ENGLISH LEGAL SYSTEM

TASK ONE

HOW JUDGES ARE APPOINTED TO THE COURT OF APPEAL AND THE HOUSE OF LORDS?

TASK TWO

ALAN GILES V. CHRISTINE BOARDMAN

HOW JUDGIES ARE APPOINTED

TO THE COURT OF APPEAL AND THE HOUSE OF LORDS?

INTRODUCTION

The appointment of judges to the court of appeal and the House of Lords is a matter of debate and subject to criticism for years by academic experts, legal profession societies, the public and the media.

As the court of appeal and the House of Lords are the supreme courts in deciding the liberty of people, the size of the debate becomes greater, and people asking more and more about the way our supreme judges are appointed.

Why they should be mainly or totally male when it relates to the House of Lords? Why the selection is secret and there is not a public voting for selecting higher judges? Who represents the female community in these higher institutions? What about the blacks, the Asians and the other minority ethnic groups who live on these Isles for years? What about the solicitors or even barristers who are not graduated from Oxford or Cambridge? And many other questions.

The government, from its side, also reviews the system and starts new projects and researches in order to find some answers for these questions. The Commission for Judicial Appointments (CJA) Suggests many radical plans for this purpose.

The question remains either the new proposals make any change to the system, and if they do, are they make great changes towards good in UK's legal system?

This short essay will try to answer some of these questions.

ENGLISH LEGAL SYSTEM IN PROGRESS

In English legal system the three powers: executive, legislative and judicial, are separated from each other theoretically, but the position of the Lord Chancellor who has power over all the three parts, is a matter of debate and question.

The Lord Chancellor, according to the study of [Elliot& Quinn 2002,p.99] is:

The head of the whole judiciary…. currently Lord Irvine, who effectively

appoints all the other judges…. He is usually a Cabinet Minister and speaker of the House of Lords.

According to the current System the Lord Chancellor's department appoints all the judges, but the conditions for judges of the Court of Appeal and the House of Lords are so strict that it is impossible for any one who is not white, male, middle or upper class, elderly and Oxbridge graduate to enter these courts. [Ibid]

This matter is highly controversial, and many people nowadays are asking for a reform in the system and may be to find an alternative for the position of Lord Chancellor and the system of appointing the higher judges.

The Prime Minister announced on 12 June 2003 the creation of a new Department of Constitutional Affairs, This will incorporate most of the responsibilities of the former Lord Chancellor's Department. [LCD online- 2003]

It can be argued that creating a Supreme Court solves the problem as it comes in the consultation paper of the Department for constitutional affairs.

In recent years there have been mounting calls for the creation of a new free standing Supreme Court separating the highest appeal court from the second house of Parliament and removing the Lords of Appeal in Ordinary from the legislature. On 12 June 2003 the Government announced its intention to do so. [Lord falconer of Thoroton LCD online 2003]

This new court will be the highest court for the whole United Kingdom, as the previous Consultation paper by the Lord Falconer of Thoroton argues:

The Government believes, however, that the time has come to establish a new court regulated by statute as a body separate from Parliament. The proposed new Court will be a United Kingdom body legally separate from the England and Wales Courts since it will also be the Supreme Court of both Scotland and Northern Ireland. [Ibid]

JUDGES OF THE COURT OF APPEAL AND THE HOUSE OF LORDS DISCRIMINATION OR HIGH STANDARDS?

The House of Lords is the highest appeal hearing authority in England, its decisions is bound all over the other courts, until 1966 it was even bound by its own decisions. [Elliot & Quinn: 2002]

The House of Lords:

Plays a far more significant role in Parliament than their minor and merely delaying powers suggest. [Encyclopaedia Britannica (1997) p.478]

The court of appeal also is a higher court second to the HL; it contains the same procedure of the HL except of containing one-woman judge (now three- October 2003). The table below gives us a clear picture of the judges of these two Higher Courts in 1999:

[Judges and lay magistrates in post (1999)]

Courts	Total	Male	Female	White	Black	Asian	Other
Lords of Appeal in ordinary	12	12	0	12	0	0	0
Heads of Divisions (Excluding the LC)	4	4	0	4	0	0	0
Lords Justice of Appeal	35	34	1	35	0	0	0

By regarding the long history of these two courts and their sensitive and historical role in the English society, one may argue that many of their restrictions are from the standard of qualification rather than the discrimination. As they ask for upper and middle classes, graduates of Oxbridge, and being a successful Barrister for years, this may support what they argue.

Since it is difficult for anyone without a private income to survive the first years of practice, successful barristers have tended to come from reasonable well-to-do families, who are of course more likely to send their sons or daughters to public schools and then to Oxford and Cambridge. [Elliot & Quinn 2002, p.105]

From another side people are living in totally different world now than it was hundreds of years ago. Now the world is smaller, women have much more contribution in life than it was before even in legal professions as this writer argues:

A few weeks ago I commented on the survey showing that pre-teen and teenage girls are much keener on becoming lawyers than boys of the same ages. Now, the latest official statistics show that 63% of law undergraduates are women. Not all will become practising lawyers, but the figures show that, last year, 55% of new solicitors were women. [Berlins, 24 September 2002]

Britain becomes a divers society and the contribution of the Black, Asians and the other minorities to the progress of this country is unavoidable. However the selection of judges through public elections may make the judges the same of the politicians, by regarding that electoral propaganda does not guarantee good judges.

The international Society is asking for democracy more than any time before. Women are entering the legal profession rapidly, so it can be argued that it is time for change. The table below shows some new progress in appointing more women judges in the Court of Appeal:

Heads of Division	**Women**	**1**	**0**	**1**
	Men	4	0	4
	Total	5	0	5
	% Women	20	0	0

Lord Justices of Appeal	**Women**	**3**	**0**	**3**
	Men	35	0	35
	Total	38	0	38
	% Women	7.9	0	92.1

[Judicial Appointments- women, September1st 2003]
Another great progress is what published by The Guardian on Friday October 24, 2003, which can be counted as a turning point in the history of English Legal System:

Legal history will be created next January when one of the last all-male bastions of the British establishment admits a woman for the first time. **Dame Brenda Hale**, one of three women judges in the court of appeal, will become the UK's first woman law lord and one of the 12 judges who will sit in the proposed new Supreme Court.
Her appointment comes amid government moves to end the white, male, public school stranglehold on the judiciary, including a proposed independent judicial appointments commission with a brief to make the judges more representative of the people they serve. [Dyer, October24th 2003]
People are more familiar with other countries systems where judges are selected through a career system, such as France.
In civil law systems, such as France, there is normally a career judiciary. Individuals opt to become judges at an early stage, and are specifically trained for the job, rather than becoming lawyers first as they do here. [Elliot & Quinn 2002, p. 101]
In USA also they follow two ways in order to appoint judges:
In the US there are two basic methods of selection, appointment and election, although a compromise between the two methods is often made. [Ibid]

Conclusion

The English Legal system is the result of hundreds of years of legal progress and practice, as well as Parliamentary consultation as a part of tradition of the British Islands. It has many positive sides with a history of good reputation. From another hand the world is always in development the same is true for societies.
The English society becomes a diverse society and the role of women, Black, Asian and other Minority Ethnic Communities becomes more and more significant.
The government also realizes the need for change in the system and good progress is on the way. There are many consultation papers regarding the way judges are appointed and the participation of other groups in these institutions.
The appointment of two new women judges in the Court of Appeal and the promise to raise one of them to the House of Lords by January is a good sign for the new developments and it can be the first step for further progress in the future.

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TASK TWO

ALAN GILES V. CHRISTINE BOARDMAN

INTRODUCTION

There is a client called Christine Boardman; Christine is charged of an offence contrary to s. 61 of Criminal Justice & Public Order Act 1994- Appendix.
It is understood that Christine and her five friends went for a cycling weekend in August 2003, and on the Friday evening they stopped at Whiteacre; which is a nice place close to Everpool. That field belongs to a local farmer called Alan Giles. The six cyclists so called "Whiteacre Six" saw a note said, "Trespassers Will be prosecuted" but they just ignore it and they pitched their tents to establish a camp at that beautiful area.
Mr. Giles asked them to leave but they ignore it and they claimed that they have a right to enjoy the nature. He asked for police, when the police officer arrived and asked them to leave, they left, but soon after that they returned to their place and set their camp again.
The police officer with a several other officers returned and arrested the "Whiteacre Six". When they are questioned they denied committing a criminal offence

contrary to s. 61 CJPOA1994 (Appendix). They now claim that the elements and details of that Act are not established.
To advice the "Whiteacre Six" all the words and details as well as sections and subsections of s. 61 CJPOA1994 should be examined with great care. Because the meaning of words can be ambiguous and different interpretations may apply to one single word.
The English Legal System based on Parliament Statutes as a supreme legislation, we cannot oppose the Act, but interpretation of the Act is necessary in order to avoid any ambiguity.
The role of the judiciary is to interpret the law, and to look for similar cases; how higher courts have decided these cases in the past.
The court follows some rules in interpreting statutes of Parliament such as Literal rule, golden rule and mischief rule, but first of all the court must look at the statute itself for any possibility of solving the case.

THE "WHITEACRE SIX'S" CASE

The Criminal Justice and Public Order Act 1994 gives power to a police officer to remove trespassers on land if: "The senior police officer…" -Appendix [CJPOA1994 s. 61-(1)].
According to the literal rule it can be argued that the "Whiteacre Six" are guilty because they were interfering on some one else's land, as Jones M. A., Explains:
Trespass to land consists of an unauthorised interference with a person's possession of land. [Jones M., A. 2002, p. 494]
However it can be argued that it is not clear either the reasonable steps are taken… to ask them to leave. "Different circumstances give rise to different standards" [Ibid]. So it is difficult to decide either the steps taken by Mr. Giles and the police officers are reasonable or not, or at least it is understood by the Cyclists as reasonable. Reasonable is defined in Cambridge dictionary as: "Beyond reasonable doubt" [Cambridge Dictionary (online) 2003]. It is the responsibility of the court to decide which steps are reasonable and which not.
By applying the mischief rule we understand that the Act is to prevent people from entering other people's land without consent and permission, so it can be argued that they entered the land and refused to leave, they breach the Act and the defendants can be guilty.
The Act gives further conditions that: "any of those persons…" Appendix [CJPOA1994 s. 61-(1)(a)]
According to literal rule of damage: damage is "harm or spoil something" [Cambridge Dictionary 2003]. Jones, M.A., deals with damage on land during trespass in his study as:
[The claimant receives a small sum of money, in effect, to vindicate his right, e.g., if the defendant has committed a technical trespass to the claimant's land, Such as in the case of Constantine v Imperial Hotels Ltd [1944] [Jones M., A. 2002, p. 659]
In this particular case there are not clear complains about damage, by the literal meaning; but it can be argued that, according to the golden rule, they entered his land without permission, pitched their tents and set up a camp. This may suggest that fixing the tent makes some damage to the grass even if the owner does not report it as physical damage; so it can be argued that they are guilty.

The Act mentions Threat, abuse and insulting words or behaviour in s.61. -(1) (a) (Appendix)

There are nothing mentioned about threats or abusive words by the defendants in this particular case, according to the information available, so it can be argued that they are not guilty. At the same time the word 'behaviour' is ambiguous, according to 'Cambridge Dictionary' behaviour is: "to act in a particular way, or to be good by acting in a way which has society's approval." [Cambridge Dictionary, 2003 (online)]

By interpreting the statute according to the literal rule, it can be argued that they are guilty because they 'acted in a particular way' which may lead to understanding it by the claimant as abusive in the case of ignoring his asking to leave the land, however it can be understood from the defendants side that they did not will any harm and they thought that it is their right to 'enjoy themselves in the scenery'. It is very hard to decide the mental element in this situation.

S.61. -(1) (b) mentions "six vehicles"(Appendix) Cambridge Dictionary describes vehicle as:

A machine usually with wheels and an engine, which is used for transporting people or goods on land, particularly on roads. [Ibid]

According to this definition bicycle is not a vehicle because it does not have an engine; so it can be argued that they are not guilty.

However there are other definitions by other dictionaries putting bicycle as a synonym of vehicle. [Agent, automobile, bicycle, boat, buckboard, buggy, bus, cab, car, carrier, chariot, conveyance, crate, jalopy, jeep, mechanism, motorcycle, taxi, transport, truck, van, vector, wagon, wheels. [Thesaurus. Com, 2003 online]

Interpreting the law according to mischief rule it can argue that they are guilty, because the mischief which the Act tries to cure it is to prevent 'Collective Trespass or Nuisance on Land' [CJPOA1994 Part 5 –Title] so they are a collective trespass with six bicycles, the landowner believes they make him unhappy by camping on his land.

Conclusion

The defendants entered as a group to a land owned by somebody else, they have six bicycles with them and they fix tents and established a camp for themselves. They were asked by the landowner to leave but they ignore it, later a police officer asked them but they returned to the same place after leaving it and understanding that they have to leave.

It can be argued that they are guilty according to the purpose of the Act of Parliament that is to "Remove Collective Trespass or Nuisance on Land" mentioned at the Title of part V of the Statute (Appendix).

They are trespassers by entering a land that belongs to some body else without permission. [Jones. M. A., 2002] and they are Nuisance because they make him annoy and unhappy; that is why he asked for police help. As in the case of Robson v Hallet [1967] where the difference is that the police officers have the right and even duty to enter a property in order to stop the breach of peace, this is not true for others. What supports Mr. Giles claim is that he had put a not saying "Trespassers will be prosecuted".

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APPENDIX

Criminal Justice and Public Order Act 1994

Part V
Public Order: Collective Trespass or Nuisance on Land
Powers to remove trespassers on land

61.—(1) If the senior police officer present at the scene reasonably believes that two or more persons are trespassing on land and are present there with the common purpose of residing there for any period, that reasonable steps have been taken by or on behalf of the occupier to ask them to leave and—
(a) that any of those persons has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his, or
(b) that those persons have between them six or more vehicles on the land,
he may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land.

(2) Where the persons in question are reasonably believed by the senior police officer to be persons who were not originally trespassers but have become trespassers on the land, the officer must reasonably believe that the other conditions specified in subsection (1) are satisfied after those persons became trespassers before he can exercise the power conferred by that subsection.

(3) A direction under subsection (1) above, if not communicated to the persons referred to in subsection (1) by the police officer giving the direction, may be communicated to them by any constable at the scene.

(4) If a person knowing that a direction under subsection (1) above has been given which applies to him—
(a) fails to leave the land as soon as reasonably practicable, or
(b) having left again enters the land as a trespasser within the period of three months beginning with the day on which the direction was given,
he commits an offence and is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale, or both.

(5) A constable in uniform who reasonably suspects that a person is committing an offence under this section may arrest him without a warrant.

(6) In proceedings for an offence under this section it is a defence for the accused to show—
(a) that he was not trespassing on the land, or
(b) that he had a reasonable excuse for failing to leave the land as soon as reasonably practicable or, as the case may be, for again entering the land as a trespasser.
(7) In its application in England and Wales to common land this section has effect as if in the preceding subsections of it—
(a) references to trespassing or trespassers were references to acts and persons doing acts which constitute either a trespass as against the occupier or an infringement of the commoners' rights; and
(b) references to "the occupier" included the commoners or any of them or, in the case of common land to which the public has access, the local authority as well as any commoner.
(8) Subsection (7) above does not—
(a) require action by more than one occupier; or
(b) constitute persons trespassers as against any commoner or the local authority if they are permitted to be there by the other occupier.
(9) In this section—
"common land" means common land as defined in section 22 of the [1965 c. 64.] Commons Registration Act 1965;
"commoner" means a person with rights of common as defined in section 22 of the [1965 c. 64.] Commons Registration Act 1965;
"land" does not include—
(a) buildings other than—
(i) agricultural buildings within the meaning of, in England and Wales, paragraphs 3 to 8 of Schedule 5 to the [1988 c. 41.] Local Government Finance Act 1988 or, in Scotland, section 7(2) of the [1956 c. 60.] Valuation and Rating (Scotland) Act 1956, or
(ii) scheduled monuments within the meaning of the [1979 c. 46.] Ancient Monuments and Archaeological Areas Act 1979;
(b) land forming part of—
(i) a highway unless it falls within the classifications in section 54 of the [1981 c. 69.] Wildlife and Countryside Act 1981 (footpath, bridleway or byway open to all traffic or road used as a public path) or is a cycle track under the [1980 c. 66.] Highways Act 1980 or the [1984 c. 38.] Cycle Tracks Act 1984; or
(ii) a road within the meaning of the [1984 c. 54.] Roads (Scotland) Act 1984 unless it falls within the definitions in section 151(2)(a)(ii) or (b) (footpaths and cycle tracks) of that Act or is a bridleway within the meaning of section 47 of the [1967 c. 86.] Countryside (Scotland) Act 1967;
"the local authority", in relation to common land, means any local authority which has powers in relation to the land under section 9 of the Commons Registration Act 1965;
"occupier" (and in subsection (8) "the other occupier") means—
(a) in England and Wales, the person entitled to possession of the land by virtue of an estate or

interest held by him; and

(b) in Scotland, the person lawfully entitled to natural possession of the land;

"property", in relation to damage to property on land, means—

(a) in England and Wales, property within the meaning of section 10(1) of the [1971 c. 48.] Criminal Damage Act 1971; and

(b) in Scotland, either—

(i) heritable property other than land; or

(ii) corporeal moveable property,

and "damage" includes the deposit of any substance capable of polluting the land;

"trespass" means, in the application of this section—

(a) in England and Wales, subject to the extensions effected by subsection (7) above, trespass as against the occupier of the land;

(b) in Scotland, entering, or as the case may be remaining on, land without lawful authority and without the occupier's consent; and

"trespassing" and "trespasser" shall be construed accordingly;

"vehicle" includes—

(a) any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle; and

(b) a caravan as defined in section 29(1) of the [1960 c. 62.] Caravan Sites and Control of Development Act 1960;

AND A PERSON MAY BE REGARDED FOR THE PURPOSES OF THIS SECTION AS HAVING A PURPOSE OF RESIDING IN A PLACE NOTWITHSTANDING THAT HE HAS A HOME ELSEWHERE.

CRIMINAL JUSTICE ENVIRONMENT

PRINCIPLES OF CRIMINOLOGY

WHY DO WE NEED DIFFERENT METHODS TO MEASURE CRIME?

INTRODUCTION

INVESTIGATING CRIME AND COMPARING CRIME RATES HAD SEEN MANY CHANGES THROUGHOUT HISTORY. CRIME CANNOT BE EXPLAINED STRAIGHTAWAY, AS THERE IS NOT A SPECIFIC DEFINITION OF IT, AND TRUE FIGURES ON CRIME CANNOT BE OBTAINED FROM ONE WAY OR A SPECIFIC STATISTICS. THE GOVERNMENT INSTITUTIONS, AS WELL AS, ACADEMIC EXPERTS HAVE BEEN TRYING TO FIND RELIABLE METHODS FOR MEASURING CRIME, ALTHOUGH UNTIL 1960'S THERE WERE NOT PROPER STUDIES ABOUT CRIME DATA. [COLEMAN & MOYNIHAN 1996]

THERE ARE DIFFERENT METHODS FOR GATHERING INFORMATION ON CRIME: CRIME STATISTICS BY THE HOME OFFICE, POLICE REPORTS, BRITISH CRIME SURVEY, LEGAL REPORTS OF THE COURTS, NATIONAL VICTIMIZATION SURVEYS, LOCAL SURVEYS AND MANY OTHERS. ALTHOUGH ALL OF THEM CONTRIBUTE IN THE PROCESS OF ANALYSING AND DEFINING CRIME, HOWEVER, AS VALIDITY AND RELIABILITY ARE NOT IN BALANCE ALWAYS, ALL THESE METHODS HAVE THEIR CRITICISMS, AND THE TRUE EXTENT OF CRIME REMAINS UNKNOWN TO A LARGE DEGREE.

THERE ARE DIFFERENT APPROACHES TO CRIME: SUCH AS BIOLOGICAL, PSYCHOLOGICAL, FUNCTIONALISM, SUBCULTURAL AND MORE. ALL THESE THEORIES TRY TO ANALYSE THE PROBLEM OF CRIME IN THEIR OWN WAYS, HOWEVER IT IS NOT A MATTER OF TRUE OR FALSE IN THESE ANALYSIS, THE CONFLICT REMAINS AS SUFFICIENT OR NOT SUFFICIENT.

THIS SHORT ESSAY TRIES TO LOOK INTO THESE DIFFERENT WAYS OF ANALYSING, DEFINING, AND COLLECTING INFORMATION ON CRIME, IN ORDER TO GIVE A BRIGHTER IDEA ABOUT THE SUBJECT THROUGH COMPARE, CONTRAST AND CRITICISM.

1. CRIME STATISTICS

1.1POLICE STATISTICS

POLICE STATISTICS INCLUDE CRIMES THAT ARE RECORDED BY POLICE. ALTHOUGH NOT ALL CRIMES REPORTED TO POLICE ARE ALREADY RECORDED. HOWEVER, POLICE STATISTICS IS STILL REGARDED ONE OF THE MAIN SOURCES OF INFORMATION ON CRIME. AS JUPP SAYS:

OFFICIAL STATISTICS ON CRIME ARE MEANS BY WHICH THE EXTENT OF CRIME CAN BE MEASURED AND ITS SPATIAL, ECOLOGICAL AND SOCIAL DISTRIBUTION EXAMINED. [JUPP 1996, P. 33]

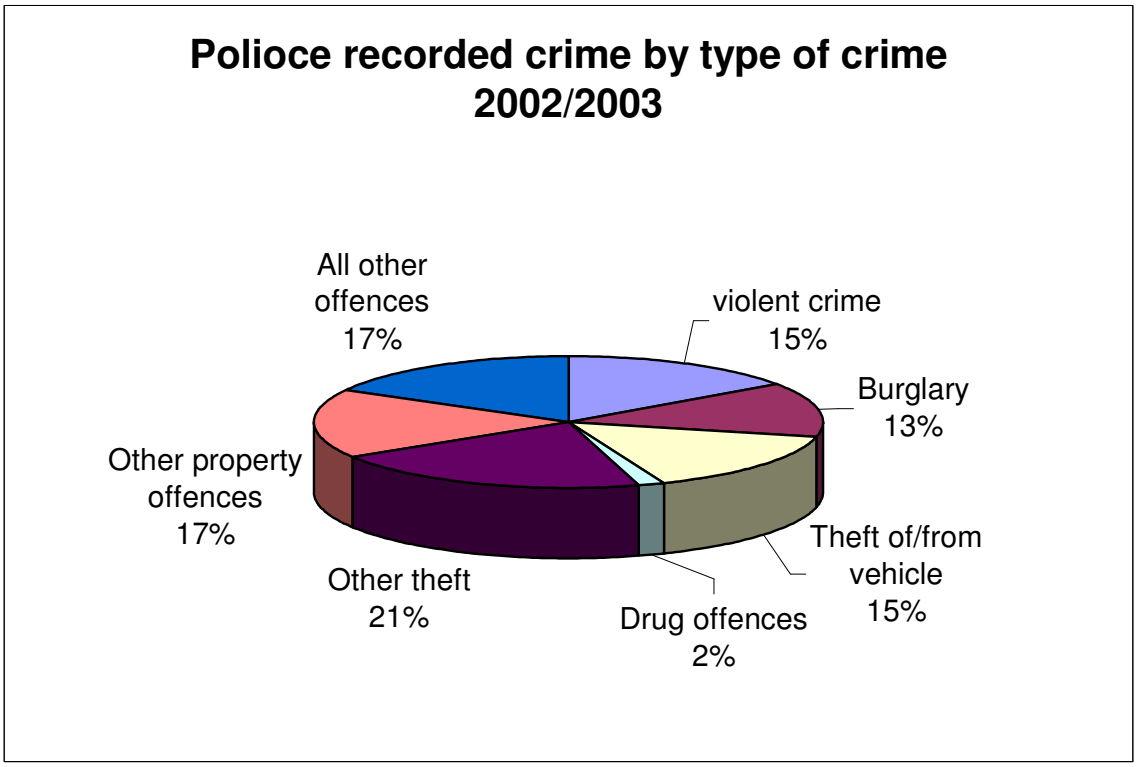
IT CAN BE ARGUED THAT POLICE STATISTICS CAN TELL US THE AMOUNT OF CRIME IN A GIVEN TIME THROUGH THE NUMBER OF KNOWN OFFENDERS, ASPECTS OF COURT PROCEEDINGS AND THE SIZE AND COMPOSITION OF PRISON POPULATION. JUPP FURTHER AFFIRMS THIS POINT BY SAYING:

STATISTICS ABOUT RECORDED CRIMES ARE USED AS A MEANS OF MEASURING THE EXTENT OF CRIME IN SOCIETY AT ANY GIVEN POINT OF TIME AND ALSO AS THE FOUNDATION FOR EXAMINING TRENDS OVER TIME. [IBID P.89]

They may be used as an alarm for the government to pay its attention to the extent of crime in the country and how to fight it, through introducing new laws and increasing police numbers. As Jupp says:

Official statistics also provide one basis for decision making by governments at a national level. [Ibid]

The following chart gives us estimation about the size of crime by the type of crime in 2002/ 2003 in England and Wales:



[Simmons and Dodd, 2003 p. 15]

We understand from the graph above that in 2002/ 2003 other thefts contain 21% of all crimes committed in the country, followed by property offences 17%, theft of/ from vehicle 15% and violent crime 15%. Burglary contains 13% of all crimes and drug offences only 2%. In this graph there is not a special place for sexual offences, probably due to small amount of recorded such crimes, so this kind of crime and other crimes are under all other offences which contain 17% of all the data.

However it can be argued from the previous graph, that police statistics are not giving us a true picture of the extent of crime. Because not all the crimes are reported to police and not all the reported crimes are recognised and recorded by the police.

People may not trust the police to take their complaints seriously because even if they call the police they may not see any evidence of crime; this may happen in racial harassments, hate crimes and juvenile nuisances.

It can be argued that the official statistics are dealing with those who caught in the hands of police not all who break the law, as Croall says:

Official offenders are those who have survived the process of attrition and are not representative of all who break the criminal law. [Croall, 1998, p. 21]

1.2. British Crime Survey- BCS

British Crime Survey has appeared as an alternative measure to official statistics.
Police statistics, it can be argued, that underestimating the true extent of crime in society, as the dark figure of crime still exists, this point is further confirmed by Jupp, when says:

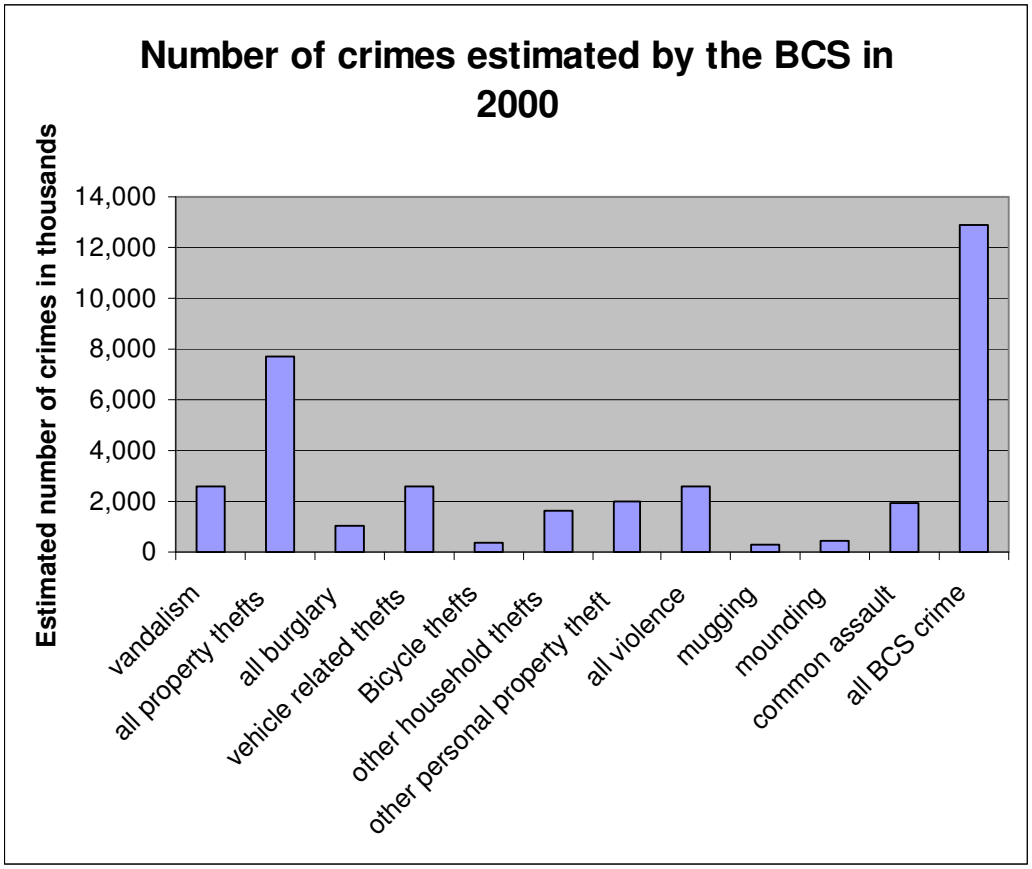
> Official statistics are notoriously bad at providing valid estimates of the true extent of crime. Surveys of victims have made valuable contributions in terms of providing some estimate of the 'dark figure' of crime, and therefore of the extent to which official statistics underestimate the true extent of crime. [Jupp, 1996, p. 46]

BCS is counted as a good source of data on crime because they are independent from the police and may bring different results in their statistics, although they depend on samples of people, because they cannot ask everybody in the country. Jupp explains this point as:

> It would be difficult, if not impossible, to ask all individuals in the country so we would be well advised to base our conclusions on a small sample of, say, a thousand individuals. [Jupp, 1996,p. 36]

So it can be argued that BCS statistics are also not sufficient for a clear vision on crime, however it fills a big gap in the official statistics.

The figure below shows the extent of crime estimated by the BCS in 2000:



[Kershaw et al., 2001]

BCS estimated all the crimes in 2000 by 12,899 crimes of which property theft contains the biggest amount, 7,672. However it did not contain any special figure of sexual offences, same as official statistics.

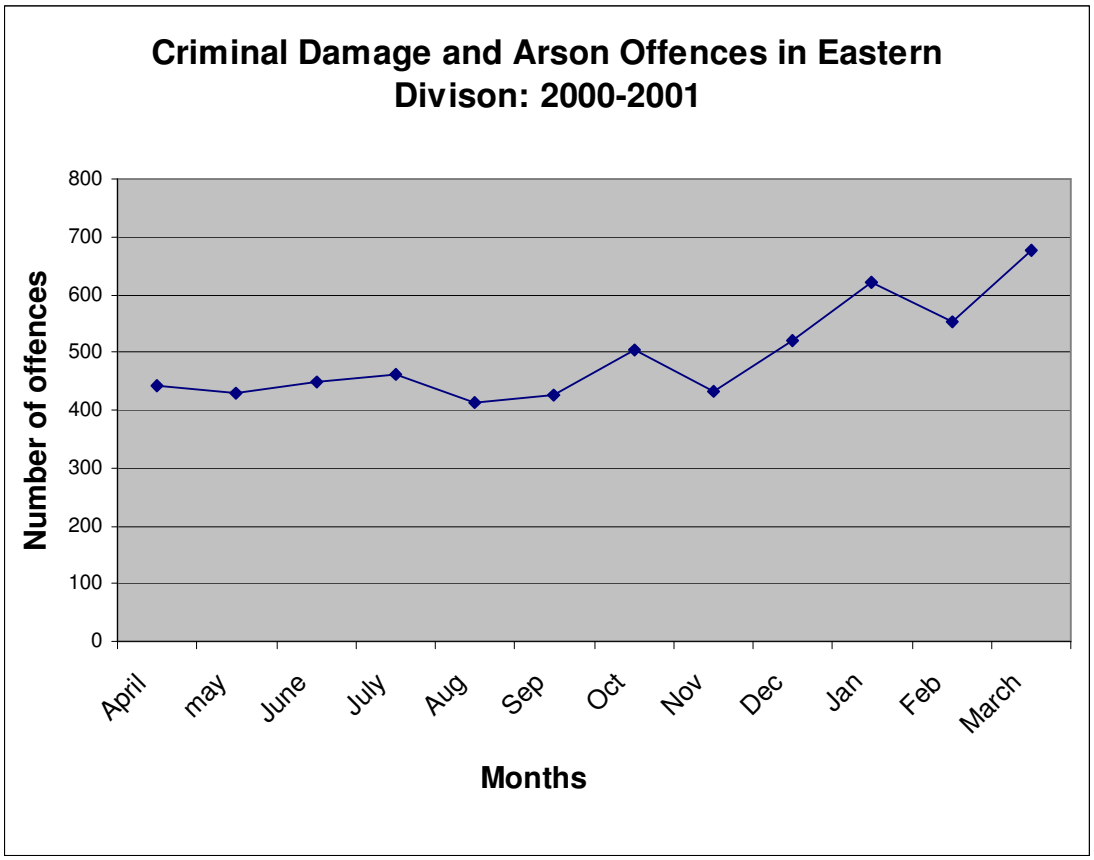
As the BCS depends on interviews with the subjects, it can be argued that it is not possible to take information about victims who are no longer available for interview, victimless crimes and crimes against those who are not staying legally in the country such as failed asylum seekers and other illegal immigrants.

It can be argued from the above graph that BCS neglected the crime areas such as fraud and forgery, white- collar crimes and corporate crimes. At the time that the economical costs of these crimes may be greater than the other known crimes.

1.3 Local statistics

Another source of statistics on crime is local statistics. Local statistics can analyse crime in smaller areas in more detail. By comparing local statistics to the national statistics we may find out more information about the areas with higher or lower crime rates within the country.

By looking at criminal damage and arson rates in eastern division for one year we may have a better understanding of rising and falling of crime within one area in different months of the year.



[Blackburn with Darwen Crime and disorder Audit report 2002, p.102]

We may understand from the graph that the lowest crime rate was in August 2000, which was 413 offences, while the highest offences recorded by police were in March 2001. Number of offences rose rapidly form November to January but in February it falls again to 552 offences, which was still higher than the rates of the rest of the months.

By considering all types of crime statistics, it can be argued that if people are reporting more crimes to police and the police taking these crimes seriously, the official statistics and other means of reporting crime may form one reliable crime survey. As Croall suggests:

Despite all their limitations, official statistics, victim surveys and other forms of research are essential sources. They chart amounts of officially recorded crimes along with rising and falling rates and provide details about offending and victimization. [Croall, 1998, p.31]

2 THEORETICAL APPROACHES

2.1 Biological theory:

Italian Theorist Lombroso (1876) argues that criminals have special features such as big jaws and cheekbones, as well as bigness or smallness of ears. Lombroso counted sixteen features and argues that if a man has five or more of these features it means he is 'born criminal'.

In the twentieth century some scientists confirm biological reasons behind crime such as Hotton (1939) who argues that criminals have special physical characteristics coming down to the new generations through heredity. Others like Sheldon argue that criminals have special hard or strong body, different from normal people.
There are others who argue that a criminal gene causes criminal behaviour. Criminals, according to these theorists, have an extra male chromosome (Y), so instead of XY they are XYY.

Some argue that criminal behaviour has psychological or personality reasons, such as Eysenck who argues that people with low IQ are become criminals more than others. What supports this argument is that people with low IQ are less intelligent than others and may not differentiate between right and wrong.

However biological and psychological theories are not sufficient to define criminals, because not all criminals are coming under their categories and classifications, and not those who come are all criminals. They neglect social, economical and environmental causes of criminality and simply say that individuals are born bad and criminal.

2.2 Functionalism

Functionalists such as Durkheim argue that the society functions like an organic body; he compares social institutions such as: churches, schools, government, police and etc… to different parts of body, such as: heart, brain, back, lungs and etc…

Although Durkheim takes criminal analysis away from biological and psychological explanations, but, it can be argued, that he cannot explain the criminal behaviour of different groups of people, and can not explain why some individuals commit certain types of crimes.

Another Functionalist is Merton who believes that a strain between our means and our goals causes crime, individuals can see the goals of society but they use different ways to achieve these goals including criminal ways. Although Merton's contribution to criminology is significant, but still it can be argued that he cannot explain that there are different goals in society people struggling for them, not only one common goal.

2.3 Sub-cultural theory

Subcultural theorists are interesting in groups and gangs who commit not-for-profit crimes. Those people are gathering in special areas and committing crimes in groups, mostly for the pleasure of belonging to a group than for profit; such as football hooligans, drug users, alcohol abusers, teenagers and prostitutes. Burke affirms this idea by saying:

Cohen Proposed that adolescent gang members in fact stole for the fun of it and took pride in their acquired reputations for being tough and 'hard'. [Burke, 2002, p. 114]

The motive behind the sub-cultures, it can be argued, that they feel they are not accepted in the society, so they form their own communities or groups. This argument supports what Merton said about the strain theory, because they struggle for acceptance in a 'respectable society' but they cannot receive it.

The British sub-cultures are different from those of America because in Britain there are not so much guns as in America, as well as, the stronger effect of religion here and the structure of the classes and ethnicity, which are more complex in American society than in Britain.

2.4 Environmental theory

Environmental theory looks at crime from a physical environment. They investigate the possibility of environment in creating crime. Crime varies in different city zones, and those areas closer to the city centre are found with higher rates of crime.

Inhabitants of these areas are generally not socially organised, because they are mostly from other cultures or societies. Those people may have not any opportunity to learn anything but crime, because it is more coherent with their immediate needs.

This theory faces criticism because it can be argued that not all cites have the same structure of zones, and the current studies about these zones only depend on official statistics.

C O N C L U S I O N

Crime is one of the most complex fields of study, it cannot be analysed in some statistics or studies. A layman may define crime as theft or violence and a policeman may define it as a threat to the society, while the media creates a big castle out of a small grain.

Despite all the studies about crime: crime statistics, policing and police researches, crime surveys and crime data; locally, regionally and nationally, the problem of hidden crimes and so-called the dark figure of crime remains. And crime is still, to a large measure, has many unknown and undiscovered sides and fields.

However the official statistics, self reported studies, local statistics and the British Crime Survey statistics are working hard to bring better results and they are getting closer in their estimations. It can be argued that better results can be obtained from reporting more crimes by the public; there is a sign of progress in this area also.

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PSYCHOLOGY OF CRIME

TASK ONE: CHILDREN WHO KILL MARY BELL

"But what I want most of all is a normal life."

– Mary Bell (as an adult)

Mary Bell

Brian Howe

Task Two: Does a criminal Gene exist?

TASK ONE

CHILDREN WHO KILL:

MARY BELL

INTRODUCTION

MARY BELL IS THE 11-YEAR-OLD ENGLISH GIRL WHO COMMITS TWO EXTRAORDINARY BABY MURDERS IN THE SPRING OF 1968 IN SCOTSWOOD, 275 MILES NORTH OF LONDON.

MARTIN BROWN WAS FOUND DEAD ON MAY 11, 1968, AT THE TIME THEY DID NOT THOUGHT ABOUT SUCH A SMALL CRIMINAL AS MARY BELL. THERE WERE NO SIGNS OF VIOLENCE AND NO ANY MARKS ON THE CHILD LEADING TO A CRIMINAL ACT, SO THE POLICE THOUGHT THAT IT WAS ACCIDENTAL.

THE COMMUNITY ASKED FOR INVESTIGATION, AT THE SAME TIME THE TWO CHILDREN MARY AND HER FRIEND NORMA WHO WERE BEHIND THE SCENES ASKING MARTIN'S FAMILY STRANGE QUESTIONS ABOUT THEIR FEELINGS AFTER LOOSING THEIR SON.

SOME WEEKS LATER THEY FOUND BRIAN HOWE IN A WORSE CONDITION; BRIAN WAS NOT ONLY MURDERED BUT THERE WERE STRANGE WOUNDS ON HIS BODY AND HIS BELLY WAS SIGNED WITH A LETTER M BY A RAZOR.

ALL THE SUSPICION CONCENTRATES ON MARY BELL AND HER THIRTEEN-YEAR-OLD FRIEND NORMA. THEY WERE NOT MISTAKEN IN THEIR SUSPICIONS.

THE POLICE CHARGED MARY WITH MURDER BUT THE COURT MAKES IT MANSLAUGHTER BECAUSE OF HER PSYCHOPATHIC CONDITION. NORMA DID NOT FIND GUILTY OF MANSLAUGHTER, BUT SHE SENTENCED FOR THREE YEARS IN PROBATION UNDER PSYCHIATRIC SUPERVISION.

MARY REMAINED IN A REFORM SCHOOL FOR SOME YEARS AND LATER IN PRISON, SHE BECAME FREE AT THE AGE OF 23 AND BECAME THE MOTHER OF A CHILD.

THIS SHORT ESSAY TRIES TO LOOK AT THESE TWO EXTRAORDINARY CRIMES IN AN ATTEMPT TO ANALYSE THEM IN RELATION TO PSYCHOLOGICAL PERSPECTIVES OF CRIME AND CHILDHOOD DELINQUENCY.

WHY MARY BECAME A CRIMINAL?

ANSWERING THIS QUESTION IS VERY CONTROVERSIAL; CRIME IS ONE OF THE MOST COMPLEX ISSUES IN SOCIETY. THERE ARE DIFFERENT SCHOOLS OF PSYCHOLOGY TRYING TO FIND REASONS FOR CHILDREN CRIMINALITIES.

PSYCHOBIOLOGICAL ARGUES THAT THE CRIMINALS ARE BORN, SO IT CAN BE ARGUED THAT MARY WAS BORN WITH A CRIMINAL GENE IN HER CHROMOSOMES. WHAT SUPPORTS THIS ARGUE IS THAT SHE WAS A VERY YOUNG AND DANGEROUS CRIMINAL WHO:

EXHIBITED THE CLASSIC SYMPTOMS OF PSYCHOPATHOLOGY (OR SOCIOPATHOLOGY) BY HER LACK OF FEELING TOWARD OTHERS. "SHE SHOWED NO REMORSE WHATSOEVER, NO TEARS AND NO ANXIETY. SHE WAS COMPLETELY UNEMOTIONAL ABOUT THE WHOLE AFFAIR AND MERELY RESENTFUL AT HER DETENTION," REPORTED DR. ORTON. " I COULD SEE NO REAL CRIMINAL MOTIVATION." [SCOTT 2003, ONLINE]

IF THERE IS NO CRIMINAL MOTIVATION, IT CAN BE ARGUED ACCORDING TO PSYCHOBIOLOGICAL THEORY, THAT MARY IS NOT GUILTY FOR HER CRIMES; SHE IS BORN LIKE THIS.

BIOCHEMICAL THEORISTS ARGUE THAT LACK OF VITAMINS AND HORMONAL BALANCE LEADS TO CHILD AGGRESSION. THEY MAY ARGUE THAT MARY WAS NOT A HAPPY CHILD AT A REAL FAMILY SO HER DIET SHOULD BE BAD AND AFFECTS HER BEHAVIOUR. WHAT SUPPORTS THIS ARGUE IS THAT:

MARY'S BRIEF CHILDHOOD WAS A NIGHTMARE OF ABANDONMENT AND DRUG OVERDOSES. BETTY WAS ANXIOUS TO GET RID OF HER DAUGHTER—SHE WOULD DROP HER OFF WITH RELATIVES... WHEN SHE WAS ONE YEAR OLD, SHE NEARLY OVERDOSED AFTER TAKING SOME PILLS THAT WERE HIDDEN... [IBID]

DRUG OVERDOSES IS DANGEROUS FOR EVERYBODY, AND WHAT ABOUT SMALL CHILDREN:

OVERDOSES, PARTICULARLY FOR A DEVELOPING CHILD, CAN CAUSE SERIOUS BRAIN DAMAGE, A COMMON TRAIT AMONG VIOLENT OFFENDERS. [IBID]
SO, IN MARY'S CASE IT CAN BE ARGUED, ACCORDING TO BIOCHEMICAL THEORY THAT HER DRUG OVERDOSES LEADED TO HER CRIMINAL BEHAVIOUR.

HOWEVER ANOTHER SCHOOL OF PSYCHOLOGY, PSYCHOANALYTIC THEORY LOOKS AT THE ISSUE FROM ANOTHER POINT OF VIEW. THEY MAY ARGUE THAT EARLY CHILDHOOD EXPERIENCES ARE DECIDING ON THE BEHAVIOUR OF THE CHILD I.E. PLEASURE PRINCIPLE.
IF THE EARLY PLEASURES OF A CHILD ARE NOT SATISFIED, THE CHILD REMAINS IN NEED FOR ITS UNSATISFIED DESIRES, SO BECOMES A CRIMINAL.

MARY HAD EXPERIENCED A VERY ABUSIVE CHILDHOOD. SHE WAS SUBJECT TO BEATING, HUMILIATING AND THE WORTH OF ALL SEXUAL ABUSE AS A CHILD, AS SCOTT SAYS:

PERHAPS THE GREATEST TRAGEDY, IF TRUE, ARE BETTY'S USE OF MARY DURING HER PROSTITUTION. IN WHAT SHE CALLS " ONE OF THE WORST CASES OF CHILD SEXUAL ABUSE I HAVE EVER ENCOUNTERED," SERENY RECOUNTS THE HORRORS THAT MARY HAD TO ENDURE AS HER MOTHER'S SEXUAL PROP. [IBID]

MARY'S MOTHER, BETTY WAS A PROSTITUTE AND HER SO-CALLED UNCLE WAS A THIEF. HER BIOLOGICAL FATHER IS UNKNOWN. FROM THE VERY DAY SHE COMES TO THIS WORLD SHE WAS AN UNWANTED CHILD. " TAKE THAT THING AWAY FROM ME" THAT'S THE WAY HER MOTHER WELCOMED HER. [IBID]

MARY WAS ALWAYS AFRAID OF HER MOTHER, SHE DID NOT TALK ABOUT HER CHILDHOOD SUFFERINGS UNTIL SHE BECAME AN ADULT; SCOTT'S DESCRIPTION OF MARY'S RELATION WITH HER MOTHER IS A GOOD EXAMPLE:

WHEN A MOTHER IS A SOURCE OF FEAR FOR A CHILD, SOME COPE BY DEVELOPING PROTECTIVE MECHANISMS AGAINST THE OUTSIDE WORLD, WHICH, FOR THE DEVELOPING SOCIOPATH, IS A CONSTANT THREAT. [IBID]

IN AN INTERESTING STUDY ABOUT PSYCHOANALYSIS THEORY OF CHILDREN GROSS (2001) POINTED OUT THAT:

ONE SUGGESTION FREUD MADE WAS THAT THE GIRL MAY FEAR LOSS OF THE MOTHER'S LOVE. TO KEEP THE MOTHER 'ALIVE' INSIDE HER, SHE INTERNALISES HER, BECOMING THE 'GOOD' CHILD THAT HER MOTHER WOULD WANT HER TO BE. [2001: 508]

IT CAN BE ARGUED THAT FOR THIS REASON MARY BECAME HER MOTHER'S 'SEXUAL PRONE' WITHOUT TELLING ANYBODY ABOUT HER SUFFERINGS.

MARY SUFFERED FROM MATERNAL DEPRIVATION, SO IT CAN BE ARGUED THAT THE WAY HER MOTHER TREATED HER LEADS HER TO CRIMINALITY. HER MOTHER, BETTY WANTED TO GET RID OF HER, SHE LEFT HER WITH RELATIVES AND AT THE AGE OF THREE, WHICH IS VERY SENSITIVE FOR MATERNAL DEPRIVATION:

BETTY BROUGHT MARY TO AN ADOPTION AGENCY, GIVING HER TO A DISTRAUGHT WOMAN WHO WASN'T ALLOWED TO ADOPT AS SHE WAS MOVING TO AUSTRALIA. " I BROUGHT THIS ONE IN TO BE ADOPTED. YOU HAVE HER," BETTY BELL SAID, LEAVING MARY WITH THE STRANGER. HER SISTER ISA HAD FOLLOWED BETTY, AND SOON FOUND THE WOMAN, WHO HAD ALREADY BOUGHT NEW DRESSES FOR MARY. [SCOTT 2003 ONLINE]

FROM ANOTHER SIDE, THE LEARNING THEORY BELIEVERS MAY ARGUE THAT SHE LEARNED HER CRIMINAL BEHAVIOUR THROUGH HER ENVIRONMENT, A PROSTITUTE MOTHER AND A THIEF SO CALLED FATHER, IS A PLACE FOR COPING CRIMINALITY. HER CONTINUOUS RELATIONSHIP WITH HER MOTHER DESPITE ALL OF HER SUFFERINGS, COULD BE COUNTED AS A GOOD EXAMPLE OF LEARNING CRIMINAL BEHAVIOUR, AS SCOTT EXPLAINS:

BOTH SERENY AND MARY ARE QUICK TO DEMONIZE BETTY BELL AS A MOTHER, AND ELEVATE MARY IN THE ROLE OF MOTHER REDEEMED. BUT SOMETHING DOES NOT SIT RIGHT WITH THIS SIMPLE REVERSAL. MARY DISPLAYS TOO MUCH OF THE "DRAMA QUEEN" FLAIR SHE PICKED UP FROM HER MOTHER, AND WE MUST WONDER HOW SUCCESSFUL SHE HAS BEEN AT PURGING BETTY BELL FROM HER PSYCHE. [IBID]

CONCLUSION

Mary Bell has so many reasons for crime that it can be argued that most of the reasons of criminal behaviour set by theories of crime and psychology collected in that child. As always Scott describes her:

Mary's abusive mother, her genetic wild-card of a father, and physical damage likely incurred by the repetitive drug overdoses all contributed to her sociopathology. Her inability to bond with others in a loving manner was twisted into a bonding process based on violent aggression. Mary responded to others based on how she herself had been treated. [Ibid]

Scott further goes on with her views about Mary by saying:

Of course, not all children raised in abusive situations become sociopaths. Genetic factors and neurological damage also play a role. If a child is subjected to all of these conditions, the forecast can be deadly. [Ibid]

The forecast for Mary was so deadly that it can be argued, if they did not stop her in that position, she would commit many other similar crimes.

Mary released from prison at the age of 23, she became a mother of a child in 1984. The question remains is that: either Mary is liable to become a mother and a normal free person after all she did to the two children? Scott's response to that is:

Somehow, Mary Bell had made a transition, without appropriate psychiatric treatment, from a child killer to loving mother. Her years in reform school and prison yielded sexual abuse and drug addiction, yet she claims to have a new moral consciousness and deep sorrow for her crimes.
Could this be possible? Can we believe? [Ibid]

Mary Bell home 23 years

Mary Bell as an Adult

[SCOTT 2001 ONLINE]

TASK TWO

CRIMINAL GENES

BETWEEN MYTH AND REALITY

DOES A CRIMINAL GENE EXIST?

INTRODUCTION

LOOKING FOR A BIOLOGICAL SOURCE OR REASON FOR CRIME IS NOT NEW; IT IS EVEN VERY OLD AS JIM WILSON SAYS:
IT IS A QUESTION AS OLD AS CAIN AND ABEL: ARE SOME KIDS SIMPLY BORN BAD? [WILSON, J. 2002]

LOMBROSO'S IDEAS MAY NOT FIND A GOOD MARKET NOWADAYS BUT THE QUESTION OF A GENETIC REASON FOR CRIME REMAINS AND EVEN GETS MORE CONTROVERSIAL AND SUBJECT OF DEBATE IN RECENT YEARS.

WHY SOME PEOPLE COMMIT CRIME OTHERS NOT? WHY WE FIND MORE PEOPLE WITH GENETIC ABNORMALITIES AMONG PRISON POPULATIONS? WHAT IS THE REASON BEHIND THE DELINQUENCY OF YOUNG PEOPLE WHO WERE SUBJECT TO ABUSE DURING CHILDHOOD? THESE QUESTIONS AND OTHERS MAKE PEOPLE TO THINK ABOUT DIFFERENT MOTIVES BEHIND CRIMINALITY, GENETIC REASON MAY BE ONE OF THEM.

IF CRIMINALS ARE BORN CRIMINALS THEN OTHERS SHOULD NOT COMMIT CRIME! IF NOT, WHY SOME PEOPLE ARE AGGRESSIVE AND CRUEL FROM CHILDHOOD AND OTHERS ARE NOT?

CRIMINALS WERE LOOKED UPON AS BAD CREATURES AND EVEN WERE KILLED IN PUBLIC, BEFORE INVENTION OF THE NEW JUSTICE SYSTEMS AND PRISONS. THEY THOUGHT THAT BAD SOULS ARE PUSHING THEM FOR CRIME AND WE SHOULD MAKE THE SOCIETY FREE FROM THESE DEMONS AS SOON AS POSSIBLE. THEY EVEN THOUGHT, AS WILLIAMS SAYS:

THE ITALIAN PHYSICIAN LOMBROSO TRIES TO DRAW A LINE BETWEEN THE CRIMINALS AND NON-CRIMINALS BY DESCRIBING THEIR PHYSICAL FEATURES. HE EVEN ARGUES THAT CRIMINALS ARE OF DEFERENT GENETIC TYPE OF NON-CRIMINALS. [AINSWORTH: 2000]
THIS SHORT ESSAY TRIES TO EXAMINE THESE QUESTIONS IN ORDER TO FIND SOME ANSWERS FOR THEM.

CRIME WAS A SICKNESS OR ILLNESS WHICH AFFLICTED INDIVIDUAL CRIMINALS, AND WAS THE RESULT OF SOME BIOLOGICAL DISFUNCTION OR DISORDER. [WILLIAMS K., S. 2001, P. 139-140]

THE NEW SYSTEMS OF JUSTICE, PROBATION AND PRISONS DOES NOT PREVENT SCIENTISTS FROM LOOKING FOR A REASON FOR CRIMINALITY:

DURING RESEARCH BY BIOLOGISTS IN THE 1960S, A NUMBER OF GENETIC ABNORMALITIES WERE FOUND IN THE CELLS OF HUMANS. [AINSWORTH 2000, P. 65]

IT IS OBVIOUS THAT FEMALE CHROMOSOMES ARE XX AND MALE CHROMOSOMES ARE XY, BUT WHAT WERE STRANGE FOR THOSE BIOLOGISTS WERE MALES WITH AN EXTRA MALE CHROMOSOME THAT IS XYY.

MALES ARE TRADITIONALLY CONNECTED WITH VIOLENCE AND AGGRESSION, AND FINDING PEOPLE WITH DOUBLE MALE CHROMOSOMES MAY SUGGEST "TWICE AS VIOLENT AND AGGRESSIVE AS THE AVERAGE MALE," [IBID]

However it can be argued that violence and aggression are associated to the males by society more than genetically, as Williams explains in his study:

Differences of gender explain different socialisation of males and females. Because of their sexual difference, girls and boys had different capabilities and interests, which are channelled and developed through different training and education, which leads to differential behaviour. [Williams 2001,p. 500]

Finding males with XYY abnormal chromosomes, and finding a big number of them in prisons and mental health hospitals makes possible to argue that those people are criminals because they have criminal genes in their body. So those people are genetically born to become criminals. [Ainsworth 2000]

HOWEVER OTHERS MAY ARGUE THAT THOSE PEOPLE WITH GENETIC ABNORMALITY ARE NOT CRIMINALS BY NATURE, BUT THEIR ABNORMALITY MAY DRIVES THEM IN TO AGGRESSION AND VIOLENCE. [IBID]

THOSE WHO ARGUE THAT A CRIMINAL GENE EXISTS DEPEND ON SOME STUDIES OF TWINS; THERE ARE TWO TYPES OF TWINS DZ AND MZ. THE MZ TWINS HAVE THE SAME CHROMOSOMES AND THE SAME GENETIC COMPONENT, SO THEY SHOULD BE THE SAME FOR CRIMINALITY:

LANGE (1931) FOUND THAT FOR MZ TWINS THE CONCORDANCE RATE FOR CRIMINALITY WAS 77, WHILE FOR DZ TWINS IT WAS ONLY TWELVE. CHRISTIANSEN (1997) FOUND THAT THE CONCORDANCE RATE FOR MZ TWINS WAS 60, WHILE THAT FOR DZ WAS ONLY 30. [IBID. P.68]

These differences between MZ and DZ concordance to criminality may suggest that crime has a genetic reason. At the same time it can be argued that the twins have the same environmental condition as Ainsworth suggests:

Most of the twins who have been studied will have been raised in the same home and thus been subject to the same environmental conditions. If they behave similarly in later life, it may therefore be impossible to disentangle the genetic effect from the environment. [Ibid, P. 69]

Even the studies on adopted children cannot bring the exact result because most adoptions are inside the same society and environment:

Children put up for adoption may each end up in very similar family circumstances and as such share similar social experiences. [Ainsworth, 2000, p. 70]

THE ROLE OF BIOLOGICAL INFLUENCE ON HUMAN BEINGS CANNOT BE NEGLECTED, ALTHOUGH THESE INFLUENCES ARE NOT EVERYTHING FOR PRODUCING A CRIMINAL STEREOTYPE, AS MITCHELL& BLAIR MENTIONED IT IN:

BIOLOGICAL MAKE-UP DETERMINES WHETHER INDIVIDUALS SHOW EMOTIONAL DIFFICULTIES. BUT THESE EMOTIONAL FACTORS ARE ONLY RISK FACTORS: AN ADVERSE SOCIAL ENVIRONMENT PROVIDES THE CONDITIONS NEEDED FOR THE DISORDER TO DEVELOP. [MITCHELL& BLAIR, 2000] CITED IN [GROSS, 2001 P. 689]

AGGRESSION IS NOT NECESSARILY CRIME; IT CAN BE USED FOR THE GOOD PURPOSES. SO IT CAN BE ARGUED THAT IF ANYWAY THE XYY GENE IS LEADING TO VIOLENCE AND AGGRESSION IN MALES, IT CAN BE EXPLOITED FOR THE GOOD, AS HOLLIN SAYS:

IF THE AGGRESSIVE BEHAVIOUR CAN TAKE THE FORM OF NON –DESTRUCTIVE AND SOCIALLY ACCEPTABLE ACTS, THEN THE PROBABILITY OF VIOLENCE IS CORRESPONDINGLY REDUCED. [HOLLIN, 2002 P.64]

HOWEVER, WILLIAMS FURTHER CONFIRM THE INFLUENCE OF THE GENES ON OUR BEHAVIOUR IN HIS STUDY ON CRIMINOLOGY, WHEN HE SAYS:

Modern biologists consider that genes are relevant because they have a strong influence on brain function and therefore, it is believed, on behaviour and criminality. [Williams, 2001 p.139]

At the same time he does not let this influence to be misused or become a straight line between criminals and non-criminals, as he remarks:

Science should be allowed to seek for truth and leave it to the politician and moral philosophers to decide how to deal with results. [Ibid]

As it is mentioned that males with XYY chromosomes are found in the population of prisons more than normal males with XY, Williams find out that this is not necessarily means that they are dangerous:

Although a high proportion of XYY men had committed crimes, they were mostly petty property offences, and such individuals were no more likely to commit dangerous crimes than normal XY males. [Ibid-p. 147]

CONCLUSION

Crime is a very complex issue to debate about it; it can be argued that there is an abnormal chromosome, that chromosome may lead some people to be more aggressive or mentally immature from others. But this is not necessarily an excuse for other criminals with normal chromosome to say we are not criminals. At the same time it is not a good excuse for serious criminals at court to say: “do not blame us blame our genes”. Williams further explains this matter when he says:

There is now some agreement that chromosome abnormality and criminality are not closely related, and, more significantly if general explanations are wanted, the incidence of XXY an XYY males is so rare as to be of little practical significance. [Ibid]

Whatever reasons we mention for violence and criminal behaviour it may be not sufficient for drawing a straight line between criminals and non criminals, it is also harmful to label people from birth for being criminal or not.

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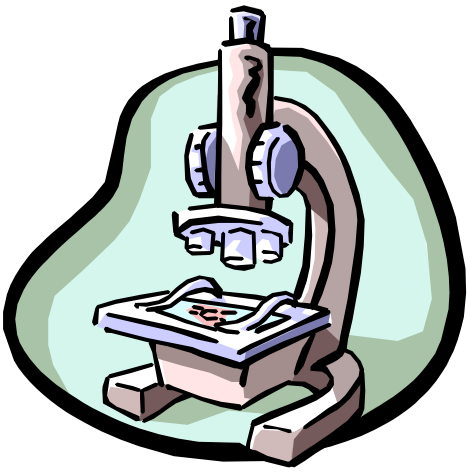

HNC CRIMINOLOGY
YEAR 1
SCHOOL OF SOCIAL SCIENCES
THE EAST LANCASHIRE INSTITUTE OF HIGHER EDUCATION
2003-2004

PSYCHOLOGY OF CRIME
2ND ASSIGNMENT
CRIMINAL EVIDENCE

IS PETER SKINNER GUILTY OF AN OFFENCE OR FRANK KAY IS MISTAKEN IN HIS IDENTIFICATION?

ATA K. ARIF
HNC CRIMINOLOGY
MARCH 2004

INTRODUCTION

THE DEFENDANT PETER SKINNER IS CHARGED WITH S. 18 OF OFFENCES AGAINST THE PERSON ACT 1861. FRANK KAY WAS HIT FROM BEHIND IN CHASERS NIGHTCLUB AT 1AM ON SATURDAY 21ST FEBRUARY 2004. PC ENFIELD QUESTIONED SKINNER IN RELATION TO THE ABOVE ATTACK AND ARRESTED HIM. THE POLICE ARGUED THAT BECAUSE THEY KNOW SKINNER AND THERE WERE SOME CUTS ON HIS HANDS, HE SHOULD BE THE ATTACKER. KAY ALSO IDENTIFIED HIM IN A PARADE AS HIS ASSAULTER EIGHT HOURS LATER.

SKINNER HAS SAID BEFORE THE COURT THAT HE IS NOT GUILTY, AND ARGUED THAT KAY IS MISTAKEN IN HIS IDENTIFICATION. CAN THIS BE TRUE? DID KAY WAS MISTAKEN IN IDENTIFYING HIM IN A PARADE HELD BY POLICE? WHY THERE WERE CUTS ON HIS HANDS? DID KAY SAW HIS ATTACKER'S FACE THAT NIGHT? DID THE POLICE HAVE ANY FURTHER EVIDENCES OF PROOF AGAINST HIM?

THE AIM OF THIS REPORT IS TO FIND OUT THE POSSIBLE ADVISES ON THE ISSUES RELATING TO EVIDENCE AND IDENTIFICATION THAT COULD ARISE AT TRIAL.

1.VISUAL IDENTIFICATIONS

1.1 VISUAL IDENTIFICATION IS A CONTROVERSIAL AREA IN CRIMINAL CASES, SINCE ANY SINGLE WITNESS OR GROUP OF WITNESSES MAY MISTAKE IN IDENTIFYING PEOPLE. IN THIS SPECIFIC CASE THE JUDGE HAS TO PAY FURTHER ATTENTION TO 'TURNBULL GUIDELINES' CONCERNING WITNESSES AND IDENTIFICATIONS OF THE ACCUSED. COURTS HAVE TO FOLLOW TURNBULL GUIDELINES IN THE:

CASES WHERE SOME MISCARRIAGES OF JUSTICE APPEARS TO HAVE OCCURRED BECAUSE OF MISTAKEN EVIDENCE OF IDENTIFICATION. [MURPHY, 2000: 490]

HOWEVER IT SHOULD BE KEPT IN MIND THAT TURNBULL IS NOT A STATUTE, AS DENNIS SAID:

> It is worth repeating that Turnbull is not a statute, and the guidelines should not be applied as if they were legislative provisions. This means that there is not set formula of words which must be recited to the jury. The purpose of the guidelines is to ensure that the judge educates the jury about

dangers of which they might not otherwise be aware. [Dennis, 2002:244]

This Issue is aroused in the case of **Regina v Dietschmann (2003)** when the House of Lords warns of the dangers of following the Turnbull Guidelines as it is. [See Appendix 4]

1.2 WHEN A CASE DEPENDS COMPLETELY OR LARGELY ON THE CORRECTNESS OF THE IDENTIFICATIONS, AS IN THE PRESENT CASE, THESE GUIDELINES SHOULD BE FOLLOWED, AND
" FAILURE TO FOLLOW THEM IS LIKELY TO LEAD TO A CONVICTION BEING QUASHED." [MURPHY, 2000:490] AS IN DENRICK ELLIOTT, R V. [1997] (SEE APPENDIX 3)

1.3 HOLDING A PARADE BY THE POLICE FOR THE IDENTIFICATION OF THE ACCUSED IS CLARIFIED IN THE POLICE AND CRIMINAL EVIDENCE ACT 1984- CODE D [SEE APPENDIX 1 -C]. THE POLICE HAD FOLLOWED THAT PACE IN THIS CASE, IN RELATION TO PARADES, AND MENTIONED THAT KAY HAD IDENTIFIED SKINNER AS HIS ATTACKER. [SEE APPENDIX 1 –A]

1.4 POLICE HAVE CHARGED SKINNER AS THE DEFENDANT IN THIS CASE BECAUSE FIRST, THEY ARGUE THAT THEY KNOW HIM, SECONDLY THEY TOOK THE CUTS ON HIS HANDS AS EVIDENCE, AND THIRDLY IN THE IDENTIFICATION PARADE KAY IDENTIFIES HIM AS THE ASSAILANT. HOWEVER ANY PERSON MAY MAKE A MISTAKE IN SUCH A CASE, AS DENNIS SAID:

It is essential that the judge brings out the point that mistakes can be made by honest witnesses, even apparently convincing ones. [Dennis, 2002; 244]

2. THE RESPONSIBILITY OF THE JUDGE TURNBULL GUIDELINES

2.1 ACCORDING TO TURNBULL GUIDELINES THE JUDGE SHOULD WARN THE JURY THAT THEY HAVE TO BE CAREFUL IN CONVICTING ANYONE ON THE BASES OF CORRECTNESS OF THE IDENTIFICATION EVIDENCE, AS IN THAT PROCESS ERRORS MAY ALWAYS HAPPEN. [SEE APPENDIX 2- B] IN THIS CASE THE JURY SHOULD CHECK THAT THE POLICE ARE NOT MISTAKEN IN IDENTIFYING SKINNER AS THE MAIN SUSPECT. THE HUMAN MEMORY IS LIMITED AND HUMAN BEINGS HAVE MANY FEATURES IN COMMON; SO EVERYBODY IS SUBJECT TO MISTAKE IN THESE MATTERS, AS LORD TAYLOR SAID:

The recognition type of identification … [cannot] be treated as straightforward or trouble-free … Each of us, and no doubt everyone sitting in this court, has had the experience of seeing someone in the street whom we know, only to discover later that it was not that person at all. [Lord Taylor C. J. (1994) 99 Cr.App.R344. Cited in Dennis, 2002: 241-242]

2.2 The judge, according to Turnbull, should warn the jury that they have to pay attention to "some sort of corroboration or additional evidence" [see appendix 2- C]. In this case the police's recognition of the accused is very weak because there is no any forensic evidence to support it, as directed by Pace code D [see appendix 1- B]. The police did not mention any link between the cuts on Skinner's hands and the wounds resulted from the attack. From another hand, Skinner's mere presence in the nightclub at that time is a very weak and unsupported evidence for his accusation.

2.3 The jury should look at the circumstances where the attack has happened: the place was a nightclub and those places are usually partly dark and only lit by the disco lights. The plaintiff was hit from behind; he had not any opportunity to see the attacker's face and regained consciousness

ten minutes later in the hospital. The attack lasts for a short time and there are no other witnesses to give evidence on the attacker. In this case, it can be argued, that the evidences against the defendant are weak and may lead the judge to withdraw the case from the jury. [See appendix 2 - D]

2.4 THE PLAINTIFF HAS IDENTIFIED THE DEFENDANT IN A PARADE; HE MIGHT ARGUE THAT THIS WAS THE ABSOLUTE PROOF, HOWEVER THIS IDENTIFICATION SHOULD NOT PREVENT THE JURY FROM TAKING CAUTION, AS LORD GRIFFITHS SAID:

> The fact that an identifying witness has picked out the accused at an identification parade in no way obviates the need for a warning of the danger that his evidence may be mistaken. [Lord Griffiths, 1989: 1261]

2.5 THERE IS NO ANY EVIDENCE THAT KAY HAD KNOWN SKINNER BEFORE, OR EVEN SAW HIM WHEN HE WAS ATTACKED, SO IT CAN BE ARGUED THAT HIS PARADE IDENTIFICATION HAS NO STRONG GROUNDS OF PROOF OR MIGHT EVEN HAPPENED UNINTENTIONALLY.

CONCLUSION

THE EVIDENCES AGAINST SKINNER CAN BE SUMMARIZED AS FOLLOWS: FIRST, THE POLICE CAN MAKE MISTAKES AS ANYBODY ELSE IN RECOGNIZING PEOPLE, AND EVEN IF THEY WERE RIGHT, HIS PRESENCE AT THE SCENE IS NOT ENOUGH EVIDENCE IF NOT SUPPORTED BY OTHER EVIDENCES SUCH AS FORENSIC EVIDENCE, AS THERE IS NO ANY FURTHER CONFIRMATION ABOUT THE CUTS ON HIS HANDS WHICH WAS CLAIMED AS GOOD EVIDENCE OF SUSPICION IN THE FIRST PLACE; THIS MEANS THEY WERE TRIVIAL. SECONDLY, THE ATTACK AS IN TURNBULL- [SEE APPENDIX 2 -D] WAS ALL OVER IN FEW MINUTES. THIRDLY, THE PLACE WHERE THE ACCIDENT TOOK PLACE WAS PARTLY DARK, AS IT WAS A NIGHTCLUB. FOURTHLY, KAY WAS HIT FROM BEHIND AND DID NOT SAW THE FACE OF THE ATTACKER. FIFTHLY, HE BECAME UNCONSCIOUS FOR TEN MINUTES, SO HE COULD NOT REMEMBER MUCH ABOUT THE ATTACK. FINALLY, KAY'S IDENTIFICATION OF SKINNER IN THE PARADE COULD NOT BE RELIED ON AS THE UNCONDITIONAL PROOF.

BY CONSIDERING ALL THE WEAKNESSES MENTIONED ABOVE, IT CAN BE ARGUED, THAT THE JUDGE:

SHOULD WITHDRAW THE CASE FROM THE JURY AND DIRECT AN ACQUITTAL UNLESS THERE IS OTHER EVIDENCE WHICH GOES TO SUPPORT THE CORRECTNESS OF THE IDENTIFICATION. [DENNIS, 2002:240]

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APPENDIX 1

POLICE AND CRIMINAL EVIDENCE ACT 1984 CODE D

A_ 1.1 THIS CODE OF PRACTICE CONCERNS THE PRINCIPAL METHODS USED BY POLICE TO IDENTIFY PEOPLE IN CONNECTION WITH THE INVESTIGATION OF OFFENCES AND THE KEEPING OF ACCURATE AND RELIABLE CRIMINAL RECORDS.

1.2 IDENTIFICATION BY WITNESSES ARISES, E.G., IF THE OFFENDER IS SEEN COMMITTING THE CRIME AND A WITNESS IS GIVEN AN OPPORTUNITY TO IDENTIFY THE SUSPECT IN A VIDEO IDENTIFICATION, IDENTIFICATION PARADE OR SIMILAR PROCEDURE. [P. 124]

B_ 6.2 PACE, SECTION 62, PROVIDES THAT INTIMATE SAMPLES MAY BE TAKEN UNDER:

(A) SECTION 62(1), FROM A PERSON IN POLICE DETENTION ONLY:

(I) IF A POLICE OFFICER OF INSPECTOR RANK OR ABOVE HAS REASONABLE GROUNDS TO BELIEVE SUCH AS IMPRESSION OR SAMPLE WILL TEND TO CONFIRM OR DISPROVE THE SUSPECT'S INVOLVEMENT IN A RECORDABLE OFFENCE, SEE NOTE 4A, AND GIVES AUTHORISATION FOR A SAMPLE TO BE TAKEN; AND

(II) WITH THE SUSPECT'S WRITTEN CONSENT. [P. 151]

C_ ANNEX B – IDENTIFICATION PARADES

(A) GENERAL

2. AN IDENTIFICATION PARADE MAY TAKE PLACE EITHER IN A NORMAL ROOM OR ONE EQUIPPED WITH A SCREEN PERMITTING WITNESSES TO SEE MEMBERS OF THE IDENTIFICATION PARADE WITHOUT BEING SEEN. THE PROCEDURES FOR THE COMPOSITION AND CONDUCT OF THE IDENTIFICATION PARADE ARE THE SAME IN BOTH CASES, SUBJECT TO PARAGRAPH 8 (EXCEPT THAT AN IDENTIFICATION PARADE INVOLVING A SCREEN MAY TAKE PLACE ONLY WHEN THE SUSPECT'S SOLICITOR, FRIEND OR APPROPRIATE ADULT IS PRESENT OR THE IDENTIFICATION PARADE IS RECORDED ON VIDEO). [P. 158]

APPENDIX 2

R V TURNBULL (1977) QB

A_ WHENEVER THE CASE AGAINST AN ACCUSED DEPENDS WHOLLY OR SUBSTANTIALLY ON THE CORRECTNESS OF ONE OR MORE IDENTIFICATIONS OF THE ACCUSED WHICH THE DEFENCE ALLEGES TO BE MISTAKEN, THE JUDGE SHOULD WARN THE JURY OF THE SPECIAL NEED FOR CAUTION BEFORE CONVICTING THE ACCUSED IN RELIANCE ON THE CORRECTNESS OF THE IDENTIFICATION OR IDENTIFICATIONS. [P. 228]

B_ Recognition may be more reliable than identification of a stranger; but even when the witness is purporting to recognize someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made.

All these matters go to the quality of the identification evidence. If the quality is good and remains good at the close of the accused's case.

The danger of a mistaken identification is lessened, but the poorer the quality, the greater the danger. [P.228-229]

C_ IT IS RELEVANT IN VIEW OF THE "FLEETING GLIMPSE" TO KNOW HOW WELL THE POLICE CONSTABLE KNEW TURNBULL. IN THE ABSENCE OF SOME SORT OF CORROBORATION OR ADDITIONAL EVIDENCE THE CONVICTION SHOULD NOT STAND. CORROBORATION MEANS ADDITIONAL EVIDENCE OR EXCEPTIONAL CIRCUMSTANCES. HERE THERE IS NO FORENSIC EVIDENCE CONNECTING THE APPELLANTS WITH THE CRIME. [P. 226]

D_ FIRST, THE IDENTIFYING WITNESS DID NOT CLAIM TO HAVE KNOWN THE ASSAILANT BEFORE THE ATTACK. SECONDLY, THAT THE ATTACK WAS ALL OVER IN A FEW MOMENTS. THIRDLY, THAT THE PLACE WHERE THE ATTACK TOOK PLACE WAS DARK, LIT ONLY BY FLASHING LIGHTS OF THE KIND POPULAR IN DANCE HALLS. FOURTHLY, THAT THE APPELLANT'S CONDUCT AFTER HE HAD BEEN ACCUSED WAS CONSISTENT WITH THE HONESTY OF HIS DENIAL AND THAT IN PARTICULAR HE DID NOT DENY THAT HE MIGHT HAVE BEEN AT THE DANCE HALL ON THE EVENING IN QUESTION OR SEEK TO SET UP AN ALIBI. [P. 235]

APPENDIX 3

DENRICK ELLIOTT, R V. [1997] EWCA CRIM 3419 (22ND DECEMBER, 1997)

GROUND 1: FAILURE TO GIVE A FULL AND PROPER "**TURNBULL**" DIRECTION.

In relation to the question of identification, the Judge gave a brief "**Turnbull**" direction in the following terms:

"A substantial part of the Crown's case against Elliot rests on the identification of him by Ukeme as one of the two who attacked and stabbed him on 16th December and by Ubong as the stabber on the 18th.

As Mr Kershen told you yesterday, it is vital that you should consider all the evidence, of course, with care. However, it is especially vital that you should do so when it involves identification because mistakes can be made and have been made and because witnesses can be mistaken and thoroughly honest witnesses can be mistaken and, of course, an honest though mistaken witness can be a very convincing one.

Therefore, it is particularly important that you should be extremely careful and consider all the circumstances in which those two identifications were made and in each case. Firstly, at the party, or rather outside the party, in the car park and, secondly, at Vauxhall Cross."

Appendix 4

Lord Hutton, Judgments - Regina v Dietschmann (2003)(Appellant) (on appeal from the Court of Appeal (Criminal Division)

25. In *R v Gittens* [1984] QB 698, in a reserved judgment, the Court of Appeal expressly approved the direction given in *Fenton* and made it clear that the direction given in ***Turnbull*** *(Launcelot)* should not be followed in the future. They said, at p 703:

"Even assuming that the direction approved in *Reg v* ***Turnbull*** *(Launcelot)* taken as a whole was correct, we consider that it is not a direction which should in future be copied, for reasons which are apparent."

In *Gittens* the appellant's marriage had been unhappy for some time as he suffered from depression for which he had sought and received medical treatment and on one occasion he had attempted to hang himself. On a visit home from hospital he consumed a quantity of alcohol and also took some of the pills which had been prescribed for him whilst his wife was out. On her return he and his wife had a violent argument and he killed her with a hammer. He then hit his step-daughter, raped her and tried to strangle her and she subsequently died. The reason he gave for the attack on the step-daughter was that he thought that it was his wife he was seeing. He was convicted on the two counts of murder.

MARXISTS AND CRIMINOLOGY

HOW MARXISTS ANALYSE CRIME?

THE MARXIST APPROACH TO CRIME BASED ON THE VIEW THAT AS LONG AS SOCIETY IS DIVIDED INTO TWO CONFLICTING CLASSES: PROLETARIAT AND BOURGEOISIE, CRIME IS A DIRECT RESULT OF THAT UNJUST AND UNEQUAL FORM OF SOCIAL STRUCTURE. SO THE ONLY SOLUTION FOR THE PROBLEM OF CRIME, MARXISTS ARGUE, IS A VIOLENT REVOLUTION TO OVERTHROW CAPITALISM AND BUILD SOCIALISM ON ITS REMAINDER.

MARXISTS ARGUE THAT CRIME IS A SMALL PART OF ALL THE PROBLEMS CREATED BY THE CONFLICT BETWEEN THE CLASSES, AND ONLY IN A SOCIETY WHERE THERE ARE NOT ANY CLASSES I.E. SOCIALISM, YOU CAN ERADICATE CRIME. IN THAT SOCIETY THERE WILL NOT BE ANY POOR WORKING CLASS PEOPLE, WHO ARE OBLIGED TO COMMIT CRIME, AS THEY ARGUE, AS A RESULT OF THEIR SOCIAL AND ECONOMICAL CONDITION.

MANY CRITICISMS AROSE ABOUT THE TRADITIONAL MARXIST CRIMINOLOGISTS' APPROACH TO CRIME WITHIN THE MARXISTS: IN THE FORM OF NEO-MARXISTS, NEW CRIMINOLOGY, AND LEFT REALISTS; THE LEFT REALISTS ARE CONCENTRATING ON THE REFORMS WITHIN CAPITALISM, NOT A BLOODY REVOLUTION. THE FUNCTIONALISTS AND SUB-CULTURAL VIEWERS ARE ALSO CRITICIZING THE MARXIST APPROACH TO CRIME, BECAUSE THEY ARGUE THAT MARXISTS CANNOT ANSWER THE QUESTION OF CRIME.

KARL MARX (1818-1883) AND FREDERICK ENGELS (1820-1895) THE FOUNDERS OF MARXISM THOUGHT THAT CRIME, SAME AS ALL OTHER PROBLEMS OF HUMAN SOCIETY, IS A DIRECT RESULT OF THE UNJUST STRUCTURE OF CAPITALISM. SO THEY DID NOT WROTE A LOT ABOUT CRIME IN PARTICULAR.

MARX ARGUES THAT THE INSTITUTIONS WITHIN SOCIETY SUCH AS LAW, FAMILY, RELIGION, POLITICS, AND MEDIA ARE TOOLS IN THE HANDS OF THE RULING CLASS, BOURGEOISIE. THE CAPITALISTS ARE EXPLOITING THE WORKING CLASSES, AND AS A RESULT OF THAT, THE POOR PEOPLE ARE DRIVEN INTO CRIME FOR

THEIR NEEDS OR AS AN OPPOSITION TO THE CURRENT SYSTEM. MARX (1867) WROTE ABOUT CRIMINALS ON PAGE 734 OF VOLUME ONE OF *CAPITAL* AS:

..At the same time, the proletariat could not suddenly adapt to the discipline of their new conditions, and so were turned into beggars, robbers, and vagabonds, partly from inclination, but in most cases from the stress of circumstances. [Cited Conflict Criminology, 2004 (online)]

THE CAPITALIST SYSTEM IS A CRIMINAL SYSTEM IN ITS NATURE, SO THERE IS NOT ANY SOLUTION, AS THEY ARGUE, EXCEPT A PROLETARIAT VIOLENT REVOLUTION, AS MOORE SAID:

CRIME IS SEEN AS A RESULT OF THE VERY NATURE OF CAPITALISM (THE CRISIS) AND THE NEED TO MAINTAIN LAW AND ORDER. THE POLICE ARE SEEN AS PROVOCATEURS, NOT AGENTS OF THE LAW RESPONDING TO OFFENCES COMMITTED AGAINST SOCIETY. [MOORE, 1996: 76]

CAPITALISM CONTROLS ALL THE GOVERNMENT AND SOCIAL INSTITUTIONS FOR ITS BENEFITS; LAW AND LAW ENFORCEMENT IS USED TO EXPLOIT THE WORKING CLASS, THEY ENFORCE THEIR OWN VALUES UPON THE REST OF THE POPULATION I.E. HEGEMONY, THROUGH THEIR CONTROL OVER THE EDUCATION SYSTEM, MASS MEDIA AND RELIGION. MOORE FURTHER EXPLAINS THIS MATTER BY SAYING:

ACCORDING TO THE MARXIST VIEW, ONE OF THE MAJOR MEANS BY WHICH THE RULING CLASS CONTROL PEOPLE IS TO MANIPULATE THE CULTURAL VALUES OF SOCIETY TO THEIR BENEFIT...IN MARXIST TERMINOLOGY, THE IMPOSITION OF THE RULING CLASS'S VALUES ON THE REST OF SOCIETY IS KNOWN AS HEGEMONY. [MOORE, 1996:88]

BONGER (1916) DEVELOPED THE SO-CALLED TRADITIONAL CRIMINOLOGY AS A THEORY; HE ARGUES THAT UNEMPLOYMENT, LOW WAGES, DEPRIVATION, AND ALIENATION WITHIN THE SOCIETY CAUSE CRIME. BONGER ARGUES THAT CAPITALISM IS BASED ON COMPETITION, ON GREED AND SELFISHNESS; THE POOR PEOPLE CANNOT GET WHAT THEY WANT SO THE ONLY WAY TOWARDS THEIR AIMS IS CRIME. ACCORDING TO HIM THEFT IS A REDISTRIBUTION OF INCOME, AND THE GENUINE CRIMINALS ARE THOSE WHO MANIPULATE THE WHOLE WEALTH OF THE SOCIETY IN THE HANDS OF A SMALL NUMBER OF PEOPLE.

CRIME, AS THE MARXISTS ARGUE, IS AN IMPORTANT MEAN FOR SUPPORTING THE IDEOLOGY OF CAPITALISM: BY CREATING MORAL PANICS ABOUT CERTAIN CRIMES OR CERTAIN GROUPS IN THE COMMUNITY THEY DIVERT THE PUBLIC ATTENTION FROM THE VERY EXPLOITING NATURE OF CAPITALISM. THEY CONCENTRATE ON THE NEED FOR LAW ENFORCEMENT AND STRONGER POLICING TO PROTECT PUBLIC FROM THOSE DANGERS, WHILE IN REALITY IS TO PROTECT THE CAPITALIST REGIME. WHAT IS GOING ON NOWADAYS IN THE TABLOID MEDIA AND WITHIN THE PUBLIC ABOUT THE ILLEGAL IMMIGRANTS AND ASYLUM SEEKERS, IT CAN BE ARGUED, THAT IS A GOOD EXAMPLE OF THIS. MARTIN BRIGHT DESCRIBES THE MORAL PANIC ABOUT THE ASYLUM SEEKERS, AS HE WRITES:

The report, 'Understanding the Stranger', also registers serious concern among asylum seekers that negative portrayal by politicians and the media can have a serious effect on local opinion and can lead them to fear for their physical safety...' Local people and asylum seekers are strangers to each other in many areas of England. Both groups are anxious about each other to the point of concern for their personal safety. This can result in a climate where myth and rumour can take root very quickly.' [Bright, 2004 (online)]

The traditional Marxists leave no any other ways to deal with crime except a violent revolution. What they expect as socialism is supposed to be the end of all the miseries of the masses, not only crime. The Communist Manifesto describes that stage as:

THE PROLETARIAT WILL USE ITS POLITICAL SUPREMACY TO WREST, BY DEGREE, ALL CAPITAL FROM THE BOURGEOISIE, TO CENTRALIZE ALL

INSTRUMENTS OF PRODUCTION IN THE HANDS OF THE STATE, I.E., OF THE PROLETARIAT ORGANIZED AS THE RULING CLASS. [MARX& ENGLES, 1848 (ONLINE)]

THE COMMUNIST MANIFESTO SEES SOCIALISM AS A SOCIETY FREE FROM: THE EXPLOITATION OF ONE PART OF SOCIETY BY THE OTHER.., WHICH CANNOT COMPLETELY VANISH EXCEPT, WITH THE TOTAL DISAPPEARANCE OF CLASS ANTAGONISMS. [IBID]

THESE TRADITIONAL VIEWS AND ONE-DIMENSIONAL ANALYSE OF CRIME PAVES THE WAY TO A NEW MARXIST CRIMINOLOGY, KNOWN AS NEW CRIMINOLOGY. THE NEW CRIMINOLOGY OR, RADICAL CRIMINOLOGY IS FORMULATED ON THE HANDS OF TAYLOR, WALTON AND YOUNG (1973). LIVESEY SAYS:

TAYLOR, WALTON AND YOUNG WANTED TO DEMONSTRATE THAT CONCEPTIONS OF CRIME AND LAW WERE BASED UPON THE **ABILITY OF POWERFUL CLASSES IN SOCIETY** TO **IMPOSE THEIR DEFINITIONS** OF **NORMALITY** AND **DEVIANCE** ON ALL OTHER SOCIAL CLASSES. [LIVESEY, 2004(ONLINE)]

THE WHITE-COLLAR CRIMES ARE CRIMES OF THE CLERKS, MANAGERS AND ADMINISTRATION BODIES IN THE COURSE OF THEIR OCCUPATION. THESE CRIMES ARE NOT EASY TO DEAL WITH, AND THE POLICE ALSO ARE NOT TAKING THEM SERIOUS AS THE WORKING CLASS CRIMES. THE POLICE ARE CONCENTRATING ON THE SO-CALLED STREET CRIME NOT THESE KINDS OF CRIMES, AS LIVESEY SAYS:

EXPERT KNOWLEDGE IS USED TO STEAL AND DEFRAUD FROM COMPANIES, SUCH AS NICK LEESON, BUT EXPERT KNOWLEDGE IS NEEDED TO UNCOVER THE CRIME AND BECAUSE POLICE FOCUS IS ON WORKING CLASS CRIME THEY DON'T POSSES THE NECESSARY KNOWLEDGE NEEDED. [IBID]

ANOTHER KIND OF CRIME IS CORPORATE CRIME, WHICH IS THE CRIME OF THE BIG COMPANIES IN ORDER TO GET MORE BENEFITS ON THE EXPENSE OF THE MASSES, ESPECIALLY THE POOR WORKING CLASSES. THE NEW OR RADICAL CRIMINOLOGISTS SEE THE CRIMES OF THOSE CAPITALISTS AND COMPANY OWNERS THE SAME AS A STREET THEFT OR MUGGING COMMITTED BY A WORKING CLASS YOUTH, AS LIVESEY SAYS:

CRIMINAL ACTIVITY SIMPLY REFLECTS DOMINANT CAPITALIST NORMS, SINCE A THIEF, FOR EXAMPLE, STEALS TO MAKE MONEY (HE OR SHE EXPLOITS THE PEOPLE FROM WHOM THEY STEAL). SIMILARLY, A CAPITALIST EXPLOITS HIS / HER WORKFORCE BY MAKING A PROFIT. CRIMINALS, THEREFORE, WANT THE SAME THINGS AS CAPITALISTS; THEY SIMPLY DON'T WANT TO PROVIDE ANYTHING IN EXCHANGE. [IBID]

THE MARXISTS SEE LAW AS AN INSTRUMENT IN THE HANDS OF THE POWERFUL TO EXPLOIT THE POOR, EVEN THEY ARGUE THAT LAW IS NOT FOR PREVENTING CRIME BUT IT IS A CAUSE OF CRIME, AS LIVESEY SAYS:

TAYLOR, WALTON AND YOUNG ARGUE, THE "**CAUSE OF CRIME IS THE LAW**". IN ORDER TO UNDERSTAND WHY PEOPLE COMMIT CRIMES WE HAVE TO FIRSTLY UNDERSTAND THE WAY CAPITALIST SOCIETIES ARE **STRUCTURALLY DIFFERENTIATED** IN TERMS OF **WEALTH** AND **POWER. [IBID]**

THE MARXISTS' DESCRIPTION OF LAW REACHES ITS EXTREMES AS LIVESEY SAYS:

"THE RADICAL CRIMINOLOGICAL ARGUMENT APPEARS TO BE THAT IF THERE WERE NO LAWS, THERE WOULD BE NO CRIME".

THE MARXISTS CANNOT GIVE SUFFICIENT EXPLANATIONS FOR NON-ECONOMICAL CRIMES SUCH AS RAPE AND SEXUAL ASSAULTS, ALTHOUGH MOST OF THE VICTIMS ARE FROM THE WORKING CLASSES.

HOWEVER, IT CAN BE ARGUED, THAT THE MARXISTS ARE EXAGGERATING IN THEIR BELIEVES CONCERNING LAW; NOT ALL LAWS ARE IN THE INTERESTS OF THE RICH AND POWERFUL PEOPLE ONLY, BUT THERE ARE MANY LAWS IN THE INTERESTS OF THE MAJORITY OF PEOPLE, AS MOORE SAYS:

NOT ALL LAWS, HOWEVER, ARE SEEN TO BE ENTIRELY FOR THE BENEFIT OF THE RULING CLASS. CLEARLY, MANY LAWS DO GENUINELY PROTECT ORDINARY PEOPLE- OBVIOUS ONES WOULD BE THE LAWS ON RAPE, DRUNKEN

DRIVING AND SAFETY AT WORK. GENUINE CONCESSIONS CAN BE GAINED EITHER WHEN THE INTERESTS OF THE POWERFUL AND OF ORDINARY PEOPLE OVERLAP OR WHEN REPRESENTATIVE PRESSURE GROUPS ARE ABLE TO PUSH THROUGH REFORMS IN THE INTERESTS OF THE WIDER POPULATION. [MOORE, 1996: 72-73]

THE FUNCTIONALISTS TALK ABOUT THE FUNCTIONS OF DIFFERENT INSTITUTIONS WITHIN COMMUNITY. THEY ARGUE THAT DIFFERENT ORGANS IN SOCIETY ARE JUST LIKE THE ORGANS OF BODY; IF THEY FUNCTION PROPERLY THE BODY IS HEALTHY, THE SAME IS TRUE FOR SOCIETY. HOWEVER THEY ARE DIFFERENT FROM THE MARXISTS BECAUSE THE MARXISTS ARGUE THAT THOSE FUNCTIONS ARE FOR THE INTERESTS OF THE RICH AND POWERFUL RULING CLASS. LIVESEY COMMENTS ON THIS MATTER BY SAYING:

WHEREAS FUNCTIONALISTS TALK ABOUT LAWS FUNCTIONING IN THE INTERESTS OF EVERYONE IN SOCIETY, RADICAL CRIMINOLOGISTS TALK ABOUT LAWS FUNCTIONING TO PROTECT THE BASIC INTERESTS OF A RULING CLASS. [LIVESEY, 2004 (ONLINE)]

THE FUNCTIONALISTS ARE CRITICIZING THE MARXISTS BECAUSE THEY ARGUE THAT THE MARXISTS ARE ALWAYS NEGATIVE ABOUT LAW; CAPITALISTS NEED LAW TO EXPLOIT THE WORKING CLASS, THEY ARGUE, SO LAW ALWAYS SUPPORTS CRIME, OR AS QUINNEY ARGUES IT IS ILLEGAL:

AS QUINNEY SAW THE LAW AS ILLEGITIMATE, HE ALSO SAW THE NEED TO OBEY THE LAW AS BEING QUESTIONABLE, AND CERTAINLY VIEWED CRIME AS A NATURAL CHOICE IN MANY INSTANCES. [WILLIAMS, 2001:451]

SUBCULTURES ARE THE CULTURES THAT ARE DIFFERENT FROM THE GENERAL NORMS AND CULTURE OF THE SOCIETY. MARXISTS ARGUE THAT THE YOUTH SUB-CULTURE IN CAPITALIST SOCIETY IS AN OPPOSITION TO THE UNJUST NATURE OF CAPITALISM; AS THE NORMS OF CAPITALISM IS THE DOMINANT CULTURE THE OTHER SUB-CULTURES ARE RECOGNISED AS CRIMINAL OR DEVIANT:

THE LAWS WOULD USUALLY REPRESENT THE RULES OR NORMS OF THE DOMINANT CULTURE. THE NORMS OF OTHER GROUPS MAY EVEN BE CRIMINAL UNDER THE LAW, SO THAT BY LIVING WITHIN THEIR SUBCULTURE'S RULES OF BEHAVIOUR, THEY MAY BE BREAKING THE CRIMINAL RULES OF THE DOMINANT CULTURE. [MOORE, 1996:439]

HOWEVER THE MARXISTS ARE CRITICIZED BECAUSE THEY CANNOT EXPLAIN OTHER GROUPS IN SOCIETY WHO MAY HAVE THEIR OWN SUB-CULTURES, SUCH AS WOMEN, AS MOORE SAYS:

FEMINIST WRITERS ARGUED THAT THE MARXIST SUBCULTURAL APPROACH IGNORED WOMEN. IN DEFENCE OF THE MARXIST SUBCULTURALISTS IT SHOULD BE POINTED OUT THAT THE OVERWHELMING BULK OF CRIMINAL ACTIVITY AMONG YOUTH IS COMMITTED BY MALES. [IBID, P. 91]

THE MARXISTS' SUBCULTURAL THEORY IS BASED ON THE YOUTH WORKING CLASS SUBCULTURES; THOSE YOUTHS SHOW THEIR OPPOSITION TO THE SOCIETY OR THE CAPITALIST SYSTEM, AS THE MARXISTS ARGUE, IN THE WAY THEY DRESS, THEIR LANGUAGE AS WELL AS SPECIAL MUSIC. ALTHOUGH THEIR OPPOSITION IS NOT A SERIOUS DANGER TO CAPITALISM, SO THEY ARE RECOGNIZED AS MAGICAL OPPOSITION.

HOWEVER, IT CAN BE ARGUED THAT THESE KINDS OF YOUTH SUBCULTURE MAY HAVE OTHER PSYCHOLOGICAL, PHYSICAL OR SOCIAL REASONS RELATING TO THE TRANSITIONAL PERIOD OF THEIR LIFE. MOORE ALSO THINKS THAT THE MARXIST APPROACH LACKS PRACTICALITY, AS HE SAYS:

THE MARXIST SUBCULTURAL APPROACH HAS ALSO BEEN CRITICIZED BECAUSE IT IMPLIES THAT THE SOCIOLOGIST ALWAYS KNOWS BEST. FOR EXAMPLE, THE YOUTHS THEMSELVES MAY WELL GIVE THEIR OWN EXPLANATIONS FOR THEIR BEHAVIOUR, BUT THE MARXIST SOCIOLOGISTS WOULD DISCOUNT THESE AND ARGUE THAT THE REAL, UNDERLYING REASON (OF WHICH THE YOUTHS ARE UNAWARE) IS RELATED TO ELEMENTS OF THE CLASS STRUGGLE. [IBID P.92]

THE MARXIST APPROACH IS ALSO CRITICIZED BECAUSE THEY ATTACK

ALL SOCIAL INSTITUTIONS, LAWS AND NORMS OF THE CAPITALIST SOCIETY, BUT THEY DO NOT OFFER SO MUCH AS AN ALTERNATIVE. THE SOCIALIST COUNTRIES WERE NOT SUCCESSFUL IN CREATING SOCIETIES AS IT WAS PROMISED IN THE MANIFESTO OF THE COMMUNIST PARTY. CRIME RATES WERE STILL HIGH IN THOSE COUNTRIES AND THE SO-CALLED WORKING CLASS STATE BECAME THE RULING CLASS AND EXPLOITER OF THE PEOPLE.

SOCIETIES, WHICH CALL THEMSELVES MARXIST, HAVE EQUAL CRIME RATE TO CAPITALIST ONES, YET IN MARXIST SOCIETY, THERE SHOULD BE NO CRIME. [REVISION- NOTES, 2003 (ONLINE)]

HOWEVER THE HISTORY DID NOT FOLLOW THE WAY, WHICH WAS EXPECTED BY MARX; CAPITALISM, IT CAN BE ARGUED, CHANGED ITS POLICY AND EVEN MIGHT TOOK ADVANTAGE FROM THE WRITINGS OF TRADITIONAL MARXISTS FOR ITS REFORMS. CAPITALISM PROVED TO BE CLEVERER THAN THEY EXPECTED IT. PEOPLE ACCEPTED THE SOCIETY AS IT IS AND GOT BUSY WITH ALL THE FINANCIAL AND BUSINESS MATTERS OF THE MODERN CAPITALISM, SUCH AS MORTGAGES, JOBS AND BANKING ACCOUNTS ETC...

FROM ANOTHER SIDE, THE SOCIETY IN OUR TIME IS NOT THE SAME SOCIETY THAT MARX AND ENGELS EXPERIENCED IT IN THE PAST, SO IT CAN BE ARGUED THAT WHAT THEY WROTE FOR THAT TIME IS NOT RELEVANT FOR TODAY. BURKE EVEN SAW THE NEW CRIMINOLOGY AS:

FROM THE STANDPOINT OF THE TWENTY-FIRST CENTURY, IT CAN BE SEEN TO BE UTOPIAN, REFLECTING THE OPTIMISTIC NATURE OF THE TIMES IN WHICH IT WAS WRITTEN; WHILE, THE GENERALITY OF THE WORK ITSELF MEANT THAT IT COULD OFFER VERY LITTLE TO SUBSTANTIVE THEORY AT ALL. [BURKE, 2002: 155]

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HNC CRIMINOLOGY
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ASSIGNMENTS 2&3

A CRITICAL ANALYSIS OF THE RELATIONSHIP BETWEEN ANTI-SOCIAL BEHAVIOUR AND HOUSING: CAUSES AND REMEDIES.



INTRODUCTION

The antisocial behaviour and juvenile nuisance are very common especially in the council

owned estates in Britain nowadays. The young people and children are involved in vandalism, drinking alcohol, taking drugs, truancy and much other bad behaviour.

Are the children simply bad, or the families do not take responsibility of their children? Single parenting is the reason or poverty? Unemployment is the reason or drug taking? The government agencies do not take action, or people do not respect the public services, on top of them all education.

As the problem looks to be far from the police control, the Crime and Disorder Act 1998:

> Prioritizes community consultation, partnership working and problem- solving as a strategy… the role of the police will be subjected to increased scrutiny and public debate and, moreover, that as a result the fundamental role of the police may undergo some alteration. [Hughes, et al., 2002: 112]

1. WHY THIS AREA BECOMES A 'PROBLEM AREA'?

Crime cannot be explained by studying the convicted offenders without looking for its causes. Many traditional theories of criminology thought that crime is related to the pathological criminals who cannot control their behaviour. However, they found out that crime is more common in the lower classes, but failed to identify the reasons behind it. [Croall, 1998: 58]

Young (1997) argues that crime cannot be understood perfectly without studying the offenders, victims, the public and the state and its institutions, as well as, the interrelationships between them. He explained his views in so called the square of crime, which contains: offender- victim- state and society. [Croall, 1998: 77]

A study carried out by Peter Lee, et al., found out that:

> Housing circumstances relate to and contribute to problems of social disadvantage more generally. Housing situations are not simply products of poverty but themselves contribute to the difficulties facing households and affect social integration. [Lee et al., 1995, (online)]

Wilson (1980) after carrying out a research in a deprived area found that Non-delinquents were sending their children to school regularly, they had rules for coming in at night and their movements in the streets were restricted, she argues that lack of care and control was related to unemployment, disability or poverty. [Croall, 1998: 73]

Unemployment leads to crime not only because of lack of money, but also in terms of providing more opportunity for committing crime. As Croall said:

> The unemployed are assumed to have more time and opportunity to commit crime- 'the devil makes mischief for idle hands'. As control theories might suggest, they are seen to have fewer constraints by having less to lose, thus work can be seen as a form of social control. [1998: 103]

However it can be argued that unemployment is not always the cause of crime, while the employed also committing crimes, Wells (1995) argues that according to his analyses crime affects those people whose position in the labour market is not stable or it is marginal. [Croall, 1998: 105]

David page found that truancy from school, leaving school before the age of 16 produces a generation who, " poorly qualified and skilled, with low levels of literacy. [Page, 2000 (online)] He also found out that:

Significantly, the very few jobless young people who were engaged in training, or were serious about their further education, mentioned the positive influence of their parents, especially their fathers. [Page, 2000 (online)]

The relationship between poor housing and being disadvantaged from one side and involvement in antisocial behaviour from the other side is identified in studies carried out by Lee et al., (1995). They realized that people in council houses are most disadvantaged than others, as they said:

Housing and housing policy are increasingly regarded as contributing to the processes which disadvantage people … In some cities deprived groups are more exclusively concentrated in council housing than in others. This suggests there is a need to be sensitive to these local differences, rather than to accept the national pattern as one which applies everywhere [Lee et al., 1995 (online)].

It can be argued that being in a disadvantaged neighbourhood is a problem in itself, because those areas have bad reputation and bad reputation mostly follows by labelling; labelling with crime and deviant is very effective on people, as Croall said:

People are labelled in many different situations but not all labels have such a profound effect as a deviant label. This is because deviance is a 'master status' which overshadows other aspects of identity. [1998: 61]

Lee et al., (1995) argued that on the study estates they found that most of the young people were jobless since they left school, those people have experienced troubled childhood and unstable families. Bad experiences in childhood because of family break-ups and low educational achievements, pave the way for social exclusion in later life. [Lee et al., 1995 (online)]

2.CRIME AND DISORDER ACT 1998

Section 1 of the Crime and Disorder Act 1998 (CDA1998) explains how the relevant authority of an area can make an application for an anti-social behaviour order dealing with individuals aged ten or over. The Act gives the relevant authority power to deal with antisocial behaviour and harassment or any other possible acts, which are likely to cause distress and fear in their area from persons aged ten or over. (See Appendix 1 section 1) So the Act recognizes children from the age of ten as criminally responsible persons.

Section 8 of the CDA1998 gives power to courts to make parenting orders. Parenting order is applied to cases dealing with parental responsibility for truancy, and child offending. (See Appendix1 section 8) Wilson & Ashton said:

Common sense tells us that, while the causes of youth crime are as broad and complex as the causes of all crime, education (or lack of it), plays a central role. [Wilson & Ashton, 1998: 66]

Section 11 of the Act is about child safety orders. According to child

safety orders a magistrates court may make an order for putting a child who is under the age of 10, and considered to be at risk or he is himself an offender, under the supervision of a responsible officer. The responsible officer for this purpose is a social worker, a probation officer, or a member of a youth offending team. (See Appendix1 section 11) This procedure is a good warning for families of children under the age of criminal responsibility, as Hughes et al. said:

It was also designed to draw children below the age of criminal responsibility into formal networks of social control. Much of this early intervention (as distinct from diversion) became justified through notions of 'child protection' or 'nipping crime in the bud'. [Hughes, et al., 2002: 146]

The local authorities can make curfews for children under the age of ten from 9 pm to 6 am in their area, if they believe it is necessary for the safety of the community. This power is mentioned under section 14 of the Act 'local child curfew schemes'. (See Appendix 1 section 14) Hughes et al. explain the achievements of the Act in a comprehensive way as they said:

One of the most radical initiatives of the Crime and Disorder Act 1998 is the availability of new orders and powers that can be made other than as a sentence following conviction. Child orders, local child curfews, antisocial behaviour orders and sex offender orders do not necessarily require either the prosecution or indeed the commission of a criminal offence. [Hughes, et al., 2002: 149-150]

Section 6 of the CDA1998 (See Appendix 1 section 6) puts responsibility on the relevant authorities of the area to implement a strategy for crime and disorder reduction in a given time. Blackburn and darwen Crime and Disorder Partnership: Crime and Disorder Audit (2002) P. 6 explains those responsible authorities and the cooperation between them. (See Appendix 2)

Section 16 of the act gives power to a police authority to remove children of the school age to special premises if they believed that they are out of school without a legal excuse. This procedure is called: Removal of truants to designated premises. (See Appendix 1 section 16)

Cooperation between different agencies is vital in order to regain the resident's esteem of the authorities, because one agency like police or council alone may make the situation even worse. Studies found that many families accepted these measures as protective strategies, while in the past they thought that the only solution was to move off the estate. [Page, 2000 (online)]

However these aims are not easy targets and they need resources and time, as Hughes et al. said:

Addressing these problems lies beyond a narrow law-and-order agenda associated with the Crime and Disorder Act and would require long-term, seriously 'joined up' interventions regarding the causes of neighbourhood destabilization in the struggle for greater social justice. [Hughes, et al., 2002: 139]

3.WHAT THE RESPONSIBLE AGENCIES CAN DO?

3.1 The police: The police role is changed according to the Act, as the act gave priority to partnerships and community work as a strategy to deal with estate problems and antisocial

behaviour. So it can be argued that the fundamental role of the police faced amendments in order to accept debates and enquiries with the neighbourhoods and listen to their needs. [Hughes et al., 2002: 112]

The community police can work with the public in order to reduce crime, vandalism and prevent antisocial behaviour, as Hughes et al. said:

> What seems clear is that the public police will, at a general level, be pushed increasingly towards what is generally thought of as 'community policing'. Though difficult to define or pin down, 'community policing' 'relies upon organizational decentralization and a reorientation of patrol in order to facilitate two-way communication between police and the public. [Hughes et al., 2002: 113]

However this sort of policing is problematic, first, as the role of the police is mostly adversarial; it is not easy to build a trust between the public and the police. Second, it is not easy to solve the conflicting demands on the police in a just and democratic way, as it is expected. [Hughes et al., 2002: 114]

3.2 Youth Offending Team: As a part of the CDA1998, the Youth Offending Team's aims (YOT) is to try to reduce offending by young people and trying to prevent re-offending as much as possible. The team has to undertake its work within the Youth Justice Board's National Standards and Home Office Guidelines. [YOT, Maidenhead Project Centre (online)] According to the Act all the local authorities are under obligations to establish one or more Youth Offending Teams. (See Appendix 1 Section 39)

It can be argued that the principal role of the YOT is to bring the young offenders out from the traditional Criminal Justice System. Their role in this respect is very important because they can communicate with the young offenders in a better way than the other agencies, on top of them the police.

Anderson et al. (1994) argue that the area reputation may affect the young people: the police and the Criminal Justice System are more likely to treat them differently, they may not get jobs because they are labelled as 'troublesome youth' and as a consequence they may be involved in criminal activities. [Croall, 1998: 133]

So, it can be argued that the duty of the YOT is to take those youth out from this circle of unemployment- offending- Criminal Justice and bringing them back into the mainstream society.

However, it can be argued that the government by bringing young people from early years into the criminal justice justifies its monitoring and scrutiny over the young people under the excuse of crime prevention. This may interfere with their human rights.

3.3 The Education Authority: The CDA 1998 puts a lot of strength on the education, as a means for preventing crime and preventing re-offending through stopping truancy.

> Although it is now widely accepted that crime prevention is about more than locks and bolts and design changes, this needs to be translated into a greater number of social, educational and family-based schemes on the ground. [Osborn & Shaftoe, 1995 (online)]

Education is always a good target, but for problem areas it is a priority. The education authority may contain an important part of the multi-agency Crime and Disorder Partnership; they can participate with the other agencies to reach their targets through:

Measures to assist single parents back to work, to tackle social exclusion, to provide universal

nursery education, to prevent drug use through education classes in primary schools and to ensure that all eighteen- to twenty-four-year-olds are in work, education or training have all been justified as 'ways of helping to tackle the roots of juvenile crime' [(Home Office, 1997b, p. 10) cited in Hughes et al. 2002: 157]

It is widely agreed that an effective crime prevention strategy can be maintained only outside the criminal justice system in the fields of education and employment, in order to overthrow the economic, social and political inequalities. [Hughes et al. 2002: 158]

3.4 The Housing Authority:

Residents want housing associations to do more to build a sense of community on new estates and prevent them becoming stigmatised by crime and other social problems. [Cole et al., 1996 (online)]

So, it can be argued that housing associations can have a crucial role in the process of crime prevention. Quality of the houses, the services available and the planning all have their roles in deciding the destiny of an area. However the housing associations have to leave their traditional system of work in order to comply with the new roles, as Cole et al. said:

This research suggests that housing associations need to move beyond a 'bricks and mortar' approach on their new estates, to community development work with residents, neighbourhood groups and local services both before and after the development takes place. [Cole et al., 1996 (online)]

CONCLUSION

A successful crime and disorder prevention strategy, it can be argued, needs time, good resources and cooperation between different agencies; a task that is not easy but also not impossible at the same time. Hughes et al., said:

As Crawford (1998) notes, one of the key structural dynamics of multi -agency partnerships is the bringing together of diverse agencies whose ideology, mission and interests differ considerably and, indeed, may be in conflict with each other. [2002: 169-170]

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APPENDIX 1

Crime and Disorder Act 1998
1998 Chapter 37

PART I

PREVENTION OF CRIME AND DISORDER

CHAPTER I

ENGLAND AND WALES

Crime and disorder: general

Anti-social behaviour orders.

1. - (1) An application for an order under this section may be made by a relevant authority if it appears to the authority that the following conditions are fulfilled with respect to any person aged 10 or over, namely-

(a) that the person has acted, since the commencement date, in an anti-social manner, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself; and

(b) that such an order is necessary to protect persons in the local government area in which the harassment, alarm or distress was caused or was likely to be caused from further anti-social acts by him;

and in this section "relevant authority" means the council for the local government area or any chief officer of police any part of whose police area lies within that area.

(2) A relevant authority shall not make such an application without consulting each other relevant authority.

(3) Such an application shall be made by complaint to the magistrates' court whose commission area includes the place where it is alleged that the harassment, alarm or distress was caused or was likely to be caused.

(6) The prohibitions that may be imposed by an anti-social behaviour order are those necessary for the purpose of protecting from further anti-social acts by the defendant-

(a) persons in the local government area; and

(b) persons in any adjoining local government area specified in the application for the order;

and a relevant authority shall not specify an adjoining local government area in the application without consulting the council for that area and each chief officer of police any part of whose police area lies within that area.

(7) An anti-social behaviour order shall have effect for a period (not less than two years) specified in the order or until further order.

Crime and disorder strategies

Authorities responsible for strategies.

5. - (1) Subject to the provisions of this section, the functions conferred by section 6 below shall be exercisable in relation to each local government area by the responsible authorities, that is to say-

(a) the council for the area and, where the area is a district and the council is not a unitary authority, the council for the county which includes the district; and

(b) every chief officer of police any part of whose police area lies within the area.

(2) In exercising those functions, the responsible authorities shall act in co-operation with the following persons and bodies, namely-

(a) every police authority any part of whose police area lies within the area;

(b) every probation committee or health authority any part of whose area lies within the area; and

(c) every person or body of a description which is for the time being prescribed by order of the Secretary of State under this subsection;

and it shall be the duty of those persons and bodies to co-operate in the exercise by the responsible authorities of those functions.

(3) The responsible authorities shall also invite the participation in their exercise of those functions of at least one person or body of each description which is for the time being prescribed by order of the Secretary of State under this subsection.

(4) In this section and sections 6 and 7 below "local government area" means-

(a) in relation to England, each district or London borough, the City of London, the Isle of Wight and the Isles of Scilly;

(b) in relation to Wales, each county or county borough.

Formulation and implementation of strategies.

6. - (1) The responsible authorities for a local government area shall, in accordance with the provisions of section 5 above and this section, formulate and implement, for each relevant period, a strategy for the reduction of crime and disorder in the area.

(2) Before formulating a strategy, the responsible authorities shall-

(a) carry out a review of the levels and patterns of crime and disorder in the area (taking due account of the knowledge and experience of persons in the area);

(b) prepare an analysis of the results of that review;

(c) publish in the area a report of that analysis; and

(d) obtain the views on that report of persons or bodies in the area (including those of a description prescribed by order under section 5(3) above), whether by holding public meetings or otherwise.

(3) In formulating a strategy, the responsible authorities shall have regard to the analysis prepared under subsection (2)(b) above and the views obtained under subsection (2)(d) above.

Youth crime and disorder

Parenting orders.

8. - (1) This section applies where, in any court proceedings-

(a) a child safety order is made in respect of a child;

(b) an anti-social behaviour order or sex offender order is made in respect of a child or young person;

(c) a child or young person is convicted of an offence; or

(d) a person is convicted of an offence under section 443 (failure to comply with school attendance order) or section 444 (failure to secure regular attendance at school of registered pupil) of the Education Act 1996.

(2) Subject to subsection (3) and section 9(1) below, if in the proceedings the court is satisfied that the relevant condition is fulfilled, it may make a parenting order in respect of a person who is a parent or guardian of the child or young person or, as the case may be, the person convicted of the offence under section 443 or 444 ("the parent").

(8) In this section and section 9 below "responsible officer", in relation to a parenting order, means one of the following who is specified in the order, namely-

(a) a probation officer;

(b) a social worker of a local authority social services department; and

(c) a member of a youth offending team.

Child safety orders.

11. - (1) Subject to subsection (2) below, if a magistrates' court, on the application of a local authority, is satisfied that one or more of the conditions specified in subsection (3) below are fulfilled with respect to a child under the age of 10, it may make an order (a "child safety order") which-

(a) places the child, for a period (not exceeding the permitted maximum) specified in the order, under the supervision of the responsible officer; and

(b) requires the child to comply with such requirements as are so specified.

(2) A court shall not make a child safety order unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area in which it appears that the child resides or will reside and the notice has not been withdrawn.

(3) The conditions are-

(a) that the child has committed an act which, if he had been aged 10 or over, would have constituted an offence;

(b) that a child safety order is necessary for the purpose of preventing the commission by the child of such an act as is mentioned in paragraph (a) above;

(c) that the child has contravened a ban imposed by a curfew notice; and

(d) that the child has acted in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself.

Local child curfew schemes.

14. - (1) A local authority may make a scheme (a "local child curfew scheme") for enabling the authority-

(a) subject to and in accordance with the provisions of the scheme; and

(b) if, after such consultation as is required by the scheme, the authority considers it necessary to do so for the purpose of maintaining order,

to give a notice imposing, for a specified period (not exceeding 90 days), a ban to which subsection (2) below applies.

(a) during specified hours (between 9 pm and 6 am); and

(b) otherwise than under the effective control of a parent or a responsible person aged 18 or over.

(3) Before making a local child curfew scheme, a local authority shall consult-

(a) every chief officer of police any part of whose police area lies within its area; and

(b) such other persons or bodies as it considers appropriate.

(4) A local child curfew scheme shall be made under the common seal of the local authority and shall not have effect until it is confirmed by the Secretary of State.

Removal of truants to designated premises etc.

16. - (1) This section applies where a local authority-

(a) designates premises in a police area ("designated premises") as premises to which children and young persons of compulsory school age may be removed under this section; and

(b) notifies the chief officer of police for that area of the designation.

(2) A police officer of or above the rank of superintendent may direct that the powers conferred on a constable by subsection (3) below-

(a) shall be exercisable as respects any area falling within the police area and specified in the direction; and

(b) shall be so exercisable during a period so specified;

and references in that subsection to a specified area and a specified period shall be construed accordingly.

(3) If a constable has reasonable cause to believe that a child or young person found by him in a public place in a specified area during a specified period-

(a) is of compulsory school age; and

(b) is absent from a school without lawful authority,

the constable may remove the child or young person to designated premises, or to the school from which he is so absent.

(4) A child's or young person's absence from a school shall be taken to be without lawful authority unless it falls within subsection (3) (leave, sickness, unavoidable cause or day set apart for religious observance) of section 444 of the Education Act 1996.

Youth offending teams.

39. - (1) Subject to subsection (2) below, it shall be the duty of each local authority, acting in co-operation with the persons and bodies mentioned in subsection (3) below, to establish for their area one or more youth offending teams.

(2) Two (or more) local authorities acting together may establish one or more youth offending teams for both (or all) their areas; and where they do so-

(a) any reference in the following provisions of this section (except subsection (4)(b)) to, or to the area of, the local authority or a particular local authority shall be construed accordingly, and

(b) the reference in subsection (4)(b) to the local authority shall be construed as a reference to one of the authorities.

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DOES WOMEN COMMIT LESS CRIME?

Studies about crime and criminology are generally men dominated; women are either invisible in the studies about crime or marginalized to the footnotes of the studies. [Oakley (1982) Cited in Heidensohn, 1989: 86]

The recorded crime suggests, "Crime is an activity carried out by young, and young adult, males. " [Heidensohn, 1989: 86] Men mainly carry out serious crimes; women may appear in less serious crimes and in fewer occasions. Prison population statistics support this argument:

Women prisoners make up just 6% of the prison population; in 2003 there were 69,638 male prisoners but only 4,417 female prisoners. [Cross, & Olowe, 2003 (online)]

Anne Campbell (1981) following a self report study argues that the rate of male and female crime is some how equal. However, Steven Box (1981) revealed that only by counting trivial crimes in parallel with serious crimes they may be equal, otherwise the official statistics are accurate. [Moore, 1996: 165]

GENDER AND JUSTICE

Do courts and the police treat women differently?

Mannheim (1940) argues that:

"The female offender –if punished– meets on the whole with greater leniency on the part of the courts than the male." [Cited in Heidensohn, 1989: 101]

MANY PEOPLE STILL BELIEVE THAT THE POLICE AND THE CRIMINAL JUSTICE SYSTEM TREAT WOMEN DIFFERENTLY; THIS LENIENCY IS KNOWN AS 'CHIVALRY'. HOWEVER IT IS OBVIOUS THAT FACTORS SUCH AS PREGNANCY, HOME RUNNING AND CHILDCARE HAVE BEEN TAKEN INTO CONSIDERATION BY COURTS. [MOORE, 1996: 165]

Women are more likely than men to be discharged or given a community sentence for indictable offences and are less likely to be fined or sentenced to custody. [Women in Custody 2003 (online)]

However Carlen (1985) found out that although courts may not fine women because of their financial dependency on men, but they send more of them to prison as a consequence. [Cavadino & Dignan, 1997: 285]

Feminists argue that women are facing a double bind treatment from the courts, as Cavadino and Dignan said:

Women who commit crimes are seen as 'double deviant': they have offended not only against the law, but also against

deeply ingrained social norms about how women should be, so they are perceived as being particularly depraved. [Cavadino & Dignan, 1997: 280]

However, it can be argued that the few women sent to prison are suffering because prisons are adapted for men not women. As a result of a small number of women being in prison, there are few prisons for women in the country, so it is difficult for their relatives especially children to travel far in order to visit them. [Cavadino & Dignan, 1997: 285]

WOMEN AND CRIME: A HIDDEN WORLD

Women are pushed to the footnotes of all the theoretical texts of criminology: Marxism (Chambliss, Hall), functionalism (Durkheim and Merton), subculture (the Chicago School, Cohen, Downes) and labelling (Becker) except for the discussion of prostitution. [Moore, 1996: 132]

It is obvious that most of the offenders are males: about 80% as it appears in official statistics and crime recordings, but it is amazing that the other 20% of the offenders are ignored. [Moore, 2002: 254]

Frances Heidensohn (1989) argues that recent criminology is 'malestream' criminology that means men dominated it. [Moore et al., 2002: 254] According to Heidensohn there are four reasons for that:

- Male dominance of offenders: most of the offenders are males so the criminologists thought it is better to study the majority than the minority.
- Male domination of sociology: the majority of sociologists are male so their theories and writings reflect male views and male interests.
- Vicarious Identification: it is easier for a male researcher to study males other than females, as some times he has to live with them and accompany them in their marginal lives.
- Gender blind theories: male sociologists did not thought about females when they constructed their theories, so it is not easy to apply them to females while they are written for males. [Moore et al., 2002: 255]

By regarding all these explanations it can be argued that, "theories of male criminality were presented as theories of all criminality" [Heidensohn, 1989: 91]

WHY WOMEN COMMIT CRIME?

The Italian criminologist Lombroso claims that women criminals are biologically abnormal; they have 'exaggerated sexuality' and they are more like men than women. Lombroso's ideas are regarded as archaic historically, however looking for a biological reason for crime in general and female crime in particular is still relevant. [Moore, 1996: 167]

Cowie, Cowie and Slater (1968) claimed that girls have a higher tolerance power than boys to environmental stress and unhappy home life. In this context boys can easily be driven to crime, as they argue, while girls may tolerate. They argue that crime is related to the difference in hormonal balance and chromosomal differences between the sexes. [Moore, 1996: 167]

Another biological explanation for women criminality is (premenstrual tension) PMT, which appeared as a defence for female offenders in the 1980s; women's menstrual cycle, they argue, makes women irrational and leads them to commit crimes such as shoplifting or infanticide. [Lawson & Heaton, 1999: 202]

Pollak (1953) argues that women are more devious than men and the official statistics are underestimating female criminality. He believes that the reason behind female criminality is their very psychological nature; they can hide their criminality as they do with fake orgasms. [Heidensohn, 1989: 89]

Biological and psychobiological explanations for women criminality have been criticized because they confuse gender with biological sexual differences. [Moore, 1996: 167] Gender and sex should be dealt with as two separate subjects, as Heidensohn said:

> Sex refers to the biological characteristics of males and females, gender to those masculine and feminine traits associated, but not exclusively, with men and women and therefore having a social rather than a physical base. [1989: 88]

Another limitation of such explanations is their reliability. As according to their suggestions, " we should expect far more women than men to be criminally involved" [Heidensohn, 1989: 89], reality shows a different result.

Another explanation for female criminality is sex-role theory; according to this theory females are less expected to commit crime because of their family and social limitations. A girl's role in the family is mainly to care and support that is far more from violence and crime, so her socialization does not lead to crime. Moore, 2002: 255]

Females are subject to social control from childhood and may continue for the rest of their life, Hagan (1989) argues that because women are mostly under control and supervision in the society they have less opportunity to commit crime, while it is expected from males to participate in risk-taking activities. [Lawson & Heaton, 1999: 208]

Committing a crime needs an opportunity for such an act. Women's role in society is so limited that they have not as much opportunity as males to commit crime.

> Because of their sexual differences, girls and boys had different capabilities and interests which are channelled and developed through different training and education, which leads to differential behaviour. [Williams, 2001:500]

However these different sexual roles may change over the time and from a culture to a culture, so it can be argued that the issue of female criminality is more complex than to be explained by some hypotheses, as Williams said:

> It could be argued that upbringing over many generations has actually over-emphasised what was originally a negligible difference between the sexes. It is very difficult to ascertain which, if either, of the social or the genetic has had the greater effect. [2001:491]

Adler (1975) argues that women emancipation and the rise of feminism leads to rise in women crime. Emancipation and women's rights make women to be involved in more activities and participating in social life, this rose women's crime rates more than men's, Adler argues. 'Liberation was leading women to be bank robbers as well as bankers'. [(Adler, 1975) cited in Heidensohn, 1989: 95]

Adler's hypothesis faced a lot of criticism because,

> Results do not suggest that there is more hidden female than male crime… it is very difficult to test methodologically – how do you measure female emancipation? [Steffensmeier: 1978: 580 cited in Heidensohn, 1989: 95]

HOW FEMINISTS ANALYSE FEMALE CRIME?

With the rise of feminism in 1970s questions arose about female crime. Feminists were not satisfied with the mainstream criminologist's hypotheses about crime, however they could not make their own criminology straightaway. As feminists are divided into different groups and schools, so the feminist criminologists also adopted different theoretical and social policy positions. [Lawson & Heaton, 1999: 192]

Liberal feminists are claiming for studies to cover both males and females. Women are forgotten in researches, they argue, we need a new theory to cover both males and females. [Moore, et al. 2002: 257] Bryson said:

> Gender interests are not permanently and irrevocably opposed, and it leaves open the possibility that 'man' and 'woman' are not fixed and closed categories. It therefore assumes that the anti-social personality traits and modes of behaviour currently associated with masculinity are not determined by biology … more positive aspects of masculinity, such as courage and assertiveness, can be acquired by women. [1999: 215-216]

However radical feminists argue that you cannot understand crime unless you see it through a female point of view. [Moore, et al. 2002: 257] They even go further to say that masculinity means criminality and femininity means conformity, Heidensohn has explained this point by saying:

> Masculinity is at least as much a problem to be analysed and explained as femininity. In fact logically it is an even greater problem, since it is masculinity which is associated with crime and delinquency, whereas femininity is linked to conformity. [Heidensohn, 1989: 97]

Socialist feminists argue that the problem of masculinity and femininity in relation to crime can be only understood when men and women are living in societies divided by sexism and opposing classes. [Moore, et al., 2002: 257]

Socialists have similar views to liberal feminists when they argue that a society with equal rights for the genders can be a better place for all of us, and that the interests of men and women are not basically opposed. [Bryson, 1999: 198] However it can be argued that crimes such as sexual offences may accrue under any economical background.

Postmodern feminists argue that the argument 'most crime is male crime' is a male's concern; women should study the reasons why women are harmed by a whole range of processes. [Moore, et al., 2002: 257]

It can be argued that women in many occasions are victims of crime, however the social and sex-role changes in recent years (Denscombe 2001) lead females to be involved in more outdoor activities and risk-taking behaviours. This may support the theoretical hypotheses relating such activities to a rise in crime rates, as Moore et al said:

Female crime levels are rising much more quickly than male ones, not just in terms of numbers but also in terms of seriousness of crimes committed. [2001:257]

CONCLUSION

There is not a special theory or study to explain women criminality fully, as the problem of crime is far more complex. Women can be seen as offenders and as victims in trivial crimes as well as serious ones. Women's crime rates are much more lower than men's, however society is not a motionless stone; it is always in a changing process.

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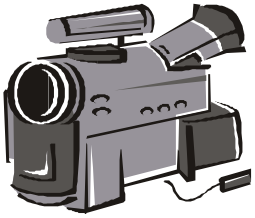
HNC CRIMINOLOGY
YEAR 1
SCHOOL OF SOCIAL SCIENCES
THE EAST LANCASHIRE INSTITUTE OF HIGHER EDUCATION
2003-2004
PSYCHOLOGY OF CRIME
ASSIGNMENT- 3
VULNERABLE WITNESSES



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HNC CRIMINOLOGY
MAY 2004

VULNERABLE WITNESSES- NOTES FOR GUIDANCE

INTRODUCTION

Vulnerable witnesses are those witnesses, who face difficulties in appearing in court because of their age, learning difficulties, mental impairment, physical disabilities or the nature of the offence against them such as child abuse, rape and domestic violence. Many cases have been withdrawn or even they did not reach a court because the victim could not face the defendant or appear in a courtroom. Intimidated witnesses issue becomes a subject of media attention [Bright & Hinsliff, 2002]

The Youth Justice and Criminal Evidence Act 1999 (YJCEA1999) contains a series of reforms and measures in order to help reduce the stress and intimidation of those witnesses. Victim Support and recently Witness Support Service are part of the procedures to reduce the stress of those witnesses. In the Criminal Procedure & Investigations Act 1996 it is mentioned that acquittals can be quashed where there is intimidation. However the YJCEA1999 has provided special measures and carried out vital reforms in the system, but the rights of the defendant for a fair trial should not be neglected also.

WHAT ARE THE SPECIAL MEASURES?

The YJCEA 1999 have combined together all the measures that have been suggested before such as live television link, which was implemented in Criminal Justice Act1988.

Screening the witness from the accused: Child witnesses may feel afraid to face the accused or they cannot say what they want in front of him. This issue may cause miscarriages of justice in many situations relating to child abuse, as Dennis said:

> Children may be the only witnesses to offences against themselves, particularly sexual offences. [2002: 451]

This matter was aroused in R. v Wallwork (1958) when a five-year old girl was hysterical to give evidence in front of her father.

According to section 23 of YJCEA 1999 the witness can be screened and in this case the witness cannot see the accused, however the judge, jury and the legal representatives can see him/ her. Witnesses will feel less intimidated and it reassures them, however the defendant's right for a fair trial should not be neglected. Generally a defendant has a legal right to examine the witness

against him in person:

> Article 6(3) (d) of the ECHR guarantees an accused the right to examine or have examined the witness against him. [Dennis, 2002: 514]

However, as the issue relates to vulnerable witnesses the YJCEA 1999 has prevented the defendant from this examination and gives that right to his legal representative, as Dennis said:

> Section 38 of the YJCEA deals with the issue by giving the court power to appoint a legal representative to conduct any necessary cross-examination on behalf of the accused. Any such representative is centrally funded, and is not responsible to the accused. [2002:514]

Evidence by Live Link: Section 24 of the Act gives a right to a vulnerable witness to give his/ her evidence via a live link. In this case the witness does not need to enter the courtroom, so it reduces fear and intimidation of children and other vulnerable witnesses and may strength their ability to give evidence. As in the screening, the witness here also can be seen by the judge, jury and legal representatives. The defendant's right for cross-examination is also abolished and is replaced by the legal representative. However the accused may need to see the defendant and observe his body language and credibility, because in these complex cases false accusations may occur, as Dennis said:

> False complaints of rape and other sexual misconduct do occasionally occur. When they do occur they may be difficult to repel, precisely because of the lack of independent evidence contradicting the complainant. A great deal is at stake for the accused: rape is a very serious offence carrying severe penalties, a conviction for it is highly stigmatic, and it may result in the loss of a man's livelihood and status, the break- up of his marriage and denial of access to his children. [2002:500-501]

These procedures are all for improving the quality of testimony of the witness, so if the court believes that any one of them is not serving that purpose, it will not be introduced.

> Although special measures should be generally available for child witnesses, they should not be used automatically whenever a child gives evidence in a criminal trial. [McConville & Wilson, 2002:239]

Evidence given in private: The court according to section 25 of the Act may exclude public as well as the press from the court. This procedure is useful for vulnerable witnesses as it reduces stress and fear of being humiliated. However the defendant has a right for a fair trial as stated in the Article 6 of the European Convention on Human Rights (ECHR). {See Appendix 1} Dennis also mentioned this article as he said:

> Article 6 requires all evidence to be produced in the presence of the accused at a public hearing with a view to adversarial argument. [2002:522]

The court follows special procedures in order to protect vulnerable witnesses and giving the right of a fair trial to the accused through the court appointed legal representatives. [Dennis, 2002: 522]

Removal of wigs and gowns: In order to reassure children and to reduce their fear from the traditions of the court, section 26 of the Act allows the removal of wigs and gowns in dealing with child witnesses. This is effective in helping children to feel they are in a friendly environment, however the court traditions have their formal meanings and their removal may reduce the child's respect for the court and the importance of telling the truth.

Video recorded evidence in chief: According to Section 27 of the Act soon after the event the witness's evidence can be recorded on videotape and kept for the day of the trial. It is very useful for children because a child's memory fades quicker than adults, as well as in cases of sexual assaults, indecent, incest and rape the victim needs some time for recovery after the event. However it has negative effects on the defendant because it is done before the trial and in most occasions a long time before it. The defendant has a right to know what the other side wants to say against him and to be ensured that he is not prejudiced.

Video recorded cross-examination/ re-examination: section 28 permits the use of video recordings for cross-examinations and re-examinations, in this case the witness has not to attend the court at all even in final stages. It has the same advantages as section 27 and even more for the vulnerable witness, however its effects on the defendant are also heavier and it may prevent him from his rights for a fair trial.

Examination through an intermediary: An intermediary is a person who explains the questions for a vulnerable witness and explains his answers to the court and the other side. Using such a person is allowed according to section 29 of the Act and he is helpful for children who may not understand the terminology of the court as well as individuals with learning difficulties and mental impairments. However the credibility of such a person is subject of question and mistrust from the defendant's side.

Aids to communication: Some vulnerable witnesses cannot communicate or their communication may not be on the accurate standard, either because of their age or any physical or mental disabilities. Section 30 of the act provides them with a right to bring communication aids such as maps, toys, dolls and special computer software in order to assist them in communication. Dennis explains this section by saying:

> A special modified computer to provide a witness with an artificial voice, where the witness has lost the power of speech, would be an example. It is most unlikely that the use of such devices will present any Article 6 problems. [2002:524]

CONCLUSION

The Youth Justice and Criminal Evidence Act 1999 introduces many vital reforms for criminal justice system in relation to vulnerable witnesses. It is clear that the measures stated by this Act have great effect on improving the vulnerable witnesses' testimony. However the defendant's right for a fair trial should not be neglected because applying the sections of this act without special care may cause many miscarriages of justice for the defendants. It can be argued that many sections of the Act may need more interpretation in order to apply justice to all. As misuse and abuse of justice may happen if the sections of the Act are applied without further caution, especially when it relates to the rights of the accused for a fair trial and fair defence.

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APPENDIX1

European Convention on Human Rights 1998

CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

AS AMENDED BY PROTOCOL NO. 11

Article 6 – Right to a fair trial[1]

1. In the determination of his civil rights and obligations or of any criminal

charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b. to have adequate time and facilities for the preparation of his defence;

c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

OCB LAW

ENGLISH LEGAL SYSTEM

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Due Date: 26 November 2003

English legal system

In this short essay I shall discuss the main sources of English law with a reference to the effects of European law on it.

English legal system has many sources of law: As there is not a single constitution or source

of law. The main sources of English law are: Statues law, Case law including Equity and European law.

I shall look at different sources and textbooks in libraries or online about law in order to bring a clear idea and giving a satisfying answer to the present question: What are the main sources of English Law?

One of the main sources of English law is Statute Law. Statutes are bills introduced by the government or private MPs, decided by both houses of Parliament and received royal assent by her majesty, the Queen. When both houses of Parliament agreed on a bill through many readings and debates, the Queen definitely accepts to assent it. It is very rare when an Act of Parliament refused by the Queen, as Martin says:
"Under the Royal Assent Act 1961, the monarch will not even have the text of the Bills to which she is assenting; she will only have the short title. The last time that a monarch refused assent was in 1707, when Queen Anne refused to assent to the Scottish Militia Bill."[1]

There are many statutes passed by parliament every year, as the meaning of the words are not always clear and there are language ambiguities; judges have to interpret them. Judges are using rules for interpreting the Statutes such as Literal Rule, Golden Rule and Mischief Rule.

In the case of **Fisher v Bell (1960) 1 QB 394**. The shopkeeper put a knife for sale but the judge find difficult to decide he is guilty because putting something in a shop window is not an offer to sell; offers are normally made by the purchasers. In this example language ambiguity leads to a need for statutory interpretation.

THERE ARE HUNDREDS OF ACTS OF PARLIAMENT E.G.:
ARMS CONTROL AND DISARMAMENT (INSPECTIONS) ACT 2003
Co-operatives and Community Benefit Societies Act 2003
Human Rights Act 1998
[2]

AS THE PARLIAMENT IS THE SUPREME POWER OF LEGISLATION, THEIR ACTS ARE PREVAILING OVER THE COMMON LAW AND THE EQUITY AT THE TIME OF A CONFLICT, BUT NOT OVER THE EU LAW. THE PUBLIC OPINION IS MOSTLY HAPPY WITH THE STATUTE LAW BECAUSE IT COMES FROM AN ELECTED PARLIAMENT AND IT IS SUBJECT TO CHANGES AND REVIEWS MOST OF THE TIME.

ANOTHER MAIN SOURCE OF ENGLISH LAW IS COMMON LAW. THIS KIND OF LAW IS PRODUCED THROUGH HUNDREDS OF YEARS OF JUDICIAL PRECEDENTS. WHEN A JUDGE LOOKS AT A CASE AND FIND IT SIMILAR TO A PREVIOUS ONE DECIDED BY A HIGHER COURT, HE MAY FOLLOW THE PREVIOUS DECISION; THE COLLECTION OF THESE CASES BECAME A SOURCE OF LAW. AS O' RIORDAN SAYS:

"MOST CASES THAT COME BEFORE A COURT ARE SIMILAR TO CASES HEARD BEFORE. THERE ARE PROBABLY ONLY SO MANY CRIMES AND WAYS THAT THEY CAN BE COMMITTED. IF THE FACTS OF A CASE ARE SIMILAR ENOUGH, PROSECUTORS, DEFENDERS, AND JUDGES WILL USE THE LEGAL ARGUMENTS AND DECISIONS FROM THESE EARLIER CASES."[3]

[1] -Martin, J., *English Legal System*. 1st edition, Hodder&Stoughton: London. 1997. P. 41

[2]- Her Majesty's Stationary Office [Online]

[3] -O' Riordan, J., *AS Law for OCR*. 1st edition, Heinemann: Oxford, 2002. P. 157.

UPPER COURTS BIND LOWER COURTS, SO THE LOWER COURTS HAVE TO DECIDE ON THE SAME BASIS THAT A HIGHER COURT HAD DECIDED ON A SIMILAR CASE BEFORE. THE HOUSE OF LORDS IS THE HIGHEST COURT IN ENGLAND AND THEY WERE EVEN BOUND TO THEIR OWN PREVIOUS DECISIONS UNTIL 1966, AS ELLIOT AND QUINN EXPLAINED IT:

" IN 1966 THE LORD CHANCELLOR ISSUED A PRACTICE STATEMENT SAYING THAT THE HOUSE OF LORDS WAS NO LONGER BOUND BY ITS PREVIOUS DECISIONS."[4]
IN **R V R (1991)** THE HOUSE OF LORDS OVERRULED THEIR PREVIOUS DECISION AND DECIDED THAT RAPE WITHIN MARRIAGE IS A CRIME.

IN THE CASE OF **DANIELS V WHITE [1938]** THE COURT HELD THEIR DECISION ON THE CASE OF **DONOGHUE V STEVENSON [1932]** BECAUSE THE LATTER CASE WAS SIMILAR TO THE PREVIOUS ONE AS BOTH OF THEM RELATED TO THE FAULTS OF MANUFACTURERS, AND THAT DECISION THAT A MANUFACTURER HAS RESPONSIBILITY ON THEIR PRODUCTS BECAME A PRECEDENT.

HOWEVER, AS THE SOCIETY CHANGES LAWS ARE CHANGING, AS O'RIORDAN REMARKS:

"THE LEGAL SYSTEM REFLECTS THE SOCIETY THAT IT REGULATES, AS A RESULT, LAWS MUST DEVELOP AND CHANGE IF THEY ARE TO BE SEEN AS FAIR AND RELEVANT." [5]

IN **ADDIE V DUMBRECK [1929]** THE CHILD FOUND TO BE HIS FAULT AND THE OWNER OF THE MINE WON THE CASE, THIS CASE BECAME A PRECEDENT UNTIL 1972. IN 1972 IN THE CASE OF **BRITISH RAILWAYS BOARD V HERRINGTON [1972]** ALTHOUGH THE CASE WAS SIMILAR TO THE PREVIOUS CASE OF ADDIE V DUMBRECK, THE HOUSE OF LORDS OVERRULED THE EARLIER CASE AND HELD THE BRITISH RAILWAY BOARD GUILTY. SINCE THEN THE CASE OF BRITISH RAILWAYS BOARD V HERRINGTON BECAME A PRECEDENT AND IT IS USED IN ALL SIMILAR CASES.

WE MAY FIND MANY ADVANTAGES FOR COMMON LAW AS: THEY COME FROM REAL LIFE, THEY ARE A GOOD SOURCE OF LAW AND IT SAVES TIME. AT THE SAME TIME THERE ARE DISADVANTAGES FOR IT SUCH AS: THERE ARE VAST CHOICES OF CASES, INFLEXIBILITY, OLD AND NEW DISPUTES AND POOR PRECEDENT CAN BE USED.[6]

AFTER RULING OF COMMON LAW FOR A LONG TIME KING RECEIVED COMPLAINTS FROM THE PUBLIC ABOUT THE WAY JUDGES APPLY COMMON LAW TO CASES. THEY CLAIMED THAT APPLYING COMMON LAW DOES NOT PREVAIL JUSTICE, AND ASKED THE KING FOR A SOLUTION. THE KING DECIDED TO CREATE A NEW LAW CALLED EQUITY. AS THE CHANCELLOR APPLIED EQUITY, A NEW COURT WAS CREATED CALLED COURT OF CHANCERY. THE EQUITY LAW HAS SPECIAL CONDITIONS:

"A WHOLE SET OF EQUITY LAW PRINCIPLES WERE DEVELOPED BASED ON THE PREDOMINANT "FAIRNESS" CHARACTERISTIC OF EQUITY SUCH AS "EQUITY WILL NOT SUFFER A WRONG TO BE WITHOUT A REMEDY" OR "HE WHO COMES TO EQUITY MUST COME WITH CLEAN HANDS".[7]

SO EQUITY WAS ORIGINALLY CREATED TO PREVAIL JUSTICE TO THOSE WHO DESERVE IT AND HAVE A RIGHT TO ASK FOR EQUITY, THAT IS WHY THEY HAVE TO COME WITH CLEAN HANDS.

WHERE THERE IS A CONFLICT BETWEEN COMMON LAW AND EQUITY, EQUITY WINS. ELLIOT AND QUINN FURTHER EXPLAIN THIS POINT, AS THEY SAY:

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[4]-Elliot, C., & Quinn, F., *English Legal System*. 4th Edition, Longman: Harlow, 2002. P. 8

[5]- O' Riordan, J., *AS Law for OCR*. 1st edition, Heinemann: Oxford, 2002. P.163

[6] - Ibid

[7] - DUHAIME'S LAW DICTIONARY [online]

" MATTERS CAME TO A HEAD IN 1615 IN THE [**THE EARL OF OXFORD'S CASE**], CONFLICTING JUDGEMENTS OF THE COMMON LAW COURTS AND THE COURT OF CHANCERY WERE REFERRED TO THE KING FOR A DECISION; HE ADVISED THAT WHERE THERE WAS CONFLICT, EQUITY SHOULD PREVAIL."[8]

IN **D & C BUILDERS V REES (1966)** THE COURT DID NOT SUPPORT REES, BECAUSE HE TOOK THE ADVANTAGE OF THE FINANCIAL DIFFICULTY OF THE BUILDERS; THAT MEANS HE DID NOT COME WITH CLEAN HANDS.
IN **CHAPPELL V TIMES NEWSPAPERS LTD (1975)** THE COURT DID NOT SUPPORT THE STRIKERS BECAUSE THEY REFUSED TO WITHDRAW THEIR STRIKE. AS THE LAW SAYS: 'HE WHO SEEKS EQUITY MUST DO EQUITY' THEY HAVE TO AGREE TO END THEIR STRIKE WHEN THEY ASK FOR EQUITY.

IN **LEAF V INTERNATIONAL GALLERIES (1950)** THE COURT HELD THAT IT IS TOO LATE TO ASK FOR A REMEDY AFTER FIVE YEARS, BECAUSE IN EQUITY 'DELAY DEFEATS EQUITIES' [9]

EUROPEAN LAW HAS A GREAT INFLUENCE OVER THE ENGLISH LEGAL SYSTEM, SINCE 1973 WHEN UK JOINED THE EUROPEAN UNION. IT IS OBVIOUS THAT THE HOUSE OF LORDS IS THE HIGHEST COURT IN UK AND ITS PRECEDENTS BINDS OVER ALL OTHER COURTS IN THE COUNTRY, BUT:
" THE EUROPEAN COURT OF JUSTICE (ECJ) IS THE HIGHEST COURT IN THE UK LEGAL SYSTEM WHERE EUROPEAN LAW IS INVOLVED."[10]
TREATIES OF EU ARE IMPORTANT SOURCES OF LAW BETWEEN THE MEMBER STATES WHICH ARE FIFTEEN NOW. THE FIRST TREATY WAS THE TREATY OF PARIS FOR PEACE WITHIN EUROPE AND TO PREVENT ANOTHER WORLD WAR. THE EUROPEAN ECONOMIC COMMUNITY (EEC) CREATED BY THE TREATIES OF ROME IS OF GREAT IMPORTANCE.

IN **MACARTHYS V SMITH (1979)** THE ECJ HELD UPON ART.139 TO GIVE A WOMAN IN THE UK THE RIGHT TO CLAIM THE SAME WAGES AS WERE PAID TO HER MALE COLLEAGUES IN HER JOB.

TREATIES GRANT THE EU INSTITUTIONS THE RIGHT TO MAKE SECONDARY SOURCES OF LAW. THESE SOURCES ARE REGULATIONS. REGULATIONS ARE APPLIED TO ALL THE MEMBER STATES. IN THE CASE OF **LEONESIO V ITALIAN MINISTRY OF AGRICULTURE (1973)** THE ITALIAN GOVERNMENT PREVENTED FROM USING ITS OWN LAWS UNDER THE EU REGULATIONS.

DIRECTIVES ARE ANOTHER SOURCE OF EU LAW BUT THEY ARE NOT APPLIED DIRECTLY TO THE MEMBER STATES, BUT THE NATIONAL GOVERNMENTS HAVE THE RESPONSIBILITY OF IMPLEMENTING THEM.
THE CASE OF **VAN DUYN V HOME OFFICE (1974)** IS A GOOD EXAMPLE OF DIRECT EFFECT OF DIRECTIVES WHEN THE ECJ HELD THAT THE UK GOVERNMENT HAS CLEAR OBLIGATIONS TO LET VAN DUYN ENTER THE COUNTRY, BECAUSE THE OBLIGATION WAS UNCONDITIONAL. [11]

A DECISION MAY BE ADDRESSED TO STATE, A PERSON OR A COMPANY AND IS BINDING ONLY ON THE RECIPIENT.[12]

THE EU LAW MAY AFFECT THE ENGLISH LAW DIRECTLY IN TWO WAYS, THE FIRST OF THESE IS THE PRINCIPLE OF DIRECT EFFECT; **DEFRENNE V SABENA (1976)** IS A GOOD EXAMPLE OF HORIZONTALLY DIRECT EFFECT WHEN AN INDIVIDUAL BRINGS ANOTHER INDIVIDUAL TO COURT, BECAUSE SHE WAS NOT PAID EQUAL TO MALES IN HER JOB, AS PER THE RIGHTS GUARANTEED IN A EUROPEAN LAW.

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[8] - Elliot, C., & Quinn, F., *English Legal System*. 4th Edition, Longman: Harlow, 2002. P78-79

[9]- Elliot, C., & Quinn, F., *English Legal System*. 4th Edition, Longman: Harlow, 2002.

[10] - O' Riordan, J., *AS Law for OCR*. 1st edition, Heinemann: Oxford, 2002. P. 162

[11] - Elliot, C., & Quinn, F., *English Legal System*. 4th Edition, Longman: Harlow, 2002.

[12] - Ibid

FOLLOWING **DEFRENNE V SABENA (1976)** THE ENGLISH PARLIAMENT WAS FORCED BY ECJ TO CHANGE AND AMEND AN ACT OF PARLIAMENT IN ORDER TO COMPLY WITH THE EU LAW. SUCH DECISION ALSO MEANT THAT PARLIAMENT SHOULD NOT PASS ANY NEW ACT NOT COMPLYING WITH EU LAW IN THE FUTURE.

IF THE STATE REFUSED TO FOLLOW THE EU LAW IT RISKS BEING TAKEN TO ECJ COURT BY INDIVIDUALS. THE SECOND MAIN EFFECT OF EU LAW IS THE SUPREMACY OF EU LAW. THE LEADING CASE OF THIS ISSUE IS FACTORTAME. IN **R. V. SECRETARY OF STATE FOR TRANSPORT, EX P. FACTORTAME LTD. (NO 2) (1991)** THE EUROPEAN COURT DECLARES THAT NATIONAL COURTS MUST ENSURE THEIR COMPLIANCE WITH THE E.C. LAW EVEN WHERE THIS LEADS TO A NATIONAL COURT NOT TO APPLY THE ACTS OF THEIR OWN PARLIAMENT.

LORD BRIDGE IN HIS RESPONSE TO EUROPEAN COURT RULING MAKES CLEAR THAT UK COURTS HAS A DUTY IN PASSING A FINAL JUDGEMENT TO MAKE SURE IT IS NOT IN CONFLICT WITH E.C. LAW. FOLLOWING THAT CASE THE UK PARLIAMENT HAS ABANDONED DICEY'S CLASSICAL VIEW CONCERNING THE UK'S PARLIAMENTARY SOVEREIGNTY, AND SHOWS A WILLINGNESS TO APPLY THE E.C. LAW EVEN WHERE IT MAY CONFLICT WITH THE NATIONAL LAW. [13]

THE ENGLISH LEGAL SYSTEM DEPENDS ON SEVERAL SOURCES OF LAW: STATUTES, COMMON LAW, EQUITY AND EU LAW. WHEN THERE IS A CONFLICT BETWEEN THESES LAWS, THE EU LAW PREVAILS OVER ALL THE OTHER LAWS IN THE COUNTRY. THE STATUTES OR ACTS OF PARLIAMENT PREVAIL OVER ALL THE COMMON LAW OR EQUITY, AND FINALLY THE EQUITY PREVAILS OVER COMMON LAW IN A CLASH.

JOINING THE EU PLACES OBLIGATIONS ON THE UK TO FOLLOW AGREED TREATIES, AS WELL AS REGULATIONS AND DECISIONS CREATED BY THE EUROPEAN INSTITUTIONS. THE HOUSE OF LORDS WAS NOT ALWAYS HAPPY WITH THE SUPREMACY OF EU LAW, BUT IT HAS BEEN ACCEPTED THAT EU LAW REMAINS BINDING OVER ENGLISH LAW AS LONG AS UK IS A MEMBER STATE OF THE UNION.

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OCB PSYCHOLOGY

BLACKBURN COLLEGE

APPROACHES IN PSYCHOLOGY

WHY CANNOT ONE APPROACH EXPLAIN EVERYTHING IN PSYCHOLOGY?

TUTOR: MICHAEL RAWSTENE

ABSTRACT

There are five main approaches to psychology: Psychoanalytic, behaviourism, Cognitive, Humanistic and Biological. As these approaches have their complexity and details, therefore this short essay can contain three approaches of them only, which are: Psychoanalytic, behaviourism and Cognitive approaches.

This short essay tries to explain the views of these three approaches to psychology and human behaviour. These approaches analyse the human behaviour from different sides and all of them have their contributions to this complex issue: psychology. So the question here is not between right and wrong but between sufficient and insufficient theories.

It can be argued that all these theories together may give a better understanding of human psychology, at the same time there is not any single approach which can give a similar picture of this complex science alone, as all of them have their criticisms and weak points as well.

The complexity of psychology is explained in the differences in gender, culture and other stereotypes in human society, as well as the complexity of human brain and mind. Human mind and behaviour cannot be observed straightaway, so different scientists had developed different understandings i.e. their theories or approaches. As a result of these differences, suggestion for further studies is introduced in this report.

INTRODUCTION

Psychology is one of the most complex and, at the same time, interesting fields of science. Human beings thought about the reasons behind human behaviour and their good and bad acts hundreds of years ago, but the study of psychology as a science had developed in the twentieth century.

Psychoanalytic theory was formulated at the hands of Sigmund Freud, who claimed that all our behaviour is determined by our unconscious, which contains most of our thoughts and feelings, and he claims that it was formulated in our early experiences of childhood. Freud claims that our destiny is already decided in our first two or three years of life.

However Behaviouristic approach believes that environment is responsible for our acts and behaviour. They relate all our acts and thoughts to the society we live in and what we learn from this environment. This approach is more scientific than the psychoanalytic approach, because it deals with observable behaviour. They believe that we can learn everything through conditioning, as Taylor et al., say:

Behaviourists "assume that antisocial or maladaptive learning can be extinguished and a new set of associations trained on." [Taylor et al., 1999]

At the same time the personal differences arise another difficulty in this approach, e.g. when the behaviourists claim that they can train children through conditioning for preventing bedwetting, it may not apply to some children. Here the psychoanalytic theorists argue that this difference is related to the early experiences of the child. [Ibid]

Behaviourism basically developed from the study of animal behaviour, through conditioning both classical by Pavlov and operant by Skinner. They claim that human beings could be learned through conditioning the same as animals. This theory is very controversial because human beings are different from animals in many aspects.

Another approach to psychology is Cognitive approach. This approach is interesting in mental processes. Cognitive psychologists believe that human mind is like a computer, so they see human beings as machines rather than animals, or sophisticated animals.

This approach claims that human behaviour only comes after thinking, which means according to this theory; our behaviour is a direct result of our mental thinking. However it is difficult, or may be impossible at present, to observe or look at human mind to explore how it is working during speaking, thinking, remembering etc, so this approach faces difficulties in explaining behaviour.

Cognitive psychology explains our memory on the basis of computer memory, they argue that human mind like a computer's memory holds more memory than we remember at once. It can be argued that human brain is more complicated than a computer and in this approach human emotion is neglected. Taylor et al., defend cognitive approach as they say:

" Although cognitive psychologists largely ignore motivational and emotional aspects of behaviour, which humanists feel so important, they do not ignore thinking processes, like the behaviourists- or ignore the nature of thinking, like the psychoanalysts." [Taylor et al., 1999]

DISCUSSION

Psychoanalytic approach explains human behaviour on the basis of the unconscious, which contains most of our behaviour, as Freud argues. They claim that our behaviour is determined by our early experiences of childhood, which we may not remember anything about it, as Gross says:

"The quality of the child's earliest relationships affects the whole course of later development". [Gross, 2001]

However the behaviourists argue that environment is responsible for our behaviour. Unlike the psychoanalysis approach this theory claims that we learn everything in society and there is nothing in our behaviour we born with it. Atkinson et al., mention this by saying:

"Behaviour is the result of a continuous interaction between personal and environmental variables. Environmental conditions shape behaviour through learning; a person's behaviour, in turn, shapes the environment". [Atkinson et al., 1996]

Psychoanalytic approach argues that our behaviour is already decided in our infanthood, so, according to this approach, it can be argued that we have not any personal responsibility or free will over our own behaviour and acts. Atkinson et al., further explain this matter by saying:

"Freud took the next step by emphasising that human behaviour is determined by forces beyond our control, thereby depriving us of our free will and psychological freedom". [Atkinson et al., 1996]

Freud argues that if a child's pleasure is not satisfied, it goes into unconscious and causes behavioural problems in later life i.e. Pleasure principle. As Atkinson et al., say:

Psychological determinism is the doctrine that all thoughts, emotions and actions have causes. Freud maintained not only that all psychological events are caused, but that most of them are caused by unsatisfied drives and unconscious wishes. [Ibid]

The cognitive approach, which deals with mental processes, argue that all our behaviour takes place between our ears, i.e. in our brain, so the situation of our brain, decides over our behaviour. Our brain is like a computer, i.e. a machine. They argue that our thinking is generally good and positive, although sometimes faults happen. It can be argued that their comparison between brain and a machine is incomplete, because human brain is not like heart or kidney or stomach to be observed directly, and computer cannot analyse as the brain does.

Unlike the Cognitive approach, the behaviourists argue that we learn everything good and bad by conditioning i.e. punishment and reward, as Taylor et al., say:

" In child rearing, or in the classroom, desirable behaviour is

reinforced by positive rewards, and undesirable behaviour discouraged either by ignoring it, by punishment or by negative reinforcement." [Taylor et al., 1999]

However it can be argued that the behaviourist theory of learning is not applicable for all the behaviour, although it can be applied to most of it, as Taylor et al., say:

"While much of our behaviour may be acquired by classical and operant conditioning, by no means all of it is." [Ibid]

The conditioning learning introduced by the behaviourists faces difficulties if we try to apply what is applicable to certain animals, to all the others including human beings. Gross further criticizes this matter, as says:

"Although conditionability seems to be an almost universal property of nervous system (including those of sea snails, flatworms and fruit flies, may psychologists have argued that there can be no general laws of learning." [Gross 2001]

The cognitive theorists does not deny the learning process by the behaviourists but they argue that the behaviourist theory is insufficient, because they cannot make a balance between the behaviour and the mind, as Taylor et al., say:

" Cognitive psychologists say there must be a representational level (that is, mind) within human beings between information input and behaviour output which cannot be adequately described in terms of brain cells." [Taylor et al., 1999]

Freud argues that when a girl realizes that she has not a penis, she becomes envy of the boys, so called penis envy. However it can be argued that the girl may realize that she is a complete human being without a penis, but less than the social position of boys, as Gross says:

"What girls (and women) envy isn't the penis as such, but male's superior social status (the penis is a symbol for male privilege). Moreover, it's men, not women, who equate lack of a penis with inferiority." [Gross 2001]

However the behaviourists argue that the children learn their behaviour towards each other's from the environment, a boy learns to behave as a boy and a girl as a girl. They are interesting in the observable behaviour, and they think that they are the most scientific approach, as Twining says:

"Behaviourism is scientific because it is 'done' in a laboratory under strict control." [Twining, 2001]

However the cognitive theorists argue that their approach is more scientific, as they use computers and experiments more practically. Taylor and others explain this issue by saying:

"Only the use of models, computers and controlled experiments gives modern cognitive psychology its greater scientific credibility." [Taylor et al., 1999]

The Psychoanalytic theorists believe that their approach is scientific, many

critics may reject this idea, but they give strength to their claim by saying that they deal with the unconscious, which is the rational part of brain. Beystehner defends this approach when says:

"Whereas new ideas have enriched the field of psychoanalysis and techniques have adapted and expanded over the years, psychoanalysts today, like Freud, believe that psychoanalysis is the most effective method of obtaining knowledge of the mind." [Beystehner, 1998]

Both psychoanalysis and cognitive approaches are developmental approaches; both of them believe that children are different from adults. Psychoanalysis approach is interesting in emotional development of the child, as a way to understand the social and personality development. They argue that our personality is shaped by the conflict between animal instincts Id and society demands Ego. However the Cognitive approach argues that human personality is a result of intellectual growth arising from an interaction between biological growth and environmental stimulation. [Taylor et al., 1999]

The psychoanalysis argue that a boy enters in conflict with his father in the age of about three i.e. Oedipus complex. This theory is subject to a lot of criticism, because Freud's theory about Oedipus Complex formulated in a special period of time and in a western society, so it can be argued that this theory may be not true for other societies or different periods of time, Segal et al., comment on this matter by saying:

"Freud assumed that the Oedipus complex was a universal phenomenon, but even if true for western cultures, the Oedipus Complex may not apply to every or to all historical periods." [Gross, 2001]

The Oedipus complex is further criticised for not fitting other cultures by Atkinson et al., as they say:

" Malinowski collected dream reports from adolescent boys in the Trobriand Islands, where uncles rather than fathers are responsible for disciplining them. He found no instances of dreams in which fathers suffered but several in which uncles met with disaster, implying that it is the discipline, not Oedipal rivalry, that creates the hostility." [Atkinson, 1996]

The cognitive approach also believes that a child is going through different stages of growth, in this matter they share a similarity with the psychoanalytic theorists, but they still have their special way of analysis, as it is explained by Taylor et al.:

" Children progress through various fixed stages as they develop an understanding of the physical and social world. Each stage is characterised by a different set of cognitive strategies which children use to understand and structure information." [Taylor et al., 1999]

C O N C L U S I O N

This short essay has looked at three approaches in psychology: psychoanalysis, behaviourism and cognitive. Each approach is analysed and compared to the others for the contributions they offer in psychology and the criticism they face in their theories.

The complexity of human mind and the impossibility of direct observation of behaviour as well as the lack of an instrument to look into human mind and to find out how we think, remember or speak drive the psychologists to obtain different views and to develop different approaches to psychology.

In psychology there is nothing called true or false, all the approaches have their contributions, similarities and differences, at the same time none of them is sufficient alone to study human behaviour; i.e. psychology. Gross explains this issue in a famous study, as says:

" Each approach has something of value to contribute to ourselves- even if it is only to reject the particular explanation it offers. The diversity of approaches reflects the complexity of the subject -matter, so, usually, there's room for a diversity of explanation." [Gross, 2001}

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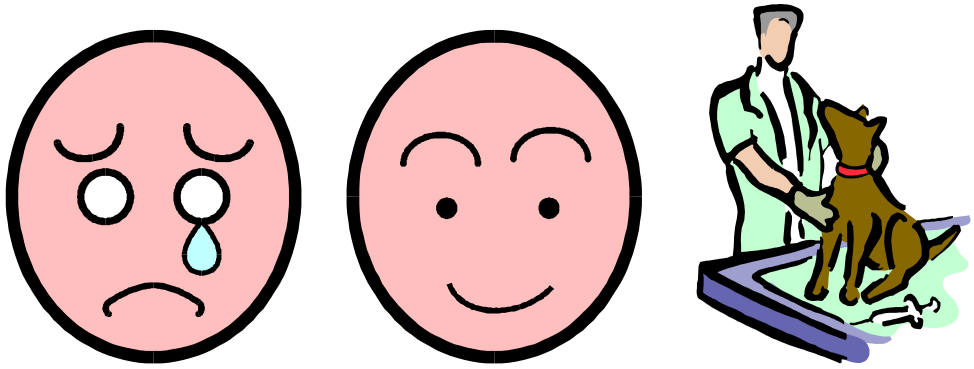


OCB PSYCHOLOGY

AN INVESTIGATION INTO

Gender Stereotyping

ABSTRACT

An investigation was carried out into gender stereotyping based on a research by Louise Higgins. The target behind this investigation is to know the gender differences in their estimations of the I.Q s of themselves their fathers and their mothers.
Asking the participants in private about their estimations of their own, fathers and mothers I.Q s has carried out this investigation. All the participants were informed that this is not an I.Q test, although most of them understood it that way in the beginning.

The investigation was a natural one by using existing live people in it. Twenty-one persons were participated in this investigation: 10 males and 11 females. They were generally interesting in the subject and were ready to be questioned.

From this investigation one may argue that the I.Q estimations had different results from males and females, as the estimations carried out by females were closer to the total estimations of both sexes.

The estimations for the fathers, mothers and selves are also different. In general the I.Q estimations for fathers were higher than those of mothers and the estimations for self-I.Q s were higher from both of the previous ones.

These results are different by comparing them to a previous research by Higgins. According to Higgins' research male participants are giving higher estimates of their I.Q s than the female participants, while in this research the results indicate that both of them gave higher estimations of their own I.Q s. However, in this investigation also, both sexes gave higher I.Q s for their fathers than their mothers.

INTRODUCTION

An investigation has carried out into gender stereotyping, which has based on a research by Louise Higgins. Higgins' research was not about intelligence, same of the present investigation.

He was targeting a study to know the different reactions of genders to the estimation of their fathers, mothers and their owns I.Q s.

Higgins' study concentrated on the differences of the males and females in their estimations and he find out that "men give higher estimates of their own I.Q s than women do, while both sexes estimate their father's I.Q as higher." [Higgins- Chester College]

Higgins' research requires three topics in psychology: intelligence, self-esteem and sex-role stereotyping, in order to understand the investigation. These fields, as Higgins argue, are arguable fields in psychology because you cannot measure or describe them straight away; they are different to different situations and people.

This investigation was a practical investigation depending on real people, as psychology is about people and without asking real persons there will not be true data.

Twenty-one persons were participated in this investigation: 10 males and 11 females. All of them were volunteers and were happy to be asked about their estimations of the intelligence of their fathers, their mothers and themselves.

The target behind this practical investigation was to find out either gender stereotyping exists between males and females in their estimations, and the study has find out many significant differences between the two sexes.

The hypotheses, according to Higgins, are as follows:

1. Male participants will give higher estimates of their own I.Q s than female participants.
2. Participants will estimate higher I.Q s for their fathers than for their mothers.
3. Participants will estimate higher I.Q s for their fathers than for themselves.
4. Participants will estimate lower I.Q s for their mothers than for themselves.

Method

Design

An I.Q scale was used in this investigation, which was a line of six inches long. That line was marked with numbers starting with 70 and ended in 140. This means that the estimated I.Q's should not be less than 70 and no more than 140. The participants had to make a strait line on the number that they estimate for the I.Q of their father, mother or themselves.

PARTICIPANTS

The participants were aged between 18 and 53. They were from different educational backgrounds starting from zero and ending in university degrees. Ten of the participants were males and the other eleven were females.

The participants were generally happy about the test and the investigation was carried out with great interest.

Discussion

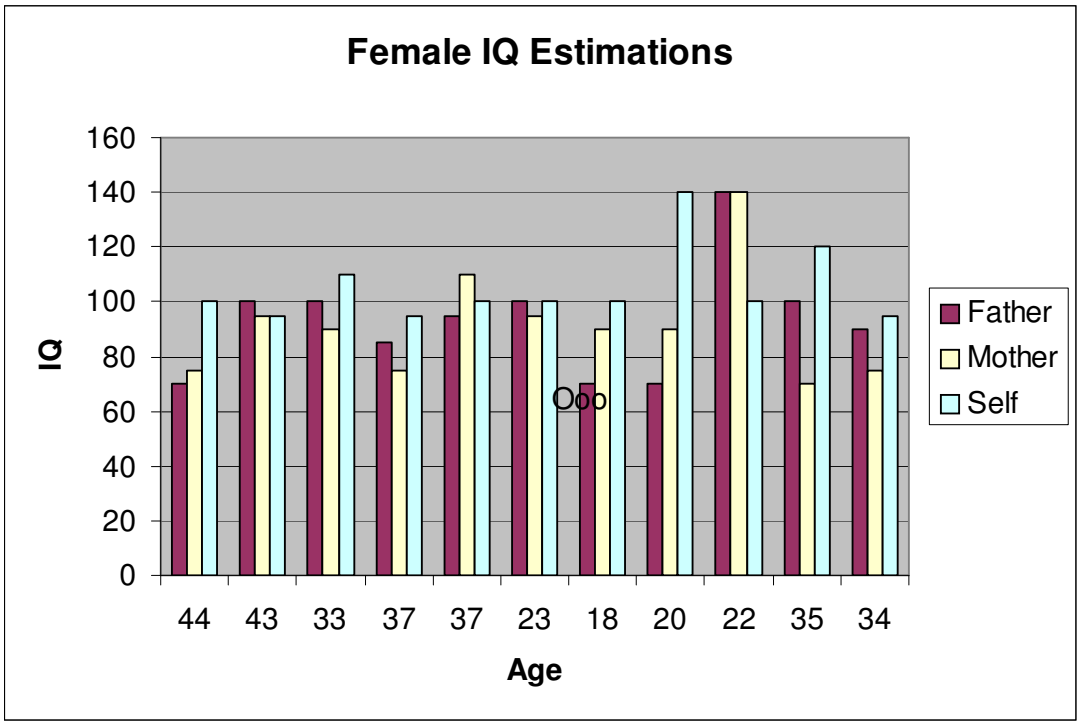
The estimations were put in charts in database format and from there different charts and percentages were carried out. (see Appendix 1)

THE GENERAL I.Q AVERAGES FROM BOTH MALES AND FEMALES WERE AS FOLLOWS:

Fathers Mothers Own

96.19 89.76 105.47

The Female estimations for the I.Qs were as follows:

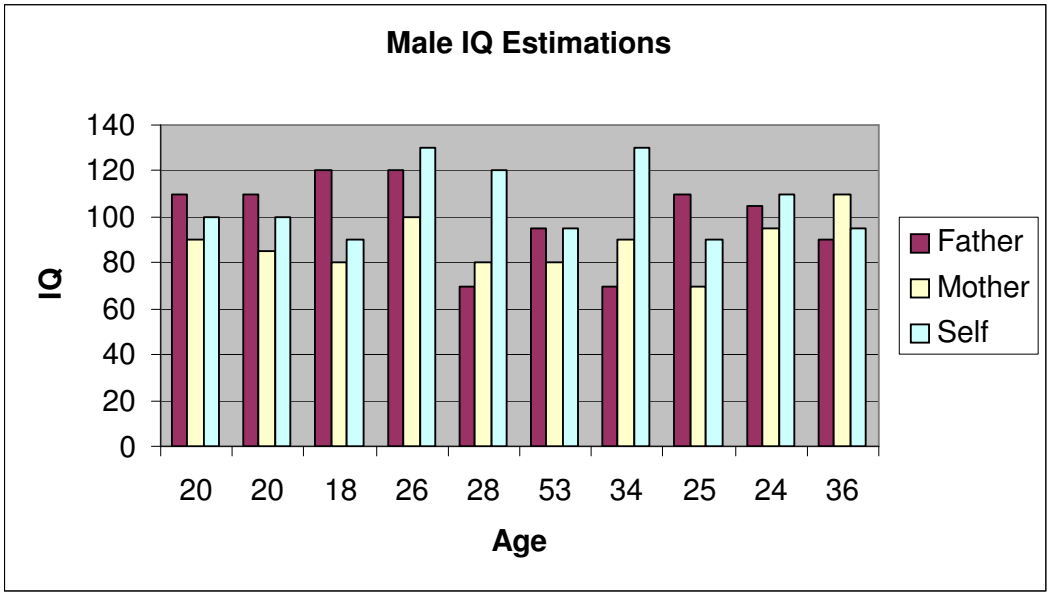


The averages of I.Q estimations by females were as follows:

Fathers	Mothers	Own

92.72 91.36 105

The Male estimations were as follow:



The averages of I.Q estimations by males were as follows:

Fathers	Mothers	Own
100	88	106

From this investigation we find out that the I.Q estimations had different results from males and females, and the estimations carried out by females were closer to the total estimations of both sexes.

The estimations for the fathers, mothers and selves are also different. In general the I.Q estimations for fathers were higher than those of mothers and the estimations for self-I.Q s were higher from both of the previous ones.

It can be argued that the reason behind the difference of I.Q estimations between fathers and mothers returns to the fact that generally women are less present in high educational or

professional positions than men. So the estimations of mothers are lower than the fathers.

Most of the people participated in this I.Q are educated to some degree. Many of them think that progress in education is a sign of higher I.Q, although it can be argued that this matter is not proven. So the estimations for selves are higher than both of fathers and mothers.

There are different social and biological theories about the differences between the sexes, although the differences appeared in some studies are relatively small and many researchers are relating the differences to the education and environment. As most of the families are treating the children of different sexes in different ways, so they are trained, educated and learned to be different.

However the biologists may argue that the sexes are biologically different, men are stronger than women and they are more intelligent, however this is not supported by many psychologists, as Smith et al said:

" The link between gender and power has led some psychologists to suggest that a gender hierarchy, in which women have relatively less power and status than men, is responsible for the observed gender differences in emotion." [Smith et al, 2003: 411]

These findings are similar to the hypotheses in some aspects and different in others. In the hypotheses male participants are giving higher estimates of their own I.Q s than female participants, in the present investigation the difference between the two sexes is very small i.e. only one. However both males and females gave higher I.Q s for themselves than for their fathers and mothers. This difference can be counted as anomalous from the Higgins research.

This finding disagrees with the hypothesis that suggests the participants will give higher I.Q s to their fathers than themselves.

The Higgins' research suggests that participants will give higher I.Q s to their fathers than their mothers; the present investigation gives the same result.

Conclusion

This investigation into gender stereotyping shows us that there are gender differences in I.Q estimations for people related to us directly: father, mother and ourselves.

Twenty-one persons from both sexes have participated in this investigation, eleven females and ten males. They all show big interest in being asked about the estimations.

The investigation finds out many results, such as differences between males and females in estimating their I.Q s and differences in estimating the I.Q s of fathers and mothers as well as themselves.

It became clear that there are gender differences in estimations and in the way they understand the world, although the differences are not very big.

The main difference that can be counted anomalous to the suggested hypotheses is that the

participants, both males and females, gave higher I.Q s to themselves than their fathers and mothers; it can be argued that this due to their formal education levels comparing to their parents.

However, formal education, it can be argued that is not the best scale for I.Q estimations, as many intelligent people may had lost their chances or opportunities for progress in these fields.

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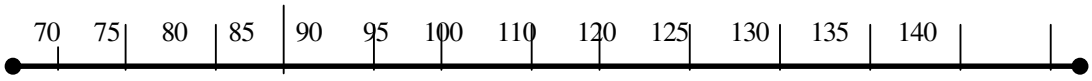
Appendix 1

An example of the six inches long line that was used for the estimations:



Appendix 2

I.Q Estimations Table

Raw data

Number	*Gender*	*Age*	*Father*	*Mother*	*Own*
1	***F***	44	70	75	100
2	F	43	100	95	95
3	M	20	110	90	100
4	F	33	100	90	110
5	F	37	85	75	95
6	F	37	95	110	100
7	M	20	110	85	100
8	F	23	100	95	100
9	M	18	120	80	90
10	M	26	120	100	130
11	M	28	70	80	120
12	F	18	70	90	100
13	F	20	70	90	140
14	F	22	140	140	100
15	M	53	95	80	95
16	F	35	100	70	120
17	M	34	70	90	130
18	M	25	110	70	90
19	M	24	105	95	110
20	M	36	90	110	95
21	F	34	90	75	95

Name: Ata Karim Arif
Course Tutor: Annsa Amin
Due Date: 12/ 02/ 2004

NEGLIGENCE- DUTY OF CARE

This short essay tries to outline the main elements of duty of care with reference to case law, and it has to analyse the role of public policy in relation to public bodies.

I have to look at different sources and textbooks in libraries as well as online about duty of care, in order to bring a brighter idea and giving a satisfying answer to the present question: What are the main elements of duty of care, and what is the role of public policy in relation to public bodies?

DUTY OF CARE IS THE FIRST REQUIREMENT IN ESTABLISHING NEGLIGENCE; BEFORE YOU PROVE SUCH A DUTY THERE CANNOT BE ANY CLAIM OF NEGLIGENCE. THIS DUTY SHOULD HAVE BEEN BREACHED BY THE DEFENDANT AND CAUSED DAMAGE TO THE PLAINTIFF. THE RELATIONSHIP BETWEEN THE PLAINTIFF AND THE DEFENDANT SHOULD BE SO CLOSE AS DESCRIBED BY LORD ATKIN AS 'NEIGHBOURS', AND THE DAMAGE OR THE HARM MUST BE REASONABLY FORESEEABLE. AS CLARK AND STEPHENSON EXPLAINED IT:

"Whenever a person can reasonably foresee harm to another he owes a duty to exercise reasonable care to avoid causing that harm."[14]

However the role of the public policy should not be ignored. One may argue that justice should be one for all; there should not be any policy bias in duty of care, while others may say that this act may lead to open the floodgates and waste the public wealth paid by taxpayers. In such a case a great number of people may claim for liability of duty of care on public bodies if they will be allowed, as in **Hill v Chief Constable of west Yorkshire [1988]** (I shall explain this case later).

In **Donoghue v Stevenson [1932]** Lord Atkin introduced what is known as 'neighbour principle', which means that we have to take reasonable care not to harm those who are so close to us that they can be affected by our actions.

[14] Clark, P., & Stephenson, G., *Law of Torts*. 3rd.ed. Blackstone Press Ltd.: London. 1991. P. 47

"YOU MUST TAKE REASONABLE CARE TO AVOID ACTS OR OMISSIONS WHICH YOU CAN REASONABLY FORESEE WOULD BE LIKELY TO INJURE YOUR NEIGHBOUR." SAID LORD ATKIN.[15]

In that case Lord Atkin found that the manufacturers owed a duty of care to the consumers even when they are not in a direct contract with them. Here the manufactures of the ginger beer are considered as neighbours to the woman who drank the beer, because their fault affects her.

"Ratio decidendi-a manufacturer, who makes a product intending that the consumer should receive the product in the same condition as when it left him, owes a duty of care to the consumer, when there is no possibility of intermediate examination."[16]

The neighbourhood test was applied in many cases, until Lord Wilberforce developed it in **Anns v Merton [1978]** into a two-part test. He remarked that in order to prove that you owed the defendant a duty of care, you have to make clear that there is enough proximity between you and the defendant as well as considering the policy regarding that case by the court, which may limit the obligation for the possibility of the duty or remove it completely.

Although the Anns test was applied in many cases, such as **Ross v. Caunters [1979]** and **Junior Books v. Veitchi [1982]**, it faces a lot of criticism by courts. The courts saw that the duty of care is much more complex than it is described in the two tier test of Anns case. The House of Lords overruled that case in **Murphy v Brentwood District Council [1990]** the facts of that case was very similar to Anns' case, but the House of Lords held that unless there is physical damage there is not liability for negligence. In this case the House of Lords consider the damage claimed by the Plaintiff as purely economic loss.

The House of Lords decided that in order to impose liability in duty of care, the court should set three tests, known as the tripartite test, as Bermingham explains it:

"The House of Lords set down a tripartite test for establishing a duty of care:

1. The harm must have been reasonably foreseeable.
2. There must have been a relationship of proximity between the parties.
3. In all circumstances of the case, it must be fair, just and reasonable to impose a duty of care. [17]

[15] Charman, M., et al, *AS & A2 Law*. 1st ed., Pearson Education Ltd.: Harlow. 2000. P. 134

[16]Kumari Lane, Tort of negligence- Duty of Care [online]

[17] Bermingham, V., Tort. 2nd ed., Sweet & Maxwell Ltd.: London. 1999. P. 27

This test is constructed and applied in **Caparo v. Dickman [1990].** The plaintiff's claim failed because there was not enough proximity between the plaintiffs and the defendants. Proximity may mean closeness but it does not necessarily mean physical closeness but it can mean closeness of relationship also. The HL also observed that the audit was not prepared for the purpose of providing information for investors, so the damage was not reasonably foreseeable. They also saw that it was not fair, just and reasonable to impose such a liability; the current position of duty of care depends on this principle.

The courts have to satisfy some principles in order to impose a duty of care on a defendant; otherwise everybody may claim that he/ she owes another a duty of care. The first condition for a duty to be imposed is foreseeability, which means that the damage was reasonably foreseeable by a reasonable man.

However this matter is very complicated for judges to decide, they have to look for similar cases that have been decided by higher courts of justice in the past. As in the case of **Bourhill v. Young [1943]** when the House of Lords held that the plaintiff owed no duty of care, because she was so far from the place of the accident that no reasonable person may foresee any physical damage to her.

However proximity was found in **Home Office v Dorset Yacht Club [1970]** because it was foreseeable that if the boys runaway they could cause damages to the yachts in the area. However it can be argued that no claims are acceptable for damages in an area, which is so far that a reasonable man cannot foresee any danger.

Although foreseeability and proximity are two important conditions for a duty of care to be held, however they are not sufficient alone, but the higher courts decided that any liability for duty of care should be just, fair and reasonable.

This principle is applied in **Barrett v Ministry of Defence [1995]** when the Court of Appeal said that it is not just, fair and reasonable to impose a duty of care on the Navy, because S was a responsible adult and he should assume responsibility for his acts i.e. controlling his alcoholic drink.

Fair, just and reasonable is always a controversial test in duty of care. What is just and what is reasonable? It is very difficult to decide, the burden is on the judge to decide what is fair, just and reasonable and what is not. However one may argue that the judges are also human beings and they may decide according to their subjective estimations rather than to be objective.

PUBLIC POLICY CONSIDERATION ARISES MANY DEBATES IN DUTY OF CARE. ALTHOUGH THE COURTS HAVE STATED THAT 'POLICY' IS NO LONGER A FACTOR, STILL THEY CONSIDER IT; IT IS CLEAR FROM CASES LIKE **HILL** THAT THEY DO. AS THE MOST VITAL DUTIES AND TASKS OF COMMUNITY ARE ON THE PUBLIC SERVICES SUCH AS POLICE, THE NATIONAL HEALTH SERVICES, FIRE BRIGADE AND ETC…ONE MAY ARGUE THAT IF YOU CANNOT SUE THOSE INSTITUTIONS, JUSTICE MAY NOT BE OBTAINED. WHILE OTHERS ARGUE THAT BECAUSE LIABILITY IS THE PRINCIPLE IN DUTY OF CARE, SUING THE PUBLIC BODIES IS A WASTE OF PUBLIC FUNDS AND MAY PREVENT THE MOST PRINCIPAL SERVICES FROM DOING THEIR WORK IN A HEALTHY WAY.

IN HILL V CHIEF CONSTABLE OF WEST YORKSHIRE [1988] THE HOUSE OF LORDS HELD THAT CLAIMS LIKE THIS TO SUE THE POLICE FOR NEGLIGENCE IN THEIR FAILURE TO CATCH A CRIMINAL SHOULD NOT BE ALLOWED BECAUSE OF PUBLIC POLICY REASONS. THE POLICE ARE DOING THEIR BEST TO FIGHT CRIME, THE HOUSE ARGUED, AND ANY CIVIL LIABILITY MAY PREVENT THEM FROM SUCH AN IMPORTANT ROLE.

It can be argued that the police knowing before hand that they cannot be sued for liability in duty of care may encourage them to be more careless in their duties. However one may argue that the police are not a profit making body, so any liability for negligence may due to waste of resources of the public and at the end it will not be in the interest of the public to do so. According to what happened in **Hill,** it is not easy to sue public bodies as Markesinis & Deakin said:

" **Hill** has been cited in a string of cases to deny liability on the part of the police to the victims of crimes and accidents. Hence the owner of a shop could not sue the police for losses allegedly caused by their negligent failure to catch a burglar. Nor has the estate of a victim of a road-traffic accident a cause of action against the police for failing to alert road users to the presence of slippery diesel oil left on the highway by a third party. The same principle has been applied to public rescue services, such as the fire service and the coastal rescue. Thus, such bodies are under no private-law duty to respond to emergency calls, and cannot be liable for an omission to act when carrying out a rescue." [18]

The public bodies such as police, ambulance and fire brigade are employed for public duties, they do their best to keep the community safe and healthy, so it can be argued that they do not need any threats for further actions. However others may argue that suing the public bodies may lead to further cautions in carrying out their duties.

It can be argued that suing the public bodies may affect their general duties and prevent them from their immediate and emergency operations for the benefits of the whole society, in the expense of some private individuals remedies. As Lord Templeman said:

"Moreover, if this action lies, every citizen will be able to require the court to investigate the performance of every policeman. If the policeman concentrates on one crime, he may be accused of neglecting others. If the policeman does not arrest on suspicion a suspect with previous convictions, the police force may be held liable for subsequent crimes. The threat of litigation against a police force would not make a policeman more efficient. The necessity for defending proceedings, successfully or unsuccessfully, would distract the policeman from his duties."[19]

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[18] Markesinis, B. S. & Deakin, S. F. *Tort Law.* 4th edition, Oxford University Press: Oxford. 1999 P. 371

[19] Lord Templeman, in **Hill v. Chief Constable of West Yorkshire (H.L) 1988. Justis .com [online]**

However the individuals have their human rights and these rights should be recognized. This matter is illustrated in **Osman v UK [1998]** when the European Court of Human Rights found that the Court of Appeal breached Article 6 of the European convention on Human Rights; a right for a fair trial for everybody. The EU Court held that there should not be a so-called 'blanket immunity' for the police because it breaches Article 6.

The HL may argue that the reason why the police immunity is reversed in **Osman v UK** contrary to what was held in **Hill** is not because of policy considerations but because in **Hill** there was not proximity between the plaintiff and the defendant, as it was not clear who he may kill. In **Osman** there was enough proximity between the plaintiff and the defendant.

The courts may not mention policy as a condition for liability in duty of care, however still they give it some thought in deciding cases relating to public bodies. In **Osman v UK** the House of Lords accepts there should be a fair trial for everybody, but still after that they consider public policy, as Jones says:

" Of course this still leaves it open to the court to find that there should be a public policy immunity after a trial on the facts."[20]

Duty of care is a controversial area and as it expands throughout the time it leads to great changes in the law in this area. As Jones says:

" In recent years the courts have identified a wide range of factors that may be relevant to the denial of a care, though it is not always clear whether these factors render the relationship insufficiently proximate or whether fall under the just and reasonable limb. The result, in practice, is the same." [21]

The courts now depend on **Caparo v. Dickman [1990]** as a basis for their decisions, although they do not mention policy as a condition but still, it can be argued, that they regard it; may be under proximity or fair, just and reasonable criterion.

It can be argued that policy is used as a justification for denying liability in duty of care, especially where it relates to the public bodies. However this position is not an acceptable one because it can be argued that why someone should deny remedy just because the fault is from a public body. Jones further criticizes this matter by saying:

"The floodgates argument is again empirically unproven, and in any event consists of the assertion that there are too many plaintiffs who are the victims of a legal wrong to confer a remedy, an argument that does lie well in the mouth of a negligent defendant." [22]

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[20] Jones, M., A., *The Textbook on Torts*. 8th edition, Oxford University Press: Oxford. 2002 P. 76

[21] Ibid P. 43-44

[22] Ibid P. 80

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STROOP

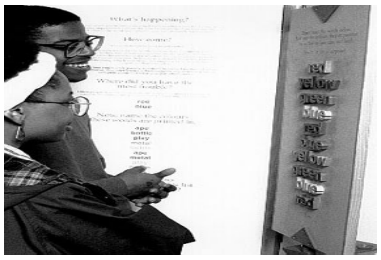
EFFECT

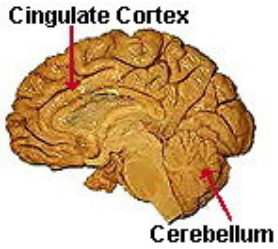
INVESTIGATION

A

PRACTICAL

REPORT





ABSTRACT

AN INVESTIGATION WAS CARRIED OUT IN TO THE STROOP EFFECT. TEN ADULTS PARTICIPATED IN THIS INVESTIGATION, AND THERE WERE THREE EXPERIMENTAL CONDITIONS, SERIES OF COLOUR PATCHES, COLOUR NAMES AND COLOUR NAMES IN CONFLICTING COLOURS.

THE PARTICIPANTS HAD TO SAY THE COLOUR PATCHES, READING THE COLOUR NAMES AND NAMING THE COLOUR OF THE WORD WRITTEN IN CONFLICTING COLOURS. IT WAS HYPOTHESISED THAT THE THIRD TASK, WORD CONFLICT, RESULTS IN LONGER TIMES, BECAUSE OF THE CONFLICT BETWEEN NAMING THE COLOURS AND READING THE WORD.

THE PURPOSE BEHIND THIS PRACTICAL INVESTIGATION WAS TO FIND OUT THE DIFFERENCE BETWEEN DIFFERENT PEOPLE'S BRAIN REACTIONS TO THE DIFFERENCES OF THE TASKS. WHEN SOMEBODY SAW A COLOUR PATCH, HE THOUGHT ABOUT THAT COLOUR, AFTER THAT READING THE NAME OF THE COLOUR GAVE HIM FURTHER AFFIRMATION, BUT READING COLOUR NAMES IN CONFLICTING COLOURS ALWAYS SLOW DOWN THE BRAIN REACTION FOR RECOGNISING THE REAL PURPOSE.

THE RESULTS INDICATE THAT THERE IS A DIFFERENCE BETWEEN THE PERSONS AND THE TASKS AS WELL. BECAUSE A GENDER DIFFERENCE WAS ALSO OBSERVED, SUGGESTIONS FOR FURTHER STUDIES WERE MADE IN THIS REPORT.

INTRODUCTION

STROOP EFFECT IS A MENTAL TEST INTRODUCED BY DR. STROOP IN 1930'S, THE IDEA BEHIND THIS TEST IS TO TRY THE BRAIN ABILITY OF THE PARTICIPANTS FOR SPEED OF PROCESSING, BECAUSE WORDS COULD BE READ FASTER THAN COLOURS ARE NAMED. AS WELL AS TO TRY THE SELECTION ATTENTION ABILITY OF DIFFERENT PERSONS, AS NAMING THE COLOURS REQUIRE MORE ATTENTION THAN READING THE WORDS. RAMUS EXPLAINS THE RELATIONSHIP BETWEEN LANGUAGE AND READING AS:

"Unlike language, reading is not one of those "natural" human skills that may have evolved under the pressure of natural selection. Rather, like tennis or chess, it is a recent cultural invention (about 5000 years), and one that puts considerable demands to our cognitive system. Nevertheless, in societies where reading is taught systematically, it is acquired early on by most children, who go on to mastering it to a high degree of skill." [Ramus, F., online]

IN TWO CLASSIC EXPERIMENTS, STROOP FIRST COMPARED READING A LIST OF WORDS PRINTED IN BLACK WITH READING THE SAME LIST OF WORDS PRINTED IN INCONGRUENT COLOURS. STROOP FOUND THAT THERE WAS LITTLE DIFFERENCE IN READING TIME FOR THE TWO LISTS. STROOP THEN COMPARED THE NAMING OF COLOURS FOR A LIST OF SOLID COLOUR SQUARES WITH THE NAMING OF COLOURS FOR A LIST OF WORDS PRINTED IN INCONGRUENT COLOURS. SUBJECTS AVERAGED 74% LONGER TO NAME INK COLOURS OF INCONGRUENT WORDS.

The results of these two studies led Stroop to conclude that since people are more practiced at word reading than naming colours, there is less interference with word reading than with colour naming.

THE ARRANGEMENT OF COLOURS DOES NOT ALLOW THE REGULARITY OF ORDER, THIS MEANS NO COLOUR IS DIRECTLY FOLLOWS ANOTHER IN THE SECOND COLUMN. THE WORDS WERE ARRANGED IN THE SAME ORDER, TO AVOID ANY AMBIGUITY.

Ten adults were used in this experiment, six males and four females. The participants were all volunteers and their motivation was very good. They were told to try to read as soon as possible and to correct the errors. Each test was on a separate sheet and a stopwatch was used to take the time.

Generally speaking the work went well, although some errors happened during the reading especially in test number three. The work was done in daytime. Hypothesis appeared in this practice about the colour stimulus of the participants, the gender difference and personal differences especially in naming the colours of the words appeared in conflicting colours. It appeared that female participants were better than the male ones in colour recognising.

It is common that subjects with Attention Deficit Hyperactivity disorder (ADHD) are slower than others in these kinds of tests, so a suggestion for diagnosing children for any suspicions of this disease arose from this experiment.

METHOD

DESIGN:

In this report the Stroop Effect was used to investigate the participants reaction to the colours. This method is a reliable method for attention testing of subjects and it can be used in classrooms also.

Three conditions were used in this experiment, and the D.V was the time taken to complete the tasks. The order of presentation was controlled.

PARTICIPANTS:

The participants were ten adults, six males and four females, aging between eighteen and forty. All those participants are friends and families to the experimenter. Three sheets of paper were used, first with colour patches, second with colour names and third one with colour names in conflicting colours. The sample of these designs can be found at the appendix of this report

The participants were taken to a quiet place, at the daytime, in order to avoid any interference with the artificial lights. Before starting the experiment, they were adjusted to some colours and colour names, to avoid any ambiguity in the process of the test.

The participants given the necessary instructions as to what they had to do in each condition. The order of presentation varied in each condition and the times recorded.

After the completing of the conditions the participants were thanked for their kind help and debriefed.

RESULTS

Discussion

The participants presented with the row data (see the appendix) in separate sheets of paper. The results were all registered with a stopwatch, and the following data came in to being:

Data analysis and presentation:

Participant's	Condition 1	Condition 2	Condition 3
1	24	19	42
2	20	25	48
3	30	35	50

4	38	27	60
5	20	20	42
6	15	15	50
7	20	20	60
8	25	30	35
9	34	20	45
10	20	15	55

The averages were found out by using a calculator, and it was as follows:

Table of results:

Condition 1	Condition 2	Condition 3
24.6	22.6	48.7

The numbers have been derived from reality.

It became clear from this experiment that it will take longer to identify the colour of a word written in a conflicting colour than it will to read a colour name or a colour patch.

The table of results showing mean slots in seconds of time taken to name colour patches, read colour names or name colour of word written in a conflicting colour.

The results indicate that it takes considerably longer to name the colour of the words written in conflicting colours than to name the colour patches or read the colour words. Therefore the hypothesis that different persons have different attention rates is correct and proved.

The "Speed of Processing" hypothesis suggests that word processing is much faster than colour processing. Thus, in a situation of incongruity between words and colours, when the task is to report the colour, the word information arrives at the decision process stage earlier than the colour information and results in processing

confusion. On the other hand, when the task is to report the word, because the colour information lags behind the word information, a decision can be made before the conflicting colour information arrives. This activity directly relates to brain ability of the subject, as Brooks says:

"Words have a strong influence over your brain's ability to distinguish information.. The interference between the different information (what the words say and the colour of the words) your brain receives causes a problem." [Brooks 2000. Online]

CONCLUSION

This practical investigation shows the different attention rates of persons. The participants were ten adults six males and four females, they were all volunteers and follow the instructions with a good enthusiasm.

The experiment took place in a room in daytime, the only light depended on was daylight. There where no any artificial source of light.

The results show that there is not a big difference between males and females, although the females where slightly quicker in naming the colours.

It is also understood from this investigation that brain is a very complicated and mysterious thing even to the scientists. You cannot X-ray the brain to know how somebody feels or taking a picture of the processes inside the human brain.

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Critically Analyse the Breach of Duty with a Reference to the Reasonable Man Test?

The question requires to analyse the breach of duty and to clarify the test, the reasonable man test. In order to answer this question I have to analyse the factors a Court will consider when deciding a duty has been breached.

Negligence is the omission to do something, which a reasonable man guided upon those considerations which ordinary regulate the conduct of human affairs, would do, or doing something which a careful and reasonable man would not do it. This test is stated in the case of **[Blyth v. Birmingham waterworks (1856)].**

In order a Court to be satisfied that there is negligence there should be a duty owed by the defendant, that duty should be breached and caused damage, which is not too remote.

A breach of duty is proved when you fall below the standard of what is expected form you in law. The Court uses a test for this purpose that is called the reasonable man test. According to

that test you should not do what a reasonable man would not do and you should do what a reasonable man would do in these circumstances.

The reasonable man is an ordinary man, an average man or the man on Clapham omnibus. The Court does not ask for 'perfection' but for 'reasonableness' for that purpose and that situation.

In deciding how a reasonable man would have behaved the Court will look at four factors; first it should look at the degree of the risk, because the greater the risk of harm the greater the obligation to take precautions. When the risk was not foreseeable there was no breach of duty, as in the case of **[Roe v. Ministry of Health (1954)];** in that case the risk of leakage of the solution was impossible to foresee at that time, so the Court held that there was no breach of duty and the defendant is not liable.

In **Bolton v Stone 1951** the risk was foreseeable however the possibility of it was so small that the Court neglect it, because the club had taken necessary precautions and there was only a small risk of a ball going over a high fence.

Second, the seriousness of the potential harm; even if the risk is small the consequences may be serious, as in the case of **Paris v Stepheny B. C. 1951** in that case the claimant was already blind in one eye so the defendant should have taken greater precautions for his safety. As he lost his other eye the defendant is liable for breach of duty.

Third, whether the risk is justifiable; when a risk is a benefit of society, to safe a life as it happens in rescue situations, it is justifiable to take a risk even though it was foreseeable, as long as it was taken only after due care and consideration. As in the case of **Watt v Herts cc 1954.** In that case a fireman was injured on their way to safe a life, the Court held that saving a life is more important than an injury, it justifies the risk, so the defendant was not liable.

Fourth, the expense and practicality of taking precautions; the Court will take the expenses and practicality of taking precautions to reduce harm. As in the case of **Latimer v AEC 1952** when the defendant had taken necessary steps to reduce risk, but it was impossible to take full precaution unless he had closed the factory. The Court held that although the risk was foreseeable and a worker was injured, but he had taken necessary precautions and the Court would not take him liable.

However it can be argued that the reasonable man test is controversial because the test itself is subject to many questions, who is reasonable and how he can be objective? The judge is a human being and he may decide according to his subjective reasoning. How he can decide the degree of risk, seriousness and expense and practicality objectively? It is open to criticism.

According to the test a driver is treated very strictly, a driver should be on the standard of a competent driver even if he is a learning driver. This point looks not fair, because a learning driver is not already a competent standard driver. This point arises policy reasons, as the third party insurance should pay.

It can be argued that as far as the driver had tried his best, he should not be liable. However it may be unfair if an injured victim was let to go without compensation because the driver was not competence. So morally a learning driver is not in fault, but legally he is liable because he is insured.

A child would be expected to be on the standard of a child of his age, not an adult. So the Court should look at the act of a child from a child's point of view of that age. As in the case of **Mullin v Richards 1998** when the Court did not take the teacher liable for negligent because what happened was only a childish play.

Professionals are treated slightly differently, by asking what a reasonable professional in that profession would do not any ordinary person. A doctor should be on the standard of an ordinary skilled doctor, but a doctor who acts in accordance with a practice approved by a responsible body of medical opinion is not negligent merely because there is a body of contrary opinion.

However the test could be easy to pass for doctors, because every doctor may be regarded as a doctor on the standard as long as he is authorized to practice the profession.

Breach of duty is controversial field in negligence, as a judge is the reasonable man and he is a human being who may be subjective or objective. Degree of risk, justifiability, seriousness or any other part of the test is subject to different opinions. Doctors and other professionals may pass the test easily without being liable to negligent, while a learning driver may be liable for negligent.

Critically Analyse the Negligence in Relation to Public Policy?

This question requires to me to critically analyse negligence and to refer to the role of public policy in relation to public bodies when a Court decides negligence. In order to answer this question I have to analyse the factors a Court will consider in deciding whether a duty of care is owed and how the public bodies should be treated.

Negligence is essentially concerned with compensating people, who have suffered damages as result of the carelessness of others. As law does not provide remedy for every one and every situation, the Court should decide who is liable for compensation and who is not.

The principal requirement of negligence is a duty of care, without such a duty there is no any liability for negligence. That duty should be breached and caused damage to the claimant, the damage should be counted in financial terms.

A duty of care is introduced with the neighbour principle as it was mentioned in the case of **Donoghue v Stevenson 1932**, when the judge held that a neighbour should not do anything that harms his neighbour. A neighbour is any one who is so close to us that he will be directly affected by our acts and omissions.

In deciding who owes a duty of care to somebody else, the Court has to follow the test introduced in **Caparo v Dickman 1990** when the Court decided that the claimant should ask the defendant three questions, was the damage reasonably foreseeable? Was the relationship between the claimant and the defendant sufficiently proximate? Is it just, fair and reasonable to impose a duty of care?

However even though all these three questions are answered positively, the public policy consideration will remain a hidden factor in relation to public bodies. Public policy is regarded for the emergency and voluntary sectors that work for the interests of the whole society. As duty of care is related to individuals the Court may take the public interest into consideration, and give it priority.

Public bodies are non-profit making organizations and allowing individuals to sue them would damage their resources. Since the taxpayers ultimately finance the police it would not be in the interests of the general public to sue them.

In the case of **Anns v Merton 1978** the judge decided that in deciding a duty of care the

neighbour principle is essential however the public police should be considered also. The Court should ask who would pay the compensation and whether it would affect their public services.

Bodies like the police and ambulance services have already a sense of responsibility towards others and they work for the security and safety of others; they do not need such a threat to push them for taking extra care. Threatening them by compensation may affect their services and delay their emergency actions.

The police and other emergency institutions have their interior protocols and procedures that control their behaviour, suing them for duty of care may push them to adopt defensive practices and consequently damages their service.

In the case of **Hill v Chief Constable of west Yorkshire 1988** the claimant was not successful because the Court held that the police have not a duty to safe everybody. It is the responsibility of the people to take care of their personal safety, however the police are responsible for any negligent during their operations. This immunity for the police is known as 'blanket immunity'.

The Human Rights Act 1998 puts human right's responsibilities on the Courts to consider in deciding cases. As the European Court of Human Rights may interfere when they believe that local Court is not following their decisions. This happened in the case of **Osman v UK 1998** when the ECHR held that the Court of Appeal breach article 6 of the European Convention of Human Rights because every one has a right for a fair trial according to that article. So 'blanket immunity' for the police was regarded as a breach of the article.

In **Hill v chief Constable of W. Y. 1988** the danger was on the whole community, not only an individual such as the claimant, however in **Osman v UK 1998** the claimant was the only person threatened by the defendant and by the way he was in danger. The Courts may regard this difference in deciding cases dealing with police.

The police are not owed a duty to protect the psychological well being of a proper adult, otherwise they cannot interview a suspect or any suspect may sue them for their psychological feelings.

The fire brigade are also treated like the police for the immunity of duty of care; unless they were negligently increased the damage or recklessly caused further damage. The Court of Appeal held that it is the responsibility of the individual to insure the security of his premises against fire. Otherwise it would create a massive of financial claims that would be an unreasonable burden on the taxpayers.

The institutions dealing with child care are also immune against any liability for duty of care, because their financial resources are mostly coming from voluntary sectors and any suing for duty of care would affect their general duty which is taking care of children.

IF WE ALLOW EVERYBODY TO SUE THE PUBLIC BODIES, IT CAN BE ARGUED THAT THIS MAY LEAD TO OPEN THE 'FLOOD GATES' SUSTAIN THE FINANCIAL RESOURCES, DELAY OR DESTROY THE PUBLIC SERVICES AND PUT A BIG BURDEN ON THE TAXPAYERS. HOWEVER, THE HUMAN RIGHTS OF THE INDIVIDUALS SHOULD BE TAKEN INTO CONSIDERATION. EVERYBODY HAS A RIGHT FOR A FAIR TRIAL AND A RIGHT FOR A SAFE AND SECURE FAMILY LIFE.

IT CAN BE ARGUED THAT AN INDIVIDUAL'S RIGHT FOR REMEDY SHOULD NOT BE DENIED MERELY BECAUSE A PUBLIC BODY IS IN THE WRONG.

THE PUBLIC BODIES KNOWING THAT THEY ARE IMMUNE, THEY MAY NOT TAKE PRECAUTIONS AND MAY ACT RECKLESSLY. THEY MAY ABUSE THEIR IMMUNITY AND USE IT FOR THEIR PERSONAL BENEFITS. WHILE IF THEY KNOW THAT THEY MAY BE SUED MAY LEAD THEM TO TAKE MORE EXTRA CARE AND MAY BENEFIT THE PUBLIC.

CRITICALLY ANALYSE THE LAW OF OMISSION?

The question requires critically analysing the law of omission; in order to answer this question I will look at the law of omission in detail and highlight any problem areas and criticisms.

The law makes a distinction between acts and omissions; act is doing something that the law asks us not to do, while omission is failure to do something that the law requires us to do.

A criminal offence consists of Actus Reus, including the act and all the other external elements of the offence except the state of mind, and mens rea, the state of mind of the offender at the time of committing the crime.

There should be a coincidence between the actus reus and mens rea, in other words the mens rea of the offence should exist at the time of the actus reus. While in cases where the act resulted in death, the necessary mental state to constitute manslaughter need not coincide in point of time.

At the case of **Pittwood (1902)** the man has not any state of mind (mens rea) to commit a crime when he did not close the gate, but he just recklessly neglect to close the door. So this is not an act but it is only an omission.

The Court uses tow approaches: admitting that an omission has occurred and imposing liability for that type of omission, or there is not an omission at all, it is a commission and he had committed the act. As in **Pittwood 1902** the gate keeping could be regarded as a continuous course of conduct, because he it was his duty to close the gate.

It should be noted that there is no general duty to act; the law does not ask everybody to become a Good Samaritan, so if you see a blind man crossing a road and you do not help him with the traffic you will not have committed a crime. However, it can be argued that a general duty may save a human being's life so it is necessary, but the problem of causation may arise, because it is difficult to prove either the victim died before the good Samaritan arrived or after. The issue of balance between the liberty of individual to pass and saving a life should be left to the jury.

However there are situations where you have a legal duty to interfere, and here a duty to act arises. In this case the casual link becomes immediate not remote. Here there is a rule of law to decide the causation rather than treating it as a matter of fact.

Where the law imposes duties to act, a failure to carry out that duty becomes criminal. There are five situations where you have particular duty to act.

First; special relationships, the common law requires a duty to act where here is a family relationship, especially between parents and children as well as spouses.

In the case of **Downes 1875** the father was a religious man and he believed in the power of

prayer rather than the orthodox medicine. He failed to call a doctor for his sick child and the child died. The father was convicted of the offence of child's manslaughter.

Now parents have a duty to provide medical aid for children under 14, while when they are grown up the duty exists only when voluntarily undertake such a duty not just for the blood relationship.

Spouses have a statutory duty to each other, when one of them needs medical aid or any other help it is a legal duty upon the other to provide it, while separated spouses would not owe each other a duty unless it was voluntarily undertaken.

Parents who did not give consent for an operation for a child and they simply said 'let him die' they are under the responsibility for his death. In the case of **Re B 1981** the parents refused to give consent for an operation on a newly born baby, while without the operation the child would died, the Court gave consent in the interests of the child. The Court regarded the parents' decision 'let the child die!' as 'entirely responsible'.

Second; when the duty is assumed by conduct, the common law will imply a duty where the defendant has voluntarily undertaken the care of another who is unable to care for him/ herself. Where there is a relationship between the victim and the defendant or any suggestion of payment, this point applies even more easily.

In **Instan 1893** both elements of relationship and suggestion of payment were exists. The judge held that she owed a moral and legal duty to act to give her food and seek medical help, so she found guilty.

Third; where the duty is assumed under contract, the common law imposes a duty on a defendant who was under a contract to act, as on duty and in police uniform, but he failed to act in order to safe the life of a man who was assaulted by some men who kicked him to death. He would save his life if he interfered, so the Court found him guilty and fined him. This point is also clear in the case of **Pittwood 1902** when the man did not close the gate and caused the death of another man. He was under a contract of duty to keep the gate closed.

Fourth; where the duty is imposed by statute, **section 25 of Road Traffic Act 1972** criminalizes failure to stop after a traffic accident. In this case the statute imposes a duty upon all the motorists to stop after an accident, so according to law it is an offence not to do it. Health and Safety at Work also has a legislation to penalize the failure to fence in dangerous machinery.

In the case of **Lowe 1973** the defendant convicted of statutory offence and charged with both manslaughter under **s.1 (1) CYPA 1933** that forbids wilful neglect of a child.

Statutory interpretation: Intention of Parliament

This question requires going through the process of interpretation of the acts of Parliament by the Courts, how they interpret them and how they clarify the meanings of ambiguous words?

In order to answer this question I have to go through the measures and approaches that are adapted by the Courts in interpreting the acts of Parliament.

When Parliament has enacted a statute, it has still to be applied by the Courts; questions arise about the meaning of the words. As there are always ambiguity in English language and it is not possible neither for Parliament nor for anybody else to foresee all the possibilities the words may apply to.

In many cases the words and phrases are clear and straightforward, and leave no doubt about

their meanings. In cases of difficulty there are different views as to what the judge should try to do. Shall he apply the text of the statute regardless of its makers' intention, or should he try determining their intention and applying the statute accordingly. Traditional English thinking for the past two hundred years has pointed to the former answer. While in recent years the judges have adopted a more 'European' or 'civilian' approach and have tended to look for the intention in cases of doubt.

There are traditionally three rules for interpreting the statutes by the judges: **the literal rule, the golden rule and the mischief rule**. Some people may say that it is up to the judge to decide which rule to choose, however the judge's task is to find the right answer for a question, while there is only one right answer for a question.

Literal rule: this rule says that the intention of Parliament is best found in the ordinary natural meaning of the words used. The Judge, according to this rule, may apply the ordinary meanings of the words mentioned in the statute, even though they lead to absurdity. It is the responsibility of the legislators not the Court if the meaning leads to absurdity.

In the case of **Fisher v Bell 1960** the shopkeeper displayed a knife in his window, and put a price ticket on it. He was prosecuted for offering for sale an offensive weapon. The divisional Court said that the phrase "offer for sale" was to be taken literally, according to contract law D's display of the knife was nothing more than an invitation to treat, as only the customers make offers not the shopkeeper.

Golden Rule: According to this rule if the literal rule produces an absurdity, the Court should look for another meaning of the words that avoids the absurd result. This rule requires the Court to hold the whole statute together; giving the words their ordinary significance, when a meaning leads to absurdity, the judge will look fro another word to avoid this.

In **R v Allen** the man was not committed any offence according to literal rule, because in law a man is not allowed to marry twice, so his second marriage was not legally valid, and he claimed that he had not committed the offence mentioned. The Court said that the phrase 'to marry' has many interpretations, it may mean 'to marry legally' again or 'to enter in a form of marriage'. Parliament could not have intended to create an offence that it was logically impossible to commit, so the second interpretation was applied according to golden rule.

Mischief Rule: The mischief rule requires the Court to take into consideration the gap that the statute tries to fill, and interpret the statute to "suppress the mischief" Parliament intended to remedy. The Act is introduced to overcome a mischief, so the whole target of the statute should be taken in to consideration not only the interpretation of the words.

In the case of Smith v Hughes 1960 the prostitutes knew that they where forbidden from soliciting on the streets, so they show themselves through windows and one was on the balcony over the street. They claimed that they were not on the street, while the Court held that the mischief behind the statute is preventing prostitution on the streets, as they could be seen from the street that was sufficient.

HOW SATISFACTORY IS THE CRIMINAL LAW REGARDING EUTHANASIA

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Due Date: 28/ 04/ 2004

HYPOTHESIS

This report is carried out to analyze the legal, moral, ethical, social, and medical issues regarding euthanasia in the United Kingdom. This report is prepared as a part of the coursework of OCB-LAW. The due date for the handing over of the report is April 28, 2004.It depends mainly on qualitative data, although some quantitative data also presented. Due to lack of enough time and resources, there are no proper questionnaires; alternatively the data and information are collected from different sources such as textbooks, websites and personal contacts. The report concentrates mostly on the UK debates on euthanasia, because this matter is very controversial here and, as the British society is a multicultural, multi faith and it is a conservative society to a degree.

Contents:

1. Introduction

Euthanasia is an old issue; the word itself comes from the Greek words eu, "good" and thanos, "death" that means 'good death' together. [23] In recent years the debates about euthanasia took a wider scale: politicians, judges, religious people, academics and even the laymen are talking about it. Many textbooks are written and there are tens of websites to discuss this controversial matter.

How satisfactory is the existing law to deal with euthanasia? Shall euthanasia be legalized? Is it humane to let people to suffer against their wills? Human beings are entitled to autonomy in life; does not this mean that they should have a right to choice their death with dignity? Why some forms of euthanasia are legalized and some parts of society are authorized to decide for others? From another side we may ask ourselves that if euthanasia legalized, does not this mean opening gates for abuses by doctors, greedy relatives and other caretakers. If we let euthanasia to go on legally, how we can make a difference between human beings and other instruments and tools we use them in our lives.

THIS REPORT TRIES TO EVALUATE HOW SATISFACTORY ARE THE LEGAL, MORAL, AND SOCIAL APPROACHES TOWARDS EUTHANASIA. IT TRIES TO SHOW HOW FAR THEY CAN ANSWER THE FUNDAMENTAL QUESTIONS REGARDING THIS ISSUE. CAN THEY FILL THE GAP BETWEEN MYTH AND REALITY REGARDING THE MYSTERIOUS WORLD OF EUTHANASIA!

2. FINDINGS

2.1 HOW SATISFACTORY IS THE LAW REGARDING EUTHANASIA?

2.1.1PASSIVE EUTHANASIA

PASSIVE EUTHANASIA IS WITHDRAWING; STOPPING LIFE SUSTAINING TREATMENT FROM A TERMINALLY ILL PERSON OR WITHHOLDING, WHICH MEANS NOT GIVING THE LIFE SUSTAINING TREATMENT AT THE FIRST PLACE. THIS IS NOW RECOGNIZED LEGAL IN THE ENGLISH LEGAL SYSTEM.

[23] Howler, J. M., and Kamoie, B., E. (1994) *Deathright: Culture, Medicine, Politics and the right to die.* 1st edition, Oxford: Westview Press. P. 243

MASON ET AL DESCRIBE PASSIVE EUTHANASIA AS THEY SAID:

Passive euthanasia is confined to withdrawal of life- sustaining treatment in the incompetent and refusal of further treatment by the competent patient where death is the intended outcome- with the 'do not resuscitate order' providing a virtually distinct category. [24]

PASSIVE EUTHANASIA IS LEGAL BECAUSE THEY ARGUE THAT IT IS NOT AN ACT OF KILLING OR MURDER BUT IT IS AN OMISSION, ALTHOUGH MANY ACADEMICS MAY ARGUE THAT SWITCHING OFF A VENTILATOR OR STOPPING THE VITAL DRUGS IS AN ACT OF KILLING IN ITSELF. MASON ET AL SAID:

A DOCTOR WHO KNOWS THAT HIS FAILURE TO TREAT WILL RESULT IN DEATH SHOULD ACCEPT THE SAME RESPONSIBILITY FOR THAT DEATH AS IF HE HAD BROUGHT IT ABOUT THROUGH A POSITIVE ACT.[25]

HOWEVER, THE SAME WRITER PAYS ATTENTION TO THE DIFFERENCE BETWEEN ACTS AND OMISSIONS AS MENTIONED BY LORD MUSTILL IN BLAND:

THE ENGLISH CRIMINAL LAW … DRAWS A SHARP DISTINCTION BETWEEN ACTS AND OMISSIONS, IF AN ACT RESULTING IN DEATH IS DONE WITHOUT LAWFUL EXCUSE AND WITH INTENT TO KILL IT IS MURDER. BUT AN OMISSION TO ACT WITH THE SAME RESULT AND WITH THE SAME INTENT IS IN GENERAL NO OFFENCE AT ALL.[26]

THE PATIENT'S RIGHT TO STOP TREATMENT, KNOWN AS PASSIVE EUTHANASIA IS LEGALIZED IN UK BECAUSE IT IS AGREED THAT KEEPING A PERSON ALIVE IN PAIN AND MISERY AGAINST HER/HIS WISHES IS AGAINST THE BASIC HUMAN RIGHTS.

NEITHER THE LAW NOR MEDICAL ETHICS REQUIRES THAT "EVERYTHING BE DONE" TO KEEP A PERSON ALIVE. INSISTENCE, AGAINST THE PATIENT'S WISHES, THAT DEATH BE POSTPONED BY EVERY MEANS AVAILABLE IS CONTRARY TO LAW AND PRACTICE. IT IS ALSO CRUEL AND INHUMANE.[27]

MASON ET AL FURTHER CONFIRM PASSIVE EUTHANASIA WHEN THEY SAID:

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[24] Mason, J.K., et al (2002) Law and Medical Ethics. 6th edition, London: Butterworths Lexis Nexis. P. 547

[25] Ibid P. P. 548

[26] Lord Mustill [1993] 1 All ER 821 at 861, (1992) 12 BMLR 64 at 106-107 cited in Ibid P. 549

[27] Rita L. Marke and Kathi Hamlon, International Task Force on Euthanasia and Assisted Suicide. [Online] http://www.internationaltaskforce.org/faq.htm

THERE IS AMPLE EVIDENCE THAT THE RIGHT OF THE COMPETENT INDIVIDUAL TO REFUSE TREATMENT IS INGRAINED IN THE COMMON LAW AND HUMAN RIGHTS LAW- AND THIS RIGHT PERSISTS EVEN THOUGH IT MAY RESULT IN THE PATIENT'S DEATH; MOREOVER, A REFUSAL CAN TAKE THE FORM OF A DECLARATION OF INTENTION NEVER TO CONSENT IN THE FUTURE. [28]

HOWEVER, IT CAN BE ARGUED THAT THE LAW IS NOT SATISFACTORY IN THIS FIELD: WHEN THE LAW AUTHORIZED A DOCTOR TO WITHDRAW/WITHHOLD VITAL TREATMENT FROM A COMPETENT PATIENT OR GIVES HIM/HER THE RIGHT TO STOP TREATMENT, DOES NOT THIS MEANS A RIGHT TO DIE OR MAY BE TO KILL? IT CAN BE ARGUED THAT THE LEGAL DISTINCTION BETWEEN ACTS AND OMISSIONS IS NOT SATISFACTORY IN THIS FIELD BECAUSE SWITCHING OFF A VENTILATOR OR REMOVING A FEEDING TUBE NEEDS AN ACT MORE THAN AN OMISSION AND BRINGS THE SAME RESULT WHICH IS DEATH.

2.1.2 ACTIVE EUTHANASIA

ACTIVE EUTHANASIA IS AN ACT WHEN A DOCTOR USES MEDICINES OR DRUGS, WHICH HE/SHE VIRTUALLY SURE IT KILLS OR SHORTENS THE PATIENT'S LIFE. THIS KIND OF EUTHANASIA IS ILLEGAL IN THE UNITED KINGDOM UNTIL NOW.

THE REQUIREMENTS FOR IDENTIFYING AN ACT AS MURDER ARE: ACTUS REUS, WHICH IS KILLING ANOTHER HUMAN BEING AND, MENS REA, WHICH IS AN INTENTION OF KILL OR CAUSING GRIEVOUS BODILY HARM. IF A DOCTOR GIVES A LETHAL DOSE OF MEDICINE TO A PATIENT WHO IS VIRTUALLY SURE KILLS HIM OR SHORTENS HIS LIFE HE COMMITS AN ACT OF MURDER. DEVLIN J EXPLAINS THE ATTITUDES OF LAW IN UK TOWARDS A POSITIVE ACT OF EUTHANASIA BY SAYING:

If the acts done are intended to kill and do, in fact, kill, it does not matter if a life is cut short by weeks or months, it is just as much murder as if were cut short by years. [29]

Lord Mustill in the case of Airedale NHS trust v Bland [1993] remarks:

[T]hat 'mercy killing' by active means murder… has never so far as I know been doubted. The fact that the doctor's motives are kindly will for some, although not for all, transform the moral quality of his act, but this makes no difference in law. It is intent to kill or cause grievious bodily harm which constitutes the mens rea of murder, and the reason why the intent was formed makes no difference at all. [30]

[28] Mason, J.K., et al (2002) Law and Medical Ethics. 6th edition, London: Butterworths Lexis Nexis. P. 553

[29] H Palmer 1957 cited in Ibid P. 531

[30] Ibid P. 545

HOWEVER THE LAW IN THIS FIELD IS STILL VERY CONTROVERSIAL, BECAUSE THE LAW GIVES PERMISSION TO A DOCTOR TO GIVE HIGH DOSES OF PAINKILLERS TO A PATIENT WHEN HE THINKS IT IS NECESSARY CLINICALLY, EVEN THOUGH HE KNOWS IT HASTENS HIS DEATH. IN R V ADAMS DR ADAMS TREATED A PATIENT WITH HIGH DOSES OF OPIATES WHO WAS INCURABLY ILL BUT NOT ABOUT TO DIE SOON. AFTER THE PATIENT'S DEATH HE WAS TRIED FOR COMMITTING MURDER, BUT HE WAS ACQUITTED. CONCERNING HIS CASE DEVLIN J SAID:

'The doctor is entitled to relieve pain and suffering even if the measures he takes may incidentally shorten life', which is a clear direction. Twenty years after the Adams verdict, Lord Edmund Davies commented: 'killing both pain and patient may be good morals but it is far from certain that it is good law.'[31]

THIS KIND OF DEFENSE THAT IS ONLY AVAILABLE TO DOCTORS BY ALLOWING THEM TO PRESCRIBE OR INJECT LARGE DOSES OF PAINKILLERS IS KNOWN AS 'DOUBLE EFFECTS', THE QUESTION HERE IS THAT WHY ONLY DOCTORS SHOULD BE ALLOWED TO DO THAT, OR FOLLOWING SUCH AN ACT WHY ONLY DOCTORS SHOULD NOT BE PROSECUTED? HOW ABOUT THE OTHER MEDICAL STAFF? IT CAN BE ARGUED THAT THE LAW HERE PROVIDES A DEFENSE FOR DOCTORS IN ORDER NOT TO PROSECUTE THEM. MASON ET AL, SAY:

CRIMINAL CASES ARE RARELY REPORTED UNLESS THEY DEMONSTRATE SOME SPECIFIC POINT OF LAW. EVEN SO, THERE HAVE BEEN SURPRISINGLY FEW RELEVANT TRIALS- AND THIS DESPITE THE NUMBER OF DOCTORS WHO CLAIM TO HAVE TAKEN PART IN SOME FORM OF EUTHANASIA.[32]

ANOTHER CRITICISM OF THIS LAW IS CONCERNING PEOPLE WITH EMOTIONAL PAIN: LAW GIVES PERMISSION FOR THOSE WITH PHYSICAL SUFFERINGS TO RECEIVE PAINKILLING TREATMENT TO A DEGREE THAT LEADS TO THEIR DEATH, BUT NEGLECTS THOSE WITH EMOTIONAL SUFFERINGS.

THE LAW SPECIFIES THE MEDICINE FOR THE PURPOSE OF THOSE KINDS OF PATIENTS TO BE PAINKILLERS ONLY. IN THIS EXTENT A DOCTOR IS NOT ALLOWED TO USE OTHER KINDS OF MEDICATIONS TO HASTEN HIS PATIENT'S DEATH, IN R V COX, DR COX WAS FOUND GUILTY, BECAUSE:

Dr Cox uses a substance which the majority of practitioners would regard as having no analgesic value-and it is this which distinguishes Dr Cox's case from any other prosecutions of doctors of which we are aware.[33]

Regarding Dr Cox's case, Ognall J said:

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[31] Ibid P. 558

[32] IBID P. 530

[33] Ibid P. 545

If he injected her with potassium chloride with the primary purpose of killing her, of hastening her death, he is guilty of the offence charged. [34]

The issue of euthanasia remains controversial and the law is not satisfactory in this field, when the law makes distinctions about some forms of euthanasia or allows doctors to defend their acts, it makes the mater more complex and subject to abuse and misuse of medical profession, Rita L. Marker and Kathi Hamlon say:

Euthanasia and assisted suicide are not about giving rights to the person who dies but, instead, they are about changing public policy so that doctors or others can directly and intentionally end or participate in ending another person's life. Euthanasia and assisted suicide are not about the right to die. They are about the right to kill. [35]

2.2 IS IT MORALLY SATISFACTORY FOR LEGALIZING?

2.2.1 FOR EUTHANASIA

PEOPLE LIVE LONGER NOWADAYS THAN BEFORE, NEW MEDICINE, NEW TECHNOLOGY, BETTER NUTRITION, AND OTHER FACILITIES ALL HELPED TO CREATE SUCH CIRCUMSTANCES. THE QUESTION ARISES HERE IS ABOUT THE MEANING OF LIFE, IF WE LOOK AT LIFE AS ENJOYMENT AND HAPPINESS WE MAY ARGUE THAT EUTHANASIA SHOULD BE ALLOWED FOR THOSE WHO DOES NOT ENJOY THEIR LIVES AT ALL, DUE TO THEIR PHYSICAL AND MENTAL INCAPABILITY AS WELL AS PAIN AND SUFFERINGS. DESCRIBING THE SUFFERINGS OF A PATIENT WHO REGARDED ALIVE BECAUSE HE IS STILL BREATHING, PUCCETTI (1976) SAID:

IN THE SENSE IN WHICH LIFE HAS A VALUE FOR HUMAN BEINGS, I WOULD HAVE BEEN DEAD ALL THAT TIME. AND IF THE NOTION OF BURYING A BREATHING CORPSE IS REPULSIVE, THEN I SUGGEST WE STOP IT FROM BREATHING. [36]

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[34] Ibid P. 545

[35] Rita L. Marke and Kathi Hamlon, International Task Force on Euthanasia and Assisted Suicide. [Online] http://www.internationaltaskforce.org/faq.htm

[36] Puccetti (1976) cited in: Lamb, d. (1996) *Death, Brain death and ethics*. 1st Edition, Aldershot: Avebury-Ashgate Publishing Limited. P. 111

IN THE PAST CENTURIES MANY PEOPLE HAD DIED FROM DISEASES, ESPECIALLY YOUNG CHILDREN, WHICH ARE TRIVIAL NOWADAYS. DEATH WAS MORE ACCEPTED AS A FREQUENT VISITOR AND THERE WERE NOT SO MANY ELDERLY PEOPLE STRUGGLING WITH SO-CALLED LONG LIFE. AS HOEFLER & KAMOIE SAID:

WHEN DEATH IS A FREQUENT VISITOR, IT DOES NOT HAVE SUCH A LASTING IMPACT… TODAY IT IS PREDOMINANTLY THE OLD WHO DIE. AND IN MANY CASES, THE ELDERLY HAVE LARGELY BEEN DISCONNECTED FROM FAMILY IN PARTICULAR AND FROM MAINSTREAM SOCIETY MORE GENERALLY.[37]

WHAT IS GOING ON NOWADAYS IS A LONG LIFE, BUT PAIN, MISERIES AND INCURABLE DISEASES ACCOMPANY THAT LIFE IN MANY CASES. DOCTORS CANNOT GUARANTEE GOOD HEALTH AND A PAIN FREE LIFE ALL THE TIME, BUT TREATMENT MAY PUSH DEATH BACKWARDS FOR SOME TIME. IN A SITUATION LIKE THIS, IT MAY NOT BE IRRATIONAL OR IMMORAL IF A PATIENT ASKS FOR EUTHANASIA. RITA L. MARKER AND KATHI HAMLON EXPLAIN THIS MATTER CLEARLY BY SAYING:

Neither the law nor medical ethics requires that "everything be done" to keep a person alive. Insistence, against the patient's wishes, that death be postponed by every means available is contrary to law and practice. It is also cruel and inhumane.[38]

WHEN A PATIENT IS TERMINALLY ILL AND THERE IS NOT ANY HOPE FOR RECOVER, IT CAN BE ARGUED THAT EUTHANASIA IS A GOOD CHOICE, AS LAMB SAID:

TO DISCONTINUE TREATMENT IN HOPELESS CASES IS NOT 'LETTING DIE' BUT LETTING DIE IN A MORE ACCEPTABLE MANNER. THE STATEMENT ' I LET HIM DIE' ONLY HAS MEANING IF IT WAS EVER POSSIBLE AT SOME STAGE TO SPECIFY ALTERNATIVE FOR MAINTAINING LIFE.[39]

TAKING CARE OF THE TERMINALLY ILL PATIENTS COSTS NHS A LOT IN HOSPITALS, AT THE TIME THAT NHS IS TALKING ABOUT SHORTAGES IN SERVICES AND STAFF IN ADMINISTERING THEIR SERVICES. IT CAB BE ARGUED THAT LEGALIZING EUTHANASIA IS A CHOICE IN ORDER TO FILL THAT GAP. ALLOWING EUTHANASIA FOR THOSE WHO WISH END THEIR LIVES AND THEIR SITUATION IS HOPELESS, IT CAN BE ARGUED, THAT IS BETTER THAN LETTING HUNDREDS OF PEOPLE DIE, WHO HAVE GOOD CHANCES OF LIFE DUE TO FAILURE TO GET PROPER TREATMENT. RITA L. MARKER AND KATHI HAMLON SAID:

A survey by the Nuffield Trust and the nurses' magazine, NURSING TIMES, found that the NHS is failing to care

[37] Hoefler, J. M., and Kamoie, B., E. (1994) *Deathright: Culture, Medicine, Politics and the right to die*. 1st edition, Oxford: Westview Press.-P. 12.

[38] Rita L. Marker and Kathi Hamlon, International Task Force on Euthanasia and Assisted Suicide. [Online] http://www.internationaltaskforce.org/faq.htm

[39] Lamb, d. (1996) *Death, Brain death and ethics*. 1st Edition, Aldershot: Avebury- Ashgate Publishing Limited. P.97

adequately for hundreds of thousands of patients who die each year, many without proper care or pain relief.[40]

DEALING WITH THE IDEA OF SAVING COSTS LAMB ALSO SUPPORTS THE IDEA AS HE SAID:

IN A CONTEXT OF ESCALATING HEALTH-CARE COSTS IT IS INEVITABLE THAT THERE WILL BE PROPOSALS TO LIMIT HEROIC AND EXPENSIVE METHODS OF PROLONGING LIFE, PERSISTENT FAILURE TO PRESENT A CLEAR-CUT BOUNDARY BETWEEN LIFE AND DEATH MAY LEND SUPPORT TO PROPOSALS FOR THE TERMINATION OF TREATMENT ACCORDING TO COST-BENEFIT CRITERIA OR ON OTHER EXTRANEOUS GROUNDS.[41]

2.2.2 AGAINST EUTHANASIA

LEGALIZING EUTHANASIA MAY FACE A LOT OF MORAL OPPONENTS, BECAUSE MEDICAL PROFESSIONS ARE KNOWN AS CARERS AND RESCUERS NOT EXECUTERS AND KILLERS. IF EUTHANASIA IS LEGALIZED, PEOPLE SHOULD LOOK AT HOSPITALS AND THE MEDICAL STAFF FROM DOCTORS AND NURSES AS DANGEROUS PEOPLE WHO ARE ALLOWED BY LAW TO KILL A PERSON IF HE CONSENTS TO THAT DEATH UNDER DISPUTE AND HOPELESSNESS. WHAT A PATIENT NEEDS AT THE FIRST PLACE IS A BETTER TREATMENT NOT LEGAL MURDER, AS RITA L. MARKER AND KATHI HAMLON SAID:

If a patient who is under a doctor's care is in excruciating pain, there's definitely a need to find a different doctor. But that doctor should be one who will control the pain, not one who will kill the patient.[42]

NOWADAYS MOST TYPES OF PAINS AND DIFFICULT SYMPTOMS CAN BE RELIEVED BY MEDICATIONS AND THERE ARE HOSPICES TO TAKE CARE OF THOSE WITH TERMINAL ILLNESSES. SINCE EUTHANASIA IS ABOUT AUTHORIZING A HUMAN BEING TO KILL ANOTHER HUMAN BEING, THE ISSUE IS OPEN TO A LOT OF ABUSE AND MISCARRIAGES, RITA L. MARKER AND KATHI HAMLON CRITICIZED EUTHANASIA IN THIS ASPECT BY SAYING:

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[40] Rita L. Marker and Kathi Hamlon, International Task Force on Euthanasia and Assisted Suicide. [Online] http://www.internationaltaskforce.org/faq.htm

[41] Lamb, d. (1996) *Death, Brain death and ethics*. 1st Edition, Aldershot: Avebury- Ashgate Publishing Limited. P. 112

[42] Rita L. Marker and Kathi Hamlon, International Task Force on Euthanasia and Assisted Suicide. [Online] http://www.internationaltaskforce.org/faq.htm

> Euthanasia and assisted suicide are not private acts. Rather, they involve one person facilitating the death of another. This is a matter of very public concern since it can lead to tremendous abuse, exploitation and erosion of care for the most vulnerable people among us.[43]

One may argue that euthanasia is legalized in Netherlands or other places, and as it is legalized the problem solved. However the nature of the act remains as it is, as Rita L. Marker and Kathi Hamlon said:

> While changes in laws have transformed euthanasia and assisted suicide from crimes into "medical treatments" in Oregon and the Netherlands, the reality has not changed – patients are being killed.[44]

Death is a natural end of life, however human beings have dignity and life has its sanctity, we cannot deal with a human being as a pigeon or a cat to have right to end his/her life in any situation or circumstances. Human's life cannot be treated as inanimate house tools, to throw them away when you think they are useless, even if the patient him/herself thinks that it is. Dr Teresa Tate has criticized legalizing euthanasia in a popular piece of writing as she said:

> Death may be impossible to postpone but should not be hastened. Respect for the dignity of the individual is important, and regarded by many as paramount. Such respect is not manifest in the act of killing the patient which would merely serve to confirm the individual's falsely devalued sense of self-worth.[45]

It can be argued that human beings are entitled to autonomy, in this respect they may be allowed to end their lives when they wish to. Dr Teresa Tate criticizes this argument of personal right for autonomy when it relates to ending of life i.e. euthanasia:

> Regard for the dignity of the individual cannot require health professionals to respect autonomy to the extent of honouring requests for euthanasia, nor can it ignore the potential adverse effect on health professionals or society in general.[46]

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[43] Ibid

[44] Ibid

[45] Dr Teresa Tate **Voluntary Euthanasia - The Council's View** [online]http://www.hospice-spc-council.org.uk/publicat.ons/text/euthanas.htm

[46] Ibid

God creates human beings and only he is entitled to bring death, it can be argued, that it is immoral to let human beings: doctors and nurses to bring that death by their own hands on the patient's will or his/her relatives when unconscious. Doctors and other medical staff are not angels and out of the circle of error or abuse, they are human beings and they have their limitations. Giving them such a power may lead to abuses, as Dr Christoph Hufeland (1762-1836) said:

If the physician presumes to take into consideration in his work whether a life has value or not, the consequences are boundless and the physician becomes the most dangerous man in the state.[47]

2.3 WHAT DO THE APPROPRIATE BODIES THINK ABOUT LEGALIZING EUTHANASIA?

2.3.1 BRITISH MEDICAL ASSOCIATION

THE BRITISH MEDICAL ASSOCIATION BMA THINKS THAT EUTHANASIA SHOULD NOT BE ALLOWED BECAUSE IT AFFECTS THE GOOD AND TRUSTFUL RELATIONSHIP BETWEEN THE DOCTORS AND OTHER MEDICAL WORKERS AND THE PATIENTS. THE ASSOCIATION SAID:

The existence of a trusting and open relationship between doctor and patient is of particular importance when the patient is terminally ill and decisions must be made for care towards the end of life.[48]

THE BMA ALSO ARGUED THAT THE DOCTORS' REPUTATION DEPENDS ON THEIR ROLE AS HEALERS AND IT IS DANGEROUS TO CHANGE IT TO KILLERS, THE BMA SAID,

"IF DOCTORS ARE AUTHORISED TO KILL OR HELP KILL, HOWEVER CAREFULLY CIRCUMSCRIBED THE SITUATION, THEY ACQUIRE AN ADDITIONAL ROLE, ALIEN TO THE TRADITIONAL ONE OF HEALER. THEIR RELATIONSHIP WITH ALL THEIR PATIENTS IS PERCEIVED AS HAVING CHANGED AND AS A RESULT SOME MAY COME TO FEAR THE DOCTOR'S VISIT" [49]

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[47] Dr Christoph Hufeland (1762-1836). Cited in Lamb, d. (1996) *Death, Brain death and ethics*. 1st Edition, Aldershot: Avebury- Ashgate Publishing Limited. P. 109

[48] BMA The voice of doctors [online] http://web.bma.org.uk/ap.nsf/Content/pas+project+-+select+cttee?OpenDocument&Highlight=2,euthanasia

[49] Ibid

BMA BELIEVES THAT THE PROHIBITION OF EUTHANASIA GIVES A SAFEGUARD FOR ALL OF AS; WE SHOULD NOT LEGALIZE IT FOR SOME PEOPLE BECAUSE THIS MAY LEAD TO ABUSES AND WE MAY LOOSE OUR EQUALITY AS HUMAN SOCIETY:

Once active termination of life is a matter of choice for competent people, the grounds for excluding non-competent people from such treatment become harder to defend"
prohibition is the cornerstone of law and of social relationships. It protects each one of us impartially, embodying the belief that all are equal. We do not wish that protection to be diminished and we therefore recommend that there should be no change in the law to permit **euthanasia**.[50]

However the BMA realizes that euthanasia may be a good option in some individual cases, but it is not logical to make laws and legislations, which affects all, on the basis of individual cases:

We acknowledge that there are individual cases in which **euthanasia** may be seen by some to be appropriate. But individual cases cannot reasonably establish the foundation of a policy which would have such serious and widespread repercussions.[51]

2.3.2 VOLUNTARY EUTHANASIA SOCIETY

THE VOLUNTARY EUTHANASIA SOCIETY VES BELIEVES THAT EUTHANASIA SHOULD BE LEGALIZED; THEY ARGUE THAT HUNDREDS AND HUNDREDS OF PATIENTS ARE CONTACTING THEM EACH YEAR DEMANDING EUTHANASIA. THEY ALSO ARGUE THAT THOSE PEOPLE ARE SO VULNERABLE THAT THEY CANNOT EVEN CAMPAIGN FOR THEIR RIGHTS:

EVERY YEAR, HUNDREDS OF TERMINALLY ILL PEOPLE CONTACT US FOR ADVICE AND GUIDANCE ON HOW TO RETAIN CONTROL OVER THE END OF THEIR LIVES. WHEN YOU ARE TERMINALLY ILL YOU ARE OFTEN TOO ILL TO LEAVE YOUR HOME OR EVEN YOUR BED. THIS MAKES IT HARD TO PROTEST, PETITION YOUR MP OR OTHERWISE GET YOUR VOICE HEARD.[52]

VES ARE BACKING A NEW LEGISLATION IN THE HOUSE OF LORDS FOR EUTHANASIA, AND THEY ARGUE THAT THE BEST THING FOR THOSE VULNERABLE PEOPLE IS HELPING THEM TO DIE NOT TO LIVE SUCH A LIFE:

[50] Ibid

[51] Ibid

[52] Voluntary Euthanasia Society VES [online] http://www.ves.org.uk/campaigns.html

WE ARGUE FOR HONESTY AND TRANSPARENCY IN END-OF-LIFE DECISION MAKING, TO BETTER PROTECT VULNERABLE PEOPLE. CURRENTLY WE ARE BACKING THE ASSISTED DYING FOR THE TERMINALLY ILL BILL [HL] 2004 WHICH IS PROGRESSING THROUGH THE HOUSE OF LORDS.[53]

VES SUPPORT THEIR ARGUMENTS BY WHAT **THE NATIONAL COUNCIL FOR CIVIL LIBERTIES** SAY ABOUT EUTHANASIA:

AS EUTHANASIA IS A CIVIL LIBERTY AND NOT SOMETHING TO BE IMPOSED, IT WOULD ONLY BE AVAILABLE WHEN REQUESTED BY A PATIENT WHO HAS THE MENTAL CAPACITY TO UNDERSTAND THE FULL SIGNIFICANCE OF THE REQUEST AT THE TIME OF MAKING THAT REQUEST.[54]

THEY ALSO ARGUE THAT MANY DOCTORS ARE SUPPORTING EUTHANASIA IF THEY HAVE THE COURAGE TO SAY. VES BRINGS A SURVEY AS A SUPPORT FOR THEIR ARGUMENT:

IN A CONFIDENTIAL ON-LINE POLL OF UK DOCTORS (MEDIX-UK.COM) PUBLISHED TODAY, 55% THOUGHT PHYSICIAN ASSISTED SUICIDE SHOULD BE PERMITTED WHEN A PERSON HAS A TERMINAL ILLNESS WITH UNCONTROLLABLE PHYSICAL SUFFERING.[55]

THE VOLUNTARY EUTHANASIA SOCIETY OF SCOTLAND PUBLISHED A SURVEY BY DAVID DONNISON UNDER THE NAME: NOT JUST AN ISSUE OF LIFE AND DEATH - THE BRITISH SOCIAL ATTITUDES SURVEY, IN WHICH THEY FOUND THAT MOST OF THE PEOPLE 86% ARE SUPPORTING EUTHANASIA FOR INCURABLE PATIENTS, AND THERE ARE DIFFERENT PERCENTAGES FOR OTHER CONDITIONS. [56] [SEE APPENDIX 1]

3. CONCLUSION AND RECOMMENDATIONS

[53] Ibid

[54] Ibid

[55] Ibid at http://www.ves.org.uk/newsstory.php?id=324

[56] David Donnison, Voluntary Euthanasia Society of Scotland [online] http://www.aez61.dial.pipex.com/97-1dvd.html

EUTHANASIA IS A CONTROVERSIAL ISSUE; THERE ARE ALWAYS PEOPLE TO SUPPORT AND PEOPLE TO OPPOSE IT. BOTH THE TWO OPPOSING FRONTS HAVE THEIR ARGUMENTS AND THEY HAVE THEIR EXCUSES FOR THEIR DEBATES. AS THERE IS NOT A PROPER NATIONAL SURVEY OR RELIABLE STATISTICS TO DEPEND ON IT, MOST OF THE ARGUMENTS ARE EITHER BASED ON SMALL AND LIMITED SURVEYS OR ON OPINIONS AND EXPECTATIONS OF MEDICAL, SOCIAL AND VOLUNTARY BODIES; A PROPER AND RELIABLE STRATEGY IS FAR FROM REACH.

Most of the parties debating euthanasia, including BMA, are convenient that there are special cases where euthanasia is the only suitable choice, however some of them refrain from permitting for legalizing it. Legalizing euthanasia affects everybody in the society and soon becomes a law it may open the gates for abuses and misuses of law, medicine and ethical values.

THE LAW REGARDING EUTHANASIA IS VERY UNSATISFACTORY AND LACKS CLEARNESS. IT AUTHORIZES ONE KIND OF EUTHANASIA AND PREVENTS THE OTHERS. DOCTORS AND NURSES HAVE BEEN PRACTICING SOME FORMS OF EUTHANASIA, ANY WAY, SECRETLY OR UNDER THE COVER OF THE DEFENSES PROVIDED TO THE DOCTORS BY ADMINISTERING HIGH DOSES OF PAINKILLERS.

IN ORDER TO FORMULATE A CLEAR IDEA ABOUT EUTHANASIA, IT CAN BE ARGUED THAT A PROPER AND RELIABLE INVESTIGATION IS NECESSARY BEFORE PASSING ANY NEW LEGISLATIONS, AND ANY SUCH LEGISLATIONS SHOULD BE STUDIED SO CAREFULLY THAT LEAVES NO GAPES FOR ABUSES FROM THE DOCTORS, NURSES OR GREEDY RELATIVES.

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APPENDIX 1

THE VOLUNTARY EUTHANASIA SOCIETY OF SCOTLAND

NOT JUST AN ISSUE OF LIFE AND DEATH - THE BRITISH SOCIAL ATTITUDES SURVEY

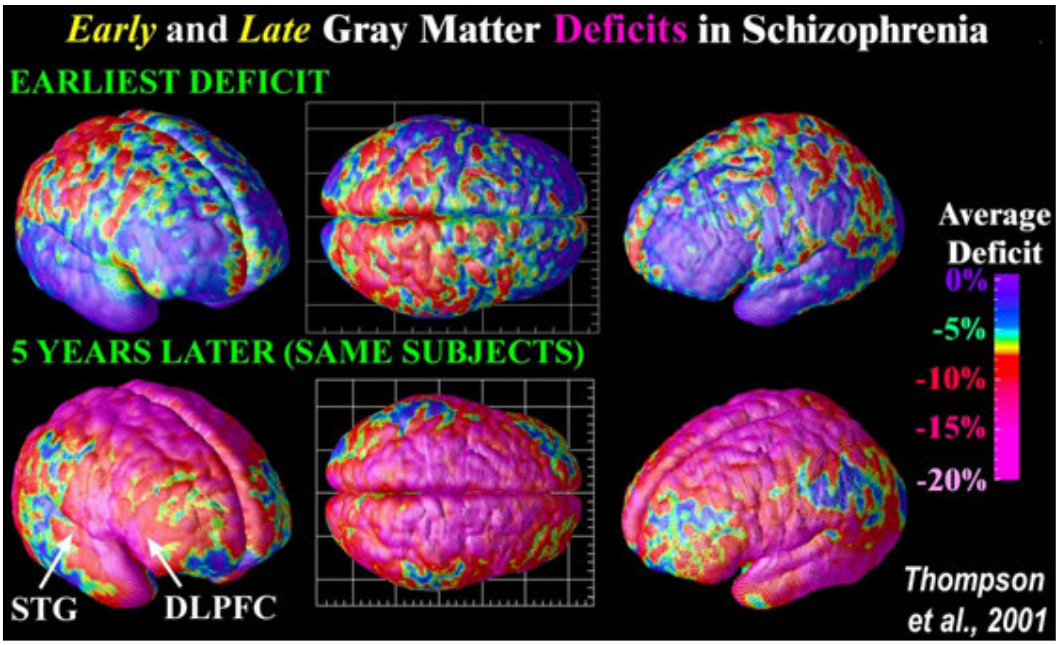
DAVID DONNISON

Percentages who think euthanasia should 'definitely' or 'probably' be allowed by law for those who are:

86%	Incurable, on life support machine never expected to regain consciousness relatives agree to Euthanasia
80%	Dying from incurable and painful illness Patient asks for Euthanasia
58%	In coma, never expected to regain consciousness, not on life support machine Relatives agree to Euthanasia
51%	Not much pain or Danger of death but permanently and completely dependant for all physical needs Patient asks for Euthanasia
44%	Dying from incurable but not very painful illness Patient asks for Euthanasia
42%	Incurable and painful illness, but will not die Patient asks for Euthanasia
12%	Not ill or close to death Simply tired of living and wishing to die Patient asks for Euthanasia

SCHIZOPHRENIA:

What causes this disease, and how the theorists analyse their views?



SCHIZOPHRENIA

Schizophrenia is one of the most complex and difficult mental diseases ever known; it is difficult to diagnosis and even more difficult to know its causes. Theorists and scientists have mentioned different reasons and causes behind this disease and these hypotheses have been dramatically changed throughout the history. What is schizophrenia and what causes this disease? Is there a reason or a range of reasons behind it? Is the causes are genetic, biochemical, behavioural, or environmental? In order to find a reliable or at least an acceptable answer to this question, this short essay tries to analyse different theories and hypotheses about schizophrenia.

Schizophrenia is a severe disease of brain; it is common to a degree as it affects 1% of population with similar numbers of males and females. It affects poor more than rich people. It is not a split personality as it was thought, but it is a split from reality. It is a chronic disease and even hard to treat, however it is controllable with medications nowadays. As there is not a special known cause for schizophrenia, many suggestions and hypotheses have been made throughout the history, starting with myth and magic and continuing with the latest technology of the 21st century.

> Although there are still mysteries surrounding schizophrenia, it is not a new illness. Symptoms relating to schizophrenia have been noted since the age of antiquity. A popular belief was that strange behaviour was a result of possession by the devil or assaults from the gods for immoral behaviour. [History of schizophrenia, online]

Patients of schizophrenia are diagnosed with positive and negative symptoms: positive symptoms are hallucinations, delusions and thought disturbances, and negative symptoms are loss of energy, lack of expressed emotions and prevention from talking, especially in the sever stages. However it is not easy to diagnose a patient for schizophrenia at the first place because:

> It usually comes on very slowly and so the personality of the person developing it changes very slowly. Often the patient is quite normal. It is therefore difficult to detect disease at such times. Sometimes when the disease is quite advanced and the true personality of the patient quite overlaid by the ill personality, the ill personality may be mistaken by doctors as the true personality. [Schizophrenia Association of Great Britain, online]

Some scientists argue that the cause of schizophrenia is genetic. They have carried out researches on twins and collected useful data. The US Surgeon General's Report on Schizophrenia found out that there are great possibilities for identical twins more than fraternal twins and coming down to lower possibilities to end in 1% in general population. [See Appendix 1]

The same report gave further details to emphasis the genetic cause of schizophrenia by saying:

> Family, twin, and adoption studies support the role of genetic influences in schizophrenia. Immediate biological relatives of people with schizophrenia have about 10 times greater risk than that of the general population. Given prevalence estimates, this translates into a 5 to 10 percent lifetime risk for first-degree relatives (including children

and siblings) and suggests a substantial genetic component to schizophrenia [US Surgeon General's Report on Schizophrenia (2002) online]

However the available data cannot suggest that the cause of schizophrenia is wholly genetic, if it was so the rate should be 100% in identical twins, as they have the same genes. Holding a gene may put somebody in danger but it is not the only cause, as Turner said:

The diathesis stress model of mental illness suggests that inheritance can put people at risk; however, stress may also play a part. [Turner, 2003: 73]

The US Surgeon General's Report on Schizophrenia also mentioned other causes together with genetic causes for schizophrenia, however the main cause or the basic one is still genetic, as they argue:

Current research proposes that schizophrenia is caused by a genetic vulnerability coupled with environmental and psychosocial stressors, the so-called diathesis-stress model. Family studies suggest that people have varying levels of inherited genetic vulnerability, from very low to very high, to schizophrenia. Whether or not the person develops schizophrenia is partly determined by this vulnerability. [US Surgeon General's Report on Schizophrenia (2002) online]

However, the research in this field continues and still it is not clear either a single gene or a group of genes are responsible for this illness.

The chemical balance of the body suggests another hypotheses for the cause of schizophrenia. Biochemical theorists argue that a high rate of neurotransmitter dopamine is the cause of this disease. This argument comes after they have treated patients with Parkinson's disease by dopamine. They noticed that:

Drug treatments to increase dopamine levels in Parkinson's patients can have side effects similar to the symptoms of schizophrenia. [Turner, 2003: 73]

They have also noticed that the antipsychotic drugs which reduce the levels of dopamine, can be used to reduce the symptoms of schizophrenia. They based their arguments on post-mortems which suggest that 'schizophrenic patients have high levels of dopamine in their brains. Drug users who take amphetamines and cocaine have symptoms similar to schizophrenia, and these drugs are known to increase dopamine levels. [Turner, 2003: 73-74]

However these findings cannot solve the problem of schizophrenia, because it cannot be established either excess to dopamine causes the disease or does the disease itself affects the levels of dopamine? As the US Surgeon General's Report said:

Excessive levels of the neurotransmitter dopamine have long been implicated in schizophrenia, although it is unclear whether the excess is a primary cause of schizophrenia or a result of a more fundamental dysfunction. More recent evidence implicates much greater complexity in the deregulation of dopamine and other neurotransmitter systems. [US Surgeon General's Report on Schizophrenia (2002) online]

It can be argued that the abnormality of the brain may cause from some difficulties during birth, as it is possible for the baby's head to be hurt during birth. Smith, et al., said:

These abnormalities in brain structure and neurochemical functioning could be due to genetics, but they also could be the result of insults to the brain of a fetus or young child. [Smith, et al., 2003:553]

There are further explanations for the causes of schizophrenia, all these studies are emphasising on the circumstances when the fetus'

brain has formulated or during the birth, as Jablnesky (2000) said:

> Studies have found that people who have schizophrenia are more likely to have a history of birth complications, prenatal brain damage, infections in the central nervous system (such as meningitis) in infancy, and maternal pregnancy complications or influenza in pregnancy (Jablensky, 2000 Cited in Smith, etal, 2003:553-555)

The psychodynamic approach's view to schizophrenia is similar to their views to other psychological disorders. Freud believed that schizophrenia is a result of the conflict between the ego, id and superego; the ego is besieged by either id or superego. The ego returns back to childhood and the person acts as a baby, by trying to emphasis his/ her self-importance. In this conflict fantasies become confused with reality.

Freud's ideas on schizophrenia are not supported by scientific evidence, as Turner said:

> Unfortunately there is no scientific evidence to support Freud's ideas on schizophrenia. Stirling and Hellewell (1999) point out that schizophrenic behaviour is not similar to infantile behaviour. Research has not found a correlation between early childhood experiences and a subsequent diagnosis. [Turner, 2003: 74]

The behaviourists explain schizophrenia as a learned response. They believe that schizophrenia is reinforced in those patients who show the symptoms as any other behaviour. As Turner said:

> The disorder develops through a process of operant conditioning. Bizarre behaviour gains attention from other people, so may be reinforced more that normal behaviour. Through a process of social learning, patients in hospitals may also observe and imitate the behaviour of other schizophrenics. [Turner, 2003: 75]

This approach cannot explain how schizophrenic symptoms have come into view at the first place. It can be argued that they cannot give a good reason why different patients show different symptoms not the same learned symptoms, as they argue.

Schizophrenia is mainly accompanied by language, thought, attention and awareness disturbances. This leads the cognitive psychologists to argue that it causes from problems in the information process of the individual. The brain of the schizophrenic patients cannot tolerate all the mass information that surrounds them from everywhere. As a result of this, the patient withdraws from the reality, as they argue, and becomes catatonic:

> Pickering (1981) proposed that catatonic schizophrenia may be caused by a breakdown in auditory selective attention, making social interaction increasingly difficult, as the individual is overloaded with auditory information. Pickering believes that withdrawal from the world is the only way for catatonic schizophrenics to keep sensory stimulation at a manageable level. [Turner, 2003: 76]

Cognitive psychologists can give a good description of the schizophrenic language and information process, however they cannot explain why these cognitive changes are happening and what are the real causes of these cognitive changes. The schizophrenic symptoms are not only limited to adults, they appear in children also, in this context, it can be argued that they are not successful in their explanation. The report of the Surgeon General said:

> These cognitive problems vary from person to person and can change over time. In some situations it is unclear whether

such deficits are due to the illness or to the side effects of certain neuroleptic medications (Zalewski et al., 1998). As research on brain functioning grows more sophisticated, some models posit dysfunction of fundamental cognitive processes at the *centre* of schizophrenia, rather than as one of numerous symptoms (Andreasen, 1997a, 1997b; Andreasen et al., 1996). [Mental health: A report of the Surgeon General–Chapter 4(online)]

There are sociocultural theories about schizophrenia, Szasz (1962) claims that there is no any disease called schizophrenia. He believes that the behaviour of those people is strange and out of control, so they classify them as mentally ill, and labelling them in that way. [Turner, 2003]

Scheff (1966) also argued that as individuals are diagnosed with mental illness, they grow the symptoms, he believed that people do and act according to the expectations from them; calling them mentally ill creates a stigma and isolates them socially. [Turner, 2003]

Labelling theory contributes in diagnosing the schizophrenic patients, however they cannot give a clear understanding for this serious mental disease. It can be argued that labelling may influence people's behaviour in one way or the other, but for a brain disease such as schizophrenia it is not sufficient.

Schizophrenia is more observed in poor people and those who live in miserable conditions. This leads some psychologists to argue that environmental stressors are the causes of the disease. US Surgeon General's Report on Schizophrenia confirms the role of behaviour and life experiences in affecting the mind, by saying:

Not only does brain biology influence behaviour and experience, but behaviour and experience mould brain biology as well. {US Surgeon General's Report on Schizophrenia (2002) [online]}

THERE IS NOT SCIENTIFIC BASIS TO CONFIRM THAT STRESSFUL AND DIFFICULT LIFE CONDITIONS ARE DIRECT CAUSES OF SCHIZOPHRENIA, HOWEVER PATIENTS WITH SCHIZOPHRENIA CAN BE AFFECTED BY THESE SITUATIONS AND THEY MAY BOOST THEIR ILLNESS. AS SMITH ET AL., SAID:

ALTHOUGH IT IS CLEAR THAT STRESSFUL EVENTS CANNOT CAUSE A PERSON TO DEVELOP THE FULL SYNDROME OF SCHIZOPHRENIA, PSYCHOLOGICAL FACTORS MAY PLAY AN IMPORTANT ROLE IN DETERMINING THE EVENTUAL SEVERITY OF THE DISORDER IN PEOPLE WITH A BIOLOGICAL PREDISPOSITION, AS WELL AS IN TRIGGERING NEW EPISODES OF PSYCHOSIS. [SMITH ET AL., 2003: 555]

In this context, environmental conditions may make the situation worse for people with schizophrenic grounds such as holding genes. From this point of view improving life conditions may help individuals with most possibilities of being affected by the diseases, as US Surgeon General's Report on Schizophrenia said:

Since life stresses can exacerbate the course of the illness, access to good quality services and social supports, as well as attention to relapse prevention interventions, can have beneficial effects on longer-term outcome. {US Surgeon

General's Report on Schizophrenia (2002) [online]}

However, it can be argued that the rich people catch the disease in the same scale as the poor people, but the rich people are hiding their weak sides and they are in control of the means to do so.

Schizophrenia is a disease of mind; it may have different causes and may need different factors to be combined together in an individual in order to show the symptoms. Researches are on the way but still there is not a special known cause for it. However there are good improvements in treating or controlling the disease.

As promising as these theories are, the causes and mechanisms of schizophrenia remain unknown. Nonetheless, research has uncovered several of treatments for schizophrenia that are effective in reducing symptoms and functional impairments. {US Surgeon General's Report on Schizophrenia (2002) [online]}

It can be argued that schizophrenia is a result of holding a gene and being subject to environmental stresses and social deprivations. There may be other reasons for the disease and researchers are studying this serious and chronic mental disease in many parts of the world. The US Surgeon General's Report on Schizophrenia combines the causes of the disease as:

Current research proposes that schizophrenia is caused by a genetic vulnerability coupled with environmental and psychosocial stressors, the so-called diathesis-stress model. Family studies suggest that people have varying levels of inherited genetic vulnerability, from very low to very high, to schizophrenia. Whether or not the person develops schizophrenia is partly determined by this vulnerability. At the same time, the development of schizophrenia also depends on the amount and types of stresses the person experiences over time. {US Surgeon General's Report on Schizophrenia (2002) [online]}

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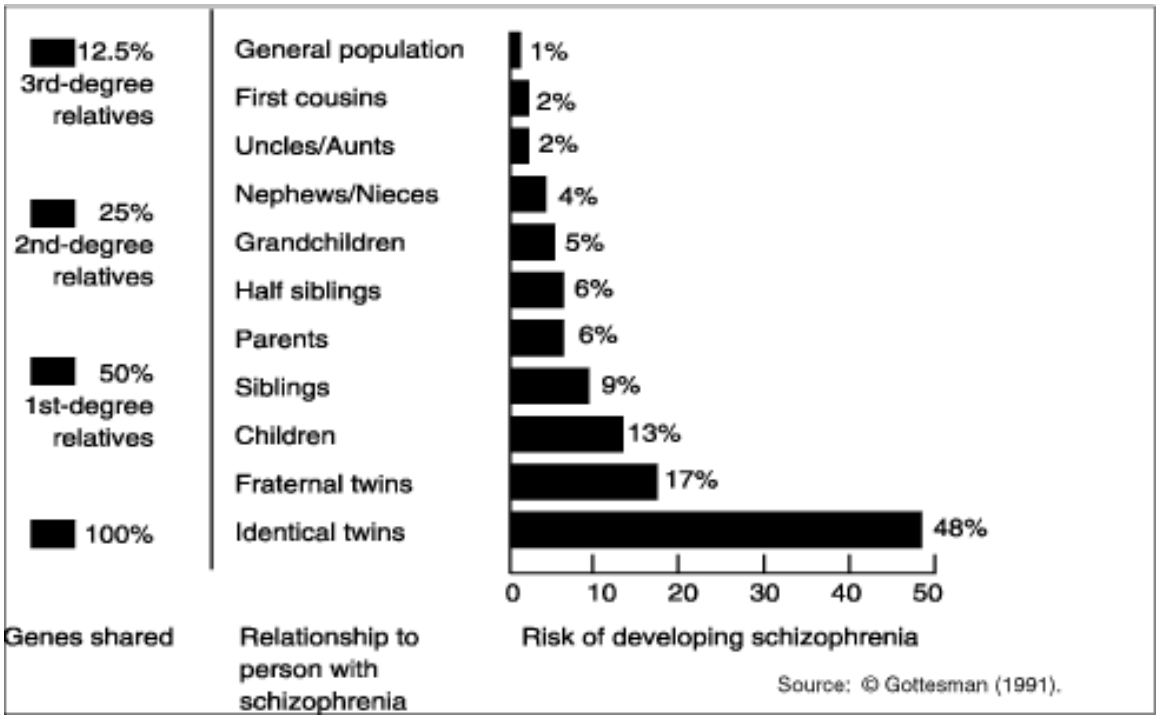
APPENDIX 1

Risk of developing schizophrenia



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