

Forever Guilty: Convict Perceptions of Pre and Post Conviction†

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Abstract

Drawing on a four year study, this article reflects on 18 people convicted of crimes in Western Australia. It focuses on the ways in which various criminal justice processes immediately and continuously imply guilt, and are damaging to the self. The article describes how the continuum of processes systemically and through individualised and casual punishment regimes brutalised and horrified subjects who were then expected to perform as citizens. Their experiences of being condemned became frequent both prior to and following conviction. However, this article is not an exposé or deep analysis of the criminal justice system, a system that became personified to many of the participants. Rather, it is an insight into the impact that a powerful collective of individuals and departments make as they leave forever an indelible mark upon a person. The research examines the impact of being forever guilty and posits the notion that this constant not only produces personal internalised damage and experiences of injustice, but that it greatly reduces opportunities to experience a positive lifestyle. Glimmers of hope surfaced at times, although such feelings towards civic pride, and experiences of personal dignity were frequently extinguished. In short, the processes damaged the self and reduced opportunities for rehabilitation, thus, for much of the time, ensuring that subjects are reproduced within the criminal justice system.

Introduction

The author is a convict criminologist who has firsthand knowledge of the impact of the criminal justice system from the initial contact at arrest, through a protracted court process to prison, and thereafter to release under the supervision of community corrections officers. These past experiences and intimate knowledge of the system supported this inquiry and, with the trustworthiness and honesty gained by working alongside participants, he was able to inquire into their lives as they recounted their connections to the criminal justice system.

The main aim of the study was to investigate and document the impact of the criminal justice process on offenders' sense of self. The study explored processes central to the operation of the criminal justice system and the experiences of those people subjugated by it, the latter being a focus on the notion of a socially constructed sense of self.

† This article draws heavily upon the author's PhD thesis *Declared Guilty, a Never-ending Story: An analysis of the impact of the criminal justice system upon the self*, which is available at www.murdoch.edu.au.

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The four year study occurred among 18 people convicted of crimes in Western Australia, and while this article only deals with the primary subjects, the original thesis also followed the experiences of close relatives as they experienced being labelled and tarnished as they too became further entangled in the system's web. Although the relational aspect between the individual and criminal justice system remains the primary focus, the socio-political context remains crucial. Currently the political climate appears to favour both individual responsibility and strict state control.

Context

The study was conducted during a period of growing incarceration rates and calls for tough on crime approaches to be used with zero tolerance policing, maintaining Western Australia as a 'punitive' society (Tyler 2006:307), and emphasising a characteristic of dangerousness. The focus of public attention has been, according to Tyler, on the 'need to punish rule-breakers' while 'support has been high for harsh punishments for a wide variety of crimes'.

O'Malley and Garland both suggest that the current climate is characterised by a mix of 'neo-conservative' and 'neo-liberal' elements. On the neo-conservative side there is an emphasis on moral order with the state acting with strong authority and control, especially through law and order (O'Malley & Sutton 1995), maintaining the ultimate power through legislative control and contracts. As Garland (2001:100) suggests, the advance of neo-conservatism with its call for law and order has led to 'a much more focussed, much more specific demand, targeted on particular groups and particular behaviours', where 'a renewed discipline and a tightening of controls ... were directed mainly at poor individuals and marginalised communities and did nothing to constrain the great majority of citizens'.

The same point is made by Findlay et al., who suggest that the people most likely to be singled out for punishment are those people who are 'distant from the centres of power in our society which inspire, direct and administer criminal justice' (1994:261). This latter point is highlighted through the over-representation of Indigenous people within the criminal justice system. They go on to comment that:

The sad reality is that discrimination does exist in our criminal justice system. A broad explanation for this may be found in the power imbalance between various groups in our society. Powerful groups protect their own interests by using the law as a tool of control over other groups (Findlay et al. 1994).

In contrast to the quasi-paternalism of neo-conservatism, neo-liberalism stresses personal choice and individual responsibility, situating the offender as a person who has made a deliberate choice and who should bear the costs of that choice through a fitting punishment. In his critique, Garland points out that the consequence of this has 'been a fateful one in emotional as well as economic terms. Every individual is more and more obliged to adopt the economic attitude of the responsabilized, competitive entrepreneur' (Garland 2001:157). He further contends that this leads to a stress on 'control, closure, confinement, and condemnation' since the 'continued enjoyment of market-based personal freedoms has come to depend upon the close control of excluded groups who cannot be trusted to enjoy these freedoms' (Garland 2001:198). It is within this context that he argues that the poor are those who pay for the freedom of others for:

The pursuit of freedom ... brings with it the risk of insecurity and the temptation to respond with repression. In this cultural setting, it is no wonder that the undeserving poor are feared and

resented. Choosing freedom comes at a cost, and all too often it is the poor and the powerless who are made to pay (Garland 2001:157).

In Western Australia, as in other jurisdictions, high rates of imprisonment include a disproportionate number of people who are unemployed, under-educated, have a mental illness or disability, and those who have previously suffered trauma and abuse. The overrepresentation of Indigenous West Australians within the current system highlights previous policies and practices that have only led to more arrests and the continuation of traumatic lifestyles, especially among remote communities.

In this context, Stern (1998:121) suggests that prisons are in the main 'occupied by the casualties of social policies: those, and the children of those, who have not managed to get for themselves a position with income, employment, family security and social acceptance'. The damaging impact of prison is difficult to repair, and the net widening of community correction orders with their default position set at imprisonment, ensures that high occupancy rates occur in each prison.

Most of the literature dealing with the counterproductive aspects of the criminal justice system focuses on imprisonment and other forms of formal punishment (Bowen & Consedine 1999; Carlen 1994; Coyle 1994; Pratt 1997; Stern 1998; Garland 2002; Goulding 2004). This study suggests that in order to fully understand the impact of the criminal justice system we must consider the processes in their entirety. That is, from the moment when a person becomes a 'person of interest' to the police, through arrest, interrogation, being charged, convicted, sentenced, through to release and beyond. It is only then that we can grasp the totality of punitiveness and its enduring impact on an offender's sense of self. Indeed, the importance of this was underlined in the interviews where it became apparent that a sense of being found guilty occurred well prior to the formal court sentencing, occurring in most cases at the point of arrest and continuing well beyond release.

Methodology

Eighteen people who had been subjects of the criminal justice system were involved in the research. During his time within the criminal justice system as a convicted person and prisoner, and later as a justice activist, prison reformer and restorative justice practitioner, the author formed several friendships with people who had been arrested, convicted and/or imprisoned. It was through this network that prospective participants were contacted for the study.

A specialised sampling method, a snowballing technique provided contact with other offenders and prisoners, and while it was unable to provide a representative or randomised sample (Hakin 1987:27), it enabled the author to interview people who had information of a very sensitive and personal nature.

A qualitative methodology was used whereby conversations held over a period of weeks, enabled participants to feel as though their stories were important and that they were being listened to; a process that was flexible and resilient enough to cope with the everyday issues presenting to participants still engaging with the system. All of the participants had been charged with an offence and had recent experience of the system. Their age-range, socio-economic circumstances and cultural backgrounds were diverse, as follows:

- The countries of birth of the participants were; Australia (7), UK (4), Italy (2), India (1), Sri Lanka (1), Croatia (1) South Africa (1) and Holland (1). Two of the participants identified themselves as Aboriginal.
- Four male participants were in custody when they were approached to participate in the study, three of these being released prior to the completion of the research. Three males had further charges brought against them during the period There were 11 male participants ranging in age from 20 to 55 years.
- There were seven female participants ranging in age from 20 to 45 years.
- Two of the three women who were in prison at the beginning of the research completed their sentences during the research, two returned to custody over breach of parole conditions and one left the State.
- Of the 11 men, five were in stable family relationships, four were single and lived at home with their families, and two men remained unsettled in both relationships and residence.
- Four of the men had children ranging in age from 7 years to 17 years. All of these children were in the care of female partners.
- Three of the women lived in stable relationships, with one of these describing her relationship as abusive, and two were mostly street present, moving between friends' squats and often living in unsafe circumstances in short term relationships, and two women lived alone in their own rented flat or unit.
- Three of the women were primary care givers to their children aged less than 6 years old. Five of them had to put their children in care while in prison.
- Four of the men were receiving some form of mental health/stress treatment, one was suffering from a disability and another from a heart complaint which first presented whilst in prison. One man was admitted into a community mental health facility within three months of the completion of the research.
- Three of the women were having regular treatment for mental health/stress related issues, in prison and following release.

Theoretical Considerations Underlying the Choice of Methodology

A methodology was developed that allowed the participants to explore their social worlds through reflections on current and past events. To this end, symbolic interactionism was used as a major theoretical and methodological influence, with Goffman's *Asylums* enabling the author to reflect on his previous experiences of the criminal justice system and incarceration.

Symbolic Interactionism

Symbolic interactionism maintains that human beings make sense of their everyday interactions in their world through the use of symbols that give meaning to social activities, enabling an interpretation of what others are doing, with these meanings 'modified through an interpretive process' (Blumer 1969:2). It was this emphasis on subjective experiences within an institutional context that the researcher brought to this study. As Psathas (1973:7)

maintains, 'symbolic interactionists seek to faithfully represent and describe the social world as it is known to those who live in it'.

However, without some expression of sympathy or solidarity these interviews could not have proceeded, for as Scraton (2004:6) comments 'interviewing people in the immediate aftermath of arrest, bereavement, court cases and so on brings the researcher face-to-face with raw emotion. It is not feasible, in the heat of such moments, to be free of moral judgement or political conviction'. He also argues that 'the most profound personal impact ... is derived in bearing witness to the depths of people's pain and suffering and the consequences on their lives of the uphill struggle for truth, justice and acknowledgement' (2004:17).

Although the author did not explicitly use a feminist methodology, Dorothy Smith's (1987:98) work provided crucial insights into the power of the researcher, particularly where research on a disfranchised group was involved. Her stance has resonance for prisoners and ex-prisoners of both genders as of any group whose views are unwelcomed, misunderstood, and discarded by the more powerful. That said, the most important aspect of this research was undoubtedly the contribution freely offered by participants. The interviews focussed on the participants' 'stories' which began at arrest and for most, continue to the present. They were then asked how they experienced the process from arrest thereon, ending with questions about how they experienced life today.

From a symbolic interactionist perspective, the notion of oneself is as an object viewed, interpreted and given meaning 'from the process of social interaction in which other people are defining a person to himself [sic]' (Blumer 1969:12). Early notions of the socially constructed self can be found in the work of Adam Smith who suggested that 'with the eyes of other people social actors scrutinize the propriety of [their] own conduct' (Smith 1982:112 cited in Barbalet 2001:121). It was Cooley (1964) who was to give this its contemporary sociological foundation when he described the 'looking glass self' as the image that arises when we look at ourselves from the imagined perspective of the other, making ourselves available as an object that the other sees and gives meaning to:

As we see our faces, figures and dress in the glass and are interested in them because they are ours, and pleased or otherwise with them according as they do or do not answer to what we should like them to be, so in imagination we perceive in another's mind some thought of our appearance, manners, aims, deeds, character, friends, and so on, and are variously affected by it (Cooley 1964:184).

However, for Goffman, a full understanding of the self calls for consideration of how that self resides in the arrangements prevailing in a given social system. In this sense the self dwells in 'the pattern of social control that is exerted in connection with the person by himself [sic] and those around him. This special kind of institutional arrangement does not so much support the self as constitute it (Goffman 1961:168). Social identity is made up of personal attributes and social categories and as Goffman (1963:12) suggests, illustrates how, in the construction of the social self, the observer or other 'transforms the person's category and attributes, into normative expectations, into righteously presented demands'. Reflecting upon how it is seen by others, the self sees itself in either positive or negative terms.

Thus Barbalet (2001:121), in his account of shame and its impact upon the self, suggests that shame is 'a negative social perception of one's self, the seeing of one's self from the standpoint of others'. It is this notion that is specifically addressed within labelling theory, where Tannenbaum (cited in Braithwaite 1989:16) refers to the self 'becoming the thing he [sic] is described as being'.

The social curtailment and inner experience of ‘blemished person’ does not happen randomly or accidentally. Rather it occurs through a series of purposeful acts and transition points. On this, Goffman (1968:24) refers particularly to the ‘series of abasements, degradations, humiliations, and profanations of the self’ through which the self is ‘systemically, if often unintentionally, mortified’ that occur within the total institution.

The impact of the system upon the self cannot be overstated especially in terms of Foucault and the pervasiveness of surveillance. It is the total nature of surveillance that not only brings into our gaze a person of interest, but engages them in a form of control and manipulation so as they are ever mindful of being watched. Whereas the dungeon ensured that the prisoner had freedom and light removed as they remained hidden from view, the new technologies makes a person visible to the closed circuit camera and thus ‘reverses the principle of the dungeon ... visibility is a trap’ (Foucault 1977:200). By the nature of this trap the person who knows they are the object of surveillance ‘inscribes in himself [sic] the power relation in which he simultaneously plays both roles; he becomes the principle of his own subjection’ (Foucault 1977:202).

The Arrest

As Findlay et al. suggest, the moment of arrest presents the first opportunity ‘to impose punishment without trial’ (1994:207) and may include summary justice measures, infringement notices and cautions. The immediate response for ‘resisting arrest’ can, as testified by participants, include being held, pushed, and thrown to the ground prior to being handcuffed. As well as labelled as a suspect, accused person, defendant or prisoner, most participants recalled that some time during the process during and following their arrest they were called derogatory names such as ‘crim’, ‘tamp’, and ‘whore’. This change of social identity, which was aided by the removal of items such as belts, ties, shoe laces and jewellery, placed participants in a highly stigmatised position which was maintained throughout their engagement with the criminal justice system – and for some, well beyond. Thus Karyn,¹ who had been through the courts and prison six times prior to this study, reported that: ‘From the start of every arrest until I get settled inside they let me know that I’ve fucked up real bad and done the wrong thing ... It’s like a broken record – although now I just turn off’.

There were similar stories from John and Jude who had also been arrested before:

They didn’t waste any time on me, just stuck the boots in, threw me onto the cell floor, kicked me in the ribs, then left me. I expect that treatment every time I go there. That’s their justice system.
(John)

They were fairly abrasive, shouting at me, pushing me around ... making me feel like a low-life kind of person. I just stuck to my guns and made it as difficult as possible for them, asking for drinks, demanding food etc. I was in a state but didn’t like the way they were treating me, pushing me around, and making me feel uncomfortable. I became defiant. Only the police said that I was guilty, no one else. (Jude)

The punishments that occurred at this stage were reported as including the humiliation of being searched and arrested in a public place or, conversely, in a family home where it is threatening not only to the accused but also to children and other family members. There were several reports of being taken away in a ‘paddy wagon’ in front of friends, family or

¹ All names are fictitious.

associates, being shouted at, pushed around, handcuffed and made to look the part of being 'forever a criminal'.

However, in contrast to the majority, two participants said the police were helpful to them during the period in which they were interviewed and waited for bail applications to be approved. In Sandra's experience:

They were so good to me, really good, they took me to East Perth Lock-up, brought me sandwiches and generally were helpful. They told me that I would remain there until someone picked me up from bail. They let me ring home, and following that day they often called me to ask if I could assist with this or that. (Sandra)

And similarly for Prince who stated:

The police were good to me, in fact they were helpful to me, understanding that I was pleading guilty and that I had further information that I was able to give. They have a job to do, one that is not easy. (Prince)

The Courts

The court process itself offers a degree of punishment especially to first time offenders through stigmatic shame, where the individual is named, the nature of their crime stated publicly and they stand before the court accused and, in many instances, ready to be sentenced. The court provides a level of anxiety and apprehension to the accused person and their family and, by inference, attendance at court gives an impression of a 'blemished character', so widely found as experienced by the participants.

In the court, at the point of sentence, punishment can take the form of a custodial or non-custodial sentence, a fine, community supervision order or a mix of these. A custodial sentence may be suspended for a set period of time in which the convicted person is required to obey the law and comply with court and community corrections orders. Obedience to the law is sought, and yet, as far as participants were concerned, fairness and due process was not always followed. As Lyn reported:

I was crying. I first of all said that I didn't do it and then he said I needed help. I was so confused. It's horrible. They don't make it easy for you do they? Yes, I did try to speak to the judge but he cut me off and told me to go and get a lawyer. I wanted to tell him about it all, how I felt, and about what had happened to me, I felt too ashamed to tell my family. He didn't want to hear my side of the story from me, and told me to go away and find a lawyer for advice. He wasn't very nice to me, and seemed aggressive, so I went and got this lawyer, someone recommended to me. I was so humiliated by them. (Lyn)

Returning to home or work following the initial court experience can be frightening and humiliating, often accompanied by feelings of shame and remorse. This was voiced by over half of the participants in the study. Here two participants tell of this period and the misery that accompanied it.

My self esteem was nothing, and all I could think of was that I had let everyone that I knew down, from work, family through to very good friends. I thought that I wasn't worthy of anything and that the best thing to do was not be around any more. I knew that I had brought a lot of harm to so many people, and that it was more than embarrassing – downright shameful. I felt that life wasn't worth living at times. I had to get help, and I had to tell my family and work. That was the hardest thing to do. (Keith)

When we left the courts I felt like I was being watched by everyone. At night I wouldn't touch the phone, or answer the door, and didn't much care for friends coming over. At work I kept to

myself, and after work I went straight home, no drinks, no stopping for a meal out. I isolated myself among my family, feeling ashamed and blaming myself all of the time. (Francis)

For many participants this period of waiting, between the first court appearance and the trial or sentencing day, was marked by withdrawal from ordinary community activities and stigmatising events. Keith commented that the media, in its rush to publicise his case, had put him through ‘a shocking experience, one that is enduring well beyond the sentence’.

My case was very public, and although I pleaded guilty at the first opportunity, the stories that they ran on TV and in the press had me as the lowest of the low. It didn't feel good then and it doesn't feel any better today. (Keith)

And Karyn related:

When you're seen as guilty and the media spreads it everywhere, it isn't always accurate. That's another problem. It sticks right through your time. (Karyn)

Sentencing day was almost overwhelming for the great majority (14) of the participants. Francis recalls his walk up the steps to the dock in the Supreme Court, describing the grandeur of the place, the wooden panelling, the wigs, the robes and the etiquette. He told the researcher that he now remains very nervous of the building, avoiding the area geographically, and still experiences feelings of total disbelief that he was declared guilty. He says that he can still smell the place. Part of his anxiety about the place is linked to distrust – a feeling that the system was unfair and the odds were stacked against him:

The court made me very nervous and afraid, but more than that, it has made me feel that it is not a place where justice will be done. I didn't have money to spend on a QC or Eastern States barrister, I had Legal Aid, and while they did represent me they told me at the beginning that they were too busy to see me much before the trial. I now feel that they didn't perform well, and that to them I was just another number. During the two day trial I was not able to participate more than for about 10 minutes. The longest time that I stood up was during my sentencing. They could have put a monkey in my place and the Judge wouldn't have noticed until sentencing, only then did he look me. I don't blame him, but I do think that he and others should take more time to talk with offenders, not always with the lawyers. (Francis)

The fact of being unable to state their case, apologise or make a comment, meant that a great number of participants (14) felt the whole thing was prearranged, leaving them without a chance of being seen or heard.

In the court you should be able to speak for yourself, but they [court] don't like that. It's all a farce. They arrange it and talk about it between themselves over lunch. (Karyn)

Yeah very frustrated ... I was invisible. And I was like a fucking mute. I felt that they didn't really want me in there, ... they isolate you from the rest as though you're a poxy leper. And you know how big I am, they couldn't miss me! They just wanted me locked up from the time I got there, it was all fixed. (Guru)

On the day, the court didn't allow for personal comments and that is a great shame really. I think that it is so important to be able to say what has happened and to be in a position to provide an insight to the judge on you as a real person. I appeared to be seen only as a criminal, or at best, the accused. I had apologised to my family and the company, but couldn't do so in person, in court. (Keith)

Importantly, participants who found the process unjust and humiliating were less likely to accept responsibility for their actions than those who felt they had been treated fairly. Clive recounted how:

I wanted to take the responsibility for what I did, which was quite a considerable amount, but not for the extras they put on me, that really made me angry. I thought about it and then I called

my lawyer and pleaded not guilty, but in fact I wanted to tell them that I did some of this. It's silly of me I know, but I felt quite ashamed until they added that extra stuff onto me, then I felt 'well fuck you too'. I began to feel that they were no better than me, and even felt as though I was being made to look stupid, and dare I say unprofessional. (Clive)

Being treated fairly – a fair cop – was important to all participants, and was crucial to the extent to which they took responsibility for their actions. Few found the court to be just, with most participants experiencing it as a place of abandonment, where they were ill-informed, and not a place where their story could be told.

The Prison

It is to the prison that we now turn; the highest mark of control of the state over the self; the act of imprisonment. As far as prison is concerned, these 'standard' mortifications include orders to the prisoners to shower, stand naked, lift a leg, breast or scrotum, part the buttocks and open all body cavities. And, as Goffman (1968:18) comments, orders such as these, and exposure of the body, represents '... a leaving off and a taking on, with the midpoint marked by physical nakedness'. In addition, such actions can become horrifying reminders of histories of previous abuse.² It is through degradations such as these that a prisoner enters an environment that schedules a different sense of self with new roles and forced relationships, embedded exclusively around the role of prisoner and inmate. This contrasts with civil life as:

In civil life, the sequential scheduling of the individual's roles, both in the life cycle and in the repeated daily round, ensures that no one role he plays will block his performance and ties in another. In total institutions, in contrast, membership automatically disrupts role scheduling, since the inmate's separation from the wider world lasts around the clock and may continue for many years (Goffman 1968:24).

The 'milieu of personal failure in which one's fall from grace is continuously pressed home' begins within the stripping processes that ensure the prisoner recognises the low status and position they hold, in contrast to the normal rights and privileges of the outside world (Goffman 1968:66).

A sense of worthlessness was increasingly internalised when people became isolated from their personal and social supports and more and more subject to the judgment of officials. Trendy reported feeling totally isolated and dejected, believing herself to be 'bad'. Similarly, Francis felt as though he had let his family down and that his life was no longer worth living – he was no longer a business proprietor, but a criminal. He was subjected to several hours of interrogation, followed by a period of overnight custody at the lock-up and only allowed to speak to his family once during this time. As van Wormer (2001:303) states, 'in the criminal justice system, clients often find their very selfhood defined by their crime'.

Intentionally or unintentionally, police and prison authorities all too often reproduced and amplified the damage participants had previously experienced. Goffman (1968:85) refers to the will-breaking and welcoming practices that encourage a prisoner to submit and become manageable. Amongst the women especially, such experiences could well mimic the brutalising treatment received from partners or as victims of past assault (Salamone 2003:2;

² Goulding 2004, *Severed Connections*. This report indicated that 81% of the women in prison who participated in the study had suffered previous abuse. A Department of Justice brochure indicates 'a widespread incidence of past abuse (77%) or abuse as a child (57%)' among women in prison (Department of Justice 2002).

Goulding 2004:33). Thus, the way that Emma was treated by police officers at her public arrest, reminded her of the way she had been treated by her mother; when she was pushed, hit, called a liar, and later abandoned. In all these ways, Emma re-experienced her early childhood trauma, exacerbating the mental condition for which she required daily medication.

Trendy experienced the same kind of situation, where officers' treatment recalled and reinforced earlier abuse. In her case, the trauma arose from being searched and then stripped. Trendy was not only a victim of previous family abuse, but had also been violated by her drug dealer and, at times, by other people who were homeless and shared space in the squats.³

Being ordered to remove her personal belongings for examination by the police and prison authorities reminded her of having no place to keep intimate items safe and secure. It also stripped her of what few possessions she had left in life. As a result she became angry and violent, leading to further punishing behaviours from authorities. She recalls feeling sick and being called a 'dirty little slut' by the people who she had originally thought would support her. When she was led away to the cell block, she was not seen by a medical officer at the clinic until late in the afternoon, by which time she had already scored. This incident was just one of the many that she remembered and recounted, incidents which continually amplified previous damage, reinforcing her self image as 'bad'.

According to van Wormer, whose work among women prisoners centres around counselling them through a strengths approach, 'the shame a woman feels being punished as a prisoner, moreover, may heighten the sense of shame and secrecy the woman has already experienced as a sexual abuse victim' (2001:285). She explains that,

the prevalence of childhood and later sexual abuse histories among incarcerated women leaves them at high risk for being retraumatised by the invasive body searches and violation of bathroom or other personal privacy that occur routinely in the prison setting (van Wormer 2001:285).

Van Wormer (2001:285) further claims, 'when prison employees violate these boundaries the survivor's experiences of earlier abuse are recapitulated in such a way that the woman reacts to the experience with an emotional intensity that may seem out of proportion to the violation'. Such violations re-traumatise and re-victimise, increasing the likelihood that the offender experiences the system as brutal and abusive.

Release from Custody

The arrest and initial interview were spoken of as the most common places to be declared guilty, and the least likely places to experience fair treatment, whilst prison was more often a place in which the self was mortified. So while participants expected to receive natural justice in a fair criminal justice system, they alleged unfair and unjust treatment at the hands of a system that had become for most, a personal adversary that continues to punish well beyond the courts and prison systems. Francis explains:

I know my actions were wrong and yet I served my penalty meted out by society. The injustice of the punishment not ending at the prison gates continues each and every day of my life and this is

³ Usually refers to an abandoned house or factory used by homeless persons.

in a society that says it is fair. I say that it's very unfair and unjust. There must be an end to punishment not just a dead end. (Francis)

The research suggested that the combined processes of being arrested, interrogated, charged, found guilty, convicted, sentenced to imprisonment or given a suspended or a non-custodial sentence, released to special reporting and compliance conditions, frequently inflicted profound and lasting damage on the self, that became internalised, often as a traumatic experience, long in duration. Participants' stories confirmed the depth of trauma associated with the criminal justice system, and as Atkinson (1990:3) writes,

There are ... human trauma experiences, implicit in human acts of violence, which result in trauma behaviours. Violent outbursts, on others and on self, are one manifestation of traumatisation. Alcohol and drug misuse appeared to fit the same self-medicating needs of those who are traumatised.

Conclusion

In the light of the above, the system itself appeared to be a complex part of the problem of producing trauma that in turn produced victims. This study places the criminal justice system, and particularly the prison, as a producer of trauma and violence, aptly illustrated by Findlay et al. (2004:2) who observe:

The prison environment requires significant redevelopment, if inmates are not to leave prison more maladjusted than when they went in. Violent, inhuman, unsafe, confrontational and exploitative prison settings will distort social and moral messages that are consistent with crime prevention.

Further, it is argued, such processes have the capacity to leave people subjected to the criminal justice system in enduring states of horror, despair and shock, and go beyond the spirit of the court's punitive sentencing regime by inflicting more than a fine, community work or deprivation of liberty. Thus, they leave a series of personal and social consequences, one of which can be a cycle of re-offending by damaged individuals who generally failed to experience opportunities for rehabilitation.

The criminal justice system is like a leech, it entered my life rather than me entering it, because I was forced to. They came to my business where I was accused and charged, taken to court and later found guilty. I had little chance to explain or say that I didn't do it, and my lawyer said that he will take care of it. He did, thank you. I was sent to jail and later given parole. Now I can't get a job and yet I used to be good at figures and accounts, and still am, but heh, who is going to employ me? Every time I apply for a job it's 'we need a police clearance'. I can't do that, I'm still embarrassed after 18 months, that's why I say it's a leech, it sucks the living shit out of you. (Clive)

Beside such horrific stories of participants' experiences, there were also glimmers of hope, for when fairness was experienced, it was greeted with more compliance and a willingness to cooperate. There were also instances where participants experienced the generosity of victims, family members and the courts. Such glimpses made a difference to the way the participant thought about themselves and their future, and although few and far between, these marks of personal generosity had a positive impact upon the image of the self, a small and yet refreshing experience amid a constant of negativity.

The participants' accounts suggest that the process of being arrested, accused, charged and punished produces a 'criminal' label which endures through time and physical space. All participants agreed that their lives would never be the same again following their

encounter with the criminal justice system. Being judged and labelled affected all participants in one way or another, even those who were well accepted by others who had been convicted. Participants reported that the process had an impact upon work opportunities, being trusted by other people, how they were treated by businesses such as banks and insurance companies, relations with the police and treatment at places such as Centrelink.

Their personal stories provide a complex view of offender–system relations that is at once both alarming and contentious.

These can be summarised as follows:

- Participants felt that a sense of ‘being guilty’ was imposed on them early on and dogged them through and beyond their formal connection with the criminal justice system.
- Participants experienced a prolonged and close engagement with the system, connecting them to it even when they were not legally bound to it.
- Participants personified the system and gave it an identity.
- There was an expectation by participants that the system would be fair and just and they felt angry and resentful when (in their experience) it wasn’t.

The sense of inner worthlessness which this engendered can be related to Cooley’s (1964) arguments about the looking glass self and supports Blumer’s (1969:12) notion that we view our self ‘from the process of social interaction in which other people are defining a person to himself [sic]’. The *self*, as subject throughout the criminal justice system, was not just responding to objective others within the system, but interpreting and reflecting in such a way as to place its own mark, however small, upon it. The self was central to, and the focus of, each and every procedure, carrying an emotional presence into the social structure of the criminal justice system. Thus for Barbalet emotions have ‘... a macro-sociological presence in their own right, or, more specifically, emotion inheres simultaneously in individuals and in the social structures and relationships in which individuals are embedded’ (2001:65).

In a nutshell, the study found that:

1. The processes of the criminal justice system impacted upon the self in a way that rendered personal internalised damage and trauma.
2. Reflecting upon the impact of the processes from arrest to beyond freedom from the sentence, the vast majority (15 of 18) of participants identified them as unfair and unjust, leading to feelings that the system itself was acting in an unfair and unjust way.
3. Cumulative and continual negative impact of the processes reduced the goal of quality rehabilitation, valued and positive citizenship, and social inclusion.
4. Three participants provided glimmers of hope and reflected upon their connection with the system as just and fair, although they did not experience prison. Their experiences showed that when processes were less antagonistic and adversarial, there was a space left for rebuilding the self.
5. There are other ways of dealing with the aftermath of crime that reduce the likelihood of re-victimisation.

Re-thinking Criminal Justice in WA

The following ideas are presented as an alternative measure to the ever-present and foreboding criminal justice system's focus upon toughness rather than effectiveness:

1. Implementing a more restorative and procedurally just approach from diversion to the point of arrest and onward has real merit but it has to be combined with human rights, due process, and natural justice.
2. There is a strong sense of a need to introduce, at least in a trial form, a wholly restorative prison, leading to a reform of current penal practices.
3. Alongside this there is a call for a series of processes that are restorative in nature, at all levels of the criminal justice system, from community policing interventions to inclusive court procedures, where restorative and therapeutic notions are able to provide a voice to family, supporters and community around both the victim and the victimiser.
4. All services should be underpinned by human rights and social justice policies and practices, enabling holistic and inclusive programs to rebuild the self into a citizen with respect and dignity for themselves and others.
5. Professional training for police and prison officers as well as other practitioners within the criminal justice system should be provided, including a program that encourages service personnel to reflect upon international regulations and laws that are consistent with reducing re-offending, and harm minimisation.

To date the criminal justice system has attempted to introduce several small measures that appear to be less adversarial, such as those being offered by the Victim-Offender Mediation Unit and Juvenile Justice Teams. Although far from being fully restorative, such beginnings enable victims a degree of participation, albeit controlled. However, the dangers of providing services in a piecemeal way, rather than presenting a whole of system process, are noted by Ted Wachtel, who observes that:

If systems are not innately restorative, then they cannot hope to effect change by simply providing an occasional restorative intervention. Restorative practices must be systemic, not situational ... You can't be restorative with students and retributive with faculty. You can't have punitive police and restorative courts (Wachtel 1999:7).

This leaves us with the question, 'Is there any hope'? The article would suggest yes, if only we dare do as Ted Wachtel suggests.

References

- Atkinson J 1990 'Violence against Aboriginal women: Reconstitution of community law' *Aboriginal Law Bulletin* vol 2 pp 6-9
- Barbalet J 2001 *Emotion, Social Theory, and Social Structure. A Microsociological Approach* Cambridge University Press Cambridge
- Bevin J, Hall G, Froyland I, Steels B & Goulding D 2005 'Restoration or renovation? Evaluating restorative justice outcomes' *Psychiatry, Psychology and Law* vol 12 no 1 pp 194-206

- Blagg H 2005 *A new way of doing justice business? Community justice mechanisms and sustainable governance in Western Australia* Law Reform Commission of WA Background Paper No 8 January 2005 p 1
- Blumer H 1969 *Symbolic Interactionism: Perspective and Method* University of California Press Berkeley USA
- Bowen H & Consedine J (eds) 1999 *Restorative justice: Contemporary themes and practice* Ploughshares Publications New Zealand
- Braithwaite J 1989 *Crime, shame and reintegration* Cambridge University Press
- Carlen P 1994 'Crime, Inequality and Sentencing' in *A Reader on Punishment* Duff, A & Garland D (eds) Oxford University Press Oxford
- Calma T 2006a 'Challenges for Aboriginal and Torres Strait Islander law and justice agencies' speech given at the *National Aboriginal Justice Advisory Committee (NAJAC) Colloquium*, 13 September 2006
<www.hreoc.gov.au/speeches/social_justice/challenges_20060913.html>
- Cooley CH 1964 *Human nature and the social order* (rev ed) Schocken New York
- Coyle A 1994 *The Prisons We Deserve* Harper Collins Publishers London
- Cunneen C 1999 'Genocide, reparations and restorative justice: Responding to the stolen generation' paper presented to the Restorative Justice and Civil Society Conference, ANU, Canberra, Feb 1999
- Farrall S 1995 'Why do people stop offending?' *Scottish Journal of Criminal Justice Studies* vol 1 pp 51-59
- Findlay M, Odgers S & Yeo S 1994 *Australian Criminal Justice* Oxford University Press
- Foucault M 1977 *Discipline and Punish* Penguin Group London
- Freiberg A 2001 'Problem solving courts' *Journal of Judicial Administration* pp 8-12
- Garland D 2002 'Ideology and crime: a further chapter in Ideology' *Crime and Criminal Justice* Bottoms & Tonry (eds) Willan Publishing
- Garland D 2001 *The Culture of Control: Crime and Social Order in Contemporary Society* Oxford University Press
- Goffman E 1963 *Stigma: Notes on the Management of Spoilt Identity* Penguin Books London
- Goffman E 1968 *Asylums* Pelican New York
- Goffman E 1971 *The presentation of the self in everyday life* Penguin Books London
- Goulding D 2004 *Severed Connections: An exploration of the impact of imprisonment on women's familial and social connectedness* Murdoch University Print
- Goulding D & Steels B 2006 'Developing, establishing, servicing and researching a communitarian model of restorative and transformative justice in West Australian Magistrate's Courts' *Special Series –e Law Journal* vol 1
<www.eLaw.murdoch.edu.au.htm> accessed r30 September 2006

- Hakin C 1987 *Research Design. Strategies and Choices in the Design of Social Research* Allen and Unwin
- House of Representatives Standing Committee on Indigenous Affairs 1990 *Our future. Ourselves* Australian Government Press Canberra
- King M & Piggott L 2006 'Mirroring the stages of change in the establishment of problem solving courts' paper presented at the Third International Conference on Therapeutic Jurisprudence Perth June 2006
- Law Reform Commission of Western Australia 2005 *Aboriginal customary law: Discussion Paper* Quality Press Perth
- Maruna S & Immarigeon R 2004 *After crime and punishment: Pathways to offender reintegration* Willan Devon UK
- Morris A 2002 'Critiquing the critics: A brief response to critics of restorative justice' *British Journal of Criminology* vol 42 Summer
- O'Malley P & Sutton A (eds) 1997 *Crime Prevention in Australia* The Federation Press Sydney
- Psathas G (ed) 1973 *Phenomenological Sociology* John Wiley and Sons Inc USA
- Pratt J 1997 *Governing the Dangerous* The Federation Press Sydney
- Salomone J 2003 *Issues Paper 8 Strip search, Drugs and related matters* Department of Justice West Australia
- Scraton P 2004 'Speaking Truth to Power: Experiencing Critical Research' in Smyth M & Wilkingson E (eds) *Researchers and their "Subjects": Ethics, power, knowledge and consent* The Policy Press pp 175-194
- Smith D 1987 *The Everyday World As Problematic: A feminist sociology* Northeastern University Press Boston
- Sykes G & Matza D 1957 'Techniques of neutralisation: A theory of delinquency' *American Sociological Review* vol 22 pp 664-670
- Stern V 1998 *A Sin Against the Future* Penguin Group London
- Tyler TR 1990 *Why People Obey the Law* Yale University Press New Haven
- Tyler TR 2006 'Restorative justice and procedural justice: dealing with rule breaking' *Journal of Social Issues* vol 62 no 2 pp 307-326
- van Wormer K 2001 *Counselling female offenders and victims* Springer NY
- Wachtel T 1999 'Restorative justice in everyday life: beyond the formal ritual' paper presented at the Reshaping Australian Institutions Conference, Restorative Justice and Civil Society, ANU, Canberra, February 1999