

**Paper presented at the annual conference of the European Society of Criminology,
September 2017. Held at the University of Cardiff, September 13th – 15th 2017.
'Post-crash austerity, geo-political turmoil and the Criminal Justice System'.
Ideas for a critical criminological approach that identifies the current challenges to the
Criminal Justice Sector.**

The discourse of critical criminology, from the mid-1960 onwards, has challenged the traditional assumptions and concepts of law and order, whereby crime was viewed as a breach of the social contract and “transgressors” (criminals) needed to be punished accordingly.

The aims of this conference encourage us to consider the new challenges to crime and crime control in contemporary Europe, in the light of global events over the last 7- 10 years. I shall be going back further than this for the context of this paper.

This is a timely call to arms. In this short paper I aim to outline some of the key factors that can/should inform our approach to considering crime and the criminal justice sector within a context that realistically reflects our 21st century ‘social world’.

To do this effectively, I will consider those drivers for change that have affected the *nature* of crime/offending and its control. What should we now be reviewing and re-thinking in our understanding of crime, offenders and the operation of the criminal justice sector (CJS)?

In this paper I will look at those drivers for change that have had a significant impact on the criminal justice sector and its operational context, pre and post financial crash of 2008. This will be considered within the framework of a STEEP analysis, which is a business tool used by organisations to analyse their strategic position in regard to their competitiveness in their particular market. The acronym comprises five factors for analysis; Social, Technological, Economic, Environmental and Political. For the purposes of this paper I will consider three of these in my framework of analysis Social; Economic and Political – with the addition of Cultural factors. These factors are closely interconnected and so this paper will consider them as a “package” of drivers that have brought us to the stage we are at today politically, economically, socially and culturally.

WHERE THINGS STARTED.

The rise and rise of neo-liberalism. Economic and political factors.

The world has experienced dramatic events over the last 5 – 7 years, which can be tracked back to the politics of the late 1970s – early 1980s, when Thatcher’s government introduced a market-focused approach to the re-shaping of public services (not for profit organisations) based on a business model of operation that is designed for organisations that are for profit. Neo liberalism is generally associated with such factors as deregulation, the rollback of welfare states, wage repression, and processes of financialization and these were all apparent throughout the Thatcher regime; notably through the deregulation of the financial markets, the privatisation of state industries (such as BT) and the repression of the miners’ union during the mid 1980s. The starting point for these reforms was to address persistent poor economic performance by opening these industries up to a wider market and making them more competitive. Competition was to be the goal and through processes such as cost cutting and introducing the strategy of “contracting out” areas of provision within the public sector (the NHS for example) this would ensure “value for money” for the tax payer (a compelling vote winner?) The three Es became King: economy, efficiency and effectiveness. “Countless...textbooks praise competition as a way to force producers to innovate and produce optimal quantities at the lowest possible costs, competition is generally argued to increase economic progress and innovation, create wealth, and to reduce poverty” (Wigger 2014, p. 604). As we can testify today, successive government’s commitments to this approach since the early 1980s, have *not* ensured successful innovation across the public sector; wealth has certainly been created – but for the few not the majority; and poverty is once again on the rise.

In 1997, Tony Blair’s New Labour government picked up the neo liberalist baton and they ushered in the party’s new-found commitment to “globalization in the form of neoliberalism in Britain”. This new approach was “couched in the language of ‘welfare reform’ (Fisher 2006 p. 57), which Fisher describes as a shift in welfare policy towards an “active” welfare state - away from the traditional Labour party commitment to nationalization and social democracy. Under the Welfare-to-Work policy, the individual themselves is seen as being responsible for finding and securing employment. Fisher explains this new policy context as a “false dichotomy between ‘active’ (positive) and ‘passive’ (negative) forms of welfare; between those citizens who desire to move from "welfare to work" as opposed to those who are workless, passive welfare citizens, dependent on State benefits. These welfare reforms individualised poverty and the circumstances of unemployment, rather than

“addressing the structural problems of inequality in the society at large (ibid) [and (Mullard, 2000: 45)]. So the structural causes of poverty – and the closely associated social and cultural factors of class and social inclusion – were not addressed at the time, nor have they been since.

“..individualising poverty fails to take into account the complex matrix of race, gender, class, and nation that creates disadvantages and inequalities for some and unacknowledged benefits, power, and privilege for others.” (Fisher, 2006)

Where are we today?

“After three decades of neoliberal economic policies, we are in the midst of a major global economic crisis, which has not yet reached its zenith”.

Wigger p. 605

Disparities in wealth have increased. Living standards of the lower strata of society in many countries have deteriorated. Unemployment, underemployment, and informal work are on the rise because of the continuation of the Austerity cuts – a direct outcome of the 2008 crash. There has been a significant rise in immigration; the gig economy and zero hours contracts have proliferated; there is now significant income inequality within countries. Despotic regimes/dictatorships have taken hold where revolution has erupted, such as in Syria and Turkey.

This global chaos generated a ‘slow burn’ foment of social unrest that has served to trigger collective manifestations of public opprobrium that include:

- the Arab Spring uprisings of 2010/11,
- the UK Brexit vote in the summer of 2016
- the national vote in the last UK election to return a minority Conservative government to Westminster.
- USA citizens voting in Donald Trump.

These were the actions of citizens acting to “punish” previous government administrations for this current state of affairs.

Challenges to the criminal justice sector/and crime control?

Social order and inequality.

The economic and political factors discussed so far have all driven changes that have given rise to a range of social and cultural outcomes.

Some 35 years of successive governments' persistence with a neo liberalist, market driven approach to our economy have served to create failure and global economic crisis. The Third Way of governance regulated the market via contractual regulation. This approach was championed by the original contemporary neo-liberalist Friedrich Hayek, who believed that "nearly all (if not all) human activity is a form of economic calculation, and so can be assimilated to the master concepts of wealth, value, exchange, cost" (Metcalf, 2017). This reductionist approach to the economy has had hugely negative results on the lives of those who are poor, vulnerable, in minority groups and who are in the lowest class of society.

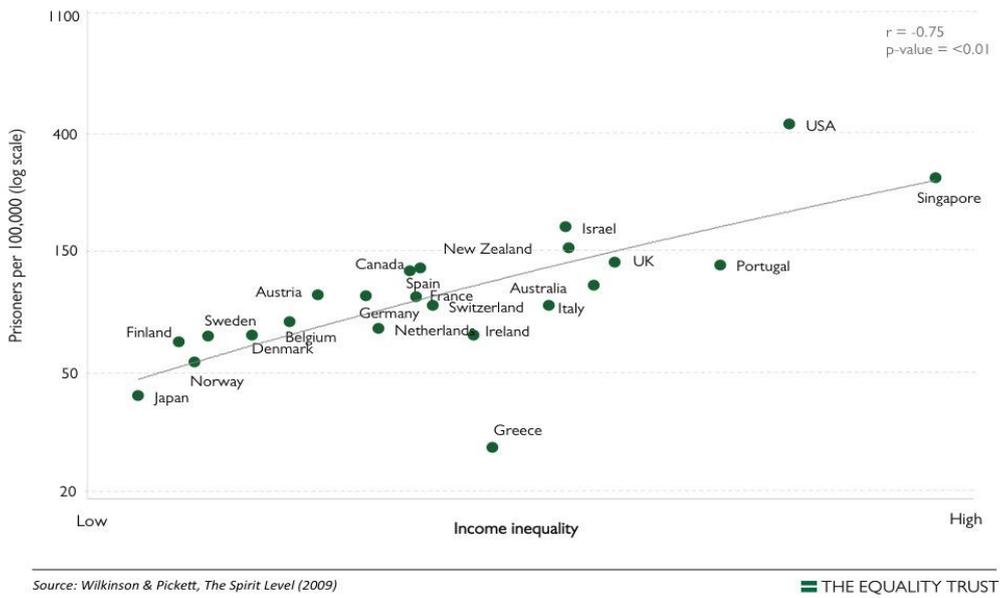
There has been ever more regulation across the years through government policies that operate via tools such as targets, performance indicators, policy statements (usually in the form of mission statements) and the governmental soundbites we have become all too familiar with over the years: greater choice for parents; reducing reoffending rates; better value for tax payers. These all refer to measurable and quantifiable calculations, which are designed to reflect "successful outcomes" of the policies.

Jordan (2010) argues that contractual regulation has now "trumped" the cultural and moral regulation that we abide by and experience personally, through our interpersonal communications. Put another way, the social mores by which we have traditionally established our expectations of one another and the standards of our behaviour are being eclipsed by a more mechanistic, quantitative approach to performance and the measurement of success. According to Jordan, the wholesale adoption of contractual regulation has inflicted long-term damage on these cultural or moral modes of regulation that existed in the workplace. Amongst many others, the rise of consumerism and excessive individualism (Layard and Dunn, 2009, p.6) have resulted in a huge inequality within society, creating an ever-widening gap between those who have and those who have not, perhaps better expressed as those who are included and those who are excluded – from accessing market opportunities and securing positive life outcomes. As income inequality has risen so have the rates of offending and imprisonment, low educational achievement and poor

health. Inversely, life expectancy reduces as the inequality in society increases. The correlation between increased offending rates/imprisonment and high levels of income inequality is represented graphically in Diagram 1, taken from Wilson and Pickett (2009).

Diagram 1

Rates of imprisonment are higher in more unequal countries



Point for consideration 1: the structural problems of inequality in the society at large.

The increasing level of inequality in society is directly correlated with the rise in offending and imprisonment.

More prisons being built and provision in prisons becoming less and less effective.

- Prisons becoming unacceptably violent and dangerous places. There have been startling increases in all types of violence.
- The biggest increase is assaults on staff which, in the 12 months to December 2016, rose by 38% to 6,844.
- The number of self-inflicted deaths has more than doubled since 2013, and in the 12 months to March 2017 113 prisoners took their own lives. (HMCI, 2017).

HMCI asks why so many of our jails have become so unsafe. Underlying causes include the prevalence of drugs on the inside (most recently the increased use of Spice, a “legal” high) and the seeming inability to keep them out. Factors such as debt, bullying, and self-

segregation by prisoners looking to escape the violence generated by the drugs trade are commonplace (ibid. p. 7). This has all been compounded by staffing levels in many jails that are simply too low to keep order and at the same time run a decent regime that allows prisoners to be let out of their cells to get to training and education, and have access to basic facilities.

But, trying to recruit more staff and tackle the drugs and violence inside prisons does not address the “complexities of race, gender, class, and nation that create disadvantages and inequalities for some and unacknowledged benefits, power, and privilege for others”. These complexities have continued to proliferate in the continued regime of neo-liberalist policies and they are evidenced through negative social, health and educational outcomes.

Point for consideration 2. The Transforming Rehabilitation (TR) agenda.

Different governments since the mid-1980s have insisted that the restructuring of public services, to conform to a more business-based model, will provide greater ‘value for money’ (MoJ, 2013a: 24; Fitzgibbon and Lea, 2014; Gash and Panchamia, 2013) and, thus, more effectiveness and efficiency.

In true neo-liberal style Chris Grayling hailed, in 2014, the new TR agenda as a reform policy that would introduce “significant changes to the way low–medium risk offenders are to be managed” that are the outcomes of the coalition government’s ‘. . . approach to driving down the rate of reoffending and delivering better value for the taxpayer’ (MoJ, 2013a: 3) – emphasising the target and measurable outcomes based approach to these reforms.

This area of service provision was taken away from the former Probation Trusts and put out to tender. Contracts were awarded to 21 corporate organisations (Community Rehabilitation Companies - CRCs), most of whose expertise is that of winning commercial contracts, notably not expertise in the casework-based approach to rehabilitation and support for offenders that the Probation Service provided (to gold star level). Since the this contracting out of probation services in 2014, more and more evidence based findings have emerged that endorse the “public nightmares that can emerge when private agencies, especially for-profit companies, administer public social services” (Reece et al, 2006, p. 38). My own research findings show that the contractual regulation of TR via the Payment by Results system has itself resulted in CRCs failing to address the more complex aspects of clients’ individual needs, especially where they needed specialist support for drugs, alcohol

and mental health problems (Hough 2016). Evidence also shows (Fitzgibbon and Lea, 2014) that the payment-by-results system is in danger of providing “an incentive, on the part of all concerned, to fail to report breaches and re-offending” (p. 33) because the corporate providers are likely to view the process of making significant reductions in recidivism as “a high-stakes gamble” on which they will be loath to risk large amounts of money where there is no guarantee of the bonus payment - their main incentive.

Point for consideration 3. The rising disproportionality of Black and Minority Ethnic (BAME) and Muslim offenders in the CJS.

This statistic remains stubbornly high, as represented in Diagram 2.

Diagram 2

Prison population by religious group, December 2016²¹

	Number	% of prison population	% pt. change on 2002	% general population aged 15+
Christian	40,919	48.5%	-9.5%	61.3%
Muslim	12,825	15.2%	+7.5%	4.0%
Hindu	400	0.5%	+0.1%	1.5%
Sikh	759	0.9%	+0.3%	0.7%
Buddhist	1,529	1.8%	+1.2%	0.5%
Jewish	449	0.5%	+0.3%	0.5%
No religion	25,749	30.5%	-0.9%	24.1%
Other	1,547	1.8%	+1.3%	0.5%
Not recorded	130	0.2%	+0.1%	7.0%
Total	84,307			

Source: House of Commons Briefing Paper UK Prison Population Statistics
Number SN/SG/04334, 20 April 2017

The Young Review and Report identified that BAME and Muslim individual involved in the Criminal Justice Sector (CJS) experience disproportionately negative outcomes, both in prison and after release, in the community. One of the recommendations from the Report was that “rigorously monitored mechanisms need to be developed and implemented to ensure that independent providers (the new Community Rehabilitation Companies) address the specific needs of BAME offenders (Mullen 2014 p.13). My own research finding show that this has been far from the case. In our small scale research project (Hough, 2016) the

new TR policies and systems actually served to prevent BAME and Muslim ex-offenders from accessing the support they needed - before and after release. The Lammy Report (2017) goes a step beyond simply identifying that there is disproportionality in the prison system.....

“There is a lack of accountability for meeting the needs of those with protected characteristics.....The equality duty too often produces only a superficial, tick-box approach. In future, all Community Rehabilitation Companies (CRCs) should publish detailed information about outcomes for different ethnic and religious groups”. (Lammy, 2017 p. 57)

But this recommendation is surely only yet another box to tick??!! What exactly is “detailed information”? How meaningful will this actually be to improving support for BAME prisoners and their experiences in the CJS?

Final words.

Since the publication of the reports chaired by Baroness Young and David Lammy there has been little emerging evidence of any improvement in the quality of rehabilitation support available for offenders generally and for BAME and Muslim offenders specifically. Similarly, there has been no discernible reduction in the negative experiences these minority groups have whilst in prison. Parmar goes a good way towards identifying the factors that mitigate against any significant improvement for these individuals and groups within the CJS. She writes that “....overlapping concepts such as race, ethnicity, nationality, [gender and faith] remain unaddressed. There is a lag between the lived realities of MEGs and criminological scholarship [and the context of the CJS]. Criminological questions remain “stuck in a binary” (Parmar, 2017, p.36)...: a) “trying to explain the over-representation of BAME in the CJS....through paradigms of discrimination or offending propensity”. She goes on to ask “....exactly what is meant by racism tends to be taken for granted and criminology has arguably contributed to the hollowing out of the concept of racism” (ibid).

Offenders and their circumstances constitute many disparate scenarios, contexts and profiles. The tendency of successive government reports and reviews – however well-intentioned – as a default, perceive these varying contexts as equivalent, not as cases where several individual factors are at play. Parmar argues that there is a need for intersectional analysis to be activated in UK courts – to overcome the “single dimension of equality law” (Parma p. 3). Analyses tend to prioritise one social identity, such as gender, and not, for example, how gender might intersect with race or faith. If taken up by the authorities, this approach might well be the driver for moving forward to improve the provision and support for BAME individuals and groups in prison and within the CJS at large.

References.

- Reese, E., Giedraitis Vincent R., and Eric Vega (2006) Welfare Is Not for Sale: Campaigns Against Welfare Profiteers in Milwaukee *Social Justice* Vol 3 No. 3.
- Fisher, T. (2006) ‘Race, Neo-liberalism and “Welfare Reform” in Britain’. *Social Justice* 33 – 3.
- Fitzgibbon, W. and Lea, J. (2014) ‘Defending Probation: What does good look like anyway?’ *European Journal of Probation* 6(2)
- Allen, G., Watson, c. (2017) House of Commons Briefing Paper Number SN/SG/04334, 20 April 2017. Available online at: <file:///D:/Conferences%20recent/ESC%20conf%20Cardiff%202017/House%20of%20Commons%20prison%20pop%20stats.pdf>
- Mullen, J. Clinks, BTEG and Barrow Cadbury Trust (2014) The Young Review: Improving Outcomes for Young Black and/or Muslim Men in the Criminal Justice System. Available online at: <http://www.youngreview.org.uk/reports>

- HMI Chief Inspector for Prisons in England and Wales (2017) *Annual Report*. Available online at: <https://www.gov.uk/government/publications/hm-chief-inspector-of-prisons-annual-report-2016-to-2017> Last accessed February 1st 2018.
- Hough, C. (2016) 'Transforming Rehabilitation and its impact on a locally-based rehabilitation programme for Black and Minority Ethnic and Muslim offenders'. *European Journal of Probation*. Vol 8 (2).
- Jordan, B. (2010) *Why the Third Way Failed*. (University of Bristol: The Policy Press
- Layard, R. and Dunn, J. (2009) *A Good Childhood*. London: Penguin.
- Lammy D. (2017) *An independent review into the treatment of, and outcomes for Black, Asian and Minority Ethnic individuals in the criminal justice system*. Available online at: <https://www.gov.uk/government/organisations/lammy-review> Last accessed: February 1st 2018.
- Metcalf, S. (2017) *Neoliberalism: the idea that swallowed the world*. Available online at: <https://www.theguardian.com/news/2017/aug/18/neoliberalism-the-idea-that-changed-the-world> Last accessed September 10th 2017.
- Ministry of Justice (2013) *Transforming Rehabilitation: A Revolution in the Way We Manage Offenders*. Norwich: TSO.
- Parma, A. (2016) 'Intersectionality, British criminology and race: Are we there yet?' *Theoretical Criminology* 1- 11.
- The Lammy Review (2017) Available online at: <https://www.gov.uk/government/publications/lammy-review-final-report>
- Wigger a, (2013) 'Competition, the Global Crisis, and Alternatives to Neoliberal Capitalism: A Critical Engagement with *Anarchism*' *New Political Science*, Vol. 35, No. 4, 604–626.
- Wilkinson, R. and Pickett, K. (2010) *The Spirit Level. Why Equality is Better for Everyone*. London: Penguin.