p.99-102) Skinheads "recreate…the traditional working class community" (p.99)

with Skinhead subculture embodying "elements of territoriality, collective solidarity and 'masculinity'…to recreate the inherited imagery of the community in a period in which the experiences of increasing oppression demanded forms of mutual organization and defense" (p.102). The counter-hegemonic practices of subcultures resound throughout the whole volume. Oppositionality and resistance for the CCCS were the main characteristic thrusts of subcultures. This thread remained central to post-CCCS work that was similarly Marxist inspired. Callouri (1985) for example contended that "subcultures interrupt cultural reproduction and threaten the hegemony of the dominant class by outmanoeuvring and embarrassing them at a day to day level" (p.50). For Callouri (*ibid.*), "subcultures expose the weaknesses of the capitalist system (e.g. Punk subculture spectacularises structural unemployment)...and contain the seeds for more radical dissidence and disruptive action (e.g. Punks set the stage for the British riots of 1981). Trigo (1995) similarly emphasises how subcultures resist the dominant ideology and "deterritorialise" and erode the vast space of the established culture.

Interestingly however within the CCCS' neo-Marxian framework of subculture, the deterritorialisation effect of subcultures is only fleeting, illusionary and temporary. Subcultures do not resolve the structural contradictions that they resist and are subject to de-politicisation, commodification and eventual absorption into the matrices of power. Frith (1988) for example holds that modern society (cemented by mass consumption, pragmatism and materialism, and propelled by an all-embracing profit *motif*) commodifies the subcultural to secure its domestication and principally, to advance the accumulation of capital. Permeating through most CCCS inspired work is the idea that disguised behind the ubiquitous lip service paid to notions of tolerance and diversity, an incessant ideological drive toward regulation through co-optation and commodification of the symbolic and ideational components of oppositional subcultures is strongly entrenched and embedded in heart of contemporary global (or better) Westernised society. Stephen Duncombe in "*Notes from the Underground: Zines and the Politics of Alternative Culture*" (1997, p.5-6) offers evocative reflections on the matter:

> The history of all rebellious cultural and political movements is the history of the unavoidable contradiction of staking out new ground within and through the landscape of the past. But today the laying of claims may be harder than ever. No longer is there a staid bourgeoise to confront with avant-garde art or a square America to shock with countercultural values; instead there is a sophisticated marketing machine which gobbles up anything novel and recreates it as product for a niche market.

For Neo-Marxian subculture theory, the continuum of oppositional practice is thus the battleground for an on-going, ingrained struggle between the dominant and the subordinate, where covert, innovative yet fundamentally ineffectual strategies of resistance and cultural conflict are reproduced in an attempt to seek succour from the suffocating noose of the establishment.

Post-subculture and the 'tribus'

The rise of post-modern subculture or 'post-subculture' theory advocating alternative concepts such as 'neo-tribe', 'scene' and 'substream networks' as more efficacious tools to explain contemporary realities of the post-modern youth cultural landscape emerged in response to the new wave subculture theory's "rigid conceptual framework [of subcultures] that read members' activities as implacably resistant" (Kahn-Harris, 2007, p.17). It is this author's contention that had new wave or neo-Marxist subculture theory (which even for those purveying an alternative theoretical scaffolding for 'subculture' seemed to be the exclusive reference point for the explanation of the concept) not pummelled an understanding of subcultures as *de rigueur* confrontational and antagonistic, a more sympathetic view towards the use of subculture as an analytical concept (that draws upon the earlier definitions of the subculture concept) would have been retained. Broadly, post-subculture theory rests on the axiom that the rigid divisions between 'mainstream' and 'subculture' where symbolic resistance to the 'dominant culture' is the measure of subcultural authenticity cannot explain the diffuse and ambiguous nature of contemporary culture and youth culture in particular (Thornton, 1995; Muggleton and Weinzierl, 2004; Stahl, 2004a; Weinzierl, 2000).

Grounded on the works of Redhead (1990,1993a,1993b,1995, 1997) at the Manchester Institute for Popular Culture (MIPC)[3] and Thornton (1995), the post-subcultures framework responded to the profuse fragmentation in post-1980s youth subcultural styles and increasing dissatisfaction with the CCCS' subculture model to adequately explain trends in contemporary youth culture (Bennett and Kahn-Harris, 2004, p.11). Thornton (1995) for example posits that the cultural deviance and CCCS traditions in subculture studies are too theoretically and ideologically bound to avoid value judgements on the social worlds that constitute subcultures. For most post-subculture theorists the *a priori* theoretical gloss of the American and Birmingham paradigms engendered historically, ethnographically and experientially dislocated accounts of subcultural behaviour. In an attempt to provide redress to these limitations, and inspired by post-modern sociology, post-subculture theory sought to articulate and unpack new ideal types to describe youth leisure trends. Most of these articulations draw significantly from Maffesoli's "tribus"

3 Redhead's edited volume with Wynne and O'Connor (1997) on clubcultures is a good introduction to help develop an understanding of the central concepts underpinning post-subcultural theory.

or "neo-tribes" concept (Bell, 2009, 2010; Blackman, 2005; Weinzierl and Muggleton, 2004). Maffesoli argues that the increasing fragmentation and transience of mass popular culture in the post-modern world have given rise to "neo-tribes" or "style nomads" that lack grounding and commitment to style and oscillate from one site of belonging and identification to another (Bell, 2009, 2010; St. John, 2004). Maffesoli's neo-tribe found favour and is presented as a watertight alternative to 'subculture' in the work of various post-subculture theorists including Bennett (1999) and Hetherington (1998*)***.** Malbon's (1998) "transitory tribes", Polhemus' (1997) "style tribes", Muggleton's "fashion tourists" (1997), Weinzierl's (2000) "temporary substream networks" and Winge's (2004) "modern primitives" are also evident derivatives of Maffesoli's tribus concept (Bell, 2009, 2010).

Muggleton's (1997) work perhaps best epitomises how post-subculture theory sought to distance itself from CCCS subculture model. He contends that the subculturalist in the disposable commodity-based reality of post-modernity, far from being committed to oppositional subcultural style as was the case of Hebdige's Mods or Clark's Skinheads, pursues and shifts through styles at a whim often re-hashing or imitating previous fads. Subcultural styles emerge here as simulacra, and subcultures become vehicles for individual versus collective expression. Other post-CCCS have sought to carve their own re-articulations of the subculture concept. 'Lifestyle' and 'scene' exemplify these efforts (Bell, 2009; Bennett and Kahn-Harris, 2004; Hodkinson, 2002). The lifestyle concept has been used most notably in the works of *inter alia* Chaney (1996), Fiske (1991), Reimer (1995) and Miles (2000). Harris (2000a, 2000b), Huq (2006) and Lau (1995). Kahn-Harris (2002,2004), Shank (2004)**,** Stahl (2004b) and Straw (1991) on the other hand each provide emblematic case studies for the application of the concept of scene. The 'lifestyle' concept emphasises consumer creativity and commodity consumption as important cultural resources and crucial parts of identity formation and image building in contemporary youth cultures. 'Scene' was adopted to describe both local and trans-local subcultural spaces for musical production and consumption (Bennett and Kahn-Harris, 2004).

Like 'subculture', the neo-tribe, post-subculture, scene and lifestyle concepts, however, have also met their fair share of what I view as justified criticism. St.John (2004) for example identifies a proto-political, oppositional thrust in his ethnography on post-rave dance culture. St.John argues that neo-ravers are networked through a DIY ethos and have emerged within the post-Y2K context of evolving "digital communications technologies" and "decentralised social movements" (p.78). The consumption of technology in today's subcultures is imbued with activism, meaning and purpose. Post-rave for St.John is not a vacuous stylistic ensemble without meaning. Rather it possesses the potential for social critique:

> These *technotribes* are networked in 'DIY culture'.…non-hierarchical in principle, attracting youth committed to voluntarism, ecological

> sustainability, social justice and human rights. Fashionably committed to pleasure *and* politics, such new formations are not disengaged from the political, but are future-directed, pursuing ideals consistent with an historical sensitivity and global sensibilities – as indicated by their reconciliatory gestures, direct action commitments and in their wider output (p.65).

All this for St John necessitates the need for the development of "differential subcultural modelling" (p.77) and approaching the Maffesolian neo-tribe concept with caution (p.65). Neo-tribe theory does not exhaust "the life-strategies of contemporary youth" and the "sea of conscientious youth" (p.69) as epitomised in "movement nuclei" committed to a search for authenticity, and expressing shared grievances and belonging while attempting to forge political changes (p.70).

Other analysts provide similar insights. Böse (2004) for example contends that class and race are still important social reference points in the creation of subcultural identities and that liberal discourses on lifestyle choices permeated by cultural hybridity and diversity should not divest the importance of accounting for the othering processes and inequalities that still exist in society. Weinzierl and Muggleton (2004, p.19), apparently revisiting their earlier post-subculture inclinations argue that rather than disappearing in hyper-reality (as post-modern subculture theory proclaims), the forces propelling subcultural identities have mutated into "disputes over tastes and sensibilities" in a stratified global economy where social groups battle over scarce economic resources. Power differentials such as class, gender and ethnicity determine accessibility to translocally mediated subcultural styles. While the economic, cultural and political dynamics of present-day cultural formations cannot be explained by the modernist gaze of the CCCS subcultures model, "an uncritical, reconstituted post-modernism" is equally unsatisfactory (*ibid.*). For these authors, the Birmingham school over-politicised subcultures. Post-subcultural theory however, under-politicised them. As Carrington and Wilson (2004, p.76-77) claim, the plethora of alternatives to the subculture concept that emerged through post-subculture theory did not offer "new analytic insight" and did not resolve the "complex methodological and theoretical dilemmas" of subculture students. Moreover, as we shall see below, subcultural practice persists and thus studying subcultures remains "an important sociological task" (*ibid.*).

Reworking subculture: the case of goth and metal

Research on contemporary subcultures challenges the idea of the post-subculturalist, not committed to any form of subcultural preference and in a perpetual nomadic state of transience between diverse 'tribal' domains. For example, Hodkinson's (2002, 2004)

studies on Goth subculture in Britain have demonstrated that commitment to subculture, or what he terms "subcultural substance" perseveres even in the wake of a virtually-mediated, trans-local social world. In his work on Internet use in Goth subculture (2004), Hodkinson argues that online communication networks enhance the boundaries between distinct cultural groupings than dissipate them. This is evidenced by how Internet use has heightened the distinctiveness, identity, commitment and autonomy of the trans-local Goth scene. The Internet combines both widely-used mass media forms and a plethora of "niche, micro media" such as specialist, specific music/lifestyle oriented websites and discussion boards or forums. The Internet stimulates a more in-depth pursuit of specialist interests and thus reinforces commitment, distinction and the autonomy of the subculture. Subcultural knowledge, friendship networks and commitment are intensified. The niche nature of these virtual subcultural spaces further protects the subculture from outsiders and acts similarly to the insulating effect of specialist venues, clubs, gigs and other activities. For Hodkinson, the post-subculturalist notion that "discreet, committed and clearly bounded groupings" have subsided to the temporary, partial, selective, fluid and transient nature of "collective affiliations" today has clear limitations (p.285).

Hodkinson (2002, p.23) notes that despite the validity of some 'post-subculture' work, the diffuse number of concepts forwarded as potential replacements for the notion of subculture and the inability of several of these concepts' proponents to explain how their preferred terminus precisely differs from others, renders the task of finding a suitable alternative to subculture very challenging:

> The imprecise way in which subculture has sometimes been used is certainly a cause for concern, but the current enthusiasm for coining more and more alternatives seems liable only to further complicate things. More importantly, perhaps, a number of the individual explanations, because of the range of substantive and fluid groupings they seek to include under a single term, are themselves unclear (p.23-24).

All this thus necessitates "a reworking" of the notion of subculture, that takes into account new forms of "subcultural substance". Hodkinson contends that the contemporary youth culture domain contains bounded amalgams "of distinctive style, identity, values and practices" supported by an international infrastructure (*ibid.*). All these are elements of subcultural substance that do not require a new concept to be investigated and explained. Rather what it requisite is the refinement of 'subculture' – a process that removes the problematic aspects of previous uses of the concept and allows for the lessons gleaned from more recent work to be integrated within it. More specifically, as Hodkinson holds, this may be achieved by rupturing the concept's ties to status adjustment/problem solving and resistance/oppositionality dyads permeating previous works and "replacing these specific

criteria with the general defining theme of cultural substance…broken down into the four indicative criteria of *identity*, *commitment*, *consistent distinctiveness* and *autonomy*" (p.29):

> Contrary to the implications of Chicago and Birmingham versions of subculture, participation in the goth scene did not appear to entail the same 'problem-solving' function for all members and neither did it signify a specific or all-important subversion of consumer culture. The style encapsulates significant elements of diversity and dynamism, its boundaries were not absolute, and levels of commitment varied from one individual to another. Furthermore, rather than owing itself entirely to the automatic gravitation or spontaneous creative practices of participants, the goth scene's initial construction and subsequent survival rested upon external and internal networks of information and organisation, often in the form of media and commerce. But in spite of overlaps and complexities, the initial temptation to describe Goths using a term such as *neo-tribe* or *lifestyle* was gradually tempered by the realisation that such a move would have over-inflated the diversity and instability of their grouping. Crucially, fluidity and substance are not matters of binary opposition, but of degree. In this particular case, the observation that the goth scene involved elements of movement, overlap and change does not somehow obfuscate the remarkable levels of commitment, identity, distinctiveness and autonomy which were evident (*ibid.*).

As I have stated elsewhere (Bell, 2013) it is also essential that this re-working of subculture takes into account the commodity-based nature of contemporary subcultures. The subculture supporting the different shades and hues of heavy metal music, epitomise how subcultural substance is manifest in commodity-based subcultures. Brown (2004) argues heavy metal's thirty year history is singular in that it has spun unparalleled "tribal loyalty" and unique youth cultural activity. Like Hodkinson's translocal goth scene, heavy metal has not resisted neo-liberal ideology nor subverted consumer culture. On the other hand, it embraces it, particularly when it serves to engender the music form it supports. Heavy metal music subculture has thrived, developed and become more complex through a supporting market network (Brown, 2004) and "a wide array of mediators providing a rich infrastructure for producing and promoting bands" (Weinstein, 2000, p. 284). Weinstein (*ibid.*) singles out small yet committed independent record labels and distributors, a strong DIY band ethos, used record stores, the rise and dissemination of extreme metal zines and more glossy magazines amongst all corners of the globe, rogue radio stations with well-informed metal DJ's playing different forms of metal music, annual metal festivals, and the Internet as the key players in this regard.

As Brown maintains, subculture theory in its classic, CCCS form, is enveloped within a theoretical-political framework that was mostly interested in radical subcultural forms. The relationship between the wider culture, the leisure and entertainment industries and subcultures is seen as exploitative shifting from moral panic to incorporation. Authentic subcultures are thus those that exist in a market/media free plane. Metal clearly does not possess such radical qualities. Its style has been made possible and attractive by a strong supporting market. Thus the reworking of the subculture concept, to include commodity-centred forms and activities, is essential for its application to heavy metal, goth and other subcultures where subcultural substance persists. A refined subculture concept should also rest on the axiom that membership in commodity-based subcultures such as heavy metal is not necessarily defined by class and other social referents but rather by identification with mass-mediated style. Moreover, the idea that the co-existence of multiple, market driven subcultures (including metal) should not be misinterpreted as total acquiescence to powerful, dominant cultural forces. True, the panoptical gaze of the normative persists. However, difference, distinctiveness, autonomy, commitment and so forth are registered in such market assisted subcultural domains.

In the ethnographic work I conducted on heavy metal culture in Malta (Bell, 2009, 2011) the participants' narratives revealed and demonstrated commitment to the music and its supporting subculture. Moreover, their identities emerged as closely intertwined with their self-categorisation as metalheads and they perceive themselves as autonomous and distinct. Maltese heavy metal subculture, emerged as a fluid and effervescent context, yet marked by distinctive practices and codes, where specialist, niche forms of knowledge, friendship networks and loyalty to the music and its supporting subculture are strongly valorised. The world of heavy metal as experienced and appropriated in the Malta evinces the persistence of clearly-bounded subcultural forms. Applying 'subculture', albeit with the refinements explained above, as an analytical scaffolding for my work facilitated an understanding of metal subculture as one which is not inherently oppositional, but one which is in a dialectical relationship to the wider society. Ultimately, what emerged is the understanding of the subculturalist as a social agent, creating and innovating a distinctive cultural space while not necessarily detaching oneself from the wider social milieu. A sociological investigation of subcultural practice thus also cannot forsake taking stock of this crucial dialectical interplay.

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CHAPTER 8

Even before Spatialising the hotspot: Theoretical Approaches towards understanding Environmental Criminology

Saviour Formosa

1. Introduction

Crime is not an easily-explainable concept. Definitions of crime differ according to the school-of-thought but the main tenets are universal. These include harm caused to victims, social consensus and official societal response (McLaughlin and Muncie, 2001, 59). The sociological impact of crime is put into context by Durkheim's statement that:

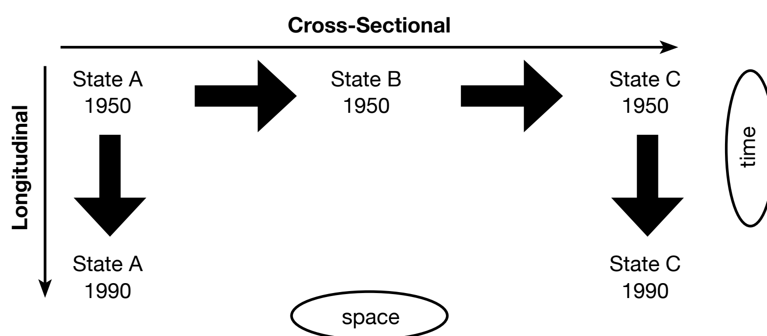
> *"It is impossible for offences against the most fundamental collective sentiments to be tolerated without the disintegration of society, and it is necessary to combat them with the aid of the particularly energetic reaction which attaches to moral rules"* (Durkheim, 1933, p. 397).

The theoretical debate developed from the harm-based theory of Jeremy Bentham to Sellin's science of criminal behaviour that looked at "naturally existing conduct norms", to rule-relativist theory and radical conflict theory. Critical conflict theorists view crime in connection with an independent notion of "human rights" as against laws, which argument was further developed by postmodernists as a dynamic evaluation of harm where each case "is a moment of expression of power" (Henry and Milovanovic, 1996, 104).

A theory posited by the rule-relativists looks at crime as "historically, temporally and culturally relative" to the social construct rather than an absolute (McLaughlin *et al*, 2001, 60). Thus, conduct that may be deemed as criminal in one state may not be deemed so in another. This situation induces the need for cross-sectional research (across space) on what is considered as crime at a particular point in time. This theory brings to the fore the temporal issue that crime changes over time as a community (state) develops where new norms and sanctions are created, inducing longitudinal research (Figure 1.1). An example would be the transition from a situation of low rates of non-serious crimes to one where

serious crimes become the norm. The temporal aspect of social analysis was enhanced by the inclusion of the spatial element, moving from John Hagan's theory of a pyramid of crime (through the integration of the different dimensions of crime), to a 'prism of crime' (Henry and Lanier, 1998) that attempts to cover all the theoretical elements mentioned above in one concept.

Figure 1.1: Crime changes across space (state) and time (years)



Source: Formosa, 2007

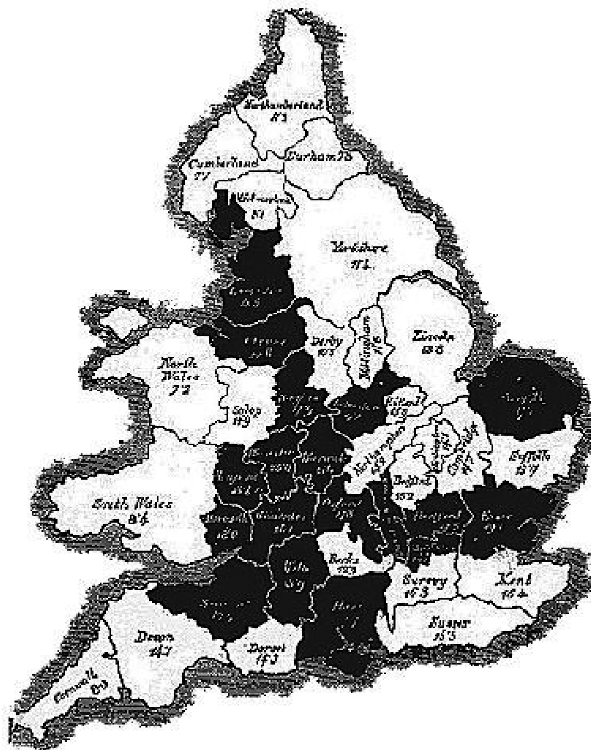
2. The spatial concept

The investigation of crime has also seen research into the geographic discipline. However, "for too long, geographers have observed distributions of phenomena while generally failing to draw attention to major spatial differences in a number of conditions of life of profound importance to many people" (Harries, 1974, p. xiii). Crime and spatial analysis were already well advanced in the 1970s but links to the social construct were needing and other concepts such as the issue of climatic impact on crime has never really taken off, though identified by Dexter as long ago as 1904 and by Cohen in 1941 (Harries, 1974). This need is felt to the extent that with extensive improvement in environmental impact assessment requirements in the development planning, spatial planning and environmental design, there is still a lack of integration of the safety factor in such studies (Glasson and Cozens, 2011).

Spatial research in crime has a long history where the earliest attempts at analysing crime through spatial patterning can be traced back to several nineteenth century innovations. In Belgium, Adolphe Quetelet (in 1835) and in France, Andre Michel Guerry (in 1833) made use of maps together with studies of urban-rural and crime/socio-economic conditions relationships (McLaughlin *et al*, 2001, p. 133; McLaughlin and

Muncie, 2005). They analysed crime in relationship to location, climate, education levels, occupation and employment. In 1861, Henry Mayhew published maps of England and Wales outlining the 'intensity of criminality' in relation to ignorance, illegitimate children and other social issues. Figure 1.2 shows an image of the number of criminal offenders for every 10,000 persons in each county of England and Wales. The map was based on averages from the returns for the last ten years under study. The counties registering below the England and Wales average were represented in white and counties above the average were shaded in black. (Kelley, 1967).

Figure 1.2: Mayhew's 'Intensity of Criminality" map



Source: Kelley, 1967

Other studies included Shaw and McKay's 1930s analysis of Chicago (1942), Morris's (1957) ecological review of delinquency in a London suburb and McClintock's London study (1963) that exhibited a gradient of diminishing crime rates with distance from the centre. Schmid (1960) studied Seattle and identified an inverse relationship between crime rate and distance from the city centre using isopleth maps to identify crime types. Lambert (1970), in his Birmingham (UK) study indicated different crime types by police zones and found that crime was concentrated in immigrant areas as indexed by both offender and offence statistics. Todorovich (1970), in his Belgrade housing communities study found that crime was not clustered around the central area and that at least some of the high-rate delinquency areas were characterised by immigrant populations and ethnic diversity. During this time, centrographic analysis offered hypothesis relating to changes in crime patterns and relationships between these changes and law enforcement activities (Harries, 1974, p. 119).

Taking these studies further, Harries looked at micro-environments stating that these can be as small as rooms, as offences have their own "ecologies of space", as well as structural characteristics that may affect opportunity levels for particular types of crime (Harries, 1974, p. 78; Nelson, Bromley and Thomas, 2001). Density is a case in point; one can study it at diverse levels, from the macro scale to the micro scale. National and regional population and housing densities as against crime signify a macro scenario, whilst the micro-scenarios may tackle such areas as the number of persons living in a block or the level of crowding such as the number of persons per room. Each level of density requires an analysis to identify the most significant correlate of crime.

3. Review of environmental criminology theory

The theoretical constructs discussed earlier in the chapter enabled investment into the study of crime within a spatial construct. The leap from non-spatial to spatial study lead to the conceptualization of Environmental Criminology theory which can be defined as the study of crimes based on complex relationships structured through space and place (McLaughlin *et al*, 2001, p. 132). This includes the study of offender residence, offence location, offender- offence relationship and the myriad interactions between the three pivots of incidence (crime), space (relationship) and place (geographical location).

Roots of the theory

Environmental criminology is the study of crime and victimization in its relation to place and space. It is also described as 'the geography of crime and 'the ecology of crime', and attempts to develop an insight into the analysis of the relationships between place, crime and offending (Bottoms and Wiles, 2001). Criminological studies have integrated the study of 'locational' crime to the activities of the individuals and organisations involved

in the criminal activity, whether they are perpetrators, victims or observers (Salleh, Mansor, Yusoffa and Nasir, 2012).

The relationship of crime to place has been developed into one of space due to the multiple linkages making up social realities related to that place. The term spatial takes on a sociological meaning to cover crime activities in the holistic approach of what constitutes crime: why, when and where it occurs, with consideration given to the baggage that the offender carries. The spatial activities of offenders take on a new role due to the diverse links related to their activity, it is not simply a case of who commits a crime or where it occurs, but how the links enforce or make possible the activity opportunities.

Environmental criminology takes into account the boundaries within which people act, such as work spaces, meeting-points and recreational areas. It explores the spatial concepts inherent in the wider scenario of criminal activity, such as the widening reaches of offenders due to access to new technologies and inventions (better vehicles, instant mobile communication devices), as well as 'zoning' policies instituted by planning authorities and transport. Interesting to note is the opportunity for emerging crime scenarios where offenders engage in computer crime that does not recognise any border or state, with the offender using remote technology to commit an offence from fraud to pornography.

Historical Development of the Theory

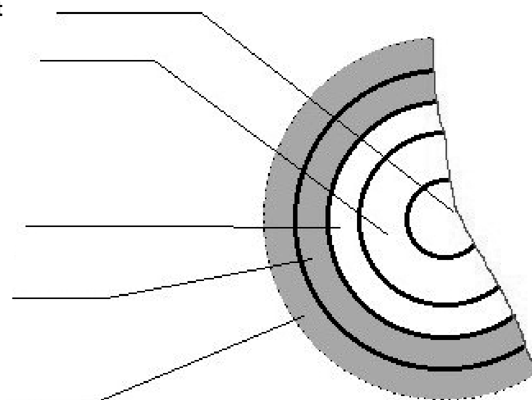
The main influence for the study of environmental criminology grew from the work of the Chicago School of Sociology, with the main proponents being Shaw and McKay, and their 1930s' theory of social disorganisation. This was based on urban work by Park and Burgess in the 1920s, who created the concept of human ecology[1] (Maguire *et al*, 1997, p. 308). Burgess's zone model of urban development conceptualised that there are five concentric zones in a city (Figure 1.3) where each zone is characterised by different types of residents who migrate away (transit) from the centre as their status improves. Over time, growing cities would engulf other peripheral towns that would become zones of transition themselves. Since urban areas contain disproportionately high rates of social problems, the larger the city the higher the concentration of poverty, welfare dependency and crime (Maguire, Morgan and Reiner, 1997, p. 308; Orford, 2004; Oh, 2005).

Urban ecology posits that there is a positive correlation between population density, city size and crime rates especially were population density is high and the possibility of bypassing danger is small (Messner and Golden, 1992; Entorf and Spengler, 2000[2]). Entorf *et al* (2000) found a high association between high population density and violent crime,

1 Human Ecology is the derived from the botanical sub-discipline of plant ecology. The concept was based on the analysis of the spatial and temporal relations of human beings, by the selective, distributive and accommodative forces of the environment (Maguire *et al*, 1997; 308). The theory was also called the 'ecology of crime' due to the relationship between crime and the urban environment.

2 cf Bundeskriminalamt, Polizeiliche Kriminalstatistik (various issues, 1975-1996), Wiesbaden, Germany

Figure 1.3: Park and Burgess's zone model of urban development



Source: http://www.csiss.org/classics/content/66

where an increase in one results in an increase in the other.

This is further enhanced due to the boundaries imposed by such phenomena as urban sprawl, where inelastic cities are created, that have no opportunity to keep on expanding. By the very fact that they are constrained by boundaries (such as sea, peninsulas, etc) they end up being even more segregated and higher degrees of poverty flourish (Shaw-Taylor, 1998). "A high number of persons per room would lead to "irritable, weary, harassed, inefficient" parents, a repulsive environment for children, and a consequently high level of juvenile autonomy, which in turn contributes to the development of gangs of delinquents" (Galle, Gove and Miller, 1972, p. 85; Harries, 1974).

Wang (1999), on the other hand postulates that the shrinking living space in urban areas in effect reduces crime rates, stating that this could be due to the proximity of people to each other. Wang posits that an increasing population density is directly related to crime reduction. However, this may also increase the possibility of unknown crime as well as the 'dark figure of crime'. These two opinions seem contradictory but are a source of debate on the possible outcome for future mega-cities and what they are expected to experience. Further study is needed in this area especially on population density and the relationship to crime. This is particularly due to the fact that areas with a high population density offer a higher concentration of crime opportunities and effectively higher potential crime targets (people and property).

The Next Steps

The early 1920s research led to a number of theories, namely the 'Culture Conflict Theory' of Sellin in the late 1930s and Sutherland's 'Theory of Differential Association' (Maguire *et al*, 1997, p. 308). Sellin, followed by Vold, Dahrendorf and Turk based their theories on the issue of diversity in an industrialised society[3]. Such diversity causes conflict to materialise moving though such constructs as conduct norms required from citizens coming into conflict with the prevalent crime norms. Dahrendorf's move from a Marxist concept of **material** haves-haves-not to **power** haves-haves-nots easily highlights the realities of society, based on the power- holding/hoarding elite and the powerless masses. Sutherland stated that through social interactionism, offenders learn favourable definitions through mixing with others who find lawbreaking acceptable (Hochstetler, 2002). However, the main impact was produced by Shaw and McKay since their research concentrated on the analysis of Chicagoan juvenile crime in the early 1930s through the mapping of offender residences at different points in time.

The Chicago researchers ventured further than just spatially analysing the offender community through a quantitative study. They also looked into the social aspect of the offenders and what was termed 'low life' in the cities. The second aspect of the study concentrated on qualitative case studies and life histories. They managed to bring together these two diverse methodologies as well as integrating the new concept of spatial analysis in crime.

Shaw and MacKay (1942) identified the existence of delinquent subcultures, which adhere to a set of norms relative to that subculture. Shaw and McKay noted that the cultural heterogeneity and constant population movements in 'zones in transition' influenced delinquency through a process termed 'social disorganization'. They tried to decipher how the conventional value systems may not adhere to all the units within the same entity, mainly where there was a lack of structurally located social-bonds that encourage legitimate and discourage illegitimate behaviour. Where these norms break down, disorganisation occurs.

This social disorganisation process occurs mainly through the concentration of persons who are liable to offend in specific areas of a city or town with a high degree of illegitimate enterprises and immoral worlds (Finestone, 1976). In this situation, the structure of the locality starts to deteriorate due to incapacity of the traditional institutions to maintain control and solidarity. These institutions include the family, the church and the local community. Due to lack of common and non-delinquent values, the areas in question become hotspots for crime.

The central discoveries emanating from Shaw and McKay's research was based on three concepts (Finestone, 1976, p. 25):

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3 http://www.umsl.edu/~rkeel/200/culflic.html

- *rates of juvenile delinquency conformed to a regular spatial pattern, higher in the middle zones and tended to decline with distance from the centre of the city.*
- *the same spatial pattern was shown by many other indices of social problems in the city.*
- *the spatial pattern of rates of delinquency showed considerable long-term stability, even though the nationality makeup of the population in the inner-city areas changed from decade to decade.*

The theory of social disorganisation has had both attractors and detractors, the former due to its solidity in relation to the offender aspect of the theory, whilst detractors criticised the fact that crime may not only be a case of disorganisation, but may be a case of organisation (Whyte, 1943 in Bottoms and Wiles, 2001). An organisation may offer social capital[4] to its members but disrupt the social cohesion[5] of the area it operates in (Kawachi and Kennedy, 1999). As an example, one can take the case of the Mafia, which is a very organised structure both in the USA, China,

Albania, and Sicily and is emergent in countries such as Taiwan (Snodgrass, 1976; Wang, 1999).

Matza (1964) claimed that the social disorganisation theory is over-deterministic and over- predictive. There were few developments in this area of study following a peak in interest in the period between the two world wars.

From the Chicago School to revival research

Following on the work by Park and Burgess, and, Shaw and McKay, other researchers such as Tibbits, McKenzie, Anderson, Wirth, and Zorbaugh collectively developed the first large-scale theoretical approach to the study of the nature of crime and American urbanism, an approach that was spatial as well as sociological (Georges-Abeyie and Harries, 1980, p. 1). The developments over the decades lead to the development of crime pattern theory that looks at both the established and changing nature of crime. Crime patterns can only happen due to the constructs that make them, inclusive of the location they occur in, and the sociological and psychological relationships to space. Heal (2001, 268) states that the imposition of crime pattern analysis on recorded crime statistics helped researchers to make a leap towards understanding crime and space and well as fill in information gaps. He states that the early 1980s' work enabled the development of crime pattern analysis, however the main limitations were those imposed by small samples and observed pattern reliability and stability. This also included limited attempts

4 Social Capital: "Those features of social organisation, such as networks, norms of reciprocity, and trust in others, that facilitate cooperation between citizens for mutual benefit" (Coleman, 1990; Putnam, 1993; Sampson, 1995)

5 Social Cohesion: the process describing "communities with high stocks of social capital and low social disorganisation" (Wilkinson, 1996; Kawachi and Kennedy, 1997; Sampson, Raudenbush and Earls, 1997)

to analyse crime patterns with socio-demographic data. Over the last decade these issues have been resolved or facilitated through the use of widely-available datasets and spatio-statistical software.

Other researchers covered different socio-economic/socio-cultural aspects. Schmid (1960) identified 6 types of hypothesis that could be used to account for patterns of crime. These were:

i) the "ecological segregation/contingent control" hypothesis where high frequencies of crime reflect opportunities, ii) the "drift" hypothesis - certain areas attract offenders, iii) the "differential association/cultural transmission" hypothesis - areas characterised by distinct sub- cultural patterns of delinquency and crime, iv) the "social alienation" hypothesis - areas characterised by social problems, v) the "anomie" hypothesis - delinquency is a disruption of the collective order, and v) the "illegitimate means/ differential opportunities" hypothesis - differentials in access to illegitimate means.

Other sociological theories on delinquency areas are based on a threefold structure (Gill, 1977):

i) the "ecological approach" investigating why people live where they do, ii) the "sub-cultural approach" that analysis how localised and distinctive life styles exist, and iii) the "social reaction approach" that highlights how labels are given to individuals and areas.

Practical problems exist where the question of the ecological fallacy arises[6]. This is the erroneous assumption that an overlap of problems at an area level (e.g. high levels of criminal victimization and high unemployment) also occurs at the level of the individual household (e.g. all victims of crime are unemployed). The relationship between victimization and unemployment can only be revealed through surveys that record the employment status of victims of crime.

Early environmental criminology studies suffered from this fallacy which assumed that *"the descriptive characteristics of areas having high proportions of offenders resident identified both areas where crime control programs should be undertaken, and the individuals who were likely to commit crimes"* (Brantingham *et al*, 1981, p. 17). Every area hosts non-delinquents though studies concentrate on the delinquents rather than the whole. An area hosting delinquent residents has a good chance of being stigmatised and labelled. Mays (1963) argues that whilst there would still be significant numbers of persons who would not be offenders, but there are sufficient numbers who are criminal, then that area as a whole could be termed as "delinquency producing". Where crime rates are high, potential offenders realise that foregoing an opportunity means that someone else will take it whilst the fact that they act may make them heroes in their community as a sort of badge of

6 In Malta, an Ecological Fallacy would serve such statements as stating that Libyans commit more crime as they reside in a small area in Bugibba when in fact an analysis of individual basis (eg crime rate per 100,000 for Libyans as against for Maltese) may show otherwise.

honour (Schrag *et al*, 1997). Some offenders anticipate arrest even if they do not commit a crime, thus the incentive is doubly attractive, further stigmatising an area.

Dunn (1980) looks at the association of land use with offence occurrence and offender residence areas, in line with Shaw's (1929) study of delinquency areas. He states that "crime… consists of a complex set of transactions of individuals with their environments … which vary in setting, time, objects, participants and activities" (Dunn, 1980). He identifies four ways to look at in the study of crime and land use: i) offence location crime in urban places, ii) areas with commercial activity and high-density residential development in poor condition, iii) quality of residential land use (substandard housing), and iv) land uses related to specific offences, due to different targets reflecting the area function or structure.

McLaughlin *et al* (2001, p. 133) identified four new spatial approaches to the topic: i) mainly the spatial distribution of crime, ii) risk of crime victimisation in space, iii) spatialised fear of crime and iv) particular crime flows from one area to another.

Gidden's theory of Structuration (Giddens, 1984) has again brought to the fore the agenda that sociological studies must be based on the analysis of 'social practices ordered across space and time', which theory reflects the take-off point of the Chicagoan School. Bottoms and Wiles (1997) have taken up the concepts of space and time as the major point of departure for environmental criminology studies, stating that Giddens' concept is central to its theoretical base. They bring as evidence his explanations on humans as knowledgeable agents, practical consciousness, his move away from the traditional dualism of objectivism and subjectivism, the duality of structures as both motivators and constraining agents, as well as the importance of routine activity. Structures result in a practical consciousness that is able to follow regular patterns in space and time. One needs to understand how place, over time, is part of the practical consciousness of social actors who engage in behaviour, including actions defined as criminal (Bottoms and Wiles, 2001, p. 19). This construct is being investigated in terms of the next spatial level, that of virtual environments and online worlds (Toet and van Schaik, 2012).

Pivots of crime

The offender residence perspective allows researchers to analyse patterns in residence preference, areas that are more attractive to offenders based on their particular norms and values. An analysis of the diverse social variables would describe the activities that offenders partake in at individual, co-familial and community-career levels.

Following the relative superiority of Shaw and McKay's theory, there was a lull of fifty years in spatio-temporal crime analysis until the 1970s when a revival of interest occurred from another aspect: offence distribution. Shaw and McKay's work had concentrated on

offenders and their life-histories as well as the relationship of their offences to the place[7] they reside in.

The refocusing of the theory indicated that there is a difference between offender residence and offence locations. Offenders aggregate in specific residential areas for social, economic and cultural reasons. Squatting possibilities, vacant housing in stigmatised areas, little financial clout to move to better areas are but a few examples. On the other hand, offence areas posit other scenarios. They could be either the same areas of residence, areas in the vicinity of the offender's day-to-day activities, areas of recreation and well as opportunity-presenting areas.

The 1970s research introduced studies on 'defensible space' (Newman, 1973) and on the constitution of crime: mainly the law, offender, target and place of crime (Brantingham *et al*, 1981). However, they were criticized as they left out the basic tenet of Shaw and McKay's effort: the offender's residence. This said, they do state that movements bring offenders and their targets together (Bottoms and Wiles, 1997).

Shaw and McKay's theory of concentric ring zonal distribution of crime was challenged both outside the USA and in Chicago itself after World War II (Taub, Taylor and Dunham, (1984) in Bottoms and Wiles, 1997:331; Bursik (1986) in Bottoms and Wiles, 1997:331). The 'old areal regularities broke down' and the 'theory of concentric rings was discarded together with the formulation of urban process that went with it' (Bottoms and Wiles, 1997, p. 331). One has to note however, that Shaw and McKay's theory of Social Disorganisation is still supported.

The new surge of research in the 1980s and 1990s identified a number of issues that showed variations from the classical circular concentric zone theory. These variations may have been due to the fact that European urban areas such as Croydon in London (Morris, 1957 in Bottoms and Wiles, 1997, p. 312) and Sheffield (Baldwin and Bottoms, 1976 in Bottoms and Wiles, 1997, p. 312) were built for different purposes, with the higher status areas concentrated around the city-centre and in other formations that do not conform to the Chicagoan model where the centre was industrialised.

Generally the contrast is between cities such as Paris and Glasgow that have disadvantaged areas on their periphery and those that confirm to the Anglo-American pattern (e.g. London, Chicago, and Los Angeles) where deprivation is in the inner cities and affluence is in the suburbs. Interestingly Malta exhibits an inner-city deprivation due to an out-migration from the cores and the depopulation of the same areas which resulted in deterioration and dilapidation (Formosa, 2007).

Recent studies have focused on the housing market and came up with an analysis of the direct and indirect consequences of the operation of the market on crime. A study in

7 Sociological concept of place: the social organisation of behaviour at a geographical place (Bottoms and Wiles, 2001)

Sheffield in the late 1960s (Rex and Moore, 1967) launched a series of studies in the field that brought up new concerns on how the modern industrial situation affects the crime patterns in both rust-belt and sunrise cities (Craglia *et al,* 2000). Industry is becoming dispersed and less zonal and is challenging the concentric-ring theory (Harries and Lewis, 1998), especially where the dispersion could be effective in reducing crime (Wang, 1999). Studies are needed in the latter to identify if dispersing industry actually results in reducing crime or else in dispersing it over a wider area.

Harris *et al* (1998, p. 623) state that the zonal model had two major faults. One was that the divisions were based on the social, political and economic fault zone between the city and suburbs. The other fault was that the zonal model misrepresented Burgess's model and the cities and suburbs of his day. Hoyt (1939 cf Harries *et al*, 1998) indicated that single family units lived in the periphery and in the suburbs, whether the latter were industrial or residential. They did this based on their consumption patterns (Douglass, 1925 cf Harries *et al*, 1998).

Another input to the theory looked at the housing market which is intrinsically linked to offender rates. As dwellings are occupied according to the residents' income, households of similar status tend to group together. Higher status groups tend to segregate themselves into small close-knit areas and try to keep other categories from moving in, whilst lower status groups tend to be dispersed (Ladanyi, 2001). In his 1979 group status analysis of prisoners in Budapest, Ladanyi identified that inequality changes with time and new forms of crime manifest themselves to reflect structural changes. In this study, areas zoned for agriculture and industry showed high offender rates as against the highest status parts of the city exhibiting very low proportions of detected and convicted offenders.

The higher-status segregation makes it is difficult to separate social class from area of residence (Pain, 1997). This is also marked where the middle class is conscious of being suburban and aggregates around the city periphery (Singleton, 1973). Where middle class values start to decline, a high incidence of delinquency and crime in urban settings is linked to the loss of social buffers (Kawachi *et al*, 1999). Schnore (1963 in Harris *et al*, 1998) claimed that income, education and occupational standing increased in proportion to distance from the urban conglomeration, moving out from inner poverty city centres to outer affluence (Jackson, 1985). An increase in delinquency is found in the population of low-income earners, the elderly and poorly educated people demanding additional social services (Goldfield and Brownell, 1979 IN Harries *et al*, 1998; Mahatmya and Lohman, 2011).

Offenders and Offences

Offender Rates: An Analysis

The offender analysis looks at the crimes committed by an offender based on his/her location of residence and role in crime. Whilst crime analysis concentrated on community studies between the 1920s and 1940s through work carried out in Chicago by Shaw and McKay, the emphasis slowly changed to an analysis of individual behaviour. This has been recently revived by looking out for the "criminal careers" of communities that could enhance the understanding of crime and its causes (Reiss, 1986). Just as one describes individual offender crime careers, Reiss (1986) argues that one could extend this concept to the communities that experience changes, through analytic studies of both offender rates and offence rates (Schuerman and Kobrin, 1986; Bottoms and Wiles, 1986, 1992; Bottoms, Claytor and Wiles, 1992).

Residential Issues and Offenders

The local housing market came into focus through such work as Rex and Moore's (1967) Sheffield study where they analysed housing patterns through a Census Enumeration District analysis. The results showed that there was a correlation of housing type with offender rates (Baldwin and Bottoms, 1976). Major variations occurred within the areas with a predominant housing type, which was further analysed to reveal that it is different from the Chicago study; there was no relationship between the rate of tenant turnover on estates and offender rates (Baldwin and Bottoms, 1976). This study and another conducted by Wikstrom in 1990 in Stockholm (Wikstrom, 1990) indicated that the studies went beyond a simple social-class analysis since they included such external elements as landuse. Wikstrom's Stockholm path-model approach hypothesised that housing tenure variables would feed through to population composition variables: in effect half the area offender rates variation in several districts was explained by housing type and social composition. This created a further inroad into the study of offenders and the locality they reside in[8].

Schuerman and Kobrin (1986) looked at the physical makeup of the locality and the shifts in land-use, particularly the housing sector, as well as demographic changes, mainly in household and absolute population structure. They argue that even small changes in land-use can bring about a change in population structures, implying that an increase or

8 This situation can be tackled in a number of ways. One study carried out in Public Housing Authorities in the USA (Hyatt et al, 1999, p. 18) looked at the housing setup within the authorities' jurisdictions and carried out concentric ring analysis based on a series of six 50m interval buffer zones. They introduced a new factor called blockface analysis where crimes occurring in areas facing the authority boundaries are also analysed. The theory assumes that crime does not stop abruptly around these housing areas but continues further away from the immediate boundary area.

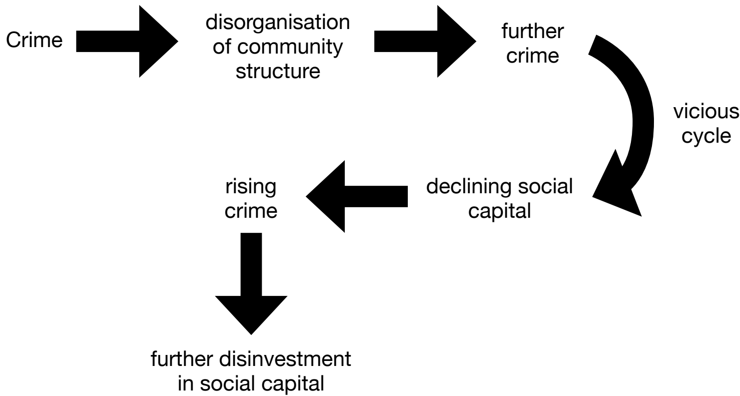
decrease in the real-estate purchases or renting could change the framework of operation in a spatial area. The same changes reflect who enters or exits the locality and in turn changes the offender/offence relationships related to that area. An increasingly degraded area would result in a reduction of rents and an influx of low-income earners effectively changing the make-up of that community (Ellul, 2003).

A classic example assessing the different types of dwelling zones was based on the analysis of two towns for three categories of housing: low-rise council, high rise-council, and privately rented areas. The classic study was the "Stonewall and Gardenia" housing estates in Sheffield case study (low-rise council) where Gardenia had 'tipped' in the 1940s. Once 'tipped' it continued to attract categories of persons who were prone to offending due to the allocation of homes to such persons. There were also indications that the negative reputation of this town created an effect on its residents, schools and networks. Stonewall did not go through the same changes and retained its crime-free structure (Bottoms, Mawby and Xanthos, 1989). Similar studies by Harries (2006) in Baltimore investigated steep crime gradients that characterize the physical and social circumstances under which they occur.

Neighbourhoods 'tip' towards crime through a process described by the 'broken windows hypothesis' where a locality's crime status deteriorates over time (Wilson and Kelling, 1982). The components keeping an area together include the offender's role, power with respect to crime by others, and the extent of the criminalisable space (Van der Wurff, Van Staalduinen and Stringer, 1989, p. 144-145). The rate of change of signs of disorder (broken windows, housing abandonment, litter and graffiti) is relative to the process where the community loses control. Once the community abandons control, vandalism occurs and an unintended invitation is given to persons involved in the crime trade to move in. Skogan (1986, 1990) investigated this decay and called it the 'spiral of decay in American Neighbourhoods', where the physical (abandoned or ill-kept buildings, etc) and social constructs (public drinking, prostitution, etc) are strongly correlated.

The fear of offenders leads to a vicious cycle until no investment in social capital occurs through withdrawal from community life, out-migration, loss of jobs, loss of networks, fewer opportunities for network and social organisations and exit of businesses (Figure 1.4) (Kawachi *et al,* 1999; Farrall, Bannister, Ditton and Gilchrist, 2000). This effectively results in a perpetuating situation of decay and where such areas remain disorganised for long decades.

Figure 1.4: Kawachi et al's description of the Social Capital Disinvestment



Source: Adapted from Kawachi et al, 1999, pg 727

Offence Rates: an analysis

Offence-location research provides valuable data on the patterns of crime by type, time, and location but also poses a problem of relationship. How does one equate the issue of offences with the area in question as well as the offender committing the crime?

There are various issues at stake in offence analysis, particularly due to its complex structure of what classifies an area as a crime attractor or crime generator. Offences occur due to the intrinsic relationships between the offender and the offence: is it a crime of chance or a crime of choice? Does an offender choose to carry out an offence in an area because of its affluence (such as a villa area) or because of its inherent social structure such as that where there is no social cohesion and social capital? Crime attractors offer high-level visual, psychological and sociological imperatives to offenders to commit crime therein such as opportunities provided by sparsely-populated residential areas. On the other hand crime-generators may be a result of land-use designation such as in recreational areas that provide easy-target opportunities such as vehicles, highly-dense patron-packed bars. Irrespective of the type of crime-function, the offender has a role to play, mainly due to his/her modus operandi and the relationship to the crime target, whether kick-started through routine activity, or specific target hot-spotting.

In order to identify specific issues that help offenders to operate within the attractor-generators pivot, in-depth studies are required such as those reviewed in Stockholm by Wikstrom (1990) and in Germany by Entorf *et al* (2000).

Per-Olaf Wikstrom in a study of offences in Stockholm in 1991 (Wikstrom, 1990), considered the fact that the measurement of areal offence rates poses quite a problem due

to the use of resident population as a denominator (Harries, 1981). Stating that crime in a historic town is related to the number of its residents is erroneous especially where most crime results from theft of for example cars in car-parks reserved for tourists visiting that area.

Wikstrom (1990) was building on a study in Sheffield where crime in traditional cities tends to concentrate around the centre of the city, particularly for violence in public, vandalism in public, and theft of and from cars. Bottoms and Wiles (2001) stress that though this is the case in most cities; one has to keep an open mind that changes in land-use could bring about changes in the distribution of these offences, also outlined by Kurtz (2008). More recent studies show that even thematic landuses such as vegetation cover effect changes in crime, where Wolfe and Mennis (2012) found that vegetation abundance in an urban space is significantly associated with lower rates of assault, robbery, and burglary, but not theft. Another study by Troy, Grove and O'Neil-Dunne (2012) found that this relationship in Baltimore is higher in public than in private lands. Through his study Wikstrom showed that residential burglaries tend to occur in areas of high socio-economic status, especially those that are nearby to areas with high offender rates. He indicated that there are specific geographical skews in the patterning of offence locations and that these can vary significantly by type of offence.

High income was found to be positively correlated to crime rates in Germany, indicating that richer persons are better targets (Entorf *et al*, 2000). This is due to the higher incentives that persons living in disadvantaged areas have (Kosbela and Viren, 1997). The higher the income inequality the worse the legal income opportunities become and in turn better illegal income opportunities are sought.

Can one be studied to the exclusion of the other?

The last two decades of the twentieth century brought the offender and offence-based theories together. Though both can be studied in isolation, the main progress being carried out by contemporary criminology is the study of this relationship.

Such a process of understanding both offender and offence relationships can be strengthened through a review of the related theories of Structuration, Opportunity and Routine Activity.

4. Related Theories

Structuration Theory

There are various theories of crime that have attempted to call themselves general theories of crime. Few have managed to integrate the issues of crime with the issue of space. For example those of Braithwaite (1989) and Gottfredson and Hirschi (1990) rarely cover the

issue of spatiality, concentrating on issues such as social control (cf Bottoms and Wiles, 2001 IN Evans, Fyfe Nicholas and Herbert, 2001, p. 12). One of the closest approaches to an integrated approach to Environmental Criminology is Structuration Theory proposed by Giddens. It is also a popular debating issue between human geographers and social theorists (Gregory and Urry, 1985).

Environmental criminology studies have not always looked at the collective study of offence and offender rates. Each has been researched to the exclusion of the other. The Chicago School concentrated on offender studies whilst others (Newman, 1972) have focused on offences. Giddens went beyond the classic theories as posited by the founding fathers of sociology and argued that these two tenets cannot be and must not be studied in isolation, rather they have to be considered as inseparable (Giddens, 1984, p. 2). For him societal change can only occur as 'social practices ordered across space and time' which evolve through the activities of human beings as knowledgeable agents acting in the context of social life. He also looks at structures and how they exist within, constrain and enable social actions as well as the issues of routine activity, social change and social processes. Brown, Esbensen and Geis (2010) explain such activities through their five ¬paradigms: free will or rational choice, positivism, ¬interactionism, the critical ¬perspective, and integration.

Giddens based his analysis of the routinised character of daily-life space-time on Hagerstrand's concept of time-geography (Giddens, 1984, p. 111). Hagerstrand had analysed movements of individuals in a local parish in Sweden over their lifespan and composed time-space analysis through charting their movements. The issue deriving from these movements indicate that there may be patterns to the way people conduct their lives and this includes offenders in their relationship to the offence location. Carlstein (Giddens, 1984, p. 116) indicated that these 'ecological constraints' derive from specific modes of 'packing', mainly the packing in small areas of materials, artefacts, organisms, and human population in settlement time-space, and their activities in the related space. This results in a 'clustering of institutions' across time and space, giving rise to offender locations that may not be desirable to reside in and offence locations that are attractive to offend in (Giddens, 1984, p. 164).

Structuration theory in effect offers an understanding of the ongoing processes of interaction between the elements making up a crime. Any model of crime analysis should look at these in an understanding of the spatial aspects of offending and offences and their relationship.

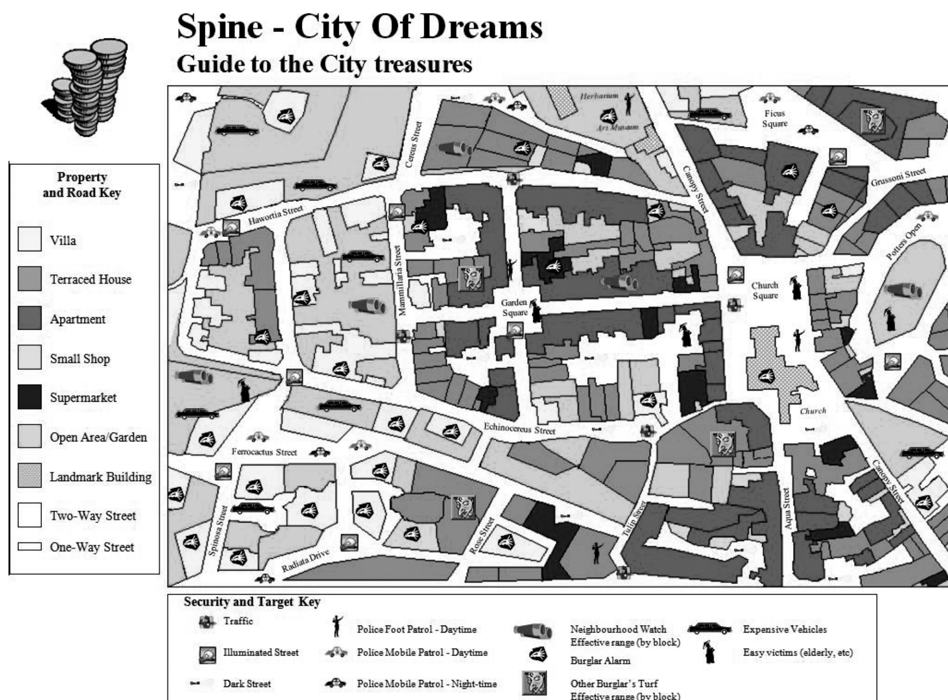
Opportunity theory and Routines Activity Theory

Offenders commit crime for a variety of reasons, varying from the need to survive to taking advantage of opportunities that present themselves. Two theories that investigate

these reasons are Opportunity Theory (Bursik and Grasmick, 1993; Felson and Clark, 1998), and Routine Activities Theory (Cohen and Felson, 1979; Ekblom, 2001; Van Daele and Vander Beken, 2011). Each fits in with environmental criminology theory in that the fundamental issue at stake is space: where does an opportunity present itself and how does one get to make use of an opportunity and act accordingly, if not through the familiarity of the spaces inherent in his/her cognitive mindmap?

A mindmap study of a Maltese Village rendered Figure 1.5 as a guide to one's cognitive map of a zone in terms of opportunities offered and routines monitored. Moving from conceptualization of one's mental image to an entitation of the surrounding landscape required the translation of that abstract concept into a solid construct such as a rough sketch, an image or a 3D model. Figure 1.5 depicts how the author viewed the diverse building blocks that make up the village mosaic both structurally, socially and criminologic. The image, though complex, shows two easily readable keys (legends), the left describing the background colours pertaining to the map and identifies all those landuse areas such as the green zones depicted open areas or gardens. The bottom legend depicts those social and crime-related activities that are

Figure 1.5: Spine: One's Maltese village cognitive map



of interest to the researcher for safety and security as seen from an offender's point of view; the elderly lady, the expensive vehicles, the burglar alarms, police presence and other many constructs so importation to the cognition of one's surroundings.

Opportunity Theory looks at crime from the point of view of the offender: the opportunity to carry out an offence and; the level of target attractiveness of the area. Such issues posit fundamental questions, especially in determining what a researcher must look for in determining attractors. When does a car become enough of an attraction to steal and for what purpose?

An offender looking for a car for 'mere use'[9] may not be attracted by a specific make of car, but a car thief looking for a lucrative catch may visit areas of high affluence.

Another aspect that makes an area attractive relates to the accessibility of the location. The accessibility issue leans on four parameters; visibility, ease of physical access, the absence of adequate surveillance and, the modus operandi of the target. Areas within easy reach of transport routes would pose a hazard for residents due to the opportunity offered (Mayhew, Clarke, Sturman and Hough, 1976). Brantingham and Brantingham (1984) further argue that all individuals carry in them a cognitive map of the city and engage in search patterns to identify areas of interest. Bottomley *et al* (1986) state that it is difficult to decipher whether the increase in the number of crimes is due to the form of increased opportunities such as the car or a decline in respect for property.

Accessibility becomes an issue due to the offender's knowledge of both the real physical and cognitive space (Beavon, Brantingham and Brantingham, 1994). Potential offenders will not offend in previously unknown areas but where criminal opportunities intersect with their cognitively known areas (Bottoms and Wiles, 1997, p. 324). Rengert (1980, p. 21) adds that 'the relative magnitude of an opportunity is proportional to its relative degree of accessibility which will partially determine its probability of being exploited'. This indicates that even though an area may be affluent or has commercial aspects that could prove lucrative to a potential offender; its accessibility plays a major part in the commissioning of an offence. Also, a high-attraction area (such as a secluded villa area) that has few visible people tends to suffer more crime since there would be fewer witnesses (Jacobs, 1961; Van Daele and Vander Beken, 2011).

Newman (1972) argued that the solution to this situation would be the creation of territorial subdivision, whether conscious or unconscious, to identify outsiders. This occurs where residences along less accessible streets are not familiar to non-resident criminals and so will experience less burglary episodes (Bevis and Nutter, 1977).

Further developing this area of research within the domain of situational crime prevention, Felson and Clarke (1998, p. 9) posited their ten 'principles of crime opportunity theory' which outline those issues that can be considered as the 'root causes of crime' as

9 Such as joy-riding

well as leading towards reduction measures:
1. Opportunities play a role in causing all crime
2. Crime opportunities are highly specific
3. Crime opportunities are concentrated in time and space
4. Crime opportunities depend on everyday movements
5. One crime produces opportunities for another
6. Some products offer more tempting crime opportunities
7. Social and technological changes produce new crime opportunities
8. Opportunities for crime can be reduced
9. Reducing opportunities does not usually displace crime
10. Focused opportunity reduction can produce wider declines in crime

Opportunity Theory has its own sister theory entitled Routine Activities Theory which looks at the day-to-day activities of victims and offenders in relation to the location and timing of offences. Crime is closely related to the offenders' activities as well as the activities of potential victims. New opportunities offer themselves, such as attacks on the elderly. Perceived high standards of living produce an opportunity to those who normally act around a few spatial locations either as part of their day-to-day activities such as a work transport route. The mere fact that an action is a routine activity implies that there is an element of social activity – there is an interaction that is being portrayed (Cohen and Felson, 1979). Furthering this concept, Felson and Clarke (1998) highlight the fact that there is a veritable target (as preferred over victim's) role in creating opportunity through their VIVA model (value, inertia, visibility and access).

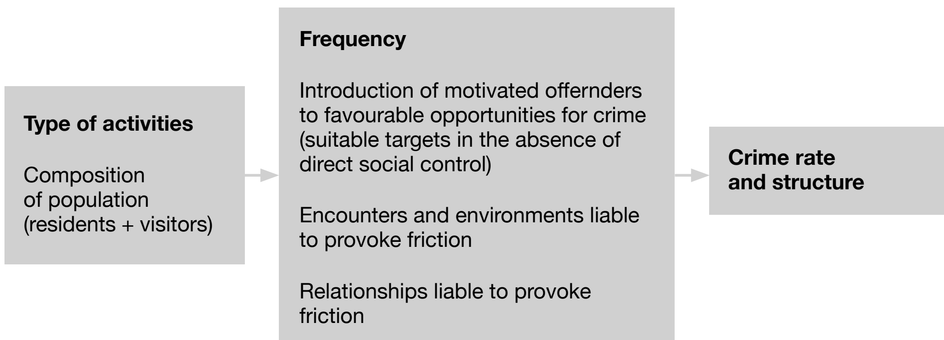
These routine daily activities fit into the framework set up by Giddens in his theory of Structuration, due to the fact that the social action being interpreted needs a human being who relates repeatedly to a social structure in a particular place (Giddens, 1984, p. 110). His concept of 'locale' looks at a wider aspect than just place, integrating the interactions occurring therein. An analysis of crime in particular areas (by type of crime and activity in that area, for example retail) may bring up specific time-periods when offences occur. "The probability that a violation will occur at any specific time and place might be taken as a function of the convergence of likely offenders and suitable targets in the absence of capable guardians' (Cohen and Felson, 1979).

Such a description helps to counter the preoccupation that studies such as the Minneapolis study conducted by Sherman, Gartin and Buerger (1989) queried when they posited that 'places cause crime' as they are criminogenic generators of crime. This is different to the concept that places host crime (serving as attractive receptors of crime) due to the interaction of a routine activity by a potential offender and that same place. The fact that persons go to have a 'good time' in recreational places does not mean that

the area creates a potential murder, since the interactions of the offender and victim could have occurred anywhere (Karlsson, 1998).

Wikstrom's approach is a combination of opportunity and routine activity theory where he introduced the concept of time-crime. He states that the inner-urban activities fluctuate over time and space to the extent that different times of the day experience different activity types and frequencies as reflected in Figure 1.6 (Wikstrom, 1990, p. 23).

Figure 1.6: Wikstrom's model of variations in and types of crime in the urban environment



Source: Wikstrom, 1990: 24 IN Bottoms and Wiles, 1997:328

Each of these components can only be studied by understanding the localities they occur in: the physical structure and the prevailing social issues that term an activity as a crime.

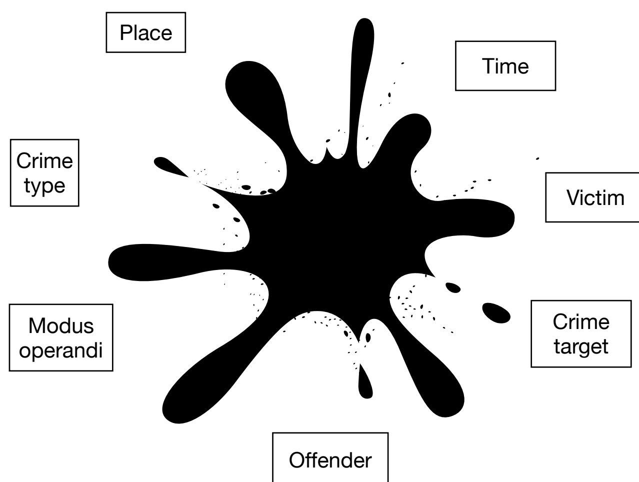
When reviewing the various pivots of crime from either an opportunity or routine viewpoint together with the social structure it occurs in, Ekblom's (2001) Conjunction of Criminal Opportunity theory provides a unified approach towards what is eventually the main aim of criminological research: prevention and reduction of crime as well as promoting to the fore community safety (Figure 1.7). Its target is the identification of all the issues that occur at a specific point in time which make criminal occurrence happen. This leads to action on assessing risk of crime (prevention), actively aiming to reduce (number and seriousness) as well as enhancing social activities through quality of life and improved state of existence.

In effect, Ekblom outlines a strategy that ropes in the main tenets of opportunity theory, routine activity theory as well as Structuration aimed at developing preventive strategies that have an impact on the ground through such actions as that outlined in his CLAMED model. The latter model takes on the role of task **Clarification**, preventive agent **Locating**

hence **Alerting** them to the crime problem whilst **Motivating** them to take on the crime reduction task, at the same time **Empowering** and **Directing** them to take on capacity issues and to follow guidelines, select targets or implement particular activities.

The latest update to the implementation of the theory is the 5Is[10] initiative (Intelligence, Intervention, Implementation, Involvement (of the community) and Impact).

Figure 1.7: Ekblom's Problem Space: A Map of Symptoms and Crime Reduction Objectives



Source: Ekblom (2001), pg 20

In conclusion, the review of the main theories that have promoted environmental criminology to its current status has shown that in its ultimate stage, crime can be analysed in its spatio-temporal constructs and based on the findings strategies can be implemented to impact and reduce crime occurrences.

Physical and Social issues

Environmental criminology research with its related theories and components as described above would be bare without a review of two main related components: land use and social issues. Each places an impact into the analysis of what constitutes the environment and how crime interacts with each.

10 http://www.designagainstcrime.com/files/crimeframeworks/04_5i_framework.pdf

Land-use component

The relationship of crime and landuse has been recognised since the thirteenth (13th) Century when Edward I tried to control crime by introducing the Statute of Winchester in 1285. This Statute covered instructions on the communities' obligations with regard to possession of weapons and to maintenance of the King's peace (Summerson, 1992). UK street widening in the nineteenth century lead to the dispersion of concentrated criminal elements (Beavon *et al*, 1994). In more recent post-war times, urban development was based on the automobile and mass transportation that led to changes in opportunities for crime due to the concentration of people in specific areas. As an example, arresting an offender committing snatch and grabs in the vicinity of subway exit-points would be very difficult to conclude as it provides a number of escape routes (Brantingham *et al*, 1984).

Urban planning and the subsequent impact on crime were brought to focus in the quest for 'livable streets' (Appleyard, 1981). Like the theory of social disorganisation before it, the analysis of street systems and their associated land-uses was shelved for over half a century but new studies have indicated that street development concentrates on increasing the carrying capacity but neglect the social and environmental costs (Appleyard and Lintell, 1972). In the urban world, streets and roads play a major role since their setup constrains flow and accessibility to offenders in their routine activities whilst inducing an opportune environment for offending.

Urban planning clusters offence targets in specific areas, through increasing or reducing accessibility for opportunities. As against opportunities in rural areas where a person is more conspicuous, urban areas become attractive to offenders especially where an area becomes prosperous (Entorf *et al*, 2000).

Zoning practice and urban design has been found to alter crime patterns due to the presence of high volume land, accessibility, design, private and public spaces, and a host of other causes (Beavon *et al*, 1994; Pain, 1997). CPTED (Crime prevention through environmental design) has had a major impetus towards the mitigation of crime in urban spaces (Cozens, 2002; Marzbalia, Abdullaha, Razakb and Tilaki, 2012; Sakip, Johari and Salleh, 2012; Fennelly and Crowe, 2013).

Social component

Socio-economic studies and its major component, deprivation, play an important part in understanding social structures and their relationship to studies in crime. Deprivation has evolved from the study of poverty to a wider 'contextually dependent' concept with the inclusion of issues as accessibility, isolation and peripherality. The use of spatial analysis in GIS to measure poverty takes on a significant role as it brings the traditional 'poverty' studies in relation to offence location by showing the mechanisms each operates in: what is the background of an offender and where does he/she prey?

Deprivation comes in two forms: absolute or relative. Absolute deprivation refers to the unavailability of resources to meet the basic needs for healthy living and is the result of various factors particularly unemployment, lack of housing and schooling as identified by the UN Human Development Index, which indicate a 'weakening social fabric' and in turn a deteriorating social cohesion. There is little evidence to suggest that absolute deprivation is an automatic precursor for crime as against relative deprivation that may in 'certain conditions lead to crime' (Young, 1997, p. 488; Lea and Young IN Muncie, McLaughlin and Langan, 2000).

Relative deprivation is the result of poverty where some citizens have significantly less access to income and wealth than others in their society. Crime is most prevalent in societies with these disparities, even in areas where absolute poverty is non-existent (Kawachi *et al*, 1999). Such societies move away from integrative social norms and in turn resort to an *anomie* situation (Merton, 1968).

Left realist criminology[11] asserts that the realisation that social 'goods' are within physical reach but grossly out-of–reach from acquisition by relatively-poor persons may in effect cause crime. Relative poverty and deprivation from 'goods' may lead these persons to attempt to make up for this perceived lack by 'acquiring' the 'goods' illegally.

Relationship of social issues and landuse to crime

Kawachi *et al* (1999), use crime as an indicator of collective social well-being both in the social and health aspects, by analysing the degree of relative deprivation and the degree of cohesion in a society. The former looks at income inequality and the latter looks at the social relationship/social capital in that society, a factor also identified in The Netherlands (Akçomak and ter Weel, 2012). They state that crime is a mirror of the quality of the social environment and use state-level ecologic data to analyse deprivation.

Variables for analysis

Diverse variables are used to analyse crime and deprivation. The main one, unemployment, indicates a direct causality to crime particularly when the economy falls into recession and crime rates increase (Eitzen and Zinn, 1988, p. 431). US federal prison population in the US tends to increase fifteen months after periods of high unemployment (Keebler, 1975). In another study, Craglia *et al* (2000) based their Sheffield studies on the analysis of households and unemployment, through the use of Townsend Index (Townsend, Phillimore and Beattie, 1988), pointing out that crime statistics need to be based on young-male unemployment, population turnover and the DETR index of local conditions. Wang (1999) found associations between unemployment and crime with the link being stronger

11 "Left Realism emerged in the early 1980s in Britain as a response to both the punitive and exclusion policies of conservatism and to the utopianism of New Left radical criminologies" (McLaughlin et al, 2001, 163)

with structural unemployment.

Other researchers base their analysis on economic factors. Entorf *et al* (2000) use GDP and relative distance to average income. They include the % of population on welfare, the % of population below the poverty line and the Gini Coefficient as reliable variables for within-state studies of crime. One interesting point that they bring up is that offenders rate themselves in relation to national income rather than that of their own areas.

Other variables also employed include population density (especially in small island states), education advancement, high school dropout rate (Shaw-Taylor, 1998, 317) and per capita GNP (Wang, 1999). These factors highlight the importance of social cohesion since a high population density can induce a reduction of social capital due to the indifference attributed to knowledge of who one's neighbours are, and very little incentive to develop viable relationships. Interestingly, whilst school dropout is identified by Shaw-Taylor (1998), Rutter, Maughan, Mortimore and Ouston (1979) identified that at the other extreme school intake is just one factor that causes delinquency (where the best students are chosen by the best schools and low-achieving non-academically inclined students are then grouped together in low-achieving and inadequate schools). They found that delinquency is not directly linked to school activities but to offending outside school. Though this area requires further research, it is assumed that high school dropout rates may lead to more time to engage in activities where there is no adult supervision and could lead to offending.

Kawachi *et al* (1999) includes single parent households as a factor in crime analysis stressing that this family structure reduces control and supervision of potential offenders, again resulting in reduced cohesion and lack of role models. They also include educational attainment and average alcohol consumption levels in their analysis. They found that as the socio-economic status increased, homicide and assault rate declined but larceny increased. In addition, where poverty and unemployment increased homicides increased. One interesting factor was that median income was positively associated to robbery rates and motor vehicle theft. Alcohol was not found to correlate to violent and property crime. Wong (2012), in turn employs an adaptation of Shaw and McKay's theory, where he examined the effects of social disorganization and family disruption on youth crime.

Urban planning also plays a part in the dynamics of the interactions of offenders and offences, affluence and deprivation. Once an area has been zoned either as recreational or has 'tipped' following the deterioration of its demographic stock, urban issues have an impact on crime structures and vice-versa. As an example, out-migration can be linked to changes in the economic scenario such as the loss of jobs from a de-industrialised city. Taub et al (1984, p. 347) identified three issues for area deterioration analysis: i) crime levels are an issue in judging the quality of an area, ii) there is evidence of a 'threshold model' where people move out of an area until tipping occurs, which few can stop, and iii)

neighbourhood change is based on ecological facts[12], individual and corporate decisions.

In summary, these factors bring into focus the need to identify the causal factors that result in the creation of a realistic evaluation of the crime, social and urban relationships. How does each variable lead to the commission of a crime? Which activities attract the highest crime rates? This issue is best tackled through the identification of the context within which an urban activity has been implemented.

6. Ending Note

The chapter described the development of the theory of environmental criminology and how it fits within other related theories such as Structuration, Opportunity and Routine Activity theories. It described crime in relation to the offender and offence location and identified how these different aspects of the theory fit together to form a comprehensive background for the analysis of crime.

Whilst the study aims to analyse crime in it spatio-temporal aspect based on an analysis of location of where offenders live and where they commit crime, the theories mentioned above point at the need to move one step beyond the geographical aspect and analyse criminal activity in relation to the structures of the areas the offenders live in, interact and commit crime.

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12 Ecological facts include an employment base for neighbourhood residents, housing market and demographic pressures, age and quality of the housing stock and external amenities such as vistas.

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CHAPTER 9

Prisons in Crisis: An International Assessment

Andrew Willis

The necessary first step in understanding the function and role of imprisonment in society begins with an appreciation of the principles that inform the decision to remove an offender's liberty. This is followed by an examination of the 'rise and rise' in the use of custody world-wide over a near fifty-year period. There are some grounds for supposing the seemingly exponential increase in custody may be somewhat moderating in recent years. Further analysis shows that this optimistic view is misplaced. Although imprisonment offers little by way of social defence, crime reduction or offender rehabilitation, where there is no political advantage and no cost incentive in not sending offenders to prison, the use of custody will remain the penal option of first resort. This is sadly most true for the offender population who arguably need imprisonment least – petty, persistent offenders overwhelmed with psycho-social problems that make the repeated cycle of offending-imprisonment-offending-imprisonment a regrettable but enduring feature of the penal landscape. Drawing on this argument Chapter 10 then develops this sombre analysis in relation to the use of imprisonment in Malta.

Punishment and prisons

Punishment comes with several justifications each with different consequences for the use (or not) of imprisonment. It is a complex matrix of intermingled and often overlapping objectives that can be seen alone or in combination in sentencing practice, and sometimes in tension with each other. The major ones include retribution, deterrence, rehabilitation, incapacitation and restorative justice (Easton & Piper, 2008; Frase, 2005; Hudson, 2003; Von Hirsch & Ashworth, 1998).

Retribution is also known as just deserts. This is the classic approach to punishment – often mistaken for revenge or an 'eye for an eye'. Offenders are deemed to be rational agents who commit crime of their own accord. To the extent they take something away from society through crime, so too must they 'pay' for it through being punished. The punishment restores the moral order. Retribution is not concerned with making bad people better. It pays no heed to what happens after punishment. Whether the offender

goes straight or not has nothing to do with it. What matters is that moral equilibrium is restored (Von Hirsch & Ashworth, 1998). The biggest question faced by the retributivist is what type and level of punishment is appropriate to a given crime act. Most argue that it should be proportionate to the crime rather than equal to it or exactly the same. But what is proportionate? Who decides? Who knows what is right? There is no universal moral calculus.

Deterrence presupposes that offenders can be terrorised into conformity by punishment. Offenders who are subject to painful and unpleasant punishment will 'mend their ways' (Ashworth, 2007). This is known as individual deterrence. The threat of punishment held over would-be offenders is known as general deterrence. Both hold that the more and greater the punishment the more it will act to dissuade an offender from committing or repeating a crime (Cavadino & Dignan, 1992). General and individual deterrence are subject to empirical measurement. Do harsh punishments dissuade? Do even harsher ones deter more? Deterrence presupposes that crime is a product of rational choice but do all offenders calculate the costs against the benefits of crime before engaging it?

Rehabilitation is also known as reform or treatment (Bottoms, Rex, & Robinson, 2004; Canton, 2011; Robinson, 2007). This holds that crime is rather like being sick; the offender is not functioning properly – and the proper job of criminal justice is to treat the underlying causal conditions, whether these are individual factors or more generalised social pathology. Probation has historically been at the forefront of rehabilitative measure (Vanstone, 2007). Rehabilitation is subject to empirical measurement. Do treatment programmes work? Perhaps more accurately, under what conditions and for whom do they work, and why? The question of treatment raise major issues about whether it is right to coerce offenders to treatment. Does the state have the right to impose treatment? Is it possible to have successful outcomes under these conditions?

Incapacitation holds that society has a right to be protected against crime and that more serious or dangerous offenders should simply be locked up for a long period to foreclose on further or predicted offending. This is known as preventive detention or incapacitation (Black, 2011; Nash & Williams, 2010). It is the equivalent of putting offenders in the penal deep freeze – society is protected for as long as the offender is incarcerated. The justification for incapacitation requires strong answers to three key questions. First, is it possible to define dangerousness? Secondly, is it possible to predict dangerousness? Thirdly, is it legitimate to incarcerate someone for something they might do rather than for something they have done?

Restorative justice and community payback or community service involve an offender paying back something to a victim (or society more generally) that 'makes good' the harm caused by crime (Braithwaite, 1989; Johnstone & Van Ness, 2007; Sherman & Strang,

2007). Under restorative justice offenders admit responsibility and often through a third party (a mediator) offer to make some form of restitution to the victim. It is judged to be effective if the victim and offender agree that payback has occurred. Under community service offenders are punished by being made to do unpaid work in the community but it is hoped that this will also have a rehabilitative effect, which will show itself in future non-reoffending.

The use of custodial sentences is usually bolstered by reference to one or more of retribution, deterrence and incapacitation, though it is frequently accompanied by a 'nod' in the direction of rehabilitation. These are important differentiations that impact directly on the use of custody and whether the prison population will rise or fall, and the prospects for a better-engineered sentencing framework. The use of non-custodial sentences is usually underpinned by reference to rehabilitation or some aspect of 'community payback'.

In the last fifty years there have been dramatic changes in the use of custody which in part reflect changing attitudes towards punishment. Taking this longer-term perspective, criminal justice in the 1960s reflected a rather cosy confidence in the correctional effects of corrections. The principle of rehabilitation was dominant with positive implications for both social work and probation. In contrast, the 1970s was a decade of despair rightly summed-up by the research-derived phrase 'Nothing works'. This unleashed in the 1980s a new-found enthusiasm for retribution – with its catch-phrase 'Prisons works'. By the mid-1990s this was abetted by the use of imprisonment as a crime prophylactic – with its catch-phrase 'Two strikes and you're out'. In the space of five decades this topsy-turvy, roller-coaster ride of criminal justice thinking and practice had moved from a dominant rehabilitative ethic to one underpinned by punishment and social protection where the latter were delivered principally through custodial sentences.

Rise and rise of custody

Prison populations soared. In round figures the prison population in England and Wales rose from 35,000 in 1975, then to 45,000 in 1985, upwards to 55,000 in 1995, on to 80,000 in 2005 and up to nearly 85,000 at the current time – nearly a three-fold increase. At each of these points academic commentators and government have pointed to the "biggest prison population ever" (Morgan & Liebling, 2007). Two-thirds of the prisons are now so crowded that they cannot provide what the authorities call a "decent" standard of accommodation. Several of the country's largest jails, including Brixton, Wandsworth and Preston, are running at 50 per cent above their 'certified normal accommodation'.

In mid-2013 some 72 of the 124 jails (over one-half) in England and Wales held more prisoners than the number deemed by the Prison Service to offer a 'good, decent standard of accommodation' (Prison Reform Trust, 2013). The prisons held 83,064 inmates against a certified normal accommodation level of 76,913 – leaving the jails with around 6,000

prisoners in excess of official capacity, or some eight per cent overcrowded. Many prisoners have to double-up in cells designed for only one inmate – with just 46 prisons running at normal capacity. The Prison Reform Trust commented that the "prison .system is flooded with petty offenders, addicts and people who are mentally-ill". Moreover, the impact of imprisonment is limited. Some 61 per cent of adult prisoners and 73 per cent of prisoners aged 17-20 years are reconvicted within two years of discharge; and 50 per cent of those reconvicted are back in prison within this two-year period.

England and Wales has one of the highest per capita rate of imprisonment in Europe – 148 prisoners per 100,000 population or roughly 1 in 700 of the entire population in prison at any one time. The position is not so dramatic in other European countries. Even so, in Germany (80) and France (106) combined there are some 95 prisoners per 100,000 population or about 1 in 1,000 of the population in prison (International Centre for Prison Studies, 2013; Walmsley, 2011).

The European figures pale into insignificance when compared to those from the United States. By 2001, approximately1 in 37 adult residents of the entire US population had ever served time in a state or federal prison (Bonczar, 2003). The US easily leads the international league table of imprisonment with 2.3 million inmates, ahead of China (1.5 million) and Russia (890,000). US state and federal prison population rose from 500,000 in 1987 to 1.5 million in 2007 – an increase of 300 per cent; and there are a further 750,000 inmates in local jails (Pew, 2008). There are in excess of 750 prisoners per 100,000 population – five times the UK rate. The current total prison population of 2.3 million is equivalent to 1 in 100 of the entire US adult population. One in nine (11%) of black males aged 18-34 years are in prison. One in fifteen (7%) of black males aged 18 years or more are in prison. In 2007, an estimated $1 in every $15 of general state expenditure (6.4%) was spent on corrections. Follow-up Pew studies (2010 and 2011) added other disturbing dimensions to the picture, not least by revealing that one in 31 adults in the United States was either incarcerated or on probation or parole. In California corrections cost $9 billion a year – approaching 10 per cent of state expenditure, with a similar proportion being spent in Arizona, Colorado, Florida, Montana, Oregon Texas and Vermont. This very considerable state expenditure on correctional facilities – over $50 billion a year – does not deliver a clear return on offender rehabilitation or public safety. As Pew emphatically puts it, since the early 1970s imprisonment has been the "weapon of choice" in the fight against crime (Pew, 2010: p. 5).

The longstanding common denominator in England, elsewhere in Europe and the United States is a seemingly ever-increasing prison population, an ever-increasing prison building programme to accommodate more prisoners – at high capital costs and (with a few years) even higher recurrent costs. There are no demonstrable positive benefits to society other than short-term incapacitation effects. Even these are limited because on

release offenders reoffend at high volume and with considerable velocity. One of follow-up Pew studies (2011) found that 45 per cent of inmates released from prison in 1999 and 43 per cent of those discharged in 2004 reoffended or violated parole conditions at a sufficiently serious level to find themselves re-incarcerated within a three-year period. The UK figures are worse. The failure rate figures remain stubbornly high on both sides of the Atlantic. As Pew argued this is the "unhappy reality, not just for offenders, but for the safety of American communities" (2011: p. 2). Additionally, reoffending is not the sole criterion for suggesting penal ineffectiveness. Whilst in prison inmates are exposed to an environment that isolates them from pro-social influences. It also exposes them to pro-criminal attitudes, beliefs and values and skills and competencies. It was not for nothing that Jeremy Bentham called prisons "universities of crime". Finally, there are the social costs associated with progressive displacement from conventional society and those associated with the fracturing of social and familial relationships. In these cases it is not just the offender who bears the 'pains of imprisonment.' It is destructive of normal social relationships which has negative implications for a prisoner's successful reintegration into society on discharge.

Grounds for optimism?

The foregoing is a very bleak assessment of imprisonment. There are, however, some straws in the wind that suggest some amelioration in the seemingly inexorable rise of custody and the use of imprisonment as the penal option of first resort. The first is what is known as the 'what works' literature. The second derives from the very high and unsustainable costs of incarceration, especially in a world traumatised by post-recession public spending restraint.

From the 1990s onwards although the cosy confidence in an across-the-board application of rehabilitation had long since evaporated, researchers were increasingly focusing attention on what works for which type of offender in what circumstances, and why. One of the pathfinders of the new approach was McGuire (1995 and 2004). The rehabilitation mandate had become less ambitious and the revised concern was on developing what has become known as 'evidence-based practice' (Burnett & Roberts, 2004; Gelsthorpe & Morgan, 2007). Programmes were explored that offered some modest but realistic "desistance" potential (Healy, 2012) rather than ones that acted as a 'magic bullet' for all offenders and all criminality. Much of this work was driven by British academics working closely with local probation and national services (Canton, 2011; McIvor & Raynor, 2007; Raynor, 2007; Raynor & Vanstone, 2002). Against the penal backcloth of unremitting punitiveness the scholars were amassing a body of evidence that something works, for some offenders, some of the time – and they could point to what and when, and how. Gradually, the penal mood lightened as an element of rationality forced its way into the prevailing punitive mindset.

At the same time, particularly in the Unites States, as the slumping economy forced states to do more with less, policy makers started to look for a better public safety return on their correctional spending. This was driven by recession, budget deficits and the need to restrict prisons expenditure. The Pew (2011) analysis suggested that if US states could reduce their recidivism rates by just 10 per cent, they could save more than $635 million combined in one year alone in averted prison costs. In fact, if just the 10 states with the greatest potential cost savings reduced their recidivism rates by 10 per cent, they could save more than $470 million in a single year. These include Alaska, California, Connecticut, Illinois, Missouri, New Jersey, New York, North Carolina, Ohio and Texas. The penal mindset had changed.

To cut reoffending and corrections costs, states began taking steps to put research on what works into practice. Recidivism reduction strategies focused on reducing crime and cutting correctional costs, including: defining success as recidivism reduction (not elimination); measuring and rewarding progress; beginning preparation for a prisoner's release at the point of admission; optimizing the use of post-prison supervision resources; imposing swift and certain sanctions for failure to meet supervision requirements; and creating incentives for offenders to succeed. State successes in Michigan, Missouri and Oregon illustrated the impact of strategies that can help cut reoffending and corrections costs. The largest reductions in recidivism were realized when evidence-based programmes and practices were implemented in prisons that also governed the supervision of probationers and parolees in the community post-release.

In Michigan, in 2002 the state was sinking $1.6 billion a year into corrections, almost one-fifth of its general fund. Less than a decade later, Michigan was riding a wave of policy changes that have allowed it to shrink its inmate population by 12 per cent, close more than 20 correctional facilities and keep a growing number of parolees from returning to custody.

In a four-year period from 2004, Missouri mapped out a meticulous plan for managing all but the most serious violators in the community. Released offenders are now subject to "e-driven supervision" (the "e" is for evidence), which uses a new risk assessment tool to categorize parolees and help set supervision levels. When violations occur, officers have a range of sanctions they may impose, from a verbal reprimand or modification of conditions, to electronic monitoring, residential drug treatment or "shock time" in jail. Every possible avenue is tried for that individual before sending the offender back to prison. The payoff has been dramatic. As a baseline, in the fiscal year 2004 some 46 per cent of released offenders were returned to prison within two years, either for a new crime or a technical violation. Since then, that rate has dropped steadily, and reached a low of 36 per cent for offenders released in fiscal year 2009. Missouri's prison population, meanwhile, has held steady at about 30,500 inmates since 2005.

In Oregon's prisons inmates receive risk and needs assessments at intake, targeted case management during incarceration, along with detailed transition planning that begins six months before release. In the community, probation officers use a sanctioning grid to impose swift, certain consequences for violations, creating consistency across offenders and from county to county. In both settings, offender programs are anchored in research and continually monitored and updated to optimize their effectiveness. The change in the handling of offenders who violate terms of their supervision was striking. In the past, parole and probation violators filled more than a quarter of Oregon's prison beds. Today violators are rarely re-incarcerated. Instead, they face an array of graduated sanctions in the community, but including a short jail stay if absolutely necessary to hold violators accountable. Only 5.9 per cent of offenders released in 1999 and 3.3 per cent of the 2004 cohort were returned to prison on technical violations.

The new approach is sometimes called "doing more with less" and as Cook, Ludwig, and McCrary, (2011 and 2012) suggest if US sentence lengths were rolled back to 1984 levels the prison population would drop by 400,000 and prison expenditure would drop from $70 billion annually to $58 billion – a reduction of $12 billion or 17 per cent. That is a lot of money potentially available for early intervention or preventative programmes, or focused offender treatment programmes in prison. In Britain, the new thinking found expression in a government paper called "Breaking the cycle: Effective punishment, rehabilitation and sentencing of offenders" (Ministry of Justice, 2010a; 2011). The Justice Secretary said the prison system was failing to stop a criminal underclass who just commit "more crime" as soon as they come out because underlying problems such as drug abuse and mental illness issues were not being tackled, together with a lack of support for those able to "go straight" to get a job. He argued that "far more" should be done to ensure they don't reoffend once they are released, as well as stop the "remorseless rise" in people being sent to prison in the first place. He added: "We have to stop having this revolving door where people go in prison, serve their time and within less than a year half of them have committed more crime."

The green paper on sentencing marked a breach with the 'prison works' philosophy which had been in the ascendant for the best part of 35 years – a third of a century. It proposed a "rehabilitation revolution" to bring down the 60 per cent plus reoffending rates for short-term prisoners that could also result in the current prison population of 85,500 being reduced by 3,000 by 2014 – a reduction of 3.5 per cent. It included measures that could see thousands of offenders with mental health, alcohol or drug abuse problems being diverted from prison into community-based treatment programmes, together with moves to allow the private and voluntary sectors to bid to run pilot community payback schemes, including unpaid work, with payment by results.

The Michigan, Missouri and Oregon data and the British thinking are superficially

compelling but they need to be treated with some caution. First, there is as yet insufficient data to indicate that "swift, certain consequences" for reoffending will not have the eventual effect of boomerang-ing offenders back into custody. Secondly, there are concerns that offenders who should really never have been in jail in the first place are the ones who have benefitted from the new policies, leaving other offenders still firmly locked (sic) in custody. Decarceration always tend to favour the best risks which generates artificially inflated success figures. Thirdly, there are suspicions that 'payment by results' and the contracting-out of offender supervision will have a detrimental impact on offender rehabilitation success rates. Nevertheless the combination of what works and fiscal constraint does appear to have had some genuine impact on levels of incarceration. There is a heavy irony in that the conservative die-hards who would have been the law and order 'hawks' in the mid-1990s are, a decade later, the neo-liberals championing the cause of penal restraint.

Custody-prone petty, persistent offenders

There is, however, a more pessimistic assessment that requires exploration. The Pew (2008, 2010 and 2011) and Cook et al. (2011 and 2012) studies and thinking are of substantial value, not least because they identify the two key variables that can promote some amelioration in rising prison population levels – specifically, cost unattractiveness and political defensibility. They are less useful because they fail to relate these variables to different types of offender and different categories of inmate populations. The Pew-Cook analysis does not look in detail at the profile of the offender-prisoner population. This leads to a less reassuring conclusion. For heuristic purposes consider the prison population as compromising three rather distinct groups. First, at one end of the scale); there is a group of none-too-serious, modest and intermittent or even one-off offenders. Secondly, at the other end of the scale, there is a population of very serious offenders who have committed the gravest of criminal acts. Thirdly, somewhere in the middle, there is a group of not-that-serious offenders but whose offending is characterized by high levels of repeat criminality, sometimes referred to a 'persistent, petty offenders'. The three groups can be considered as each comprising roughly one-third of the total prison population. Penal policy is moving in different directions for these three groups and for different reasons. The first two groups are relatively unproblematic whilst dealing with the persistent, petty offender is saturated with penal difficulty.

At the least serious end of the scale, these prisoners are none-too-serious and have solid community roots. Research on the adult male population in England and Wales born in 1953 and followed-up for some 50 years showed that over one-quarter (28%) had been convicted of at least one criminal offence (a so-called 'standard list offence' which includes all serious indictable offences plus assaults and criminal damage but excludes matters such as parking violations or speeding offences) by the age of 30 years, rising

to some 33 per cent by age 53 years (Ministry of Justice, 2010b). By age 53 years just over one-half had been convicted on only one occasion, whilst 18 per cent had been convicted on five or more occasions. Of all the offender population aged 53 years, 52 per cent had appeared in court just once, eight per cent had been to court twice and some 23 per cent had appeared in court on four or more occasions. These data indicate that for the majority of actual offenders their contact with the criminal justice system was one-off or very limited – in effect, their criminality was self-rectifying. The majority of the adult population has limited, infrequent and decreasing contact with the criminal justice system. These data suggest that the one-off offenders are neither sufficiently serious in their offending behaviour nor sufficiently repetitive so as to warrant a custodial sentence. Some of these, however, will find their way into prison despite being excellent candidates for community-based alternatives to custody, such as a financial penalty or community service.

These are the offenders who have bizarrely and unwarrantedly added substantially to the prison populations in recent years, sucked-up by the 'hoovering' power of the correctional industry in its 1970s-onwards thirst for ever-more-inmates. These are occasional or one-off offenders who pose no threat to the social fabric. They have employment and income and, more importantly, strong roots in the community. These are the readily available and best candidates for the Pew-Cook early release with community supervision initiatives. Where they do end up in jail there is a strong case for concluding they ought not to be there, and this can be justified by pointing to the unnecessary costs associated with loss of liberty and the politically risk-free (or low risk) option of suggesting otherwise. Belatedly but properly academics and policy makers have recognised the inappropriate over-use of custody, but taking them out of jail now is something of a bogus solution to a false problem because they ought never to have been in prison in the first place. Claiming credit for lowering the prison population in these cases is rather like bringing down a patient's temperature when the hospital itself caused the fever in the first place. Nevertheless, early release or not sentencing these offenders to custody at all makes both good economic sense and reflects a certain political maturity about the lack of need for social defence. Keeping this sort of offender out of jail makes economic sense and has political credibility.

At the other end of the crime-criminality spectrum lie the far fewer but very much more serious offenders who have committed grievous offences and for whom long prison sentences are inevitable, either by way of retribution or incapacitation, or both. Although the costs of incarceration are monstrous there is no controversy about the need to keep paedophiles or child killers off the streets, put rapists in jail or sentence cop killers or terrorists to very long prison terms. In all these cases the high costs of incarceration – upwards of $100,000 a year or more depending on the level of security – are always trumped by the political requirements of social protection. Although there are grave

concerns about the over-reach of protective sentences based on predicted future criminal behaviour (Black, 2011) rather than actual crimes committed, there is little doubt about the perceived need for very long sentences for a minority of very serious offenders. The Pew-Cook recommendations do not apply to these prisoners. They are custody-inevitable and destined to lose their liberty for very long periods of time. Although relatively small in number because they 'stay' in prison for a long time, new receptions keep adding to the existing long-term prisoner population and the prison system becomes inflated with the more serious, long-stay prisoners. This has cost implications and also real consequences for prison management.

The 'prisons problem' is most acutely focused on the mid-group of persistent, petty offenders where less serious offending possibly pushes towards the cost-attractive option of community sentences, but where persistence and repeat offending pushes towards the political defensible option of custodial sentences. They are subject to conflicting pressures on the Pew-Cook axis of reducing costs and meeting political requirements.

The offenders who fall into this 'conflicted' group are far from insubstantial. A Home Office study in England made a long-term comparison between all offenders born within a four-week period in 1953, 1958, 1963 and 1973 and a population sample of all persons born in the same period. This allowed an estimate to be made of the so-called active offender population (Home Office, 2001, Annex B). The comparison found there are one million active offenders at any one time. This population has a 20 per cent turnover a year (some offenders moving out of active offending and others moving in). Of the one million active offenders, about 100,000 (or 10 per cent) are persistent offenders – with more than three crime convictions in their career. These persistent offenders account for 50 per cent of all convictions. These estimates are based solely on convicted offenders, so the 'real' active offender population is larger because it will include non-detected offenders and offences. These findings could be interpreted as a justification for imprisonment either by way of retribution or incapacitation, and there is some evidence for the latter (Bandyopadhya, 2012; Pease, 2010).

Closer examination of this repeat offender group reveals, however, a distinct constellation of psycho-social and environmental disadvantage. One-half were aged less than 21 years old. Three-quarters started offending between 13-15 years old. One-third were in care as children. Substance abuse was common. Two-thirds were hard drug users. One-half had no formal qualifications. One-half been excluded from school. Three-quarters have had no legitimate work experience or little or no legal income. Up to 60 per cent had a reading ability below that of a six-year-old child – and most leave prison having learned nothing. Only one-in-five inmates can fill-in job application form; and 50 per cent do not have skills for 96 per cent of jobs. Offender skills were at or below that of 11-year old in reading (50%) and writing (80%); and some say much worse. When imprisoned

some 40 per cent lose contact with their family. The Prison Service in England admits that 10 per cent of the prison population is 'seriously mentally ill'. Almost everyone in the field considers this a serious underestimate; and mentally ill offenders are 50 per cent more likely to reoffend.

These factors suggest multiple and chronic social deficits that are highly correlated with offending behaviour and a routinised commitment to criminality. With severe levels of economic disadvantage and deprivation, together with extreme social dislocation and social exclusion, these offenders experience a profound, progressive accelerating detachment from conventional society. This becomes accepted as normal and inevitable. This is often referred to as membership of the 'underclass'. Crime then becomes a rational response to a social predicament – a lifestyle, lifetime commitment. Male offenders usually commit to predatory street crime, which is low-skill, low-risk with some prospect of reasonable reward. This is somewhat illusory because the prospects of detection are high. These offenders rapidly become 'known' to the authorities and are targeted. For female offenders the crime profile frequently involves prostitution. For male and female offenders drug use and small-scale drug dealing are common denominators. In both cases imprisonment follows when non-custodial options have been exhausted. On discharge and when repeat offending occurs – as it will – more imprisonment becomes inevitable. In turn this fuels social dislocation and more crime – and more imprisonment. These offenders have what is known as a 'revolving door' relationship with the prison system.

The problem here is that this is an offender population where high level 'social need' is demonstrable but where offenders will routinely find themselves in prison, frequently for relatively short sentences, which makes tackling social need – the root causes of their criminality – a non-starter. They are cleaned-up, medicated and fed and then discharged with the underlying conditions of social dislocation, relationship problems, accommodation and money problems, the absence of basic literacy and numeracy, and mental health and abuse problems not addressed. They will have a risk of reconviction that is well above average – and they will meet these sad expectations.

The critical question here is whether offenders with the clearest evidence of criminogenic need will have those needs met properly – the "doing more" part of the Cook et al. (2011 and 2012) equation or the "rehabilitation revolution" proposed in England (Ministry of Justice, 2010a and 2011). The answer is dispiritingly negative. For this offender population there are no political benefits in moving towards non-custodial options. The repetitive nature of their criminality combined with psycho-social handicaps makes these offenders poor prospects for community-based sentences. There is also the high probability of relapse and breakdown through failure to meet the requirements of community supervision. Often referred to as being feckless, the better term is to see them as being rootless where their lives are characterised by disorder, chaos and sometimes

catastrophe. They are not seen as exciting candidates for community supervision (Eadie & Willis, 1989).

Equally, there is no countervailing cost advantage in using community sentences. The marginal costs of flinging of few more social casualties into prison are small; and so, too, are the marginal savings of not doing so. More importantly, were their needs to be properly addressed in prison this would require a small army of remedial teachers, therapists, psychologists, drugs and other abuse workers, social workers, probation officers and counsellors, each delivering a specialist service. The costs would be enormous. Far better, to leave them pretty much alone for the duration of their sentence and deliver them back to the streets unloved, unreformed and subject to precisely the same pressures that brought them into prison in the first place.

There is arguably political disadvantage in leaving the 'rag, tag and bobtail' of the offender population on the streets; and there is certainly no political advantage in keeping these offenders out of jail. There is also huge cost disadvantage in dealing properly with their substantial social and criminogenic needs. The net effect is that occasional, time-limited intermittent custody is arguably the politically favoured and the lowest cost option; so benign neglect in prison becomes the default option. For these offenders crime followed by imprisonment becomes normal and acceptable, as does further offending on discharge followed by more loss of liberty. The formula is simple: social exclusion promotes criminality which leads to imprisonment; incarceration further distances the offender from law-abiding society; and discharge from prison is followed by further crime, conviction and more loss of liberty. It is a downward spiral of despair and social degeneration punctuated by episodic imprisonment.

Conclusion

The global over-use of custody is well documented. Although recession-fuelled, cost-saving measures have led to some amelioration supported by the 'what works' evidence, there are few savings to be made in dealing properly with the persistent petty offender in the community and there is at best modest political attractiveness. The Pew-Cook axis talks about "doing more with less". This is over-optimistic. The ongoing neglect of the high-volume but low-seriousness offender in prison, characterised by low crime risk and high social need, is rather more suggestive of doing 'less with less'. The implications of this argument are developed in the following chapter which examines the current state of prisons in Malta together with options for reform.

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CHAPTER 10

Imprisonment in Malta: The Case for Reform

Andrew Willis

The chapter explores the cost-attractiveness / unattractiveness and the political-advantage / disadvantage nexus as a determinant of prison policy and number and type of prison population, and whether this can usefully be applied to the Corradino Correctional Facility (CCF) in Malta – in effect an extended case study premised on the theorising from the previous chapter. This is done by exploring the Corradino prisoner profile; what prisoners have said about their experience of imprisonment; structural and managerial deficits in prison management and administration; misdirected legislation that impedes prison functionality and reform; the absence of a meaningful resource commitment to rehabilitation programmes; and ways in which research-led options for reform can ameliorate an unedifying aspect of public policy.

Prison population and prisoner profile

The starting point is that Malta has experienced the same 'rise and rise' in its prison population as found elsewhere (Pew, 2008, 2010 and 2011). Using statistics supplied by the Corradino Correctional facility (CCF) in 2001 the end-of-year prison population was some 252 prisoners but by April 2013 it had risen to over 621 prisoners – an addition of 369 prisoners or an increase of 146 per cent (Formosa, 2013a). In a little over 10 years the prison population had doubled and increased by half as much again.

Malta shares the international inclination to use imprisonment as the penal option of first resort, and increasingly so in recent years. It is the same sad tale. The prison population per 100,000 general population is the mechanism for making valid international comparisons across countries (International Centre for Prison Studies, 2013; Walmsley, 2011). Within the EU, Slovakia (205) and Hungary (173) lead the European table, with a cluster of countries, including Malta at or around the 150 per 100,000 population level – Romania (156), Bulgaria (151), Spain (149), England and Wales (148) and Malta (144). Other countries use imprisonment rather less – for example, Portugal (134), Italy (108), Cyprus (106) and France (106); and others use imprisonment very much less – for example, Netherlands (82), Germany (80), Slovenia (69) and Finland (60). Malta is a

middle-to-high user of imprisonment.

As at 29 May 2013 Corradino held some 614 prisoners – 114 sentenced to more than one prison term and 12 sentenced to life (combined, making some 22 per cent serving long sentences) with the remaining 78 per cent serving shorter and mostly single sentences (*Times of Malta*, 5 June 2013). The prisoner profile is very similar to the three-way split discussed in the previous chapter. Moreover, historical research in Malta confirms the preponderance of low-level, socially disadvantaged offenders as a feature that was present in the mid-nineteenth century and still present in the mid-twentieth century, and almost certainly still present today (Scicluna, 2004; Scicluna & Knepper, 2008). Offenders in jail were and are routinely young-adult males with low-levels of criminality and high levels of social need. For women, too, the prison was an asylum, a refuge, a shelter and a penitentiary (Scicluna & Knepper, 2010). The persistent, petty offender is as present in Malta's jails as elsewhere in the world; and poses the same challenges relating to desistence, rehabilitation and successful reintegration into civic society (Home Office, 2001; Ministry of Justice, 2010a and 2011). These are the repeat offenders with multiple social disadvantages who have a 'revolving door' relationship with the prison system (Prison Reform Trust, 2013).

The focus below is concerned primarily with the high-need, low-seriousness but persistent offender who comprises so much of the overall prison population. Diversion of the even less serious offender from custody and the decision to target so-called 'dangerous' offenders for extra-long prison sentences are subjects for others papers. The current concern is how best to handle the mainstream prison population in a way that combines social defence with appropriate rehabilitation opportunities. Neither comes without a price – both in terms of hard costs and political will. Any failure to rise to the challenge means that prison policy shows only a counterfeit compliance with what is required morally and legally.

Formosa (2013b) offers a more detailed analysis of Corradino Correctional Facility (CCF) prisoner statistics. As at mid-November 2012 the prison population stood at 622 prisoners – 575 males (92%) and 47 females (8%). Of the total population some 158 prisoners (25%) were awaiting trial and 464 prisoners (75%) were under sentence. The current population exceeds the level designated by government. The Mid-Dlam għad-Dawl Foundation (2013) points to overcrowding with prisoners kept 16 persons to a 48 square metre dormitory, sharing one toilet; and others sleeping in the corridor or on mattresses on the floor. The pressure group rightly points to the non-compliance with local and European standards and the shattering effect such conditions have on prisoners' dignity and, by implication, the potential for reform.

The Formosa (2013b) figures also show that of the total population some 339 inmates (64%) were Maltese and 223 inmates (36%) were foreign nationals. Of these 223 foreign nationals, some 134 (60%) were on remand or sentenced for conspiracy in drug

trafficking, cultivation of cannabis, importation of drugs, or possession and trafficking of drugs. Overall, out of the total prison population of 622 inmates, some 223 prisoners (22%) were foreign nationals with a pattern of drugs-related offending. Some inmates, mostly foreign, went on a hunger strike in June 2013 complaining of inferior treatment compared to Maltese prisoners, including harsher sentences; refusal of transfer requests to serve the sentence in their home country; a lack of proper medical treatment; and an ineffective parole system (*Times of Malta*, 17 June 2013).

The Council of Europe (2013) European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Malta in 26-30 September 2011. In a blistering critique it pointed to material conditions that were "quite simply appalling" and "below any acceptable standard" (p. 13), exacerbated by overcrowding and the lack of organised activities for many prisoners. It also pointed to an inadequate response to its 2008 visit. It concluded by calling for a "comprehensive plan to renovate the entire CCF as soon as possible" (p. 14) together with a timetable. The Government of Malta's (2013) response was to complain the CPT had an undue focus on illegal immigration (part of its job) and of visiting Malta on a disproportionate basis – making six visits each to Malta, Germany, the Czech Republic and Hungary despite the latter countries being "much larger in terms of population, prison population and number of prisons". Other countries, like Belgium, Austria, Ireland, Norway, Sweden and Switzerland were visited only five times. As regards the recommendation for a plan to renovate the entire facility, government commented that "maintenance work at CCF is conducted on a regular basis" (p. 15). Did it not occur to government that ongoing prisoner overcrowding and continuing under-staffing, with near riotous prisoners and foreign detainees on hunger strike, offered strong confirmation that the CPT's anxieties were well founded? Or that the 2008 visit generated such grounds for concern a re-visit was deemed appropriate?

There are a number of important observations here. The prison population has risen by nearly 150 per cent in a little over a decade. The general profile shows a significant proportion of persistent but petty offenders, a pattern which is stable over time and consistently found elsewhere – relatively low-level criminality combined with high-level social need. Additionally, a significant proportion (25%) are awaiting trial rather than under sentence. And over one-in-three prisoners (36%) are foreign nationals, of whom approaching two-thirds (60%) were in jail for drug-related offences. These factors add to the stresses of managing the prisons successfully and being able to offer appropriate and useful rehabilitation programmes.

The net effect is an increased challenge for effective prison management, together with an equally demanding obligation on government to make sure that its prison policy is as well thought through, properly supported and operationalised so as to be consistent with its international obligations under the *International Covenant on Civil and Political Rights*

and the *International Covenant on Economic, Social and Cultural Rights*; and its European obligations under the *Convention for the Protection of Human Rights and Fundamental Freedoms*, the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* and the *European Prison Rules*.

Inmate perspectives

Perhaps more tellingly, offenders themselves have offered a clear and insightful commentary on what it is like to be a prisoner in Malta. Focused interviews with a sample of 13 adult male prisoners in Malta generated a compelling indictment of prison and the absence of positive outcomes from the offenders' perspective (Formosa, 2012).The findings reflected previous international studies which show offenders, including prisoners, can offer an informed perspective about their current situation, highlighting 'the good, the bad and the ugly', and do so credibly; and where it is reasonable to take what they say at face value and treat it seriously (Armstrong & Weaver, 2005; Petersilia, 2011; Willis, 1981, 1983, 1986 and 1991).

The credibility of the offenders' perspective comes after careful "thematic analysis" of what they say in response to open-ended, non-directional questions about their experience (Braum & Clarke, 2006; Gubrium, Holstein, Marvasti, & McKinney, 2002 and 2012). The prisoners' indictment is as clear as it is compelling. They point to a wholly dysfunctional system characterised by inefficiency, corruption and the absence of rehabilitative programmes. Interestingly, their comments about probation services were as positive as their views on the custodial experience were negative.

All bar two of the Corradino sample said that prison was not successful and they said so forcefully and with conviction (Formosa, 2012) as the following examples illustrate:

- If you throw a person in prison, they do not learn, it's a mixture of problematic people together, all you see in there is a lot of chaos and disorder.
- No there is nothing successful about it. I passed long years locked up in a small room, every day.
- I have to say is not only that it is not successful but it personally made it worse.

There was a recurring theme about the availability of drugs:

- I went inside prison taking drugs, whilst I was inside I took drugs, and when I left prison I kept on taking drugs. There is no rehabilitation in prison.
- It is very difficult to stay away from drugs because they are always there in your face ... When I was eventually released I became much more addicted to drugs.
- It is easy to get in trouble. I was offered drugs by the other inmates because they said that it would make me feel better.

Some offenders pointed to management and administrative failings, including the absence of personal safety, corruption and prison officer maltreatment:

- The worse thing is that there is a lot of corruption where the officers help a certain group of people only.
- The worst thing is when they put you in a division where you are not safe, or when the wardens themselves make fun of you and ridicule the offender during strip searches.

Perhaps most tellingly, nine offenders (69%) pointed to limited or absent rehabilitation programmes:

- There are social workers but I only got to speak to them once. My drug problem was never addressed. You are like a dog, thrown there, nobody caring about you.
- There are programmes but they are not available for everyone.
- No there was nothing to help me just things that could have made it bad.

Dysfunctional management

These criticisms by 'informed insiders' (sic) pretty much reflected what the authorities already knew and sometimes said. For example, in 2013 staff absenteeism at Corradino generated a Ministry of Home Affairs investigation which found at least seven officers missing from their posts during a surprise ministerial visit; regular shortcomings in punch clock recordings; shortcomings in the recording of leave, particularly urgent leave; a 2009 report on absenteeism by the Auditor-General had been ignored; in a two-year period over 100 entries in the attendance sheets were erased, as were punch clock records; and hundreds of entries showed irregular and unauthorised absenteeism. Additionally, the fall-in of the staff had not been held for years and the prison management had met only twice in 18 months.

It is difficult not to conclude that this paints a picture of deeply-ingrained culture of work practices substantially at odds with the formal terms and conditions of employment. In organisational terms a conventional top-down management structure has been inverted by a bottom-up culture of entitlement by prison staff.

In conjunction the case for reform was being made powerfully by prisoners and government, and its articulation was arguably long overdue. The appointment of a director for the "implementation of reforms" within the Ministry of Home Affairs was also an indicator of government concern, as was the condemnation of "idle and unproductive" conditions for young-adult prisoners held in YOURS (a facility for young offenders) by the Social Policy Minister. There was overwhelming evidence that Malta has considerable "prison shortcomings."

This was acknowledged by the Minister of Home Affairs who said the prisons were in a "disastrous state" and pointed to workers doing what they wished; security equipment

not working; guard dogs ending up as the prisoners' pets; a remissions board and a parole board which did not function; and the absence of professional assessments of prisoners (*Times of Malta*, 5 June 2013). There is little doubt that an independent audit of Malta's correctional facilities would show major deficits against international requirements and benchmarks of best practice (Coyle, 2009).

For any prison governor, correctional officers and other prison staff are at the heart of successful prison management yet they have a job specification that invites occupational stress (Lambert, Cluse-Tolarr, & Hogan, 2006; Lambert & Hogan, 2009; Lambert & Paoline, 2008; Morgan, 2009). This has increasingly been studied within its organizational context (Hogan, Lambert, Jenkins, & Wambold, 2006) with special reference to balancing the 'hard' and 'soft' aspects of the role. There are also special stresses in managing a young-offender prisoner population (Wells, Minor, Angel, Matz, & Amato, 2009). Sound prison management is a necessary condition for competent and motivated prison staff which, in turn is a pre-condition for prisoner rehabilitation.

At the same time the Minister announced an amnesty of 100 days for prisoners, excluding those convicted of crimes against children including child prostitution, paedophilia, abandonment of children under seven, cruelty, and human trafficking of children. The net effect is that where the prison population stood at 614 in 20 May 2013 some 134 prisoners will have been discharged early by December 2013 – a de facto reduction in sentence for some 22 per cent of the prison population i.e. one-in-five prisoners released early on the executive authority of the Minister. It was unclear whether this was to curry political favour (as some commentators suggested, though this is a high-risk strategy) or whether it was to ease the pressure on an overburdened and dysfunctional system (as some criminal justice professionals suspected) including taking pre-emptive action to foreclose on possible disorder and riot. Whatever the motivation, the net effect was that it confirmed suspicions of a system rather out of control.

These points are all in addition to the now well acknowledged hopelessly disorganised and inefficient system of the administration of justice – civil and criminal (The Commission for the Holistic Reform of the Justice System, 2013). As regards criminal cases, the Management Efficiency Unit (MEU) found that 45 per cent of the 16,000 cases yet to be decided have been pending 10 years or more; and that the average revenue from criminal cases of €267 in fees and fines is far outweighed by the average costs – €391 per case rising to over €2,000 with an appeal (*Times of Malta*, 26 June 2013). The administrative back-cloth is far from reassuring.

Ill-conceived legislation

Poor or absent management and generalised dysfunctionality has been compounded by some disastrous decisions regarding penal policy and its supportive legislation. The

Restorative Justice Act (Cap 506) has been trumpeted as a watershed in penal practice comprising both the introduction of parole and victim-offender mediation, but it was an ill-advised and conspicuously confused piece of legislation (Willis, 2012). The White Paper (Ministry of Justice, 2009: p. 22-24) makes but one reference to the different types of conditional release systems within the EU member states. The material is descriptive. It relies on a single policy source. Despite a huge international literature, no other works were cited, no analysis made and no conclusions drawn. Major European centres of excellence such as the Leuven Institute of Criminology which hosts the European Forum for Restorative Justice website (http://www.euforumrj.org/) were ignored, as was the UK's Restorative Justice Council (http ://www.restorativejustice.org.uk/). Seminal studies by Sherman and Strang (2007), Robinson and Shapland (2008) and Shapland, Robinson, and Sorsby (2011) or even basic texts (Johnstone & Van Ness, 2007), were ignored. Even the academic 'grandfather' of restorative justice, John Braithwaite (1989), was ignored. It was an unfortunate 'back of the envelope' piece of penal planning; and neither the government of the day nor the then opposition can take credit for promoting or endorsing something so conspicuously ill-conceived.

For example, the Minister said emphatically that parole is "not aimed at granting inmates early release from prison" (*The Malta Independent Online*, 2 March 2012). That is precisely what it does; and it was disingenuous to say otherwise. There was no consideration of what the sentencers might think or want; and they were not consulted. There was no consideration of how the parole process might be seen by prisoners, when evidence suggests it can real distress if it raises unrealistic expectations – with matters being made much worse if the decision-making process itself is seen to be scrappy, incomplete, haphazard and characterised by chaos, confusion and delay. There was no consideration of likely parole numbers over time and in relation to sentencing throughputs.

What was offered was no more than a catalogue of new roles and posts of labyrinthine complexity – parole unit, parole clerk, parole board, offender assessment board, victim support unit – something in excess of thirty new posts where roles and responsibilities remained obscure and under-specified. Procedural complexity is not necessarily associated with good and sound decision making, especially in the field of offender risk management. Indeed, the greater the complexity, the greater the 'zones of confusion' at the points where the various elements intersect. And just as numbers were ignored so, too, were costs. Finally, no attention was paid to the status and standing of extra-judicial enquiries into prisoners' behaviour and performance and how this can be properly squared with due process, oversight and accountability.

The introduction of parole was a carnival of errors. It made a bad prison situation worse. The cynic might argue that the prisoner amnesty of mid-2013 (discussed above) reflected the fact that some 16 months after the introduction of parole in February 2012,

no prisoners had yet been released. Justice delayed is justice denied is the phrase that springs to mind. Amnesty became an alternative to parole as a crude, knee-jerk way of managing an overburdened prison estate. This was a disservice to prisoners and slap in the face for skilled, experienced and committed criminal justice professionals who have to pick up the pieces and make the dog's dinner of parole look like a wedding feast. Finally, grafting victim-offender mediation onto an inappropriate vehicle simple added to the overwhelming sense of incoherence, with probable negative implications for success in this area, too.

Most importantly, regarding the impact on prisoners the whole parole edifice was erected on the presumption that it would be awarded where prisoners successfully completed correctional programmes – see RJA: 4. (1) (a) (ii) and RJA: 13. (a) (i), (ii) and (iii). The legislation places a clear duty and responsibility on prison officials to "design" and offer rehabilitative and restorative justice programmes; these must be "available" for prisoners to "undergo" them; and prisoners must "participate and show improvement" in order to be eligible for parole. The combination of the words design, make available, participate and undergo, and show improvement means that correctional programmes in prison have to be there. And active participation and profitable engagement can only be possible where rehabilitative programmes exist. They do not.

This is not just a policy failure. There is also the legal point that if prisoners are required to demonstrate "improvement" in order to become parole credible then the authorities have a duty, an obligation to provide them with appropriate opportunities. If they do not, the prisoners will possibly have a legal case against the Minister for requiring something of them they cannot possibly meet. In England, there are some cases where prisoners are being denied parole where they subsequently and successfully sue the Ministry of Justice for "illegal detention" under the ECHR and have been awarded damages.

No commitment to rehabilitation

The final element to consider is the commitment to prison rehabilitation as expressed by expenditure on education and training, using figures from the Ministry of Finance (Ministry of Finance, the Economy and Investment, 2010, 2011 and 2012). In a thoughtful and telling critique Camilleri (2012) points out that each prisoner costs the Maltese taxpayer around €20,000 for every year spent behind bars; but in 2008 of a total prisons spend of €9.7m just €41,000 or 0.42 per cent was designated for education and training. In 2010 the corresponding figures were €8.9m overall spend and just €54,822 or 0.48 per cent on education. In 2012 the total spend was €9.1m with just €50,000 or 0.55 per cent on rehabilitative programmes. Simply put, whilst prisons expenditure in total hovers around the €9m a year mark, expenditure on education and training is a meagre €50,000 a year – around one-half of one per cent of the total.

Or to put it a different way, it is possible to set the total spend on education and training against the inmate population and generate a figure for investment in rehabilitation expressed as euros per prisoner per year (Parliamentary Question No. 34083 as cited in Camilleri, 2012, p. 32). In 2008 the education spend was a paltry €97 per head of prison population. In 2009 it was €85 per head of prisoner. In 2010 it was €94 per head of prison population. And in 2010 it was a meagre €71 per head of prison population. Across the four-year period there was a miserable €87 average spend per prisoner per year on education and training. As one informed source has said this is a "shockingly modest amount of money invested on education and training ... a pittance".

These figures are staggering in absolute terms, and all the more so when they are set in the context of the so-called transformation of criminal justice with the RJA and its general commitment to rehabilitation and the specific requirements for correctional programmes as the lynchpin of parole. It is difficult to avoid the conclusion that the rhetoric of rehabilitation is rather more prominent than its delivery. This leaves a major disjunction between what the legislation requires and what government provides. This is both anomalous and wrong. It is a blot on the landscape of contemporary penal policy and practice.

What can be done?

Malta's prisons are in crisis – fundamentally, too many prisoners and not enough by way of rehabilitation, and where parole has made a bad situation worse. There is an urgent need for reform – what in England has been called the "rehabilitation revolution" (Ministry of Justice 2010b and 2011). If part of the academic task is to offer a data-driven and theoretically sound critique another part is to gently suggest ways in which improvements could be made, though this remains the responsibility of government and criminal justice practitioners. There are three avenues that could usefully be explored – legislative reform, improved prison management and injecting some meaningful purpose into the corrections agenda.

Consider legislative reform

Although legislative reform is probably the most difficult to secure, not least because legislators do not like recognising that they might have 'got it wrong', it does offer a route to significant and substantive change. The unholy mess called parole is the first and most obvious candidate. There are different types of conditional release systems within the EU member states – mandatory release (Sweden), discretionary release (France) and mixed release (England and Wales). Where there is an element of discretionary decision making as in the French and British models, of necessity the process becomes complex and convoluted – and expensive. The most elegant approach and the most parsimonious

in terms of its administration, and the costs associated with it, is the mandatory release model as found in Sweden. It offers all the benefits conferred in the RJA but without the complexity, confusion and cost. Movement in this direction would free up expenditure on silly and self-serving posts that could be better targeted on offender rehabilitation programmes. At present Malta has postholders associated with parole squatting in odd places around the criminal justice sector not knowing what to do or how to do it. The available resource can be better spent.

The second candidate for legislative intervention relates to the criminalisation of drugs, especially in relation to adult leisure users. Internationally, as the twenty-first century moved into its second decade there has been a conspicuous sea-change in how best to manage the problem. The authoritative Global Commission on Drug Policy (2011, p. 2) states bluntly and without equivocation that the fifty-year 'war on drugs' had been lost, and lost badly. They say firmly: "The global war on drugs has failed, with devastating consequences for individuals and societies" adding that massive expenditure and repressive measures directed at producers, traffickers and users have had no impact at any of these levels. What is required is a radical reappraisal of the global drug prohibition regime so that "futile supply reduction strategies and incarceration" give way to research-led, human rights-based and cost-effective strategies that target demand and harm reduction. They call for an end to the "criminalization ... of people who use drugs but who do no harm to others" and replacement by "experimentation ... with models of legal regulation of drugs to undermine the power of organized crime and safeguard the health and security of ... citizens".

A little later, at the time of the US presidential election in November 2012, electors in the states of Colorado and Washington voted to legalise the consumption of cannabis for adult recreational use and de facto decriminalisation followed immediately, notwithstanding countervailing federal legislation. The USA is now effectively licensing cannabis in some areas and using tax revenues to support broader social policy. Similar changes can be found in the Netherlands and Portugal.

Perhaps most importantly, by mid-2013 the Organization of American States (OAS), led by senior politicians from Colombia, Guatemala, Mexico and Uruguay, insisted on change and seized the initiative by endorsing a shift from repressive approaches to one that allows for experimentation with different approaches to regulating illegal drugs, protecting citizens and strengthening community resilience. In effect the Americas are now saying that there are no benefits to them associated with continuing the war on drugs whilst there are huge countervailing costs – financial costs, social costs and costs in terms of political stability. In June 2013 the OAS sympathetically discussed the "Report on the Problem of Drugs in the Americas" (OAS, 2013) previously presented by the Secretary General, José Miguel Insulza, to the President of Colombia, Juan Manuel Santos, as a new starting point for drug policy reform. In late July 2013 Uruguay took steps to create a

legal but regulated market for the production, distribution and use of marijuana – thereby creating the first large-scale alternative to the dominant prohibitionist paradigm.

When authoritative studies, US voters and Latin American leaders are all pushing in the same direction it would be unwise not to consider the implications locally. The National Commission on the Abuse of Drugs, Alcohol and Other Dependencies (2011) has moved in the "more tolerant" direction with its useful proposal to introduce an "arrest referral scheme" for first-time offenders for drug offences / possession for personal use. This diversionary approach is grounded in harm reduction rather than repression. It is a progressive first step but broader and more ambitious thinking is required. In mid-2013 the former European Court of Human Rights judge, Giovanni Bonello, who headed the national Justice Reform Commission, said: "We would like to see the personal use of drugs treated no longer as a judicial issue but as a social problem" (*Times of Malta*, 26 July 2013). This again was a modest sign of a localised adjustment to a major change in international thinking.

The simple fact of the matter is that one-in-five of Malta's prison population is a foreign national incarcerated for drugs offending. If the same proportion of local prisoners are in prison for drug offences then the overall figures would suggest that possibly over 450 out of 622 prisoners (70%) are in jail because of drugs-related offending. Were they not to be there at all, which may be somewhat fanciful, the annual spend on prisons could be reduced from around €9m a year to just €3m a year. This would free-up an awful lot of resource for community-based drug desistence programmes and prison-based rehabilitation programmes. The general point here is that criminalization of drugs is increasingly seen as absurd whilst it consumes a disproportionate amount of law enforcement and corrections resource, most of which is to little or no avail. As the Global Commission on Drug Policy exhorted (2011, p. 3): "Break the taboo on debate and reform." These are wise words.

Reclaim prison management

The state can inflict nothing more serious on its citizens than the deprivation of liberty. This non-delegable function requires due process and respect of human rights (Coyle, 2009). The loss of liberty must be implemented in a manner that is no more restrictive than necessary, consistent with security, good order and discipline. Some commentators take the view that security is such an overriding imperative that everything else fades into insignificance (Nellis, 2007; Stanton, 1985). Others insist that it must also offer some prospect for the elimination or reduction of the criminogenic factors that led to crime in the first place, so that on discharge an offender can assume fully-inclusive participation in law-abiding civic society (Hucklesby & Hagley-Dickinson, 2007; Padfield, Van Zyl Smit, & Dunkel, 2012). This is a self-evidently sensible aspiration, though some would say, rather more strongly, an absolute moral obligation.

The combination of security and discipline, together with measures that promote desistence from crime, is a frighteningly tall order in operational terms – one that places particular demands on prison staff (Crawley & Crawley, 2008) and prison managers (Liebling & Maruna, 2007). The current position in Malta is that the so-called correctional facility is far from that in practice. Corradino is little more than a warehouse for the flotsam and jetsam of society without a common purpose, with appalling industrial relations and with little by way of modern management understanding. As overcrowding and ethnic diversification increase and as inmate demands for twenty-first century protections of minimum standards become more articulate (Easton, 2011) the governor's job becomes all the more onerous – possibly one of the most challenging in criminal justice (Bryans, 2007; Crew & Bennett, 2011). Where this challenge remains unmet the prospects for securing capable, competent and committed correctional officers diminishes sharply, or disappears altogether.

Managing a prison is a complex role because prison society – the society of captives – is a most unusual social arrangement. Offenders don't want to be there and show resistance to the 'system' represented by prison staff. Prison staff are wary of contact with offenders of whom they often disapprove morally and who pose a potential threat. Prison governors manage two universes within the same separate-from-society and confined space; and they do so on a 24/7 basis. Even when a governor is 'off duty' staff and inmates will look to that one core figure.

The first and most important step is that management reclaims managerial status from the absurd 'Spanish practices' that have evolved over the years where the staff 'tail' wags the management 'dog'. The Director has an unenviable task. One of the best precepts that offers advantage in the penal environment is 'firm but fair' where this is applied equally to staff and inmates. The Director has two incarcerated populations – offenders and uniformed staff – and the smooth running of the institution requires management skills appropriate to both (Bennett, Crewe, & Wahidin, 2008; Liebling, Price, & Shefer, 2010). In both cases these will sometimes be inclusive and friendly, whilst at other times they will be rather more top-down and authoritative. The successful prison governor 'knows' how to adapt and change as the circumstances require. Although a solid base in 'Prison Rules' is a prerequisite for sound management, it is the interpretation of these rules in individual cases and particular circumstances that marks out the competent governor from the unsuccessful one. The ability to exercise a professional discretion is a paramount virtue; and it needs to be applied in the staff and inmate universes simultaneously.

This means that a bureaucratic model of prison management, one that is characterised by over-reliance on the 'rules' is doomed to failure as is constant referral from the prison yard to the Ministry. Prisons are people-centred social settings where staff interests and inmate interests rarely coincide, and the governor has to manage both at the same

time whilst maintaining credibility with staff when he seemingly favours inmates, and keeping the respect of prisoners when he seemingly favours uniformed staff (Phillips and McConnell, 2005). A participatory management style is probably the best suited to a prison environment and many of the best governors have strong characters and are often highly charismatic. The job specification is awesome; the person specification perhaps even more so.

Additionally and in keeping with the general argument of the Justice Reform Commission, Willis (2013) points out that Malta could usefully deploy some of its internationally-recognised IT talent to introduce of a single case system that progresses offender management electronically right through the system from police to court and then probation or prison (and subsequent parole supervision) without the constant re-keying of information; and where all the relevant agencies – government and NGOs have access to data relevant to their concerns, meeting all the appropriate data protection requirements regarding access, oversight and accountability (as cited in Justice Reform Commission, 2013, Appendix 1, p. 70-93). Added-value through efficiency would speed-up decision making (as in parole) and it would free-up resource that could more usefully be dedicated to effective interventions and offender risk management rather than to time consuming, costly and unproductive bureaucracy.

Reaffirm rehabilitation

The final and most important reform is to reaffirm and support rehabilitation in the prisons. The lessons to be learnt often derive from the non-custodial sector, especially probation services, where there is a longer and stronger tradition of making 'what works' work (Canton, 2011; McGuire, 1995 and 2004; Vanstone, 2007; Whitehead, 2010) with others looking for transferability between the penal sectors (Bottoms et al. 2004; Hedderman, 2004a and 2004b), and others stressing a spectrum of options to promote desistence from crime (Burnett & Roberts, 2004; Farrell & Maruna, 2004; Healy, 2012; Maruna & Immarigeon, 2004). If there is one phrase that summarises this revisionist penal mood it is "Get smart not get tough" which implies looking for research-led success stories (Hedderman, 2007). Against this, recent research shows a very modest EU-wide commitment to prisoner rehabilitation and education (GHK, 2012).

To the extent prisoner rehabilitation is the primary end-goal of imprisonment, over and above that of punishment for a period commensurate with wrongdoing, then the provision of offender correctional programmes points to the need for a small army of trained professional who can provide specialist services in, for example, literacy, numeracy and IT skills; social and life skills training; dealing with anger management; drink, drug and other substance abuse problems; debt and money management difficulties, including usury; child care and parenting; managing relationships; mental health and social

wellbeing; and many others. These are all associated with having a positive impact on long-term reoffending rates. In England the best of these are now kite-marked as "core correctional practices" or "accredited programmes" (Hancock, 2007; Raynor, 2007) and there is an expectation that only the best will be used. In contrast, most of the traditional prison programmes in workshops and in servicing the domestic needs of the prison itself (kitchen, cleaning and making toys) do not have proven effects; at best they 'kill time'. Until recently, prison work programmes took centre stage (Prima Work Group, 2007). This is rapidly (and rightly) being supplanted by a focus on education. Up to 60 per cent of prisoners have a reading ability below that of a six-year-old child – and most leave having learned nothing. How can we be surprised that only 25 per cent stay away from crime when they are released?

Education and access to training is a contemporary entitlement. Protocol No. 1 to the Council of Europe's *European Convention for the Protection of Human Rights and Fundamental Freedoms* states that "No person shall be denied the right to education" (Art. 2). The *European Social Charter* (revised) sets out the right to work, the right to vocational guidance, and the right to vocational training. And the Lisbon Treaty recognised the rights of EU citizens through the enforcement of the *Charter of Fundamental Rights* where Article 14 of the Charter recognises that "everyone has the right to education and to have access to vocational and continuing training" (DKG, 2012). It applies to all citizens whether in prison or not but arguably more so in the latter environment (Coyle, 2009) where it is seen as the major mechanism for routing an offender back into law-abiding civil society.

Meeting prisoners' welfare and education needs to be re-conceptualised as an essential and core part of the institutional role not as a desirable add-on where possible, which almost invariably means modestly if at all. Prison education broadly defined is the route to improve the ex-offender's chance of employment in what is an increasingly difficult sphere. As Bayliss (2003) argues prison education needs to be loosened from the constraints of providing no more than basic skills – which is usually a euphemism for no more than a prison-based form of occupational therapy – into the mainstream prison activity of "what prisoners do", supported by sufficient resource within the institution and by the external community. Locally, Joseph Giordmaina (*Times of Malta*, 26 April 2013) has made the same point:

> With a limited staff of two social workers and three psychologists, for a prison population of over 600, one understands how difficult it is to have meaningful interventions ... In the "education centre" at CCF there is one full time coordinator ... The budget line for education in prison is a pittance.

What is needed is an organised day structured to meet the educational needs of prisoners not the convenience of prison staff. Giordmaina is wrong, however, to want to divorce the role of the prison guard (correctional officer) and the educational function. If it is to be successful then it needs to be properly and fully incorporated in the institutional mission, structure and service delivery. Giordmaina is spot-on, though, to insist that inmates need a proper "planned pathway" to include basic literacy and numeracy, academic education, vocational education, life skills and soft skills; in effect a programme that leads to employability at the end of the prison sentence. This is a non-delegable function of government. Prisoner "care plans" are also a requirement under the Restorative Justice Act.

Unfortunately, government and opposition are equally disingenuous regarding rehabilitative provision in prisons. In mid 2012 they had a vigorous spat about whether the training budget was some €50,000 or €55,000 a year. The debate about which figure was accurate took the character of the "Oh, yes it is!" and "Oh, no it isn't!" pantomime routine. No one pointed to the blindingly obvious fact that either figure was embarrassingly and unacceptably low. In the following year the Minister proudly pointed to the range of correctional programmes on offer – 216 of 610 prisoners (35%) taking courses in English, first aid, electronics and computing, hip-hop and yoga; as well as food preparation and environmental landscaping – the last two, of course, being euphemisms for working in the kitchen or the garden (*Times of Malta*, 2 July 2013). More significantly, no information was offered about how much time on average prisoners spend out-of-cell on worthwhile activity, no information about the total number of hours per day and days per course, and no information about what proportion of total sentence length is spent undertaking courses or training. The figures given flatter to deceive. The Council of Europe (2013) CPT visit in 2011 pointed to prisoners taking computer lessons, guitar lessons and pottery lessons, but only for "some two hours per week" (p. 16). The Government of Malta response (2013) could point to just 79 prisoners attending 16 courses (p. 17) giving an average of less than five prisoners per course. Those closest to the prison know that most prisoners spend most of their time doing nothing. Idleness compounds social disorganisation, increases dependency and does nothing to promote rehabilitation. It generates what is known as 'learned helplessness' – precisely the opposite of what the Restorative Justice Act requires.

Additionally, there are problems associated with the voluntary sector taking-on mainstream correctional activities. Sensible and worthwhile initiatives like setting up the Rehabilitation in Society (RISe) programme to offer prisoners transitional living facilities and mentors to ease their way back into society (*Malta Independent*, 5 July 2013), or the admirable efforts of the European Prison Education Association (EPEA, see http://www.epeamalta.org/), get taken for granted and co-opted by government. They become alternatives to mainstream provision not additional provision. This leaves government in

the very happy position (from their point of view) where they can points to these successes whilst at the same time use them to conceal s the fact they are failing to meet their own core responsibilities. The net effect is that people believe things are being done whilst government knows this not to be the case.

There is also a need to note a sombre pan-European dimension that adds a layer of complexity and urgency. Europe is in recession and gripped by the protestant austerity imposed by northern Europe on its southern partners. Budgetary discipline has become the new economic morality. European Commission figures for April 2013 showed 27 million persons or 12 per cent of the workforce out of work – with unemployment ranging from low rates in Austria (5%), Germany (5%) and Luxembourg (6%), to the highest rates in Greece (27%), Spain (27%) and Portugal (18%). Within the latter countries there were 'pockets' of regional unemployment at the 60 per cent level and higher. More disturbingly, the overall youth – under-25s – unemployment rate was 24% in both the EU-27 euro areas, with the highest levels in Greece (63%), Spain (56%), Portugal (43%) and Italy (41%) (Eurostat, 2013). This means there will be a generation of adults reaching thirty years with no real work experience and few long-term prospects. All the signs point to a lost decade indicating a new and growing underclass. When the President of the European Commission is moved to warn about young people being "scarred for life" the portents are far from good. Some of these will offend and many will find themselves in prison. This will place additional demands on general welfare services and on interventions specifically related to offenders and their offending behaviour. The demand is set to go up not down.

Conclusion

What is required is political commitment and proper funding to deliver the rehabilitative services that offenders need – targeted most specifically those persistent, petty offenders showing the greatest psycho-social need, with service delivery both in prison or, perhaps to better effect and at lower cost, in the community. Anything less is a self-serving, morally bankrupt deception bereft of social utility. Membership of the modern Europe brings with it responsibilities to meet twenty-first century standards – to the letter and not just rhetorically. As at 2013 Malta's prisons are more reminiscent of the jails that were found to its eastern and southern shores in the 1970s. Forty years on and well into the second decade of the twenty-first century that is not good enough. Government has to show the will and commit the resource so as to confirm modernity and enlightenment. Anything less is a blueprint for social exclusion. More optimistically, the following chapter by Sandra Scicluna shows that community-based corrections in Malta can offer as useful and important alternative to custody.

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CHAPTER 11

Alternatives to Imprisonment: a Thousand and One Ways to Norm Attenuation

Sandra Scicluna

With increasing crime rates "lock them up and throw the keys" is a saying that we frequently hear from populist media, this is supported by parties in their run to get elected. Once in government these parties have to follow their dictates and become tougher on crime, build new prisons (on the 5th May 2013, the Ministry for Home Affairs in Malta announced that building permits were being submitted for approval to build a 160 bed young offender facility) and try to rehabilitate offenders. Rehabilitation is a big thing in Malta. We see the enactment of the Restorative Justice Act in 2012, with the cry of rehabilitating prisoners, we see the new proposed facility where a ministry spokesperson said "We want to create a correctional system that incentivises inmates to rehabilitate themselves...not one in which good behaviour and hard work go unrecognised and unrewarded" (Borg, 2013). This rehabilitative/redemption rhetoric has been going on for centuries.

In this chapter I will first start by giving a general introduction on why society needs to punish and the justification it uses to punish. This would be followed by an overview of the use of rehabilitation in prison through to the use of alternatives. The essay will continue by giving an overview of the development of the probation order, the suspended sentence (as well as the suspended sentence supervision order), community service orders and combination orders. Fines, admonitions and reprimands together with the change in the role of the probation officer will also be discussed.

Why Punish?

Before we start talking about punishment let us start by briefly addressing the question "why do we punish? The first justification for punishment is **Deterrence** (Walker, 1991). There are two types of deterrence: General and Specific. General Deterrence means that the existence of punishment alone has a strong deterrent effect. This means that just by the threat of punishment people will be influenced and controlled, and that the crime rates will go down. Factors, which influence crime rates are **certainty, severity** and **rapidity** of

punishment. For example Tittle and Rowe in 1974, studied arrest rates in Florida USA and they found that if the police managed a 30% arrest rate of a particularly reported crime, crime rates actually went down, however under the 30% rate there was no change in crime rates (Chamlin and Myer, 2009). Specific deterrence means that once you are punished the influence on you is so negative that you will not repeat the crime again so as to avoid being punished. Before the beginning of the 21st century it was thought that there was little evidence to support that punishment actually deters crime, as criminals rarely use rational thought when acting, most crimes are opportunistic crimes and most offenders are under the influence of drugs or alcohol when they commit crimes, therefore they are not thinking rationally. Furthermore most offences are committed by a small number of offenders; therefore specific deterrence is not working. Furthermore, most offenders do not perceive the punishment as such, most would meet people they know in prison and they perceive alternatives to incarceration as a way out. To add to all this, our Criminal Justice System is very slow. We have seen some changes in these thoughts mainly through the researches of Wright, Caspi, Moffit and Paternoster (2004) and Rauhut and Junker (2009) who started to analyse offenders' real offending rather than relying on general public research and self-confessions. Research on deterrence is still inconclusive. This is mainly because the possibility of having controlled study is problematic and because some crimes and criminals are more easily deterred than others.

The other justification of punishment is **Incapacitation** (Malsh and Duker, 2012). It seems logic to suppose that if we incarcerate people for a long time than crime rates should go down. In this period we will keep society safe and crimes will be reduced. Unfortunately this trend of thought seems to be fallacious because we see that a certain number of imprisoned people are likely to end up in prison within 12 months from their release. This is also unjust especially for those offenders who have committed low tariff crimes. For justice to be served we need to have equality in sentence according to the gravity of the offence and the harm done to society.

The third justification is **Retribution**, or 'An eye for an eye a tooth for a tooth'. This is an old form of biblical justice. For this type of justice all punishments would have a fixed sentence. Retribution is sometimes called revenge as the offender is made to suffer according to the suffering he/she has caused the victim (Walker, 1991).

Maybe the most known justification for punishment is **Rehabilitation,** where the individual is seen as being sick and in need of treatment. Here punishment became highly individualized and treatment is given paramount importance (McGuire, 2002). The problem with this type of justification is that we can have high disparity of justice which would lead to unfair treatment of individuals. Let us take the example of a drug addict and a man who has killed his business partner. In the first instance, the drug addict, we will be looking at a very long treatment procedure, in the second case, the killer, treatment would probably be

very short, as the offender is unlikely to kill again. Justice would not be served if the drug addict spends some 20 years undergoing treatment while the killer spends a year. Although a purely rehabilitative model has been abandoned the rehabilitation rhetoric goes on.

The final justification of punishment is **Just Deserts**. In this type of justification, punishment must be based on the gravity of the offense and the culpability of the offender. This is the fairest mode of punishment. Today we tend to adopt this attitude towards punishment putting in a formula the offence, the risk posed to society and the needs of the offender. When a punishment is issued we must keep in mind that those who violate others' rights should be punished, but also that we should not deliberately add to human suffering but at the same time punishment may prevent further problems. At the end what determines punishment is that it should be offense directed and given according to the culpability of the offender (McIvor and Raynor, 2008).

If society is punishing under the umbrella of deterrence, incapacitation, retribution, rehabilitation or just deserts the major preoccupation of any criminal justice institution is recidivism. Recidivism refers to a person re-offending after he/she has been through the criminal justice process. Recidivism rate studies usually follow offenders for three year after the offender has exited the criminal justice system (Pew Center on the States, 2011). Nation states are giving great importance to recidivism, some like England and Wales basing their financial contribution to the probation services according to the success they had in the fight against recidivism. This is a somehow reductive way of seeing offenders and recidivism as these researchers fail to address what component in the service offered did not work (Mair, 2008).

Imprisonment as a form of punishment

Let us now start by tracing the development of the rehabilitation ideal in the Maltese Criminal Justice System. Rehabilitation is first mentioned when the building of the "new prison" was being constructed in 1850. The idea behind the Pentonville style prison was to create a prison that could reform offenders. In one of the letters written by the governor to the colonial authorities he maintains that the prison was 'constructed in the plan of Pentonville for reformatory discipline' (NAM, GOV/01.2/24/38). Around the 18th Century we see a substantial shift in penal policy as a result of a change in sensibilities of society as a whole. The courts started using imprisonment much more (Spierbenburg, 1998:66). This change would be in line with what Elias (1939) would term as the civilising process. This results in societal changes, leading to more humane treatment in corrections.

The story did not end here. The prison continues to evolve around rehabilitation of offenders from its beginnings to the present. Another important date in prison reformation is 1931, where we find the introduction of new prison regulations that allowed for the entry of outsiders such as theatre groups, musicians and the helping professions. This

ideal faced a momentarily set-back during World War II, when the internment camp took over the juvenile offenders wing in 1941 (Scicluna, 2011, p.21). It was only after the war years that we see any real rehabilitative effort from the prison (Scicluna, 2004). We see another change in the prison regulations in 1995, this time this change was rendered necessary due to two consecutive riots in prison. The 1931 regulations had not seen any substantial revisions in over 60 years, therefore any change was long overdue. Section 3 of the Prison Regulations (1995) sets out the principles and treatment objectives. These are: "to instil in prisoners a sense of discipline and responsibility...to enable them to reform their character...to educate them about the impact of crime on their victims, families and communities, and to improve their prospect of successful resettlement in society after release". Laudable words, however, almost 20 years down the line we are still speaking on the reforms that are needed in prison to rehabilitate offenders. The Restorative Justice Act (2011), enacted by the Nationalist Government and the 2013 policies being thought about by the labour government have still not materialised into something tangible, with prisoners waiting for the appropriate rehabilitation programmes to materialise.

We have been speaking about prisons and rehabilitation, however there is a parallel development, the alternatives, which also seek to reform and rehabilitate. The major argument for the development of community measures is that very few people will spend their entire life in prison; many will at some point go back to society. If these have not been rehabilitated they will re-offend. Today, rather than speak about rehabilitation we speak about offender management. We see a strong development in alternatives where they have become "more punitive, more managerial, more accountable, less supportive, more evidence-based, more private sector based, involves more case management, more work... more institutional control and can be plagued with prison thinking" (Herzog-Evans, 2013: 2). This leads us once again to the point of a change in culture leading to a change in punishment. There are numerous theories that point to the change in sensibilities of a people resulting in a change in corrections (Elias, 1939; Spierenburg, 1984, 1998; Beattie, 1984; Platt 2002:9). Changes in behaviours, resulting in changes in punishment, are what bring about society's demands for a change in punishment. People demand a stop of certain punishments because they are unwilling to support a nation that is acting in a primitive manner against offenders. This trend can also be observed in the birth and development of alternative to imprisonment in Malta.

The Development of Alternatives to Imprisonment in Malta

If we take a look at the development of alternative to imprisonment in Malta we see them developing partially in parallel with prisons and partially on their own. We see a parallel between what is going on in prison, with the resulting policies and what is happening in community corrections. Reprimand and Admonitions together with Fines existed

in the first editions of the criminal law, way back in 1854. Fines are the oldest form of community sanctions going back to the 17th Century (Canton and Hancock, 2007), while admonitions are as old as man.

Probably, the first quasi alternative to incarceration that we find in Malta, goes back to the 1900s with the introduction of the *Articolo Venti Tre* (Scicluna, 2008: 617). The article (called article 23 because that is where it was found in the Criminal Code), allowed the courts to release an offender, with the only condition being not the re-offend. This will be later transformed into the conditional discharge. Another experimentation phase was conducted in the 1920s, when offenders, mainly sentenced for offences related to farming, were released from prison, under the supervision of the police. This experiment lasted for only one year. For more developments we have to wait till 1944. During his visit to Malta Sir Alexander Patterson was commissioned to write a report on the treatment of offenders in Malta. For young offenders he has three recommendations: the introduction of Probation; the strengthening of the industrial school; and the setting up of a prison camp in Gozo. For adult offenders he proposed: the use of probation for first time offenders; a system of extra-mural punishment, where prisoners would be sent to perform hard labour outside of prison and the use of a former RAF Gozo Camp to be used as a form of open prison. He also proposes a release on licence for certain category of prisoners (Patterson, 1944).

Patterson's recommendations on Probation will have to wait until 1957 to materialise while his recommendations for Parole were taken on-board in 2011. Probation was enacted in the Maltese laws after Judge Guze Flores took an interest in the plight of young offenders and decided to start experimenting with it. Mr Justice Flores used to call on the parish priest of the village or town where the offender lived. He used to place the young offender under the care and custody of these priests (Calafato and Knepper, 2009). One has to understand the cultural set up of the Maltese Islands during the 1950s. A predominantly catholic country, the church was the fulcrum of activity. Most churches were built in the centre of the village core and live revolved around it. Therefore it is no surprise that the parish priest was chosen as the person to take care of these vagrant youths. This system evolved when the Honourable Guze Cassar, the then Minister of Justice, took the plight of those people who committed a mid-range offence and who were not career criminals (Parliamentary Debates on the Probation of Offenders Act, 1957) to hearth and he proposed the enactment of the Probation of Offenders Act in Parliament. Although the Act came into force in 1957, it took until 1961, for the first probation order to be issued by the Courts of Malta. During these four years, two men and two women were sent to England to study on probation (Scicluna, 2000, 2008). It is interesting to note that in the records held at the Centru Hidma Socjali (which used the house the first probation services) there is a file of an English lad who was sentenced to probation by

the English courts in 1957. As this young man had a Maltese mother and he wanted to live in Malta, the English courts transferred the case to Malta (Centru Hidma Socjali File number W/055/57). Could this be seen as the precursor of the Framework decision of the transfer of conditionally sentences offenders (Framework Decision, 947)?

The Probation of Offenders Act (1957) proposed three new alternatives to imprisonment. The absolute discharge, the conditional discharge and the probation order. The absolute discharge is given to those offenders who, the court feels, have learned their lesson from the trial experience and no further punishment is required. One would be right in thinking that this punishment is reserved for minor offences and usually first time offenders. The conditional discharge is a slightly harsher sentence, in that offenders are released with a condition not to re-offend. Should a further crime be committed, during the operative period of the sentence, that could be between six months and three years, the offender would be tried for the new offence and sentenced for the old offence as well. A probation order is a court sentence, used in lieu of a prison sentence, where the offender is put under the supervision of a probation officer, for a period between one and three years.

In the 1957 Act, the probation order is the harshest alternative sentence that could be given to offenders. It was used for offenders who had committed a crime which was not punishable by a fine and for which the offender could not be awarded a prison sentence of more than ten years. During the operative period of the probation order, the offender would be under the supervision of a probation officer. The law did not go into much detail on the role of the probation officer, however it specified that the officer must "advise, assist and befriend" the probationer. Moreover the court could add "such requirements as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender" (Chapter 152, Section 5.2). This enabled the court to write a number of requirements that the offender had to follow. It is worth mentioning that in this order the court has to explain the order and its requirements to the offender in everyday language, the offender has to accept the order, with all its requirements and sign this acceptance in front of the court, before the order commences. This means that the offender should be aware of all that the order entails and the consequences of breaches of the order.

In Malta, the next important development in alternatives to incarceration was the Suspended Sentence which was introduced in 1990 (Articles 28A to 28I of the Criminal Code). A prison sentence for up to two years can be suspended by the court for a period of anywhere between two and four years (Knepper and Calafato, 2010). The suspended sentence is an alternative to imprisonment, in certain instances very similar to the probation order. One of the major differences is that the offender knows the amount of time he/she will spend in prison, if he/she breaches the order. As it is a prison sentence, in all effects it is equivalent to imprisonment i.e. it is literally a prison sentence that has

been suspended. The Suspended Sentence Supervision Order (SSSO) is an option that has been developed along the lines of the suspended sentence, with the difference that the offender is under the supervision of a supervising officer, who is also a probation officer. The difference between a SSSO and a probation order are minimal. The probation officer works under the same conditions in both instances. The suspended sentence originated in Belgium in 1888, however our law mimics the British law. The trigger for this law in England and Wales was a solution for prison overcrowding, with the aim of using it for rehabilitation especially of young persons. Malta, during the 1990s, was not facing prison overcrowding. The aim was to use the suspended sentence as an alternative to incarceration with the aim of punishing and having no rehabilitation in it. Rehabilitation was left in the hands on the SSSO.

In a suspended sentence the offender can also be made to compensate the victim. In this case the law does not fix an amount for compensation, but it does fix an amount in the time limit that it gives for the compensation to take place, which is a maximum of 6 months. After this time period elapses the victim has three months to report the fact to the courts that compensation was not given. At this stage the court can grant a further month for the compensation to be given. If the offender fails to do this, the court will order that the suspended sentence comes into effect. Although this has a high rehabilitative ideal, there are two problems in this scheme. The first is that the courts are bound by a time period of six months, therefore the compensation issued has to be reasonable, in that the offender has to be able to pay the victim within this time frame. Another problem is that the victim has to initiate procedures if the offender fails to give compensation. Not all victims are in a position to initiate procedures, some could be afraid of the offender, others could not afford to pay a lawyer, others still might not be bothered. All this renders the idea of victim compensation problematic at best.

When the court is of the opinion that a Suspended Sentence could be issued there is a mental reasoning that should be followed. A judge should:

- Find the person guilty
- Ask what type of sentence should be given – i.e. a fine; an alternative sentence or a prison sentence?
- If the decision is for a prison sentence – is the prison sentence less than 2 years?
- If less than two years should it be suspended?
- Following these four steps assures that the suspended sentence is not used instead of other alternatives to incarceration but it is used instead of a prison sentence, therefore avoiding the net widening effect (Phelps, 2013).

Once the operative period of a Suspended Sentence is done, there would be no time spent in prison. However the down side of this is that the police conduct sheet, which

is usually, asked for when seeking employment, is tainted and in case of future crimes the offender will be treated as a recidivist. Certain offenders such as drug traffickers and arms traffickers are excluded from the provision of the suspended sentence. The suspended sentence has in it three elements of punishment i.e. retribution, deterrence and rehabilitation when a SSSO is issued.

Developments in the 21st Century

The 21st century saw an important development in the Maltese probation services, with the new Probation Act being enacted in 2002. The 1957 Act had served its purpose, but it needed to be bought into the 21st century. I was entrusted with the revision of this Act. When deciding on the changes that needed to be done I consulted the probation services, asking them how they envisaged the new probation Act. After receiving their feedback I started researching various probation acts, mainly those found in the United Kingdom, in Canada and America. At the end the Irish Probation Act seemed to be the one that was closest to the wishes of the probation services. Therefore the new Act is heavily based on the Irish Act. The requests of the probation services could be summarised as follows: the creation of an accountability measure, a better explanation of the role of the Probation Officer, for the presentence report to be given more prominence, the introduction of two new alternatives – Community Service Orders and Combination Orders; and a swifter method to be adopted in case of breach action.

The best method that we came up with was to make each probation officer more accountable through the introduction of checks and balances. Prior to the 2002 Act, probation officers were very autonomous. They had to report periodically to the courts, but that is where it all started and stopped. The new Act introduced a supervisory board (Section 5) whose role was to submit a yearly report to the minister on the workings of the probation services. The board was to have access to all the records of the probation services. Furthermore we see the introduction of the director of probation services, whose role was to manage, organise and supervise the whole service. The director had other duties such as to assist probation officers, to receive from them periodical reports and to decide if breach action was required. The director, together with the supervisory board, was to act as those entities that would check the work being done by the probation officers.

The Role of the Probation Officer

The role of the probation officer had traditionally been to "advise, assist and befriend" (Section 4.1d) probationers. The 1957 Act assigned another three roles to the probation officer, these being to visit and receive reports from the offender, to see that the person under supervision observed the rules and conditions of the probation order and to report, on the general wellbeing of the offender at least twice yearly to the court. The 2002 Act

expanded and modified these roles. Section 8 gives the probation officer 12 specific tasks. The first role was "to advise and assist the probationer" (Section 8.1a). "Befriend" was eliminated from the equation because probation officers were not expected to act as "friends" for offenders, they had to care for offenders but at the same time control their behaviour and protect society, two actions that friends are not called upon to perform. The other three roles that were previously assigned to them remained, however other roles were added. Probation officers today are expected to "plan, monitor, and assist probationers in fulfilling the conditions of the probation order" (Section 8.1c). This was seen as necessary to increase accountability. The victim was also given a mention, in the fact that the probation officer had to help the offender appreciate the harm done to the victim. Amongst others, the law also specified that the probation officer had to help offenders in securing a job and help them find suitable social and educational activities. The roles mentioned in the Act were not something new for the probation services, most officers utilised these various roles however the Act helped in putting a legal footprint on the work that was being done.

Report Writing

The pre-sentencing report, already introduced in Section 13 of the 1957 Act was expanded in Section 6 of the 2002 Act. Since the last decade of the 20th century the probation services had been working on pre-sentencing reports. The first batch of university graduates had created a format for these reports, which was later adopted by the service. The aim of this report was to assist the court in arriving at the best possible sentence for the offender. The report covered the offender's criminal, institutional and social history. It looked at the family, at the offender's educational and social endeavours, at the psychological make-up, at medical problems and so on. The aim of this report is to render the offender as a "real" person, a person that has a past and whose past is impinging on behaviour, in front of the court. Often, the court is not in a position to understand what makes the offender tick. Although this might give the impression that the report is there to help the offender, this is not always the case. It will help those offenders who want to be helped and who have decided to turn over a new leaf. It will hinder those offenders who do not want to rehabilitate.

When the court asks for a pre-sentencing report, a probation officer is assigned the case. The probation officer will usually start by going to the court to look at the file. Here the officer would get an idea of what the crime was about, what the prosecution is saying and if there are any victims involved. The next task that faces the probation officer is to secure appointments with the offender, the victim and the police inspector that has worked the case. The aims of these three appointments are various, but probably the most important is that of giving these three actors a voice outside the courtroom. This is

especially important for the victim, who might not have had the opportunity to narrate in detail the criminal episode. A victim impact statement is also taken, as this would enable the probation officer to calculate compensation. The police inspector will be asked for his/her opinion about the case and to give any information about the offender and the victim that he/she might know. The offender is, to a certain extent the most important actor of this process. Offenders are asked to narrate what they did, if a police statement exists it is read to them and they are asked if they want to add or clarify anything in it. Their voice, together with that of the victim and the police is written for the court to read.

Another arduous task is the collecting of the offender's institutional history and pending criminal cases. This is done by going to the police for police records, going to prison for the offender's prison history and going to court for the offenders pending cases. The probation officer needs to rely heavily on the information given by the offender, especially with regards to pending cases as there is no centralised system, whereby an offender's name and identification number are inputted and the pending cases are shown. The probation officer will also look at the family – both that of origin and new families that have been created. Usually home visits are conducted. This helps the officer assess both relationships and potentially dangerous situations. For example an offender who lives with a brother who is presently abusing drugs renders the house a potential danger, should the offender be awarded a community based sanction.

Education and work experience are two variables that are looked into. Education is particularly important if the offender is young or is looking for a job. Work is important because it gives structure to the individual. Being unemployed or having practically no education means that if a probation order would be issued the probation officer in charge of the case will have to take them into serious consideration. Other variables taken into consideration are health, spirituality, friends and other professional evaluations. Ideally all information obtained is checked with another person or source. Information that has not been corroborated is listed as obtained from a specific source or person and as not verified. After obtaining all the possible information the probation officer summarises the findings and gives a recommendation to the court. This recommendation is usually followed however the court has the last prerogative in sentencing.

The Alternatives in the New Probation Act

We find no substantial changes in the new probation order. The only real changes were brought about because there was a policy of "being tough on crime". Therefore we find some cosmetic change in the fact that now a probation order could be issued for those crimes carrying a prison sentence up to 7 years, with the proviso that the court could extend this period to 10 years if it justifies its reason. The 1957 Act had fixed the tariff at the 10 year mark. It is also possible to include, as a condition of the probation order,

part-time incarceration. In Section 7 subsection 6 we find the possibility for the court to send the offender, during those times when he/she is not required to study or work, for a maximum of six weeks, to an approved closed institution. The purpose of this stay has to be rehabilitation. Here again we see the move to be tougher on crime, but the legislator has also rehabilitation at heart. This subsection has never been used. Another important change was the fact that the court now no longer nominated the probation officer, but it was up to the director to nominate the officer (Section 9). This was seen as necessary, because with the dispositions of the 1957 Act a situation of unfair distribution of cases was being created.

Two important changes occurred with the introduction of Community Service Orders and Combination Orders. A Community Service Order is an order where the offender has to work on a voluntary basis for a period between 40 and 480 hours. The work has to be unpaid, it has to be done in the offender's free time and it would be work which otherwise would not have been done. The work must be done within a period of 3 to 12 months. The offender has to be over 16 years (Section 11). In cases where the offender is deemed to need some form of help a Combination Order (Section 19) can be issued. This order has the elements of a probation order but also the work element of a Community Service Order. In these cases the number of hours of unpaid work is between 40 to 100 hour.

Both orders have three elements of punishment. They are retribution based, because the work element is a punishment, there is a paying back to society element, i.e. reparation, because the offender is giving something back to society and it does good both to society and also to the offender. Society feels that it is gaining something while the offender feels that he/she is doing something positive for society, therefore there is a rehabilative aspect. As an alternative to incarceration it commands public support i.e. people like it. It also is one of the cheapest and most cost-effective ways of punishing, enabling social inclusion, promoting positive thinking and improving the educational and working skill of the offender. It can also be given to the employed as the person can do the community work in their free time. The legal parameters of these orders are the same as those of probation orders. However when the court is thinking about issuing a community service order or a combination order it must request a pre-sentencing report. This is necessary, because the probation services must assess whether the offender would be a good candidate for community work. Offenders who are either abusing drugs or alcohol, who are extremely violent or who are mentally unstable cannot be allowed to work in the community.

Unfortunately some offenders breach the orders. When there is an alleged breach of the order the probation officer must write a report to the director of the probation services. If there seems to be a *prima facia* case of breach, breach action is initiated. The case is taken back to court where if the case is proven, the court may award the offender a fine of not more than €234 or the court could deal with the case in any other matter

it deems fit. This means that the court has the power to re-start the order again or to sentence the offender to another sanction, even imprisonment.

Under the probation Act it is also possible to compensate victims. The 1957 Act gave a limit of LM500 (equivalent to €1,170) (Chapter 157, Section 11), however the 2002 Act removed all limits (Chapter 446, Section 24). The court can order any amount of compensation and in case of non-payment this debt would be considered as a civil debt.

Conclusion

Alternatives to imprisonment are continuously evolving. We started with the parish priest looking after offenders, continuing with social workers being put in-charge of offenders and ending with professionally trained probation officer. Today we see a movement from the purely rehabilitative idea of the 1970s to a more control oriented and risk assessment management of offenders. This chapter has taken us on a brief tour of the development of the rehabilitative ideal in Malta. We have seen that the word "rehabilitation" has been used and abused throughout these last two centuries. Rehabilitation seems to be a good political tool to be used alongside with the "let us get thought on crime" cry. It seems that this rhetoric leads to cosmetic changes, that look good on paper e.g. Restorative Justice Act and part-time imprisonment but unfortunately almost never materialise, due to lack of planning, lack of financial assessment and lack of academic research on the subject. What would the Maltese criminal justice system look like had Patterson's recommendation, especially with regards to parole, been taken up earlier? By now we would surely have a fully-fledged parole services, the prisons might be less overcrowded, but then we might face what is being faced in England and Wales – the ever increasing incarceration rates. As we have been following England and Wales in the development of alternatives, we might have become more punitive, speaking about punishing offenders in the community. Our future might look like this but on the other hand it might not as punishment is shaped by developments in the penal field but also by the culture of the people it sets out to control.

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Postscript: the next publication - a taster...

Islands as Crime Generators: An exploratory discussion
Alex Hirschfield, University of Huddersfield

The next publication will explore how far the distinctive characteristics of small island states such as Malta influence the types of crime that are committed and the ability of the police customs and other security services to detect, tackle and reduce crime. Particular attention will be paid to how factors such as location, population size, tourism, land use, accessibility to other islands and larger neighbours, insularity, culture and governance influence crime opportunities and the capacity to respond. The prevalence of offences often associated with islands (drugs and people trafficking, money laundering, organised crime, violent crime) will be examined and the expertise and resources at the disposal of law enforcement agencies (data bases, computer mapping, IT) will be investigated.

The extent to which there is a distinctive 'criminology of island nation states' will be explored along with the associated theoretical implications. Contributory chapters will be sought from a number of contrasting small islands including Malta, Sicily, Cyprus, Hong Kong and Trinidad and Tobago.

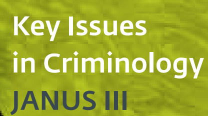
Next Generation Crime Analysis: Immersion in Visualisation
Saviour Formosa, University of Malta

Taking crime analysis from locational to spatial to immersion requires a veritable leap in imagination as well as use of technological expertise. The next publication will review how the analysis of crime has gone from the use of maps to high-end data analysis such as LIDAR technologies to immersive technologies where social interactionism is analysed. Crime interacts with social action whether in a real or virtual world and the best way to investigate such is through the identification of readily available open-source and proprietary software. Programs such as Second Life, Sim City and Minecraft are reviewed for their potential in understanding the mitigation and reduction of crime. Other tools will be investigated for the availability, access and functionality in terms of crime analysis functionality. The study reviews the utility of these technologies for diverse domains in the urban and rural physical scenarios, the social domains and the crime domains. This is done through the taking on board the requirements as outlined by the diverse legislative tools available to the expert and the general public.

'The Balkan Route: The EU Response to Drug Trafficking in South East Europe and the Mediterranean'

Darja Koturovic, South East European Research Centre (SEERC), Thessaloniki, University of Sheffield

South Eastern Europe (SEE) faces strong underground illegal networks, which represent one of the main obstacles in regards to further development and European integration. Studies indicate that organized crime, specifically drug trafficking, is flourishing in a part of European continent referred to as "the Balkans". The illegal criminal networks of South Eastern Europe erode democracy and inhibit the development of stable societies, by disrupting legitimate economic activity and draining national assets. Moreover, Balkan criminal networks also impact outside the SEE and may succeed in subverting law enforcement throughout Western Europe. Coupled with the global financial crisis, there is a possibility that these groups may increase their power and influence on the local governments and institutions. Taking into account the diversity of the SEE states in regards to their past, political and legal frameworks, it is of great importance to analyze potential actions that may decrease the impact of transnational crime groups on good governance and long-term effort of these states to approach the EU. Based on the above, this research will investigate the actions undertaken by the Government of Serbia in combating organized crime and drug trafficking, as well as the potential obstacles of these actions related to the role of the legitimate actors in criminal networks. Next section provides a brief review of the research background, including past and present situation in Serbia in regards to organized crime and drug trafficking. Subsequently, the aim of the study and main research questions are presented. This is followed by the discussion on the conceptual inconsistencies of organized crime. Consequently, a review of the existing body of knowledge related to organized crime, drug trafficking and corruption in Serbia and other transition countries is offered, illuminating the selection of these particular factors for the analysis.



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