

# Criminal Law News Issue 7 March 2009



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(Willan)*

*Book Review: Mental Illness, Medicines  
and Law (Ashgate)*

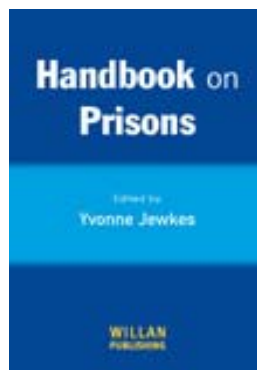
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*Contents**Book Review: Handbook on Prisons (Willan)**Book Review: Mental Illness, Medicine and Law (Ashgate)***BOOK REVIEW BY SALLY RAMAGE****HANDBOOK ON PRISONS, edited by Y. Jewkes****(WILLAN PUBLISHING, CORNWALL 2007).****ISBN 978-1-84392-185-1 (paperback)****ISBN 978-1-84392-186-8 (Hardback)**

This massive book of 780 pages was written by academics and some practitioners, namely Helen Arnold, Jamie Bennett, Charlotte Bilby, Helen Codd, Andrew Cotle, Elaine Crawley, Ben Crewe, Kimmet Edgar, Richard Harding, Clive R. Hollin, Sophie Holmes, Kirsty Hudson, Ruth Jamieson, Yvonne Jewkes, Helen Johnston, Roy D. King, Alison Liebling, Mike Maguire, Shadd

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Maruna, Kirsten McConnachie, Kieran McEvoy, Diana Medicott, James Mehigan, Alice Mills, Rod Morgan, Anne Owers, Laura Piacentini, Peter Raynor, Abigail Rowe, Mick Ryan, David Scott, Jane Senior, Jennifer Shaw, Jow Sim, Keith Soothill, Richard Sparks, Sarah Tait, Dirk van Zyl Smit and Michael Wheatley.

It's flavour is that of an academic textbook on criminology, rather than a practitioner's 'nuts and bolts' detailed book on prison law. Yvonne Jewkes who coordinated the whole project also wrote the introduction, in which she states that the book's aims is to offer a broad introduction to prisons and imprisonment in a wide-ranging and timely manner. It also aims to provide core reading for university courses on criminology. It is divided into five parts, the topics being: 'prisons in perspective'; 'prisoners'; 'themes and debates'; 'staffing, management and accountability'; and finally 'regimes, rehabilitation and resettlement'.

Starting with the final section of the book first, resettlement, this has been studied and reported on in the UK Social Exclusion Report published in 2002. It is said that resettlement is part of prisons' core business and a full set of practical measures have been put in place to help prisoners obtain work and accommodation when they leave prison, with the much acclaimed National Offender Management Services ('NOMS') at the core, a 'joined-up' individually planned approach that was claimed to significantly reduce offending.

The only set-back to this big ideal is that the plan was over-spent by several hundreds of millions of pounds by way of a scrapped computer system into which all prisoners' details would be placed. The failure to implement a central database on offenders was put down to poor management and unrealistic expectations, the National Audit Office (NAO) said in

a report. C-NOMIS was designed to track criminals in England and Wales from sentence to release. Yet the NAO found the project was abandoned due to a number of errors with the National Offender Management Service's (NOMS) programme management and the actions of its senior management. Plans for the £234m C-NOMIS, began in 2004. However, by July 2007 the project was two years behind schedule and its estimated costs had soared to £690m.

The technical complexity of the project was also found to be "significantly underestimated". Whilst the report believed a single offender database was "technically realisable", it said NOMS did not adequately explore other potential solutions and underestimated the cost of customising the software it had already selected for the Prison Service. Procurement for C-NOMIS was also found to be sloppy. In view of this turn of events in March 2009, parts of the final chapters may need updating.

Chapter 2 by Keith Soothill, on prison history made for interesting reading and included the 1966 Mountbatten Report which proposed the upgrading of physical security in the prison estate, placing high-risk prisoners together. The chapter narrates the prisoner protests, the May Committee Report advocating the rewriting of prison rules, and the birth of liberal penology. Keith Soothill's chapter included very useful suggested further reading, including the development of penal policy as narrated by Ryan (2003) in *Penal Policy and Political Culture*, published by Waterside Press.

Part 3 of the Handbook on Prisons includes chapters on the problem of containment, prison healthcare, drugs in prison, prisoner suicide and dealing with the media. These are current awareness issues and very important inclusions into a book on prisons.

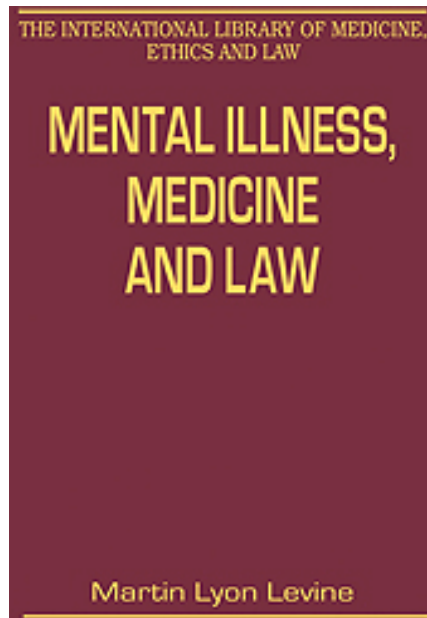
This Handbook on Prisons concludes with a chapter titled, '*After prison, what? The ex-prisoner's struggle to desist from crime*' and quotes the UK Association of Chief Officers of Probation as defining the word 'resettlement' as follows:

*'A systematic and evidence-based process by which actions are taken to work with the offender in custody and on release, so that communities are better protected from harm and reoffending is significantly reduced. It encompasses the totality of work with prisoners, their families and significant others in partnership with statutory and voluntary organisations'.*

This is a highly readable book on prisons and it looks deeply at all the research ever done on the subject of prisons. It will be essential reading for undergraduate and post-graduate law and sociology students.

ENDS+

**Mental Illness, Medicine and Law**  
**Edited by Martin Lyon Levine**  
**Ashgate Publishing Limited, ( Surrey 2009)**  
**ISBN: 978-0-7546-2121-8.**  
**Review written by Sally Ramage**  
**March 2009.**



## Introduction

This tremendously important collection of international papers on the subject of mental illness, medicine and the law, has never before been so urgently needed. Society today is troubled with rising levels of youth violence, depression, domestic violence, murders, personality disorders, sexual abuse of children, anorexia and other eating disorders, more apparent now than in past years. Coupled with such illnesses is the legal awareness, especially due to the world wide web, of the general public as to their human rights. Incompleteness of knowledge in itself causes much disruption to the progress of psychiatric treatment, especially in the legal issues of informed consent, treatment rights, confidentiality and privacy, for example. Children of mentally ill parents are known to be a high risk group in psychopathology and several studies have shown that the risk of developing mental disorders and serious socio-emotional problems among these children range from 41 to 77%, that is, high (Beardslee et al., 1993; Downey & Coyne, 1990; Goodman, Adamson, Riniti, & Cole, 1994; Orchavel, Walsh-Ellis, & Ye, 1988; Rutter & Quinton, 1984; Weissman et al., 1987).

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This book of 566 pages is divided into three parts, namely, the seriously ill, the ordinary mind and the therapist. Part 1 on the seriously mentally ill, covers such topics as the ethical benefits and costs of coercion in short-term inpatient psychiatric care. The United Kingdom authorities practise community care and the topic of medication to shorten or prevent civil commitment to a hospital is an important one. Ethics in community health care is an included topic which assists us to better understand and apply the new Mental Health Act 2007. Privacy in psychiatric treatment is one subject included and which the English courts have not properly addressed. Patient autonomy including the right to refuse mental health treatment is another valuable topic included in Part 1 and so is the topic of psychiatric diagnosis and racial bias.

Part II, which deals with the ordinary mind, is a necessary balancing part of the book. To know the ordinary mind is to know when it has been deviated from, some might argue. This section includes the psychological underpinnings of law, law's assumption of rationality, over-diagnosis and over-medication and the modern topic of treatment enhancement.

Part III, on the therapist, is the section that many criminal law practitioners will use. The topics included in this section are informed consent, trust and confidentiality, boundary violations, divided loyalties, and the ethical practise of psychiatry.

## Insanity

Society is especially concerned when those deemed 'mad' commit serious offences such as murder. An insane person is defined under one of the compulsory provisions of the 1983 Mental Health Act must be suffering 'mental disorder' and 'mental disorder' is currently defined by the Mental Health Act 2007. The Law Commission<sup>1</sup> published a paper in 2006 which included the first recommendations on the law of murder.

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<sup>1</sup> The Law Commission is a non-political independent body, set up by Parliament in 1965 to keep all the law of England and Wales under review, and to recommend reform where it is needed.

In Part I of the book, Szasz says that psychiatry is part law and part medicine, helping voluntary patients to cope with their problems and also helping relatives and society at large to '*rid themselves of certain unwanted persons, under medical auspices.*' Szasz argues that true psychiatry reform depends on a separation of these two roles which he views as mutually incompatible. He states:

*'The term "mental illness" implies that persons with such illnesses are more likely to be dangerous to themselves and/or others than are persons without such illnesses.<sup>2</sup> This is the source of the psychiatrist's social obligation to control "harm to self and/or others", that is, suicide and crime. The ethical dilemmas of psychiatry cannot be resolved as long as the contradictory functions of healing persons and protecting society are united in a single discipline.'*

This is an interesting proposition and one to bear in mind when examining the progress of mental health reform law in the UK. In August 2008, the British Home Office announced a Consultation process. The 2006 Law Commission Paper recommended that there should be three main murder offences. The Law Commission recommended that there should be offences of first and second degree murder. They recommended that cases currently classed as voluntary manslaughter should be classified as second degree murders. For first degree murders the only defences should be provocation and diminished responsibility. The Law Commission recommended the abolition of the charge of voluntary manslaughter. The Law Commission recommended that the present charge of 'unlawful act manslaughter' should be called 'criminal act manslaughter'. An act of killing is violence<sup>3</sup> and types of violence have certain traits. When a lawyer argues a murder case in isolation of the environmental backdrop, it makes nonsense of the argument. It is one reason why 'bad character' evidence has been placed firmly onto the statute

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<sup>2</sup> T. Szasz, 'Psychiatry and the control of dangerousness: on the apostrophic function of the term "mental illness"', pgs. 99-106.

<sup>3</sup> The 2002 World Health Organisation Report for death by violence.

[www.who.int/violence\\_injury\\_prevention/violence/world\\_report/en/summary\\_en.pdf](http://www.who.int/violence_injury_prevention/violence/world_report/en/summary_en.pdf)

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books through the Criminal Justice Act 2003<sup>4</sup>, section 101. Already factors which must be considered in manslaughter cases are aggravations for race, religion, sexual orientation and disability. For those who receive a mandatory life sentence for murder, Schedule 21 of the Criminal Justice Act 2003 applies. The 2008 Home Office Consultation paper on murder<sup>5</sup> outlines proposals for reformed partial defences to murder of provocation and diminished responsibility<sup>6</sup>; reformed offences of complicity in relation to homicide<sup>7</sup> and improved procedures for dealing with infanticide<sup>8</sup>.

## Suicide

Recent newspaper reports of cases of suicide have helped to bring legal awareness to the subject. Certain youth suicides in one part of the UK have raised scientific awareness that in fact suicide can be contagious<sup>9</sup> and although police insist there is no evidence that this is the case, a scientific study has found that people who know someone who has taken their own life being more likely to do commit suicide also, men being more vulnerable than women when a suicide was committed by a work colleague. When a suicide is linked to a murder, as is the classic case that involves self-pity and selfishness, a person may murder loved ones before they commit suicide.<sup>10</sup>

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<sup>4</sup> Following the 2001 Law Commission Report, No.273, "Evidence of bad character in criminal proceedings".

<sup>5</sup> "Murder, manslaughter and infanticide: proposals for reform of the law", Consultation Paper CP 19/08, preceded by Law Commission's 2006 Paper, "The reform of murder" "Partial Defences to Murder: A Consultation Paper", Law Com No.173, 2003.

<sup>6</sup> The conviction of murder may be reduced to manslaughter by raising the defences of provocation (s3 Homicide Act 1957), diminished responsibility (s2 Homicide Act 1957) and membership of a suicide pact (s4 Homicide Act 1957).

The defence of duress was extended to include acts of complicity in murder in *Lynch* [1975] A.C. 653, but reversed this in *Howe* [1987] A.C. 417. As to duress and attempted murder, the Law Commission said that the decision in *Gotts* made it clear that, as a matter of policy, duress could not be a defence to attempted murder. However, the rationale for this policy is that the difference (if any) between the offence and the attempt is predicated on the existence of the "grievous bodily harm" rule, namely, that a defendant can be deemed to have the intention to commit murder notwithstanding that he intended to do serious (grievous) bodily harm to the victim. At present dealt with in the Infanticide Act 1938. See also the 1993 Law Commission Paper No. 177, 'A criminal code for England and Wales.'

<sup>9</sup> Urea Khan, 'Suicide can be contagious', Daily Telegraph, 13<sup>th</sup> March 2009.

<sup>10</sup> Nick Britten and Nigel Bunyan, 'Mansion arson inquiry: Christopher Foster murdered wife and daughter', Daily Telegraph, 3<sup>rd</sup> September 2008. Christopher Foster murdered his wife and daughter before setting fire to his mansion and killing himself.

Oftentimes such a person may have planned the suicide and murder.<sup>11</sup>

In the UK at present, the debate rages about the legality of taking one's own life, with a notable case of potential assisted suicide being that of Diane Pretty in *R (Pretty) v DPP, Secretary of State for the Home Department intervening*<sup>12</sup> which case went to the European Court of Human Rights where it was held that there is no incompatibility between section 2(1) of the 1961 Suicide Act and the 1950 European Convention on Human Rights. Suicide is no longer a crime in English law but the Suicide Act 1961, s.2 makes it an offence to aid, abet, counsel or procure another to commit suicide, or attempt to do so.<sup>13</sup> However, no proceedings may be instituted for an offence under this section except by or with the consent of the Director of Public Prosecutions. In the European Court of Human Rights, the case *Pretty v UK*<sup>14</sup>, the assumption that the prohibition on assisted suicide in section 2(1) of the 1961 Act constituted an interference with the right to respect for the applicant's private life, as guaranteed by Article 8(1), she being physically incapable of taking her own life, such an interference would conform to the requirements of Article 8(2); there being no dispute that the interference was prescribed by law and served a legitimate aim, the only question was whether it was necessary in a democratic society for the purpose of achieving that aim.

## Suicide Pacts

Suicide pacts also cause legal issues although English criminal law clearly states in the Homicide Act 1957 that a suicide pact is a common agreement between two or more persons to kill themselves, whether or not each is to take his own life. Professor Szasz states (page 105) that in his opinion, suicide

<sup>11</sup> Dave Keating, 'Arson millionaire Christopher Foster built network of pipes to fuel blaze,' Daily Telegraph, 3<sup>rd</sup> September 2008. Foster had planned the arson, building a network of pipes to fuel the blaze.

<sup>12</sup> [2002] 1 A.C. 800, HL.

<sup>13</sup> Section 2 states that: 'A person who aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide, shall be liable on conviction on indictment to imprisonment for a term not exceeding fourteen years.'

<sup>14</sup> [2002] 35 E.H.R.R. 1.

can be reasonable and he asserts that suicide is the ultimate expression of personal autonomy, but in English law, a suicidal person is treated as dangerous and may be detained to prevent his suicide.<sup>15</sup> The British Home Office, in its 1999 paper 'Managing dangerous people with severe personality disorders: proposals for policy developments' tried to tackle this delicate issue.

It is easy on society to take Professor Szasz view on suicide but the matter is not mutually exclusive from other legal issues concerning the family, one such topic being infants of depressed mothers who are a group now known to be more likely to be at risk of developing mental and socio-emotional problems. Growing evidence shows that parent-child interactions during this early period have a strong impact on the development of children's resilience and psychiatric vulnerability. Worryingly, two-year-old children of depressed mothers are more likely to show a delay in expressive language development as compared to children of non-depressed mothers (Cox, Puckering, Pound, & Mills, 1987). This extension of the problem illustrates the fault lines in the law and as the idiom, 'No man is an island', the same is true for law; 'no law is an island.'

If, as some studies indicate, there is genetic transmission of depression, this raises deep international issues of poverty - inducing depression being profiled as genetic and racial. Depression is typically a recurrent disorder, with over 80% of depressed patients experiencing more than one depressive episode, 50% of patient's relapsing in 2 years, and 70% relapsing in 5 years (Belsher & Costello, 1988; Keller, 1988; Mueller et al., 1996). In this regard, preventive intervention is vital.

## Conclusion

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<sup>15</sup> Gareth Llewellyn, 'Beach-ban Anti-Social Behaviour Order ('ASBO') for suicide bid woman', *The Independent*, 16<sup>th</sup> January 2006. 'A woman who has repeatedly tried to drown herself has been banned from visiting her local beach. Amy Dallamura, 42, from Aberystwyth, has an Anti-Social Behaviour Order ('ASBO') which prohibits her from entering the sea, the beach, parts of the promenade as well as walking on the town's Constitution Hill'.

This book' illustrate well that crime is interlinked to mental illness also. Organisational decisions and policy making are often reactive and political, must have a strong underlying framework that guides responses and reflect the interests, values, and sensibilities; the working assumptions and cultural commitments of people under the jurisdiction of English law.

**Ends+**