

## *From England*

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# **A NIGHTMARE COME TRUE: C. S. LEWIS AND THE HUMANITARIAN THEORY OF PUNISHMENT**

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**Robert Shaw**

In 1949, C. S. Lewis found that he could only publish his article 'The humanitarian theory of punishment' in an Australian journal because he could 'get no hearing for it in England.'

His argument was that:

1. reforming prisoners, as opposed to punishing them for deterrent purposes, had slid into therapy;
2. the therapy had become compulsory;
3. instead of being a prisoner within a justice system, the prisoner had become a patient within a treatment system;
4. the criterion for a punishment is no longer a moral one but a therapeutic one;
5. so, rather than be detained for as long as it is considered morally right to detain a person to satisfy justice, the prisoner is detained until they are 'cured.'

He goes on to argue that the theory has gained traction because it is being put into practice by well-intentioned Christian people but what if it starts to be put into practice by less well-intentioned people?

He concludes by arguing that the appearance of mercy in the Humanitarian Theory is 'wholly false.'

### **How forensic psychology brought the Humanitarian Theory into our prisons**

In 1985 Ross and Fabiano published a speculative text on the contribution of cognitive psychology to the treatment of offending. At the annual conference of the Midlands Forensic Research Group in 1987, Dr Derek Perkins from Broadmoor and Prof. Donald West from Cambridge University

were arguing for a treatment approach to sex offenders. Interest in this topic had grown in the 1980s in part because of the work of Finkelhor (1984) and Bentovim (1987) but was fuelled by the publicity surrounding the Inquiry into child abuse in Cleveland 1987 (1988). Meanwhile, psychology courses were finding that access to supervised practice opportunities for students in mental hospitals was becoming increasingly difficult as many were closing down as part of the move towards community care.

These trends all came together in the decision of the Home Office to support the introduction of a new form of forensic psychology into prisons aimed at treating sex offenders but, in practice, solving the psychology profession's need for supervised practice opportunities for psychology students.

However, there was no evidence beyond public perception that this group of offenders should be a priority for the Home Office. It had long been known that the re-offending rate of sex offenders, at 25%, was the second lowest after that for murderers, which is less than 1%. There were not many in the prison system and the main problem for the Home Office was the need to provide 'vulnerable prisoner' wings in which to accommodate some, though not all, of them.

With the benefit of hindsight, we now know that the prison service was on the cusp of a new challenge: the end of the century long decline in the proportion of prisoners given community sentences (Shaw 2011). While the moral panic of the 1990s did lead to an increase in convictions of sex offenders and thus to the number of sex offenders in prison, the reversal of the trend towards more community sentences and the consequences of the changes brought about by the 1991 Criminal Justice Act brought a great many more people into prison and fuelled the (nearly) twenty year rise in the prison population.

So the decisions of the Home Office to adopt an entirely untested approach to dealing with sex offenders and to devote so many resources to a tiny minority of offenders look more like a response to a public concern than a rational attempt to address re-offending.

### **The Sex Offender Treatment Programme**

One of the first fruits of these decisions was the Sex Offender Treatment Programme (SOTP) which, as I described in 2008, takes the same approach as the Inquisition. In the Inquisition the presiding judge reads out the correct doctrine and the heretic is asked to assent to it. In the SOTP the psychologists

prepare an account of the prisoner's offending and the prisoner is asked to assent to it. Those who assent are deemed to have completed the programme satisfactorily and those who decline to assent are deemed to have failed.

Apart from the fact that the script to which the prisoner is expected to assent is compiled from court documents which, by their very nature, are incomplete as the Crown Prosecution Service (CPS) only presents enough evidence to obtain a conviction and, if the offender pleads guilty, are never subject to challenge, it is not infrequent for false allegations to be made alongside true ones by those seeking compensation.

So it is not uncommon for those who are deemed to have completed the programme satisfactorily to have assented to a significant number of false statements while those who believe that they should not assent to the false allegations in the psychologists' script in order to gain personal advantage are deemed to have failed the programme.

### **Sex offenders in prison**

Broadly speaking sex offenders fall into two groups: those who only commit sex offences and those for whom sex offending is just one part of a criminal lifestyle (Lloyd et al., 1994). Typically, the former commit their offences over a single episode which may last several years but before which they have committed no offences and after which they commit no further offences. Extrapolating from victim studies, it is likely that there are at least two million of these offenders in the community (or at least ten times the number of sex offenders known to the authorities), living 'normal' lives in which their offending is unknown to most, if not all, of those around them. In most cases their offences will have been committed against family members, most often siblings (Cawson et al., 2000). They may be pillars of their own community and are no threat to anyone as their episode of offending is long past. Pretty well every congregation will have one or more of these 'unknown' offenders in their congregation as well as one or more victims who have never disclosed their victimhood. The contrast between the ways in which these 'unknown' offenders are treated by members of the congregation and the ways in which they will be treated if they become 'known,' even though they are no threat to anyone in the congregation, is likely to be stark.

In the 1950s the rate of re-offending of sex offenders was around 25%; by the turn of the twenty-first century, it had dropped to 13% (Council, 2003) probably because of the increase in prosecutions during the 1990s of those

in the former group. While their re-offending rate is less than one per cent, that of the latter is over fifty per cent. However, for the CPS, these were the 'low-hanging fruit' since this group had one of the highest guilty plea rates (Evidence submitted to the Independent Review of Child Protection 2001), a situation that has changed since more draconian punishments for sex offenders have been introduced (Hulls, 2015). So the CPS pursued these 'easy' prosecutions with alacrity while ignoring the more difficult ones involving people in the public eye.

Once the two groups arrive in male prisons, the former are more likely to end up in 'vulnerable prisoner' wings while the latter are often encouraged by the Prison Service (because of the shortage of places on 'vulnerable prisoner' wings) to remain on the 'main' wings where they declare all their offences other than their sex offending to other prisoners. These prisoners do not take part in the SOTP because that would reveal their sex offending and probably result in a move to a 'vulnerable prisoner' wing. So most male participants in the SOTP are those with less than a one per cent probability of re-offending while most of those with over a fifty per cent probability of re-offending are not offered the SOTP.

As far as I am aware, there are no 'vulnerable prisoner' wings in female prisons and the SOTP has never been offered to female sex offenders.

### **Why therapy is inappropriate for sex offenders**

However, for neither group is 'therapy' in the sense of something that 'cures' a condition appropriate. Prior to their episode of offending the former cannot be distinguished from those who will never become sex offenders because

- their offending is mostly opportunistic, that is to say, there is a change in their circumstances which offers an opportunity to commit the offences and they cease committing the offences when their circumstances change, for example, because they leave home or their victim has left home or got enough courage to say No;
- the most common precursor to becoming a sex offender is emotional abuse (Rodriguez-Srednicki and Twaite, 2006) but a great many people who are emotionally abused do not become sex offenders;

"the reason why they become sex offenders is because they take a decision to take advantage of the circumstances in which they find themselves to commit the first offence; this is a moral choice, one over which they have

control, not one which was 'caused' by a prior condition because, if there were a prior condition which would inevitably lead them to commit a sex offence, it would have been detected by now.

Apart from the evidence that emotional abuse is often a precursor to sex offending, the only other evidence we have of something which might be a predisposing factor is that men who make particular efforts to be masculine are more likely to sexually harass others (Lundberg-Love and Marmion, 2003). However, there is no evidence that all men who make particular efforts to be masculine will become sex offenders or that this is a 'condition' for which there is a treatment.

In other words, the available evidence is that, while there may be factors in a person's life which appear to make them more vulnerable to making the wrong choice when faced with an opportunity to commit a sex offence, these factors do not cause them to make the wrong choice any more than the presence of combustible material and oxygen in a room causes a fire. There has to be a source of ignition and that, in the case of a sex offence, is a moral choice to act in a particular way in the circumstances.

After they have ceased to commit sex offences, those in the former group almost invariably make the right decision when placed in similar circumstances without having to have undergone any therapy. If they were suffering from a treatable 'condition,' they would commit further offences without treatment.

For those who commit sex offences as part of a criminal lifestyle, there is no therapy which can affect their propensity to commit sex offences because it is part of a lifestyle choice and the only known 'therapy' for a lifestyle choice is a relationship which they value and in which they are valued which persuades them to abandon their criminal lifestyle - itself as much a moral choice as their earlier choice of a criminal lifestyle.

Moreover, Bronfenbrenner (1974a,b) demonstrated that short term therapy which is not accompanied by a significant long term improvement of the circumstances of those receiving it has a short term effect. So the answer to both main groups of sex offenders is not therapy but a significant long term change in their circumstances. That is almost certainly why so many sex offenders are living totally unknown and unsuspected in society. For reasons over which they may or may not have had any control, their circumstances have changed and they have ceased to see sexual misconduct as part of their new circumstances.

## **Escaping from the nightmare**

One of the least desirable outcomes of providing therapy for sex offenders is that it allows them to evade responsibility for their actions, to blame a 'condition' for their actions and to put the responsibility for their future behaviour on the effectiveness of the therapy. However, the forensic psychologists offering the SOTP are very resistant to restorative justice since the starting point for any restorative justice with an offender is that the offender accepts their responsibility for the offence(s) and does not hide behind a 'condition.'

In other words, the way out of the nightmare is to accept Paul's statement that 'all have sinned and fallen short of the glory of God' (Rom 3:23), that sex offences are examples of hamartia, or 'falling short of the mark,' and that the only way of dealing with them is through metanoia, or a 'change in the way you think about things.' This change must encompass

- the ways in which you think about your body and what it is for,
- your emotions and how you deal with feelings,
- your relationships and how you can best express your love for your neighbour,
- your identity and those with whom you identify,
- your behaviour and how you accept responsibility for it and,
- whether or not you are a believer, the faith you have and whether you need to rethink that.

The last is particularly important for Christians - and may be for members of other faiths - who can be lulled by the consolations of their faith into thinking that they will not be tempted by the opportunities that may arise when they are in a position to take advantage of someone else. They foolishly believe that only those without a faith are likely to fall and so underestimate the power of the temptation when they encounter it.

Speaking of 'satisfying justice,' Marshall (2005) says that victims have seven needs:

- a safe space to speak of their experience
- validation and vindication
- answers to their questions

- genuine truth-telling
- empowerment
- restitution or reparation and
- hope of a better future.

In order to 'satisfy justice' in the sense set out by Chris Marshall, offenders need to be prepared to take part at the very least in the answers to the questions of the victim, the genuine truth-telling and restitution or reparation (Shaw, 2015). In order to 'satisfy justice' in the sense set out by C. S. Lewis, it is necessary to set a term of punishment which enables the offender to satisfy the victim(s) in these areas.

In some cases that requirement could be addressed by a community sentence which enabled the offender to take part in a restorative justice process or by adjourning the sentencing until the offender had taken part in a restorative justice process (Kinnunen, 2007). In others, it would only be necessary to sentence the offender to a period of imprisonment which would be of a reasonable length to enable them to accept responsibility for their offence(s). We know from the experience of the 1960s in England when those who had escaped hanging were given life sentences and then released on licence that nearly all of them could be released safely in under 14 years. It is therefore likely that, with very few exceptions, sex offenders for whom a prison term was deemed necessary would only need single figure determinate prison sentences in order to 'satisfy justice.'

### **The responsibilities of the Parole Board**

As C. S. Lewis predicted, one outcome of the Humanitarian Theory would be that prisoners would be detained arbitrarily until they were deemed 'cured.' This, in effect, was the finding of Hood et al., (2002) looking at sex offenders being dealt with in the first few years of the new 'therapeutic' regime. The professionals' reports to the Parole Board grossly exaggerated the risk of re-offending of sex offenders.

in the Parole Board Rules (Secretary of State for Justice, 2016), Part B: Reports relating to the prisoner, the Board must consider:

3. Current reports on the prisoner's risk factors, reduction in risk and ...
4. (i) an assessment of the risk of reoffending;

The difficulty about paragraph 3 is that, in the case of murderers and sex offenders who have only ever committed sex offences who have an overall risk of re-offending of under one per cent, it is practically impossible to measure 'reduction in risk.' Calculating the confidence intervals required suggests that a sample size of well over 100,000 would be needed for any research programme aimed at measuring 'reduction in risk' for these groups of offenders.

This may help to explain why, when the Canadian Department of Justice asked for a report on the reliability of predictors of risk in the case of sex offenders, the researchers (Hanson and Morton-Burgon, 2009) found that the only reliable predictors of risk were actuarial results such as those contained in Lloyd et al., (1994). So it is practical for the Parole Board to have actuarial predictions of the risk of re-offending as required under paragraph 4 for these types of offenders but not reliable assessments of reduction of risk as specified in paragraph 3.

Unfortunately, forensic psychologists and probation officers routinely purport to be able make such assessments, in part because the OASys run by the Prison and Probation Services pretends that such assessments can be made for all offenders when in practice it is impossible to do so, other than actuarially, in the case of certain types of offenders.

### **The IPP and its consequences**

Indeed, it may have been the introduction of OASys in 2002 that gave credibility to the idea of the Indeterminate sentence for Public Protection (IPP) introduced in the 2003 Criminal Justice Act (Higham, 2007) giving forensic psychologists the final say on the future of prisoners. The fact that successive governments of all hues have still to resolve the consequences of this ultimate expression of the Humanitarian Theory against which C. S. Lewis railed nearly seventy years ago is in part a tribute to his foresight in seeing where it would lead and in part a damning indictment on the blindness of those who were seduced by the idea. His judgement that the appearance of mercy in the Humanitarian Theory was 'wholly false' has been clearly demonstrated in a process which has turned so many people into victims on the altar of forensic psychology.

But, lest anyone think I am biased towards psychology, let me say that nothing could be further from the truth: I have drawn on psychological findings and research throughout my entire working life, findings and



research which have enhanced the work I have been able to do with people and also my understanding of my Christian faith. It is precisely because I have so much experience of the value of sound psychology that I find the speculative and untested psychology peddled by forensic psychologists in prison so offensive, speculative and tested psychology which is peddled against some of the weakest people in society in ways which are often more abusive of their fellow human beings than the abuses which offenders have perpetrated.

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