After Penal Populism: Punishment, Democracy and Utopian Method

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ABSTRACT

In a context of growing concerns about the role of public opinion in informing responses to crime, this essay highlights two opposing strategies for seeking to protect criminal justice policymaking from the excesses of penal populism: *insulationism* and *reinvigorationism*. It argues that particular concerns about the relationship of criminal justice policymaking to public opinion reflect a broader climate of knowledge production within contemporary society, such that the contemporary production of criminological knowledge itself forms part of the apparent problem of penal populism. Consequently, the aim of this essay is to suggest that the most effective response to the apparent problem of penal populism lies in a reconsideration and democratization of the relationship between expert knowledge and public policy in contemporary society. Drawing on the example of the 2014 Scottish Independence Referendum, it advocates the need for new forms of producing and utilising expert knowledge as a means of creating 'spaces of hope' through which more meaningful policy alternatives, and engaged

publics, can be imagined and developed, proposing Ruth Levitas' 'method of utopia' as one possible means of doing so.

KEYWORDS

Penal populism; 'spaces of hope'; utopia; liberalism; democracy; criminal justice

INTRODUCTION

As the late twentieth and early twenty-first centuries have borne witness to certain increasingly punitive responses to crime in a number of advanced liberal countries, reflected in the apparent 'crisis' of mass incarceration in the United States and its echoes and sequels elsewhere,[1] concerns about the influence of penal populism on criminal justice policy have come to play a pivotal role in discussions of how we might realise more effective and just policy responses. Whilst recognising that these trends have not unfolded identically across different contexts,[2] within these discussions a tension is drawn between those who advocate insulating questions of crime and justice from the vagaries of an ill-informed and punitive public (or, if not the public themselves, public discourse surrounding responses to crime), instead committing them to the safety of 'expert' decision-making, beyond the sway of public opinion and political electioneering; and those seeking to engage these publics in such questions in an active and meaningful way. At its heart, this tension raises important questions regarding the relationship between policymaking (perhaps most acutely in a criminal justice and penal

context, but certainly not limited to this), liberalism and democracy, and, ultimately, the polarizing question of whether the issue is one of *too much* public engagement in the development of public policy or *not enough*?[3]

Animating these opposing perspectives on the contemporary problem of democracy in policymaking which I term 'insulation' and 'reinvigoration', lies an increasing polarisation between, on one hand, liberal concerns to preserve criminal justice policymaking from becoming a tool of oppression and domination, and, on the other, a normative project of social democratic change.[4] We are also faced with an implicit question of how these apparently opposing, and certainly divergent, tendencies might be reconciled.

Against this backdrop, this chapter examines debates regarding the most effective way to respond to the problem of penal populism. It argues that much of the apparent problem of penal populism and contemporary responses to it lies in the failure of those interested in criminal justice and penal reform to connect their particular agendas to the broader concerns and lives of lay members of the public.

Specifically, I argue that the contemporary production of criminological knowledge forms part of the apparent problem insofar as the current organisation and production of knowledge arguably *creates* or reifies the problem of 'populist punitiveness'[5] itself. Consequently, I advocate the need new forms of producing and utilising criminological knowledge as a means of

creating 'spaces of hope'[6] through which more meaningful policy

alternatives, and more engaged publics, can be imagined and developed.

In so doing, I offer the example of the recent Scottish Independence

Referendum as an implicit realisation of such a space, suggesting that, amid

a sense of a shifting mood in response to the apparent 'crisis' of mass

incarceration, such an opportunity for challenging penal populism might be

on the horizon. Whilst not a specifically criminological example, it

nevertheless demonstrates the need for more holistic and integrated

conceptualisations of social problems, which seek to tie particular interests

and issues to a broader project of social change. Indeed, this is the very

point of the example, for it challenges the insulationist tendency within some

areas of academic criminology to sever issues of crime and justice from their

location in a broader politics and normative questions as to what type of

society we believe is both desirable and achievable. Finally, I propose a

solution to identifying strategies for implementing change in the form of a

'method of utopia'[7] as a means of taking advantage of such 'spaces of hope'

when they arise. Advanced as a means of reconnecting abstract political

theory with a practical commitment to institutional design, this method offers

a point of access into more systematic thinking about crime and its solution.[8]

Moving beyond, for example, concentrating on the existing criminal justice

and penal system and narrow debates over ameliorating mass incarceration

and advocating piecemeal reforms, it locates such issues in more holistic

accounts of social change. It is also envisaged as a means of reengaging a

disenfranchised public with questions about crime and justice insofar as it has been described as 'an active device in reflexive and collective deliberations about possible and desirable futures'.[9]

In arguing thus, it is maintained that whilst the issues concerning democracy, liberalism, and political legitimacy may be brought to the fore and rendered particularly acute by the contemporary crisis of mass incarceration and concerns about penal populism, they ultimately reflect much wider questions concerning the development of public policy in contemporary society. Therefore, this chapter is not intended as a commentary on mass incarceration or possible routes to the development of alternatives to prison *per se*. Rather it uses this context as a lens through which broader concerns about how to build a more socially just society can be meaningfully discussed and articulated, focusing specifically on the ways in which the relationship between expert knowledge and public policy might be more effectively democratized.

Finally, by way of introduction, it is important to qualify the term 'utopia' as it is employed in this chapter. As a frequently contested concept, the particular use of utopia as a method is distinguished from other uses. Without wishing to become entangled in the problems of definition, for the purposes of this chapter, there are two (related) definitions of 'utopia' on which I intend to draw: an analytical definition and a descriptive one.

At the analytical level, in the absence of a clear or agreed definition of 'utopia', Ruth Levitas has identified the idea of desire as a key unifying theme underpinning competing definitions. Accordingly, she advances a broad definition of utopia as 'the expression of the desire for a better way of being'.[10] At the descriptive level, a general definition of utopia is adopted whereby 'utopia' is commonly used to identify and refer to an outline of an ideal and/or perfectly organised society, which is currently non-existent and considered desirable. These two are related insofar as (as will be demonstrated), the application of Levitas' 'utopian methodology' to different theories of crime and justice policymaking, provides the means of translating the abstract analysis of such 'expressions of desire for a better way of being'[11] into a more holistic reimagining of an ideal society that is currently non-existent and considered desirable.

It has been suggested that utopias present 'a determinate type of *praxis*'[12] in their presentation of alternative societies.[13] By bringing into relief the alternative (and often competing) visions of the good society implicit within different theories of, and responses to, crime and justice, the utopian method invites critical evaluation on both the desirability and practicability of such proposed measures. It enjoins us to consider the type of society we want to live in, and how best this might be realised as well as what 'kind' of people we think we are and/or could be. These are ultimately political, normative questions about the world, requiring us to move beyond the disjointed and 'value-neutral' modes of engagement currently dominant within academia.[14]

Thus, the utopian method offers a possible means for returning questions of crime and justice from the insulated realm of academic expertise and institutional particularism, to normative public deliberation and debate and social universalism. By teasing out a holistic account of the good society from the particularities of expert discourse on crime and justice, this method is anticipated as a more productive means for effecting social improvement and subjecting both contemporary society and its concomitant social theories and political programmes to public engagement, dialogue and deliberation. The need that this approach discloses is for experts to make clearer the relevance of specialist forms of expertise to the lives of the public, thereby helping create an informed, engaged, public involved in devising more imaginative responses to crime.

PATHWAYS OUT OF MASS INCARCERATION: INSULATION OR REINVIGORATION?

The starting point for my analysis is the growing concern amongst academics and 'experts' over the danger of penal populism in the contemporary climate. The trend towards mass incarceration in contemporary Anglophone countries arguably reflects the apotheosis of such populism. It has often been presented as a key site for articulating concerns about the dangers of holding criminal justice policy hostage to political interests and the need for new ways of thinking about, and responding to, crime and justice.

Defined by Simon as 'the tremendous changes in the scale of incarceration that began in the late 1970s and became visible to readers of imprisonment charts by the middle of the 1980s',[15] the problem of mass incarceration has gained increasing traction as a locus of critique over the past thirty years. Criticisms regarding the effectiveness, legitimacy and harmfulness of mass imprisonment are well-documented and do not bear repetition here.[16] However, as the voices of such criticism have gained increasing attention and political traction, we are arguably now witnessing a *watershed moment* in its development whereby the prospect of continuing along such punitive lines appears increasingly untenable.[17]

Consequently, we have begun to witness both concern regarding the relationship of criminal justice and penal policymaking to professional expertise and public opinion, and growing interest in the role of democratic theory in developing contemporary responses to mass incarceration, in order to stem the tide of 'populist punitiveness' and offer new, and more effective, alternatives for responding to crime and justice.

In response to this opportunity, commentators have noted two opposing tendencies in response to concerns over the relationship between public opinion and professional expertise in relation to this issue: what shall be termed here '*insulationism*' and '*reinvigorationism*'.[18]

As appeals to populist sentiments stand accused of diluting the authority of criminal justice expertise and interfering with the shaping of its research and

policy agenda, one response has been to problematise an apparent excess of democracy in criminal justice policymaking.[19] The charge here is that there is a fundamental problem with criminological expertise and professional decision-making being held hostage to the tyranny of a public opinion that is taken to be ill-informed and unduly laden with emotion. I use the term '*insulationism*' to describe those who call for the decontamination of issues of criminal justice policymaking from public political discourse, locating them instead within independent, professional, regulatory bodies formed of criminal justice experts.[20] The claim is that such professional bodies will serve to *insulate* criminal justice policy responses from the exigencies of an emotionally aroused and vengeful public bent on punishment (or, at least, the construction and deployment of criminal justice policies in such ways that presume such public sentiment around the issues).[21]

On the other hand, it has been argued that the assumption of an automatic punitiveness amongst the general public is overstated.[22] Rather than indicating 'too much democracy' creating a populist response to crime, it is claimed there is a crisis of civic engagement in contemporary society and a sense of 'too little democracy'.[23] In a climate of increasing insecurity and declining civic participation, apparent populist punitiveness arguably reflects the alienation of the public from meaningful engagement in policymaking processes and, in turn, from a sense of public responsibility for these processes. Instead of removing issues of crime and justice policy from the

realm of popular opinion, it is argued, the aim should be to move beyond the

tokenism of political elites. Reinvigorated normative public debate around

issues of crime and justice coupled with reinvesting the public with a sense

of civic responsibility for crime and justice, it is anticipated, will not only

loosen the grip of 'populist punitiveness', but will also serve as the

handmaiden to more creative, democratically imagined (and thereby

legitimate) responses to crime and justice.[24]

Central to understanding the reinvigorationist approach is recognising this as

not so much a strategy intended to come to a majoritarian conclusion about

penal policy, but one designed to foster dialogue and discussion in more

meaningful ways for developing more effective, whilst also legitimate,

responses to issues of crime and justice. As such, it taps into broader

concerns within political theory which challenge both the uneasiness towards

democracy found within liberalism, but also the fundamental individualist

premises upon which it is predicated. For example, as Young argues:

> [l]iberal political theory represents individuals as occupying private and
> separate spaces, as propelled only by their own private desires. This is a
> consumer-oriented conception of human nature, in which social and political
> relations can be understood only as goods instrumental to the achievement of
> individual desires, and not as intrinsic goods. This atomistic conception
> generates a political theory that presumes conflict and competition as
> characteristic modes of interaction.[25]

A variety of commentators have similarly challenged the premises that Young identifies, pointing towards the effects that these have on promoting an 'instrumentalist' and 'privatized' approach to politics.[26] Moreover, they have also highlighted concerns which echo those noted above, about the way in which the knowledges we produce (in this case liberal political theory) *construct* publics in particular ways through the values they embody, despite formal appeals value neutrality.[27] For example, Walzer argues that

> The liberal ideology of separatism cannot take personhood and bondedness away from us. What it does take away is the *sense* of our personhood and bondedness, and this deprivation is then reflected in liberal politics'.[28]

The tension that the divergent projects of insulationism and reinvigorationism reflect is not peculiar to the field of criminal justice, but speaks to broader antagonisms animating the production of knowledge directed towards effecting social change and a more general problem regarding our understanding of, and response to, social problems.

INSULATIONISM, LIBERALISM AND ILLIBERALISM

Throughout the second half of the twentieth century, especially in the aftermath of the disasters wrought by the social experiments of Nazism and Soviet Communism, the need to balance liberalism and the protection of individual freedoms with the pursuit of utopia or 'the good society',[29] has haunted Western thought.[30] Indeed, the imposition of various visions of

'utopia' in the last century has arguably realised the adage that one person's paradise is another's hell only too well.

As hopes for wholesale social reform have given way to what are now considered brutalising regimes, thinkers such as Hayek[31], Popper[32] and Gray[33] have led the way in championing the liberal cause for the protection of individual liberty against the dangers of unbridled progressivist tendencies.

This is further reflected in a divergence in orientation to the means of effecting social change. More conservative, liberal, approaches arguably tend towards small-scale, piecemeal reform within the existing regime, whilst more radical, social reformist perspectives seek more holistic social change. Whilst for the former position, the danger of the latter is the imposition of a vision of the good which infringes on the rights, liberties and protections to which all are entitled in civilized, humane and liberal society; for the latter, the danger of the former is a tendency to prop up a system which may, itself, be unjust.

Walzer has argued:

> The standard liberal argument for neutrality is an induction from social
> fragmentation. Since dissociated individuals will never agree on the good life,
> the state must allow them to live as they think best, subject only to John Stuart
> Mill's harm principle, without endorsing or sponsoring any particular
> understanding of what "best" means. But there is a problem here: The more

dissociated individuals are, the stronger the state is likely to be, since it will be the only or the most important social union. And then membership in the state, the only good that is shared by all individuals, may well come to seem the good that is "best."[34]

Here, Walzer sums up the basis for the insulationist approach, both in terms of its animating impulse (namely, to curtail the imposition of particular visions of the good life upon individuals), but also in terms of its implicit danger, that of its own capacity for dysfunction. In seeking to prevent the tyranny of the masses, the danger is that this can, all too easily, be substituted for another form of tyranny: in the case of criminal justice policy as articulated by proponents of insulationism, tyranny of an expert and professional criminal justice elite. Thus, this strategy may, in turn, also raise questions of the legitimacy of any policies so devised. Indeed, as even the fiercest defenders of liberalism have highlighted, within a liberal polity, some degree of democratic engagement and accountability are essential means for diluting potential excesses of power and holding social institutions in check.[35]

Insofar as the criminal law has historically been conceived as an 'index of social solidarity',[36] reflecting the common morality and presenting a declaration of the shared obligations and restrictions on individuals within a given society,[37] the so-called 'insulationist approach to penal policy'[38] which advocates the restriction of penal affairs to professional expertise seems normatively untenable. Thus Dzur has argued that:

an insulated approach to criminal justice policy seems particularly inapt given the central normative place of the public in defining the very meaning of a criminal act. What separates a criminal from a civil offense, […] is the fact that the public is also thought to have a stake […]. Additionally, prominent in American political thought is a robust argument for the transparency of the criminal law grounded by the fundamental injustice of ordinary citizens being held accountable to rules that they did not authorize, cannot check, and may not understand. If at the core of criminal codes is a normative foundation that is inherently public, it is inappropriate to exclude the public from meaningful participation in criminal justice policymaking.[39]

Therefore, as Turner has highlighted, concerns about crime and the appropriate responses to it, are ultimately not technical issues, but rather, are fundamentally questions of values, such that '… neither politically nor normatively is there any good reason why criminologists' opinions should count more than anyone else's'.[40]

There is also a more fundamental concern as to the role of insulationism in potentially reifying penal populism or 'populist punitiveness' itself and the implications of this for criminal justice policymaking. This concerns the question of whether the 'populist punitiveness' from which the insulationist approach seeks to protect criminal justice policy formation is based on a mythical account of public opinion, as well as questioning the role of the construction of academic knowledge in creating this account.

As Dzur has noted

to advocate exclusion and deference as the public's role in criminal justice […]

is to say that the public […] is careless regarding the lives of others and needs

restraints, expert guidance to dampen down normally poor impulse control. But

this assumption of carelessness is too broad, and risks being a self-fulfilling

prophecy.[41]

Key questions raised by an interrogation of the insulationist perspective

include consideration of the extent to which this position reifies the

presumption of penal populism in the first place, as well as that of who the

assumed 'public' from which it is seeking to guard criminal justice policy is?

Is the population necessarily as 'punitive' as this position supposes and how

does our own knowledge and research in this field shape this public and its

attitudes in the first place?

For example, Hough and Roberts have found that what might appear to be

'punitiveness' amongst the lay public, might actually reflect a propensity to

'systematically under-estimate the severity of sentencing patterns'[42] and,

hence, ignorance over typical penalties awarded rather than a desire to mete

out harsher penalties *per se*. However, they also suggest that whilst

research has typically focussed on public attitudes regarding criminal justice

policymaking, few have explored public knowledge of the issues involved

and 'fewer still have explored public opinion as a function of public

knowledge'.[43]   By contrast, these authors have found that current

approaches towards gauging public attitudes regarding criminal justice and

penal policy are typically flawed and, despite perceptions of lenient

sentencing, members of the public still tend to award more lenient sentences than typical sentencing practice.

In this way, the production of knowledge arguably plays a role in the construction of human subjectivity and penal populism itself and the insulationist approach might serve to reify such constructions by lending them durable institutional form. This is reflected, for example by Turner's account of how measurement of social phenomena (such as attitudes to crime and justice policies) can constitute 'the public' and their attitudes in particular ways.[44]

Accepting the validity of these data, one might question the logic of further insulating penal decision-making from the apparently 'punitive' public rather than trying to better engage them in such practices. This seems particularly problematic given that evidence suggests that when publics feel engaged and are informed about criminal justice policy and decision-making they are more likely to moderate 'previously held punitive views'[45]. Concurrently, however, it also points to the need for alternative processes and forms of knowledge in constructing alternative public attitudes and perceptions regarding both crime and its appropriate policy responses.

THE ANTIDOTE TO INSULATIONISM

It is against this backdrop and the perceived implications of the insulationist project that reinvigorationist calls for more (and better) democratic

participation in public policymaking are situated. The danger becomes that,

through the implicit normativity it presupposes, the strategy of insulationism

becomes the instigator of penal populism rather than the solution to it.

From the reinvigorationist perspective, what is sought are new ways of

constructing crime and justice problems and solutions, to reinject normativity

into our responses to crime. By moving away from established ways of

viewing 'the public', the aim is to alter the contemporary terrain of knowledge

production/consumption in order that we can enable the emergence of more

informed and democratically engaged publics. If, then, the problem is in the

construction and circulation of knowledge, it seems possible that therein

might also lie the solution. How then then might we build this more

democratically responsive mode of knowing and talking about questions of

crime and punishment in practice?

As Dzur has pointed out, all too often whilst lip-service may be paid to the

inclusion of the public in criminal justice processes via superficially

participatory forms of justice (such as those reflected within some restorative

justice processes), core normative issues and decisions which lie at the

heart of criminal justice policies and responses remain insulated from

genuine public democratic debate and dialogue.[46] In response, Dzur

highlights the need for the active construction and creation of places of

public participation in which people can explore these issues in a

deliberative, participatory manner.[47] The danger is that, without such

spaces, public consultation falls into tokenistic legitimation of the liberal

elites, thereby leaving political decision-making the hostage of expertise,

whilst also reifying the very conditions of egoistic individualism upon which

the insulationist strategy is based in the first place.

One such route towards opening up more progressive and constructive

spaces for public deliberation and debate has been identified by Albert Dzur

in his specific call for a reimagining and reinvigoration of the role of the jury

in criminal justice processes.[48] The problem with most current approaches

to public inclusion in penal policymaking is precisely the detachment of

criminal justice processes and decision-making from the realms of public

debate. For example, Dzur argues that whilst trial by jury is conventionally

heralded as 'a cornerstone of democracy'[49] in reality the bureaucratic

processes of the criminal trial relegate public participation to the formal role

of passive spectatorship rather than meaningful participation in the

construction of justice.[50] This, in turn, is facilitated by increasing

individualism and a declining sense of community within contemporary

society.[51] The danger becomes that the jury serves as purely a symbolic

form of legitimation for what is, ultimately, expert-decision-making.

Consequently, where public engagement within the criminal justice system is

still demanded, participation is typically 'more appendage than antidote'[52] to

the formal, bureaucratized, professionalized criminal justice system. The

key argument for proponents of the reinvigorationist perspective, therefore,

is that it is the alienation of criminal justice decision-making from public democratic deliberation that results in the apparent punitiveness of contemporary society. Therefore, the antidote is not to eschew public engagement but to reawaken it:

> Lay participation in criminal justice is needed because it brings otherwise attenuated people into contact with suffering human beings, draws attention to the ways in which laws and policies and institutional structures prolong that suffering, and makes possible – though does not guarantee – greater awareness among participants of their own responsibility for laws and policies and structures that treat people humanely.[53]

In this way, a reimagining and redesign of the jury into a site of load-bearing civic responsibility is proposed by Dzur. By allowing active participation of jury members in trial proceedings; resisting increased removal of questions of criminal and penal policy from public deliberation; and connecting decisions of guilt and innocence with issues of appropriate penalty, it is anticipated, the jury can be 'rediscovered' as a progressive site of civic engagement and resistance to penal punitiveness and mass incarceration in the name of popular democracy.

THE NEED FOR 'SPACES OF HOPE' IN (AND BEYOND) CRIMINAL JUSTICE

Assuming the necessity of more, rather than less, democratic public participation as the means by which we might move beyond punitiveness

and mass incarceration, the danger is that, so long as this focus remains solely on the criminal justice system and penal policy, this strategy continually risks ultimate recapitulation of the criminal justice system.

Indeed, critical Marxist geographer David Harvey has argued that 'the re-making and reimagining of 'community' will work in progressive directions only if it is connected *en route* to a more generalized radical insurgent politics'.[54] The problem, he argues, is that, political movements are typically located at the level of a particular issue, debate or group and struggle to 'transcend particularities, and arrive at some conception of a universal alternative to that social system which is the source of their difficulties'.[55]

The particular claim for more public deliberation and active democratic engagement in issues of crime and justice perhaps reflects a more general concern regarding the need for what Harvey has termed 'spaces of hope'[56] in response to declining belief in the possibilities of any radical alternatives to the contemporary social order.   Highlighting the way in which contemporary politics in general serves to disconnect particular issues from more universal principles, Harvey argues that social concerns become segmented into particular interest groups, issues, etc., which exist as disjointed silos. This, he suggests, ultimately results in problems of capacity to effect social change and difficulties in terms of changing scale from particular concerns to universal issues and *vice versa*. On the other hand, however, lies the danger of abstract universal theorising with no clear means of practical translation.

Whilst this is arguably a tendency borne out across social science research, in no small part reflective of the contemporary context of knowledge production, it seems to be brought into relief particularly starkly by criminology and the historical battle lines that have been drawn between 'administrative or governmental' and 'critical and emancipatory' criminologies.[57] Underpinning such divisions (though recognising that few theorists totally identify with either end of what is, ultimately, a spectrum) lies a tension between a commitment to effecting real-world social change, and belief about the best means by which it can be achieved: small-scale reform from inside the existing system or wholesale radical change from without. On the one hand, the danger is of lapsing into particularism and/or reforms concerned with 'tinkering at the edges' but leaving the general structure of society and its institutions (and by extension its organising assumptions and principles), untouched. On the other, is the risk of offering an abstract critique of society, without any concrete means of institutional realisation or agenda for reform.

Mapping on to such divisions, Harvey also points to the way in which visions of the good society either tend towards a focus on a static vision of that good society, without any clear means of the way in which it might be implemented, or focus on the *process* of creating change, without any clear sense of direction or goal. Moreover, attempts to implement social change also risk accusations of authoritarianism or the privileging of particular issues

(neglecting the situated production of knowledge) if any attempt is made to implement them.

In response, Harvey identifies 'spaces of hope' in which the prospects and possibilities for alternatives to existing institutions and responses can be explored. Such spaces, he argues, must be rooted in the spatiotemporal realities of the contemporary social order, whilst also able to look beyond them. The question, of course, arises as to how and where such spaces of challenge and intervention can be generated. As Harvey notes: 'we cannot engage in endless problematization and never-ending conversations. […] without translation, collective forms of action become impossible. All potential for an alternative politics disappears'.[58]

Instead, he identifies a need for what he call's 'dialectical utopianism' and the need for 'mediating institutions' which can serve to connect the particular to the universal and *vice versa*. Central to this is a need for political and intellectual humility amongst those working on particular interests, to look beyond them, and seek to translate their particular concerns or problems into meaningful dialogue with those who might be animated by other interests or concerns.

In this context, the criminal justice system can be considered a 'mediating institution', serving to 'translate' the underlying abstract universal organizing principles of society into particular applications. However, such 'mediating institutions' can, themselves, become sites of power and reification of the

dominant discourse of society and must tread carefully to ensure recognition

and successful negotiation of the dialectic between particular institutional

reform and more wholesale social change.[59] For example, whilst growing

recognition of the limitations of conventional criminal justice processes for

addressing offending and realising 'justice' (however defined) have resulted

in increasing uses of restorative justice responses, these have typically been

accommodated *within* conventional criminal justice apparatus, rather than

developed as genuine *alternatives* to it.[60]

The danger is that attempts by philosophers, political theorists and

criminologists, to challenge contemporary ways of thinking, talking and

responding to crime and justice beyond populist punitiveness and mass

incarceration that focus solely at the re-democratization of the criminal

justice and penal decision-making processes in isolation, arguably neglect

the way in which the production of their own knowledge is a socially-situated,

political and normative exercise. Too often attempts responses to apparent

populism by experts either seek to exclude publics all together (as reflected

in the insulationist strategy) or only seek to present the issues or debates in

ways that are meaningful to those working in those fields.

Accordingly, it may only be by reconnecting the problems of penal populism

and declining civic engagement to a broader, more holistic examination of

society that we can avoid simply extending and reifying existing conceptions

and responses to crime. Otherwise, potential spaces for realising

progressive alternatives can all too easily end up buttressing and legitimising the existing social system and the values it promotes, unless clearly tied to a more universal politics of social change. Thus, the danger of current responses to apparent penal populism which advocate the reengagement of a disenfranchised public as a means of opening up a space in which alternatives to mass incarceration might be imagined, is that they risk isolating issues of crime and justice as particular expressions of more abstract principles, from their broader location in a holistic social order.

The converse danger, of course, is that by demanding an all-or-nothing commitment to wholesale social reform, we stagnate under abstract universalism without a particular strategy for realising social change within the contemporary spatiotemporal order.

Consequently, in considering how contemporary democratic theory might try to think beyond mass incarceration and ask how the normative complexity of criminal justice might be addressed, so too must those working in this arena recognise and reflect on how they might also think beyond crime and justice if they are to realise more genuinely democratic alternatives

BUILDING 'SPACES OF HOPE'

In advocating the need for the development and articulation of 'spaces of hope', questions inevitably turn to the practical building and institution of these spaces. Whilst advancing the need to engage in collective political

struggles which move in scale from the local to the global and back again, the question, in practical terms becomes the translation of particularities into a universal agenda.

The temptation might be to announce an impasse between these two camps and continue the problematisation of translating normative theorising into practical change, or critique attempts to effect social change for the absence of normative theorising regarding the 'bigger picture'. However, whilst one can reject the imposition of a blueprint of social democratic organisation as the route to more holistic, engaged and democratic responses to social problems, one can, at least, suggest means of opening dialogue that might foster such means of communication and dialogue currently in operation in nascent form within our own lived social reality. The next stage now is, surely, to build these in practice.

Here I invoke an example from my own recent experience which, I think, perhaps indicates the way in which we are seeing more democratic forms of politics and the nascent creation of 'spaces of hope', with particular agendas tied more overtly and explicitly to a vision of 'the good society'.

On 19th September, Scotland held a referendum to decide whether it wanted to become an independent nation, separate from the rest of the UK. This was a significant moment, played out in the media and analysed considerably since. What was notable about this event, from the point of view of this observer, was the way in which discussion and debate about

specific policies, such as taxation, education, welfare, defence, healthcare

and nationalism,[61] were translated from particular issues into a broader

debate about the type of society people envisaged as possible and

desirable. As one journalist in the *Scotsman*, Peter Jones, put it: 'Groups

backing No and Yes sprang up all over the place, some marshalled by

common interests and occupation, many more drawn together by ties of

community'.[62] Thus, there was a clear translation from particular interests to

broader, unapologetically normative discussions about the type of society

people wanted to live in and though possible. As then Scottish Cabinet

Secretary for Education and Lifelong Learning, Michael Russell said to the

Utopian Studies Society in July 2013, describing the referendum:

> […] it is a debate which starts with the question about what *kind* of Scotland we
> want to live in.

> And that is a real utopian project.

> In the spirit of Owen[63], it is a *practical* utopianism – one that is wide in its
> ambition and scope.

> In this sense, every single Scot is a negotiator of independence.

> The question that will be asked of every Scot in 14 months' time won't simply
> require a "yes" or "no" answer.

> And, it won't merely ask them to side up with one or other political party.

Rather, it will require them to envision a better Scotland – a Scotland that *will* exist - and to think how, by working with their fellow citizens, they could work toward making that vision real.[64]

Further, it is interesting to note that, despite formally voting to maintain the *status quo* (in terms of preserving the same formal relationship between Scotland and the rest of the UK prior to the independence referendum), as Paterson has noted: 'If Scotland was not sovereign unless independent, then its capacity to set the agenda since it voted has been quite remarkably autonomous'.[65]

Whilst admittedly this is simply one account from one particular observer and the legacy of the referendum still remains unclear, it does demonstrate one way in which we might carve out 'spaces of hope' insofar as particular issues were tied to larger questions about the structure of society and its implications for creating new forms of meaningful public engagement (and, by extension, an engaged public with a record 84.6% turnout[66]). For example, during this period, topics that featured in debates ranged from concerns about nuclear arms; education; health; jobs; the economy; identity; and the future for today's youth. Concerns or hopes articulated around a particular aspect (such as the renewal of the Trident nuclear missile system or the continuation of free higher education in Scotland) were raised as part of a larger discussion of what was possible and desirable for society, as well as whether this was better achieved within the UK or as part of an

independent Scotland. In this way, one saw a constant shifting in registers: from particular policy concerns to a broader question about how to organise society; and from big questions about the norms and values animating Scottish society and how the structural organization of society (in this case, a different relationship with the rest of the UK), might (or might not) also allow us to better realise these in the way we address particular policy problems , There was, then, a constant connection of individual interests to broader questions of the social organization of society. In this way, different and often disparate particular areas policy or interested could be recognised as interconnected with bigger, bolder, 'utopian' questions about what type of society the people of Scotland want to live in and why. This suggests that when debates and issues are made meaningful and accessible to the public, the public will engage with them. It also suggests the need for new ways to connect particular policies and debates, or interests, hopes, and fears to broader normative questions about the type of society we want to live in and why, in which all citizens have a stake.

THE METHOD OF UTOPIA AS A MEANS TO HOLISTIC REIMAGINING OF SOCIETY

Part of the problem of the contemporary disenfranchisement of the public from criminal justice decision-making, is perhaps the failure to recognise that the concerns of the general public are not necessarily aligned to those of criminal justice professionals. Most people are not immediately connected to issues of crime and justice either as victims of offenders and, as noted

above, the operations of the criminal justice system further serve to present issues in a way that is foreign to and detached from the realities of many lay people's daily lives. Accordingly, if those working in the fields of criminal justice wish to engage the public in debates and decisions of criminal justice and penal policy so too must they engage in the issues about which the public *are* concerned. This means demonstrating the connections between these questions and the broader social order that immediately affects that public in their daily lives.

What is needed, then, is a means by which we can reconnect such particular debates concerning crime, control and justice to broader, universal concerns and thereby make them relevant and accessible to the general public from whom they have become alienated. Here, it is suggested that the development of a 'utopian method'[67] as a form of 'speculative sociology'[68] may prove a useful candidate.

Levitas offers the idea of utopia as a method for considering the values implicit within social theories and political programmes, and their implications, both for the institutional organisation of society and for the type of people necessitated by such a society.[69]   Identifying three aspects: *archaeology*, *architecture* and *ontology*, the utopian method is thus advanced as 'a means of exposing these normative assumptions and constructions of society to critique and critical comparison'.[70]

Taking as a starting point this idea that all social theories and political programmes can be seen as containing an implicit, if repressed, vision of the good society, together these three aspects of archaeology, architecture and ontology offer a means of representing holistic accounts of the good society implicit within contemporary social theories. Shifting away from a focus within these programmes on piecemeal reform, the utopian method encourages an expanded evaluation of their implications, requiring 'judgment, not simply about the attractiveness of such abstract values as freedom, justice, inclusion, equality, but about how these might actually be played out in institutional form'.[71]

Taking 'insulationist' approaches to criminal justice policymaking, premised upon liberal concerns to protect policies from populist punitiveness, the application of the utopian method in archaeological mode reveals a fundamental premise (notwithstanding the various species of liberalism that exist) that the 'good' or 'desirable' society is that in which individual autonomy and choice regarding one's individual pursuit of the good is protected so far as is compatible with guaranteeing that same right or capacity for each individual.

These assumptions, in turn, feed into the institutional implications or *architecture* of the insulationist approach to criminal justice policy. Within its commitment to liberalism, one can identify the inspiration of an institutional structure which protects individuals from assaults to these rights via the

exercise of power. This arguably also reflects a particular normative view of how the good (or at least the best attainable society) ought to be constituted which, in turn, implies a notion (albeit a quite general one), of how society might be institutionally constructed to realise this end. For example, Shklar suggests that, in terms of maximising individual liberty, '[l]imited government and the control of unequally divided political power constitute the minimal condition without which freedom is unimaginable in any politically organized society'[72]. Essential to this is the rule of law as a protection from the arbitrary use of punishment by governments, bolstered by the 'division and subdivision of political power'[73].

Finally, in terms of the third aspect identified within Levitas' method, that of *ontology*, it is here that one can also find a particular ontological position concerning the construction of selves and human subjectivity and this is reflected in the insulationist concerns. The liberal position presupposes the existence of individual selves who may differ in their identification and pursuit of the good. The requirement that each person's individual pursuit of the good be respected and preserved as far as compatible with that of all others, reflects a priority of the individual and the role of the state as consisting in solving a Hobbesian coordination problem, where the interests of some threaten to impinge those of others. The ontological implications of this position, therefore, reflect a liberal individualism that consists in the individual with his/her interests existing prior to and distinct from the group's.[74]

Thus, despite an overt rejection of any attempt to impose upon others a normative vision of the good life not of their own design, an implicit (albeit nascent) vision of the good society can nevertheless be extrapolated from the values fundamental to the liberalism of fear that arguably dominates contemporary expert responses to contemporary social phenomena. However, without explicit normative commitment to social reform, and commitment to specialised forms of knowledge, the result typically becomes a tendency towards piecemeal reforms *within* the existing system rather than radical, wholesale challenges to the *status quo*. However, this itself reflects a normative position insofar as, through the denial of normative, wholesale, theorising the implication is that the current organisation of society is the best we can hope for.

Absent from the liberal commitment to the rejection of utopia, therefore, is an awareness of the way in which this system may itself impose a vision of the good (that may or may not be shared by all). It also presupposes liberalism as the only route to democratic and humane decision-making. Both of these assumptions are, moreover, arguably reified by the insulationist approach and challenged by the strategy of reinvigoration in response to concerns over contemporary penal populism. Therefore, it is also important to reflect on the liberal assumptions informing the insulationist response to penal populism regarding the nature of the human subjectivity and the role such approaches play in constructing both the 'public' and 'penal populism',

embedded as they are in the contemporary processes and strategies of knowledge production noted above.

Although space precludes a more detailed elaboration, the brief application of this method to the liberal insulationist approach also demonstrates how apparently particular concerns about crime and justice policymaking encode a bigger set of assumptions about how society can and should be organised. A commitment to the preservation of individual liberty as central premise of the underpinning of criminal justice policymaking, as part of a bigger (albeit implicit) vision of the good society, arguably also implies a similar approach to other policymaking arenas (such as housing policy, education policy, welfare policy etc.). Taken together, more holistically, the possibility and desirability of institutions designed on such principles might be examined. So too, could the compatibility of different policies pertaining to different spheres of public life (such as housing, welfare, education, criminal justice), be considered. This is particularly important given the current segmented approach to policymaking which may potentially allow policies in different areas to be developed on fundamentally different assumptions and principles, regarding what is both desirable and achievable for the good society.

CONCLUSION

Following the analysis undertaken in this chapter, it seems clear that what is fundamentally required in this context is more systematic thinking about

questions of crime and justice that is also allied to practical means for fostering dialogue and discussion between different factions, interest groups and forms of knowledge.

There are a number of registers at which this could fruitfully take place. Firstly, insofar as expert discourse, as evidenced above, shapes our understanding of social problems and the responses of the public to social problems, there is a need to find conceptual tools that allow us to act as '*democratic under-labourers*'[75] and translate our superficially 'technical' discussions into normative debates in which publics are necessarily invested. The utopian method as identified by Levitas is offered as one potential means for doing this.

At the same time, however, one must be wary of trying to impose a particular 'space of hope', artificially and externally, lest it become ideological or tokenistic. That said, given that we are witnessing what has been described as a *watershed moment* in terms of increasing questioning of contemporary trends in penal sanctions and mass incarceration, both by experts and others the present is perhaps more promising in this regard than the recent past. Situated within a broader context of public engagement with and questioning of established orders and practices of powers (as evidenced through, for example, the Scottish Independence Referendum, but also other local and global social movements such as the Occupy protests and, more recently, the #BlackLivesMatter movement in the US), which have often

seen local concerns connected with broader social injustices and issues, we may just be witnessing the potential opening of such 'spaces of hope' on the horizon.

Thus, to conclude, it is the central argument of this chapter that criminal justice experts can and should seek to address and involve people in matters of policymaking by rendering them relatable to their lives if it wishes to have a genuinely informed and engaged public, equipped to resist the populist temptation.[76] Rather than lament the failure of publics to resist the lure of vengeance, as empirical evidence has demonstrated, it is incumbent upon criminal justice experts to engage those publics in meaningful ways, and to approach their subject with both 'political humility'[77] and normative clarity. Admittedly, this is not easy given the current climate of knowledge production and the tendency towards specialization and the suppression of normativity. The utopian method is offered here as a suggestion for changing how we understand, produce and present our knowledge, in ways that may render them more meaningful and accessible to lay publics.

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[1] See Jonathan Simon, *Mass Incarceration on Trial* (New York and London: The New Press, 2014); LoÏc Wacquant, *Prisons of Poverty* (Minnesota and London: University of Minnesota Press, 2009); David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford: Oxford University Press, 2001).

[2] For example, the phenomenon of 'mass incarceration' is typically considered a distinctly US phenomenon. See David Garland, "Introduction: The Meaning of Mass Imprisonment" in *Mass Imprisonment: Social Causes and Consequences* (London and Thousand Oaks: Sage, 2001); Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford: Oxford University Press, 2001), p. 135.

[3] Albert Dzur, *Punishment, Participatory Democracy, and the Jury* (Oxford: Oxford University Press, 2012), Chapter 2.

[4] See Ian Loader and Richard Sparks, *Public Criminology?* (Abingdon and New York: Routledge, 2011).

[5] Anthony Bottoms "The Philosophy and Politics of Punishment and Sentencing" in *The Politics of Sentencing Reform*, ed. C. Clarkson and R. Morgan (Oxford: Clarendon Press, 1995), p. 40. See also John Pratt, *Penal Populism* (Abingdon and New York: Routledge, 2007).

[6] David Harvey, *Spaces of Hope* (Edinburgh: Edinburgh University Press, 2000).

[7] This method has been devised and developed by Ruth Levitas. See Levitas, *Utopia as Method: The Imaginary Reconstitution of Society* (Basingstoke: Palgrave Macmillan, 2013); Levitas, "Being in Utopia," *The Hedgehog Review,* 10 (2008): 19–30; Levitas, "The Imaginary Reconstitution of Society: Utopia as Method," in *Utopia Method Vision: The Use Value of*

Social Dreaming, ed. T. Moylan and R. Baccolini (Bern: Peter Lang, 2007);

Levitas, "Looking for the Blue: The Necessity of Utopia," *Journal of Political Ideologies,* 12 (2007): 289–306; Levitas, "The Imaginary Reconstitution of Society or Why Sociologists and Others Should Take Utopia More Seriously," Inaugural Lecture, University of Bristol (24 October 2005), (http://www.bris.ac.uk/spais/files/inaugural.pdf, date accessed 16 December 2015); Levitas, "Against Work: A Utopian Incursion into Social Policy," *Critical Social Policy,* 21 (2001): 449–465.

[8] See also Lynne Copson, "Towards a Utopian Criminology," in *Crime, Critique and Utopia*, ed. M. Malloch and B. Munro (Basingstoke: Palgrave Macmillan, 2013).

[9] Ruth Levitas, "Back to the Future: Wells, Sociology, Utopia and Method," *The Sociological Review*, 58 (2010): 529-547, at p. 530.

[10] Levitas, *The Concept of Utopia* (London: Phillip Allen, 1990), p. 8.

[11] *ibid*.

[12] Frederic Jameson, "Of Islands and Trenches: Naturalization and the Production of Utopian Discourse," *Diacritics* 7 (1977): 2-21 at p. 6.

[13] See also Peter Young, "The Importance of Utopias in Criminological Thinking," *British Journal of Criminology*, 32 (1992): 423-437.

[14] Copson, "Towards a Utopian Criminology", p. 131.

[15] Simon, *Mass Incarceration on Trial*, p. 3.

[16] See, for example, Simon, *Mass Incarceration on Trial*.

[17] See Ian Loader and Richard Sparks, "Beyond Mass Incarceration?," *The Good Society*, 23 (2014): 114-120, at p. 115; David Green, "Penal Populism and the Folly of "Doing Good by Stealth"," *The Good Society*, 23 (2014): 73-86, at p. 82.

[18] See Dzur, *Punishment, Participatory Democracy, and the Jury*; Loader and Sparks, *Public Criminology?*; and Green, "Penal Populism and the Folly of "Doing Good By Stealth"".

[19] This has been highlighted by Dzur in his *Punishment, Participatory Democracy, and the Jury*; p. 22-24.

[20] For examples, see Philip Pettit, "Depoliticizing Democracy," *Ratio Juris*, 17 (2004): 52-65; Franklin Zimring, Gordon Hawkisn and Sam Kamin, *Punishment and Democracy: Three Strikes and You're Out in California* (Oxford: Oxford University Press, 2001); Franklin Zimring, "Populism, Democratic Government, and the Decline of Expert Authority: Some Reflections on Three Strikes in California," *Pacific Law Journal*, 28 (1996): 243-256. See also Dzur, *Punishment, Participatory Democracy, and the Jury*, pp. 27-30 for a discussion of this approach.

[21] *ibid.*; See also Albert Dzur, "Participatory Democracy and Criminal Justice," *Criminal Law and* Philosophy, 6 (2012): 115-129.

[22] See Elizabeth Turner, "Beyond 'Facts' and 'Values': Rethinking Some Recent Debates about the Public Role of Criminology," *British Journal of Criminology*, 53 (2013): 149-166; Roger Matthews, "The Myth of Punitiveness," *Theoretical Criminology*, 9 (2005): 175-201; Mike Hough and

Julian Roberts, "Sentencing Trends in Britain: Public Knowledge and Public Opinion," *Punishment & Society*, 1 (1999): 11-26.

[23] Dzur, *Punishment, Participatory Democracy, and the Jury*, pp. 32-36.

[24]See Dzur, *Punishment, Participatory Democracy, and the Jury*; Dzur, "Participatory Democracy and Criminal Justice". See also Green, "Penal Populism and the Folly of "Doing Good By Stealth""; Elizabeth Turner, "Penal Populism, Deliberative Methods, and the Production of "Public Opinion" on Crime and Punishment," *The Good Society*, 23 (2014): 87-102; and Ian Loader, "Fall of the 'Platonic Guardians': Liberalism, Criminology and Political Responses to Crime in England and Wales," *British Journal of Criminology*, 46 (2006): 561-586.

[25] Iris Young, *Justice and the Politics of Difference* (Princeton, NJ: Princeton University Press, 1990), p. 228.

[26] *ibid.*; For examples of commentators who have challenged the individualism upon which liberalism is premised, see Brooke Ackerley, "Is Liberalism the Only Way Toward Democracy?: Confucianism and Democracy," *Political Theory*, 33 (2005): 547-576; and Michael Walzer, "The Communitarian Critique of Liberalism," *Political Theory*, 18 (1990): 6-23.

[27] See Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982), p. 11.

[28] Walzer, "The Communitarian Critique of Liberalism", p. 10.

[29] Lawrence Douglas, Austin Sarat, and Martha Umphrey, "Law and the Utopian Imagination: An Introduction," in *Law and the Utopian Imagination*,

ed. A. Sarat, L. Douglas, and M. Umphrey (Stanford, CA: Stanford University Press, 2013).

[30] See, for example, Ruth Levitas, "Dystopian Times? The Impact of Death of Progress on Utopian Thinking," *Theory, Culture & Society*, 1 (1981): 53-63; Judith Shklar, "The Liberalism of Fear," in *Liberalism and the Moral Life*, ed. N. Rosenblum (Cambridge, MA and London: Harvard University Press, 1989); and my own "Towards a Utopian Criminology".

[31] See Friedrich Hayek, *The Road to Serfdom* (Chicago: Chicago University Press, 1944).

[32] See Karl Popper, "Utopia and Violence," *World Affairs*, 149 (1986): 3-9.

[33] See John Gray, *Black Mass: Apocalyptic Religion and the Death of Utopia* (London: Penguin Books, 2008).

[34] Walzer, "The Communitarian Critique of Liberalism", pp. 16-17.

[35]For example, Shklar argues: 'without enough equality of power to protect and assert one's rights, freedom is but a hope. Without the institutions of representative democracy and an accessible, fair, and independent judiciary open to appeals, and in the absence of a multiplicity of politically active groups, liberalism is in jeopardy. […] It is therefore fair to say that liberalism is monogamously, faithfully, and permanently married to democracy – but it is a marriage of convenience','"The Liberalism of Fear", p. 37.

[36] Robert Reiner, "Crime, Law and Deviance: the Durkheim Legacy," in *Durkheim and Modern Sociology*, ed. S. Fenton (Cambridge: Cambridge University Press, 1984), p. 177.

37 See Emile Durkheim, "Two Laws of Penal Evolution," in *Durkheim and the Law*, ed. S. Lukes and A. Scull (Oxford: Martin Robertson, 1983 [1901]); Emile Durkheim, "Crime and Social Health" in *Durkheim and the Law*, ed. S. Lukes and A. Scull (Oxford: Martin Roberston, 1983 [1895]); and Emile Durkheim, *The Division of Labor in Society* (New York: The Free Press of Glencoe, 1964 [1893]).

38 Dzur, "Participatory Democracy and Criminal Justice", p. 118.

39 Dzur, *Punishment, Participatory Democracy, and the Jury*, pp. 31-32.

40 M.Tonry and D. Green (2003), at pp. 492-3 in Turner, "Beyond 'Facts' and 'Values': Rethinking Some Recent Debates about the Public Role of Criminology", pp. 154-5.

41 Dzur, *Punishment, Participatory Democracy, and the Jury*, p. 32.

42 Hough and Roberts, "Sentencing Trends in Britain: Public Knowledge and Public Opinion", p. 11.

43 Hough and Roberts, "Sentencing Trends in Britain: Public Knowledge and Public Opinion", p. 13.

44 See Turner, "Penal Populism, Deliberative Methods, and the Production of "Public Opinion" on Crime and Punishment".

45 Green, "Penal Populism and the Folly of "Doing Good By Stealth"", p. 82.

46 Dzur, "Participatory Democracy and Criminal Justice"; Albert Dzur, "The Myth of Penal Populism: Democracy, Citizen Participation, and American Hyperincarceration," *Journal of Speculative Philosophy* (New Series), 24 (2010): 354-379.

[47] Dzur, *Punishment, Participatory Democracy, and the Jury*.

[48] *ibid.*.

[49] Dzur, *Punishment, Participatory Democracy, and the Jury*, p. 6.

[50] Dzur, *Punishment, Participatory Democracy, and the Jury*.

[51] Dzur, *Punishment, Participatory Democracy, and the Jury*, p. 32.

[52] Dzur, *Punishment, Participatory Democracy, and the Jury*, p.19.

[53] Dzur, *Punishment, Participatory Democracy, and the Jury*, p. 14.

[54] Harvey, *Spaces of Hope*, p. 240.

[55] Harvey, *Spaces of Hope*, p. 241.

[56] Harvey, *Spaces of Hope*.

[57] Loader and Sparks, *Public Criminology?*, p. 72.

[58] Harvey, *Spaces of Hope*, p. 245.

[59] Harvey, *Spaces of Hope*, pp. 241-243.

[60] See Tony Marshall, "The Evolution of Restorative Justice in Britain," *European Journal of Criminal Policy and Research*, 4 (1996): 21-42; Barbara Hudson, *Understanding Justice: An Introduction to Ideas, Perspectives and Controversies in Modern Penal Theory*, 2nd ed. (Buckingham: Open University Press, 2003), Chapter 5.

[61] See, for example, Julie Gilbert, "Independence Referendum: Grassroots Campaigners Explain Why they are Voting Yes or No," *Daily Record* (18 September 2014) (http://www.dailyrecord.co.uk/news/local-news/independence-referendum-grassroots-campaigners-explain-4280302, date accessed: 31/05/2015); Cabinet Secretary for Education and Lifelong

Learning, "Speech to the Utopian Studies Society," New Lanark (3 July 2013) (http://news.scotland.gov.uk/Speeches-Briefings/Speech-to-the-Utopian-Studies-Society-24c.aspx, date accessed: 31/05/2015).

[62] Jones, "Referendum Shows the Power of the People," *The Scotsman* (22 September 2014) (http://www.scotsman.com/news/peter-jones-referendum-shows-the-power-of-people-1-3549512, date accessed: 31/05/2015). See also Lindsay Paterson, "Utopian Pragmatism: Scotland's Choice," *Scottish Affairs*, 24 (2015): 22-46.

[63] Robert Owen, industrialist and so-called 'utopian' socialist. Owen sought the practical institution of the good society attempted at New Lanark. By emphasising education, training, and the fostering of charity and goodwill amongst people, and eradicating the exploitation of one group by another upon which capitalism was based, Owen anticipated that "society may be formed as to exist without crime, without poverty, with health greatly improved, with little, if any misery, and with intelligence and happiness increased a hundredfold". See Robert Owen, *An Address to the Inhabitants of New Lanark*, London: The Informal Education Archives (1 January 1816) (Available at: http://www.infed.org/archives/e-texts/owen_new_lanark.htm, date accessed: 10/01/2016). For more on Owen's designation, as a 'utopian' socialist, see Friedrich Engels, *Socialism: Utopian and Scientific* (London: Bookmarks, 1993 [1880]); and Karl Marx and Friedrichs Engels, *The Communist Manifesto* (Oxford: Oxford University Press, 1992 [1888]).

[64] Cabinet Secretary for Education and Lifelong Learning, "Speech to the Utopian Studies Society".

[65] Paterson, "Utopian Pragmatism: Scotland's Choice", p. 23.

[66] The Electoral Commission, *Scottish Independence Referendum: Report on the Referendum Held on 18 September 2014*, (December 2014) (http://www.electoralcommission.org.uk/__data/assets/pdf_file/0010/179812/Scottish-independence-referendum-report.pdf, date accessed: 31/05/2015), at p.1.

[67] See Levitas, *Utopia as Method: The Imaginary Reconstitution of Society*; Levitas, "Being in Utopia"; Levitas, "The Imaginary Reconstitution of Society: Utopia as Method"; Levitas, "Looking for the Blue: The Necessity of Utopia"; Levitas, "The Imaginary Reconstitution of Society or Why Sociologists and Others Should Take Utopia More Seriously; Levitas, "Against Work: A Utopian Incursion into Social Policy".

[68] Levitas, *Utopia as Method: The Imaginary Reconstitution of Society*, p. xiv; Levitas, "The Imaginary Reconstitution of Society or Why Sociologists and Others Should Take Utopia More Seriously", p. 13.

[69] For a more detailed discussion of this method and also to trace its development, see Levitas, *Utopia as Method: The Imaginary Reconstitution of Society*; Levitas, "Being in Utopia"; Levitas, "The Imaginary Reconstitution of Society: Utopia as Method"; Levitas, "Looking for the Blue: The Necessity of Utopia"; Levitas, "The Imaginary Reconstitution of Society or Why Sociologists

and Others Should Take Utopia More Seriously; Levitas, "Against Work: A Utopian Incursion into Social Policy".

[70] Copson, "Towards a Utopian Criminology", p. 130. See also Copson, "Towards a Utopian Criminology", pp.125-131 for a more detailed discussion of this method.

[71] Levitas, "The Imaginary Reconstitution of Society: Utopia as Method", p. 57; See Copson, "Towards a Utopian Criminology", p. 129.

[72] Shklar, "The Liberalism of Fear", p. 28.

[73] Shklar, "The Liberalism of Fear", p. 30.

[74] See Walzer, "The Communitarian Critique of Liberalism"; Young, *Justice and the Politics of Difference*; Sandel, *Liberalism and the Limits of Justice*.

[75] Loader and Sparks, *Public Criminology?*, Chapter 5.

[76] See LoÏc Wacquant, "From 'Public Criminology' to the Reflexive Sociology of Criminological Production and Consumption: A Review of *Public Criminology?* by Ian Loader and Richard Sparks (London: Routledge, 2010)," *British Journal of Criminology*, 51 (2011): 538-548; LoÏc Wacquant, "Ordering Insecurity: Social Polarization and the Punitive Upsurge," *Radical Philosophy Review*, 11 (2008): 9-27; Hans Boutellier, *The Safety Utopia: Contemporary Discontent and Desire as to Crime and Punishment* (Dordrecht: Kluwer Academic Publishers, 2004).

[77] Loader and Sparks, *Public Criminology?*, p. 132.