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No Fixed Abode: The Continuum of Policing and Incarcerating the Homeless

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Abstract In the overzealous drive to criminalize and target the homeless for offences that are mostly related to their poverty status, this article makes the argument that homelessness produces targets for policing, and by extension, punishment. Drawing upon empirical evidence carried out in England, this article highlights the challenges that having no fixed abode presents within the criminal justice system. Looking at how homelessness impacts upon individual experiences in the criminal justice system, including pre-trial imprisonment, conviction and probation, this article argues that the resort to incarcerating homeless populations cannot be separated from the rise in policing and enforcement strategies that result in the disproportionate number of arrests and prosecutions of unhoused populations.

Introduction

There is a rich body of research and academic literature that focuses primarily on the implementation of ‘anti-homeless legislation’ and the role of the police as the main enforcers of those laws (Mitchell, 1998; Berk and MacDonald, 2010; Beckett and Herbert, 2010; Walby and Lippert, 2011). However, few academic discussions demonstrate how policing functions as a necessary component in the incarceration of the homeless. Furthermore, very few academic studies consider how incarceration itself plays a key role in producing homelessness during post-release, as high rates of offenders leave prison with no fixed abode (Baldry *et al.*, 2003; Anon, 2013). While homelessness itself is not a crime, everyday activities associated with being homeless can ‘multiply the risk of

arrest’ (Speigman and Green, 1999, p. 6). Homeless people are likely to be convicted for petty crimes, such as: substance misuse, drunk and disorderly, loitering (for purposes of prostitution), trespassing, squatting, begging and theft. The obvious point to be made here is that the resort to incarcerating homeless populations cannot be separated from the rise in policing and enforcement strategies that result in the disproportionate number of arrests and prosecutions of unhoused populations, compared to housed (Speigman and Green, 1999).

This article will first set out the argument that people with no fixed abode who come into contact with the criminal justice system are punished for their lack of access to sufficient accommodation. It will, second, highlight the challenges that people

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with no fixed abode present within the criminal justice system. Drawing upon original empirical data, generated from a study involving 29 homeless people in the criminal justice system and 3 homeless and probation practitioners in the North of England (fully reported in Cooper, 2013), this article highlights how accommodation impacts upon people's experience of punishment and rehabilitation. Drawing upon these data, the article calls attention to the direct and indirect ways in which people with no fixed abode are further disadvantaged by the criminal justice system. While this article highlights data surrounding homeless people's experience of incarceration and post-release accommodation, the police play a significant role in the everyday management of homelessness and, as part of joint-offender management programmes, they too play a critical role in post-release monitoring strategies.

Policing the homeless

Historically, policing the homeless has its roots in the development of vagrancy legislation and the rising resort to control urban disorder during industrialization (Mitchell, 1998; Feldman, 2004). Vagrancy laws gave the police a significant range of powers to arrest and convict 'mobile anomalies' (Steedman, 2015, p. 56) and wanderers, unable to give a 'satisfactory account of themselves' (Lawrence, 2016, p. 6). Despite various amendments made to vagrancy legislation in the 1980s, these antiquated laws are still with us.¹ Currently, we are seeing a revival of vagrancy legislation. Evidence shows that, in 2008, 1,884 people were prosecuted under the Vagrancy Act² and that the

number of people brought to court for vagrancy-related offences increased by 70% between 2013 and 2014 (*The Guardian*, 2014).

In addition to the revival of vagrancy legislation, zero-tolerance enforcement strategies are also used to sanction and criminalize homeless groups. In 1998, the former New Labour government implemented a set of civil orders that targeted 'street-level crime' and social disorder in the UK. 'Anti-social behaviour orders' were first introduced under the Crime and Disorder Act 1998 and, as well as targeting marginalized youths (Muncie, 2008; Jamieson and Yates, 2009), these sanctions initiated a 'begging clampdown' as they effectively criminalized homeless people in key urban areas (Joseph Rowntree Foundation, 2007; Johnsen and Fitzpatrick, 2010). Police units, along with formal local authority partnerships, began isolating and targeting street-level activities—most of them associated with homelessness. Between 2009 and 2015, the Metropolitan Police made 3,036 arrests for begging-related offences and between 2012 and 2014, Kent Police reported 1,714 arrests for 'Begging/Vagrancy/Sleeping Rough' incidents.³ Where no police arrest is issued, homeless people can still be 'moved-on' using other enforcement measures, such as Public Space Protection Orders (Joseph Rowntree Foundation, 2007).

Incarcerating the homeless

While anti-homeless legislation and the policing of it, cannot alone explain the concentration of homeless people in prison, a revival in the use of vagrancy legislation and zero-tolerance measurements for controlling public disorder, is a major contributing

¹ The Vagrancy Act 1824 was repealed in Scotland by the Civic Government (Scotland) Act 1982.

² These data were retrieved from a Freedom of Information Request (accessed April 2015). Available online at: https://www.whatdotheyknow.com/request/vagrancy_act_convictions

³ These data were retrieved from two Freedom of Information Requests (accessed March 2016). *Kent Police, Freedom of Information Request*. Available online at: http://www.kent.police.uk/about_us/foi/archive_responses/crime_inc_stats/attachments/140414_Begging.pdf
Metropolitan Police, Freedom of Information Request. Available online at: http://www.met.police.uk/foi/pdfs/disclosure_2014/july_2014/2014060001911.pdf

factor in the rising resort to incarcerate the homeless (Turney, 2014).

In 2002, figures published by the Social Exclusion Unit⁴ demonstrated a strong correlation between homelessness and incarceration, estimating that: 32% of the prison population are homeless prior to entering prison; ‘up to a third of prisoners lose their housing during custody’ and many face ‘severe difficulties in accessing housing upon release’ (p. 94). Clearly, being released from prison with no fixed abode negatively impacts upon the possibility of making a smooth transition from prison to the community. For example, studies surrounding homelessness experienced by prisoner groups, show that people with a previous custodial sentence are three times more likely to have been homeless before their current sentence, compared with those who had not served a previous sentence (Ministry of justice, 2012). In terms of repeat offending, those who are homeless upon entering prison have a higher reconviction rate within one year of being released (Prison Reform Trust, 2012).

On exiting prison, studies surrounding the usage of homeless hostel accommodation show that a high number of prison leavers go on to access day-centres and hostels for the homeless: of the 216 homeless day-centres in England (used mainly by rough sleepers), 90% of the client profile primarily comprise prison leavers and out of 1,271 accommodation projects and homeless hostels in England, one in four clients (27%) have an offending history (Homeless Link, 2014, p. 16). The high concentration of prison leavers using homeless spaces further illuminates the spatial concentration of ex-prisoners and homeless groups, and the extent to which they come into police contact. Seen as ‘underclass symbolic locations’ (Reiner, 2010, p. 256) and ‘criminogenic hotspots’, hostels and day-centres are routinely policed, where the

everyday conduct of its residents and service-users is monitored (DeVerteuil, 2006; Ranasinghe, 2013; Hansen Löfstrand, 2015).

While homelessness itself is not a crime, the everyday activities associated with being homeless—and by extension, the urban spaces in which they are concentrated in—can ‘multiply the risk of arrest’ (Speiglmán and Green, 1999, p. 6). Homeless people are likely to be convicted for petty crimes, such as: substance misuse, drunk and disorderly, loitering (for purposes of prostitution), trespassing, begging, and shoplifting. However, representations of homeless people in the criminal justice system as *offenders*, is misleading. Victimization studies reveal that homeless people are also disproportionately subject to extreme and persistent violence, where they typically experience hate crime, assault, theft, sexual harassment, interpersonal violence, and homicide (Rock and Newburn, 2005; Jasinski *et al.*, 2010). Notwithstanding the scale of crimes perpetrated against the homeless, their experience of victimization is grossly underreported and rarely documented in mainstream victimization surveys (Rock and Newburn, 2005; Scurfield *et al.*, 2009) and ‘not usually reported in the mass media’ (Rock, 2008, p. 111).

Despite the clear evidence demonstrating the inextricable link between homelessness and incarceration, and the spatial concentration of these two groups; prisoner and homeless populations are often approached as disparate groups in the criminal justice system. Only when we analyse both homeless and prison populations simultaneously, do we begin to realize the entangled relationship between incarceration and homelessness and the extent to which homelessness produces targets for policing and punishment. The significance of this point will become clear as we explore the empirical evidence set out in the next section.

⁴ The Social Exclusion Unit was set up in 1997 by the former New Labour government. It functioned as the government’s main poverty research and policy advice unit. It was abolished in 2010.

Research

This section of the article presents findings from a qualitative research study that explored the experience of homeless people in the criminal justice system. The study involved 12 interviews with homelessness women, 19 homelessness men, 2 homelessness practitioners and 1 offender manager. The principle focus of those interviews was to explore the experience of homeless people in the criminal justice system and the extent to which their accommodation, prior to and post-imprisonment, impacted upon their experience of punishment (full details of the research methodology can be found in the full report, [Anon, 2013](#)).⁵

Pre-trial imprisonment

Findings revealed a number of issues relating to the experience of homeless people, during pre-trial imprisonment. Several participants in this study reported that they were arrested and frequently remanded to custody due to their status of having 'no fixed abode'. One participant below explained that, upon being arrested and charged, she was unfairly remanded to custody:

I did a four month remand that if I'd have had an address, I wouldn't have had to have done. Because I had nowhere to live, there was nowhere to bail me to. They always say at court, 'due to fear of flight', because I don't have a stable address, they say, 'due to fear of flight, Miss [x] must be remanded into custody' for things that I wouldn't be remanded for. I get sentences for things that I wouldn't get sentences for, because I'm not deemed appropriate for any probation

or community sentence orders, because of the fact that I'm homeless.
(Shirelle, probation hostel)

Shirelle was detained in custody due to presenting a 'flight risk'. Under the Bail Act 1976 (schedule 1, Part 1, para. 2(1)), a defendant can be refused bail if there is some indication that they may 'fail to surrender to custody', abscond and fail to attend the next court hearing. People with no fixed abode present a 'flight risk' to court authorities because they are deemed to be less traceable in the community, than defendants with a fixed address. Shirelle's experience above indicates that homeless people in the criminal justice system are likely to fail the 'bail test' and are subsequently remanded to custody—due to having no fixed abode.

The data also revealed that interviewees who were remanded to custody were released back into the community as homeless. Participants, below, explained that this is due to a lack of support and poor administration of the remand sentence:

In August when I got out, I was on remand, so I never had a release date to get out to, and nothing [release preparation] was done. I knew that the charges would get slashed because I hadn't done nothing, but because I only had a court date they couldn't do anything because they didn't know if I was going to get out or not. So, when I actually got out, nothing had been done for me and I was homeless.
(Callum, prison)

They couldn't give me any support because they didn't know how long I was going to be in jail for and I got released from jail one day into a tent, that's

⁵ At the point of this study taking place, people serving a minimum 12-month custodial sentence were subject by statutory law to probationary supervision upon their release. However, since the introduction of the Offender Rehabilitation Act 2014, in England and Wales, now every person is legally committed to probationary supervision, upon their release. This study was carried out prior to the implementation of the Offender Rehabilitation Act 2014 and thus does not include these legislative changes.

what I had a tent! (Shirelle, probation hostel)

These quotes are indicative of a general experience among people released from remand: that an unrecognized effect of being remanded to custody is the exacerbating conditions of poverty. Moreover, releasing those individuals as homeless, brings them in close contact with the police. One participant, a former commissioner of homelessness services, claimed that homeless people without community support 'end up getting harassed by the police'—suggesting that when they are in receipt of support, then 'the police will leave them alone'.

In summary, data from the study on pre-trial imprisonment shows that participants are often remanded to custody due to presenting a 'flight risk'. Due to having no fixed abode, homeless defendants are less visible within the community and, therefore, appear as slippery targets for the police, should they need to trace them. As such, homeless defendants are remanded to custody in order to maximize the possibility that they will reappear in court. However, remanding an already disenfranchised group in custody only serves to exacerbate their impoverished circumstances. Poor prison infrastructure at the remand stage, including having no advanced notice of a release date, means that the work carried out by prison and resettlement staff can only be impromptu. This lack of support not only increases the likelihood of detainees being released from custody as homeless, but further brings them in close contact with the police.

Post-Release: men's experience

In the preceding section, the analysis focused on pre-trial incarceration. In so far as the data

revealed that homeless men's and women's experience of pre-trial incarceration were broadly similar, the preceding section makes no major gender distinction. The same cannot be said, however, for men's and women's experience of accommodation and support, post-release. Post-release support is critical for people coming from prison as it helps them to make the smooth transition from imprisonment to the community. Accommodation, including the geographical location, type and quality, forms a crucial stage in the post-release phase. The next two sections of the data analysis will outline the key distinctions between men's and women's experience of accommodation, post-release. In particular, it will focus on the issues affecting those who are released on a conditional licence and accommodated in hostel premises.⁶

The data show that ex-prisoners released with no fixed abode, are frequently released into temporary hostel accommodation, where they are routinely monitored. Two participants below outlined the cyclical pattern between living in hostel accommodation and going to prison:

If I'm not in prison, I'm in a hostel somewhere

(Jonathon, prison)

Researcher: And all the time that you have been in prison has your homelessness been recorded as something to be considered, in preparation for your release?

Gareth: No, I would just go and stay in a hostel and that.

Researcher: And when are you due to be released from here . . . [will you be rehoused]?

⁶ This article uses the term 'hostel' to refer to 'Supported Accommodation' and 'Approved Premises'. Supported accommodation is a non-statutory provision of accommodation for homeless people, where routine guidance and move-on support is provided. Approved Premises, formerly known as probation and bail hostel premises, provide statutory accommodation for high risk offenders, serving a community sentence and/or released from prison on probationary licence. These premises are approved under the Offender Management Act 2007. *National Association of Approved Premises Handbook* (2009), available here http://www.napa-uk.org/content_images/library/APPROVED_PREMISES_HANDBOOK_2009FINAL2.pdf

Gareth: Not at all, no. When I'm released they say 'oh, we didn't know we haven't looked into your file, we didn't know that you were in here it's a bit too late now'. You know, like that. I'll most probably go to a hostel
(Gareth, prison)

Both homeless hostels and Approved Premises provide structured move-on support, helping individuals to settle back into the community. Approved Premises especially functions as 'an enhanced level of residential supervision in the community as well as a supportive and structured environment' (Ministry of Justice, 2009, p. 8). But male participants in this study rarely made the transition from hostel accommodation to housing in the community. Instead, they were arrested and recalled back to custody. Two participants, below, revealed their experiences of living in hostel accommodation, claiming that the restrictive regime led to their recall:

I started going into hostels and then I got recalled in last January, not this January gone, last year January I got recalled and I was in for five months then. I got out went back to a hostel and again and this is basically non-residing that I'm coming in for, because I don't want to stay in a probation hostel . . . when people say to me sum it up what it's like there I say it's like a strict decap prison, it's like a strict open prison. (Callum, prison)

Martin: I was in [name of probation hostel], in [name of area]. It was terrible. It's a hostel run by probation, the prolific offending team, the police probation and [name of housing association]. They tell you what to do – you've got to. If you breach it they put you back in here. To be quite honest with you, you are better off in here. That housing [association], don't ask

me how they get paid for that accommodation. Then I had to go into a different probation one [names a different probation hostel].

Researcher: And what was that one like?

Martin: That was horrible. They put you in a shared room you have to go into a shared room first. It sounds petty. That's a probation run hostel, all they are doing in those places giving you enough rope to hang yourself.

(Martin, prison)

Evidently, participants quoted above struggled to adhere to the various hostel rules and regulations. These sentiments were echoed by most of the male participants in this study with experience of being recalled. Such difficulties can partly be explained by the disproportionate number of rules and regulations for people living in hostel accommodation, compared to those people living in their own home. Where people living in their own home must comply mainly with their probation licence agreement, those living in hostel premises must comply with two interrelated licence agreements: the hostel premise licence agreement and probation agreement. Approved Premises rule can include: no visitors, drug-testing, prohibition of alcohol, CCTV surveillance, curfew, and compliance with rehabilitative treatment programmes (Ministry of Justice, 2009). Failing to comply with these rules may result in eviction, further causing individuals to be arrested and recalled to custody for 'not residing' at the address originally stated in their licence agreement.

The police play a pivotal role in maintaining these rules and regulations. According to the Approved Premises Handbook (Ministry of Justice, 2009), hostel management is obliged to notify the police, should individuals breach the licence terms and conditions and, depending on level of risk, a 'rapid response rate' should be established between hostel premises and the local

police (Ministry of Justice, 2009, p. 41). Not only do the police play a key role in joint-offender management strategies, but they are also the main authority responsible for arresting and returning offenders to the local prison and/or remand centre. As national recall rates continue to peak, particularly since the Criminal Justice Act came into effect in 2003,⁷ and Public Protection partnerships expand, the role of the police for enforcing post-release rules is palpable (Padfield and Maruna, 2006).

Unable to live under these rules and regulations, one male participant, below, claimed that he would rather spend the duration of his sentence in prison, than endure the upheaval of being released - of being arrested and then recalled:

The first time that I went away [to prison], they sorted out my Salvation Army accommodation [on release]. Then I was on warrant for breaching my licence and I went back on a twenty-three day recall. I'm out now. It's just like probation - I said the first time [I was released], that I would rather go to jail and do my time rather than get another order.
(Jason, centre for rough sleepers)

To summarize the data set out in this section of the article, having no fixed abode had significant impacts on participants who are granted conditional release from prison. Perhaps the most significant of those impacts is that they are subject to *more* security measures, compared to people living in their own homes. Under such close monitoring

and observation, participants struggled to comply with their licence terms and conditions, which led to them being arrested and recalled to custody. These experiences raise critical questions about the purpose of monitoring and policing offenders post-release, as evidence shows that it failed to rehabilitate and reintegrate those individuals back into the community.

Post-Release: women's experience

In contrast to men's experience of post-release accommodation, female participants reported mostly positive experiences within this area of support. Female participants appeared to be involved in some form of coordinated activity that focused mainly upon women-centred offending-related needs.⁸ One female participant below described the level of participatory support she experienced while living in one hostel:

Oh [I've had] loads of support like a drug councillor and a key worker and when you sign up to come to here you do groups every day and it's like stress awareness, anger management, drug awareness and we are actually doing one today and it's about women empowerment, you know about domestic violence and stuff. Yeah, it's really, really good.
(Natalie, probation hostel)

Another respondent below, suggested that her needs around housing, substance misuse, and welfare benefits were all addressed upon

⁷ Over the last 15 years, the rate of people returning to custody on recall has increased significantly. According to a former Chief Inspector of Prisons, Anne Owers, 'in 2000/1, 3,182 prisoners were recalled to custody for breach of their licence conditions or curfew, and this rose to more than 11,081 in 2004/5' (HM Inspectorate of Prisons, 2005, p. 7). This increase was triggered by legislative changes, whereby the Criminal Justice Act 2003 enhanced powers to recall people to custody for non-compliance. This Act also accelerated the speed at which recalls can be put into effect. Currently, people categorised under 'emergency recall' can be returned to custody within 74 hours and standard recalls, returned within 144 hours (Ministry of Justice, 2011).

⁸ In the seminal report considering women's experience of the criminal justice system, Corston (2007) suggested that there needs to be 'a radical new approach, treating women [in the criminal justice system] both holistically and individually - a woman-centered approach' (p. 2).

arriving at the homeless hostel where she was accommodated:

Oh they have been brilliant. They have helped me get a doctor because I am a drug user, I've only been clean now two days so they helped me get a script with the doctors and they are going to help me go on the house search next week to get a flat. Yeah, they've been great with me, fair do's. They've helped me sort all my benefits out, but I know I'm safe and no one can touch me here. It's just nice to feel safe and have somewhere to live for a change.
(Belinda, homeless hostel)

Clearly, supporting women's multiple needs, can improve their sense of wellbeing. Female participants, highlighted below, claimed that the support they received helped to bring about a sense of stability in their lives:

Researcher: Between 1993 to now, when in that period do you think you were at your most stable, in terms of housing?

Vivienne: Here [Probation hostel]. Yeah, since I've been here. I've never felt, how can I put it . . . I've never felt so stable in the whole of the drug life that I've had, than I've had being in here. I could honestly say that it has got its good points about it in the end.
(Vivienne, probation hostel)

I was street homeless in a basement basically because I was going in and out of there every day. I rang up here and they explained that they had some outreach beds so I came for an interview with [name of staff worker] and I said 'I'll give it a go'. But I had to do a drink detox because I was a bad alcoholic and I was taking Crack and Smack all the

time, but I'm off all that now. Since I've been here, it's sorted my head right out.
(Shirelle, probation hostel)

I have been off the drugs now since I been out of prison, I've not bothered. I think that is mainly due to being here and having the support and what not

. . . .

(Kate, probation hostel)

Overall, these quotes above highlight a common response by female participants: that they appear to feel safe, secure, and confident in their hostel environment and engaged in holistic frameworks of support. The data further suggest that hostel staff are responsive to women's various background experience of domestic violence, homelessness, and substance misuse.

While the data mostly indicates that hostel regimes of support for women are more integrative and rehabilitative, compared to male participants, it has been noted elsewhere (Barton and Cooper, 2012) that women experience very acute and adverse circumstances in their relocation to hostel accommodation. In this respect, women face different challenges, compared to men, which involve uneven geographical dispersal from their home community and family.

Conclusion

While the evidence raised in the article pays particular attention to homeless people's experience of incarceration and post-release hostel accommodation, policing is central to these stages of the criminal justice system. Involving various practices, the police play a significant role in the management of homelessness and, as part of joint-offender management programmes, they too play a critical role in Approved Premises monitoring strategy. This raises profound questions for policing strategies that target homeless people prior to and post-release. Perhaps the most compelling factor for thinking about policing the homeless is that, in

the overzealous drive to criminalize and target the homeless, the criminal justice system has become a regressive form of managing the poor.

Drawing on empirical evidence, this article has highlighted the failure of the criminal justice system to adequately respond to challenges that people with no fixed abode face. First, the article highlighted how homeless people who are arrested and charged, are likely to be subject to pre-trial imprisonment, as they present a 'flight risk' to court and criminal justice authorities. Not having a fixed abode, makes homeless groups appear to be difficult to 'track down', should they abscond and/or fail to surrender to custody (Player, 2007). But pre-trial imprisonment exacerbates and prolongs episodes of homelessness, if only for the fact that prison administrators and resettlement staff rarely have a release date for detainees and, consequently, cannot organize adequate accommodation when detainees leave custody. What is more, releasing people without any accommodation and/or support, brings them in closer contact with the police.

Second, the article explored men's and women's experience of post-release hostel accommodation. How people experience post-release support has a significant impact on the likelihood that they will remain in the community, gain access to permanent housing and/or return to custody. The study highlighted key distinctions between men's and women's experience of hostel accommodation and rehabilitative support. Male participants released on conditional licence and accommodated in hostel premises, encountered more rules and restrictions, than female participants. Male participants were arrested and recalled back to custody on several occasions, for not complying with their licence terms and conditions. These experiences raise critical questions about the purpose of security and policing in post-release hostel premises, as evidence shows that those individuals were not rehabilitated or reintegrated into the community, but arrested and returned to custody. In contrast, the data revealed that female participants had

mostly positive experiences of hostel accommodation, where they received strong levels of rehabilitative support, including support with accessing permanent rehousing.

This article raises critical questions about how policing functions as a necessary component in the incarceration and post-release of homeless people and how homelessness itself produces targets for policing and, by extension, targets for punishment.

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