



## The Governance of Sexual Offending Across Europe: Penal Policies, Political Economies and the Institutionalization of Risk

McAlinden, A-M. (2012). The Governance of Sexual Offending Across Europe: Penal Policies, Political Economies and the Institutionalization of Risk. *Punishment and Society*, 14(2), 166-192. DOI: 10.1177/1462474511435573

**Published in:**  
Punishment and Society

**Queen's University Belfast - Research Portal:**  
[Link to publication record in Queen's University Belfast Research Portal](#)

### General rights

Copyright for the publications made accessible via the Queen's University Belfast Research Portal is retained by the author(s) and / or other copyright owners and it is a condition of accessing these publications that users recognise and abide by the legal requirements associated with these rights.

### Take down policy

The Research Portal is Queen's institutional repository that provides access to Queen's research output. Every effort has been made to ensure that content in the Research Portal does not infringe any person's rights, or applicable UK laws. If you discover content in the Research Portal that you believe breaches copyright or violates any law, please contact [openaccess@qub.ac.uk](mailto:openaccess@qub.ac.uk).

# Punishment & Society

<http://pun.sagepub.com/>

---

## The governance of sexual offending across Europe: Penal policies, political economies and the institutionalization of risk

Anne-Marie McAlinden

*Punishment & Society* 2012 14: 166

DOI: 10.1177/1462474511435573

The online version of this article can be found at:

<http://pun.sagepub.com/content/14/2/166>

---

Published by:



<http://www.sagepublications.com>

**Additional services and information for *Punishment & Society* can be found at:**

**Email Alerts:** <http://pun.sagepub.com/cgi/alerts>

**Subscriptions:** <http://pun.sagepub.com/subscriptions>

**Reprints:** <http://www.sagepub.com/journalsReprints.nav>

**Permissions:** <http://www.sagepub.com/journalsPermissions.nav>

**Citations:** <http://pun.sagepub.com/content/14/2/166.refs.html>

>> [Version of Record](#) - Apr 18, 2012

[What is This?](#)

# The governance of sexual offending across Europe: Penal policies, political economies and the institutionalization of risk

**Anne-Marie McAlinden**

Queen's University Belfast, N. Ireland

## Abstract

This article examines why England and Wales have comparatively one of the most stringent systems for the governance of sexual offending within Western Europe. While England and Wales, like the USA, have adopted broadly exclusionary, managerialist penal policies based around incapacitation and targeted surveillance, many other Western European countries have opted for more inclusionary therapeutic interventions. Divergences in state approaches to sex offender risk, particularly in relation to notification and vetting schemes, are initially examined with reference to the respective theoretical frameworks of 'policy transfer' and differing political economies. Chiefly, however, differences in penal policies are attributed to the social and political construction of risk and its control. There may be multiple expressions of risk relating to expert, lay, moral or emotive aspects. It is argued, however, that it is the particular convergence and alignment of these dimensions on the part of the various stakeholders in the UK – government, media, public and professional – that leads to risk becoming institutionalized in the form of punitive regulatory policies for managing the dangerous.

## Keywords

comparative penal policies, England and Wales, Europe, risk, sex offenders

---

## Corresponding author:

Anne-Marie McAlinden, School of Law, Queen's University Belfast, 29 University Square, Belfast, BT7 1NN, N. Ireland.

Email: [a.mcalinden@qub.ac.uk](mailto:a.mcalinden@qub.ac.uk)

## Introduction

The politics of 'risk' has come to dominate international debates on crime and justice. Over the last two decades the expansion of a risk-based logic has reconfigured the penal landscape and punishment in particular has become a regulatory tool (Beck, 1992; Ericson and Haggerty, 1997; Shearing, 2000). Scholars have highlighted a range of contemporary developments in the governance of security (Christie, 2000; Crawford, 2003; Loader and Walker, 2007), which illustrate the prominence of risk-based approaches to crime control. Recent initiatives range from preventive detention and restrictions placed on dangerous offenders on release from custody to the development of multi-agency panels to assess and manage risk (Rose, 2000). This relatively 'new penology' (Feeley and Simon, 1992), linked with what has become known as 'actuarial justice' (Feeley and Simon, 1994), has formed the basis of targeted intervention with selected 'at risk' groups, such as sexual offenders (Kemshall and Maguire, 2001; Simon, 1998).

Despite the prominence of risk within penal policies as a whole there are various permutations of risk within specific societies (Cavadino and Dignan, 2006; Tonry, 2001). While there is a range of theoretical frameworks which delineate the development of regulatory state policies in general (Braithwaite, 2000; Crawford, 2006; Majone, 1994), there is much less work that seeks to explain individualized accounts. Risk may be 'a key idea in understanding contemporary penalty' (Sparks, 2001: 159). What is less clear, however, is how constructions of risk actually come to dominate official and popular discourses on particular crime problems in specific national contexts and so become 'the structuring principles of penal systems and penal politics' (Sparks, 2001: 159). This article seeks to address this important lacuna within the literature and to make a contribution to the latter debate within the specific field of comparative penal policies for governing sexual offending within and across Western Europe. While there are acknowledged nuances and contradictions in contemporary configurations of penalty, even within a given nation state (Muncie, 2005; Pratt, 2008a, 2008b), which are highlighted throughout, this analysis concentrates predominantly on policy trends at the broader macro-level.

The sexual exploitation of children has been the subject of transnational policies which have led to advances in policing and human rights instruments (Alexander et al., 2000). Most recently, the Madeleine McCann case<sup>1</sup> has focused attention on the dangers of transnational child trafficking and the relative ease with which sex offenders may cross jurisdictional boundaries. Within this wider international context, England and Wales have developed restrictive policies for protecting the public from the risk posed by sex offenders within a broadly punitive managerialist framework. Risk-averse policies have attempted to apply the logic of precaution (Ericson, 2007) and respond pre-emptively (Zedner, 2009) to all potential risks posed by sex offenders (Hebenton and Seddon, 2009; Seddon, 2008), particularly within the context of post-release control. The Sexual Offences Act 2003 strengthened the sex

offenders register and created a range of orders and offences to prevent sex offenders from travelling abroad without notice. The recent Safeguarding Vulnerable Groups Act 2006 requires the vetting of all those who work with children or vulnerable adults.

As will be discussed further below, many Western European countries, however, do not even have a sex offenders register and there are significant differences in vetting and information systems (Fitch et al., 2007). In addition, despite a growing emphasis on enhanced judicial and police co-operation (Constantin, 2008; Ramage, 2007), exchanges of information between EU member states in particular about potential sex offenders still operate very much on an ad hoc basis. Some Western European jurisdictions appear to have configured risk very differently via what Conrad and Schneider (1980) refer to as the 'medicalization of deviance'. Several Western European countries have recently introduced more restrictive measures on sex offending, often in the aftermath of high profile cases of child sexual abuse or murder. Many others, however, have generally resisted retributive responses. The core business of their penal systems is still transformative rather than managerial in nature (Feeley and Simon, 1992: 452).

The central purpose of this article is the explanation of this variation – to explain critically why England and Wales have such a far-reaching regulatory approach to sexual offending in comparison with many other Western European countries. While there is a growing body of comparative work on sex offender management in British and American contexts (Hebenton and Seddon, 2009; McAlinden, 2006), there is a dearth of comparable recent research within a European framework (see Petrunik and Deutschmann, 2008, for an isolated example). This article also attempts to redress this imbalance by initially applying existing theoretical frameworks to the specific problem field of sexual offending in a Europe wide context, before proffering its own exposition of penal policy variation. While the focus throughout is predominantly on the countries of Western Europe, Eastern European states, such as Poland and the Czech Republic, are also discussed briefly for the purposes of comparison and illustration.

The discussion in this respect will explore three inter-related modes of enquiry. First, it will draw on the work of Newburn and Jones in relation to 'policy transfer'. In essence, I argue that many of the punitive crime control policies in England and Wales in relation to sex offenders derive from similar regulatory policies enacted in the United States (Jones and Newburn, 2005, 2006; Newburn, 2002). While this theoretical framework may provide an insight into the convergence of penal policies between the USA and England and Wales in terms of scope, it does little, however, to explain the material differences in the substance of local policies. Moreover, it is of limited benefit in terms of explaining the divergence between England and Wales and Western Europe.

Second, drawing on the work of Cavadino and Dignan (2006) and others, I explore the argument that differences in both the mode and severity of punishment can, at least in part, be attributed to differing political economies of late

modern societies. These variances in political cultures are based, *inter alia*, on differing levels of social exclusivity/inclusivity; the segregated nature of state–citizen relations; and dominant penal ideologies. Broadly speaking, societies with higher levels of social inclusivity and clear demarcation of state–citizen relations in the formulation of policy tend to favour less punitive penal policies. Once more, however, while this framework may help to explain broad differences in punitivity, it fails to account for specific variances in state-led and popular anticipatory responses to sex offenders as a particular category of deviant.

The third and central mode of analysis will extend this thinking by framing arguments around the social construction of risk. Consistent with the body of work which broadly contends that punishment and crime control are culturally conditioned (Garland, 1990; Nelken, 2000; Sparks, 2001) I argue that penal policies on sex offending in England and Wales are ‘an index of culture’ (Nelken, 2007: 153) and are in themselves shaped by a complex interplay of social, political and cultural factors. These relate to media reporting of high profile cases which have highlighted the pervasiveness of the risk of sexual victimization and have prompted retributive public attitudes towards sex offenders which ultimately become part of a punitive policy cycle.

While there is an extensive contemporary literature on comparative criminal justice and criminology in general (e.g. Downes, 1988; Reichel, 2008; Ruggiero et al., 1993; Van Swaaningen, 1998), there are acknowledged caveats which underpin the comparative method (Nelken, 2007; Roberts, 2002; Zedner, 1995). These relate, *inter alia*, to differences in legal frameworks and cultures, socio-political ideologies and penal cultures and infrastructures which make direct comparisons difficult; the sheer volume of data which underlies meaningful comparison; and the differing approaches taken by academics and practitioners, each with their own affiliations, and descriptive and interpretative frameworks. With these challenges in mind, the broad approach adopted here is essentially one of interpretation. The core task is to show how differences in criminal justice policies on sex offending go beyond a simple analysis of legal institutions but are rather more nuanced and are ‘embedded within changing, local and international, historical and cultural contexts’ (Nelken, 2007: 148).

The structure of the article is as follows: the first part provides an overview of the recent history of penal policies on sex offending in England and Wales along with the broad methods adopted across a selection of European countries as an illustration of the differences in approach. The second part reviews existing theoretical frameworks which may help to explain why England and Wales have such stringent management systems in place in comparison to other Western European states. The discussion relates to the process of ‘policy transfer’ (Jones and Newburn, 2006; Newburn, 2002); and to the link between penal policy and political economy (Cavadino and Dignan, 2006). The third and final part seeks to present differences in approach across Western Europe as attributable principally to the complexities of the social construction of risk by the media and the public as well as the policy and professional elite.

## **The governance of sexual offending within and across Europe: A recent history**

Unravelling jurisdictional differences in the contemporary governance of sexual offending requires a brief examination of the European history of the social recognition of the problem. In this context, a number of insights emerge which may help explain the preponderance of therapeutic interventions with sex offenders across much of Europe and the general resistance to retributive sentences. First, in Europe in general, specific awareness of child sexual abuse emerged later in comparison with the United States and England and Wales. Although reports of incest and child sexual abuse date back to before the turn of the 20th century,<sup>2</sup> it was not until the 1970s that awareness of the problem of child sexual abuse was heightened among professionals and the public in the United States (Finkelhor, 1979; Kempe, 1978) and in England and Wales (Parton, 1985). Catholic cultures, however, such as France and southern Germany were even slower to recognize sexual abuse as a moral, legal and social problem, than Protestant or secularized cultures such as the United States, England, Canada, Sweden, Norway, the Netherlands and northern Germany (Bagley and King, 1990: 25–37).

Second, within much of Europe there has been a well-established tradition of medical and scientific practice as the fundamental approach to sex offending. As Petrunik and Deutschmann (2008: 506) point out, the rehabilitative method has been well documented in countries such as France (Foucault, 1978), Belgium, the Netherlands (Derks, 1993), the Scandinavian countries of Sweden, Denmark and Norway (Sansone, 1976; Weihe, 1988) and in Germany, which adopted inpatient sex offender treatment programmes from England. In England and Wales, however, as will be argued further below, the therapeutic orientation of the early sex offender treatment programmes has largely been reconfigured according to risk-centred managerialist principles and ‘treatment’ has, in effect, become a vehicle for punishment.

Third, there have traditionally been more liberal attitudes and laws concerning sexual relationships between adults and children in most Western European countries (Jenkins, 2001: 150–152). During the 1970s, for example, there was considerable liberalization of laws relating to the age of consent and countries such as the Netherlands and Denmark witnessed significant production and distribution of child pornography (Jenkins, 1992). By the end of the 1970s, a harsher attitude towards sexual deviancy emerged, largely due to the feminist movement which condemned male sexual violence and laws were gradually tightened in the 1980s (Pfäfflin, 1999). Countries such as Sweden, however, generally retained much laxer definitions of child pornography. At the same time, attitudes to sexual deviants were becoming more *laissez-faire* which helped to encourage a move away from punitive sanctions (Jenkins, 2001: 150). In contrast, in England and Wales and in the United States, adolescents are generally raised under stronger moral pressure in which the ‘innocent space’ of childhood must be safeguarded at all costs (Jackson and Scott, 1999: 86). Indeed, in an age of cultural pluralism and complexity in which many western societies lack social and norm cohesion (Tavuchis, 1991),

there is striking consensus in these jurisdictions concerning the wrongness of sexual relationships between adults and children (Hacking, 1999).

Fourth, there are marked differences between England and Wales and most Western European countries in terms of the sentencing of persistent offenders. Although many Western European jurisdictions make provision for some form of indeterminate detention (e.g. Sweden, Belgium, Italy and Germany (Lieb, 2000)), England and Wales have had a consistently higher prison population rate over the last few years in comparison to many other Western European countries. The most recent Council of Europe figures, for example demonstrate that England and Wales imprison more people per 100,000 (152) than most other Western European nations (apart from Scotland<sup>3</sup> (156) and Spain, including Catalonia (173)) and approximately 50 per cent more than Belgium (101), France (103), Germany (89), Italy (106), the Netherlands (99) and Sweden (77) (Council of Europe, 2011: 38–40). These figures, however, are generally much lower than the prison population rates of Eastern European countries such as the Czech Republic (210), Poland (220), the Ukraine (318) and Russia (620) (Council of Europe, 2011: 38–40).

## England and Wales

The ‘treatment’ of sex offenders in England and Wales has changed significantly over the last half century (Beech and Fisher, 2004). The early development of psychodynamic therapies based on medical and psychiatric approaches was subsequently discredited by the emergence of Martinson’s (1974) ‘nothing works’ philosophy. By the mid-1980s therapeutic work with sex offenders, first in the United States (Knopp, 1984; Laws et al., 2000; Marshall, 1999; Marshall et al., 1990, 1998; Salter, 1988) and later in England and Wales (Barker and Morgan, 1993; Beckett, 1998; Beckett et al., 1994; HM Inspectorate of Probation, 1998), was centred on cognitive behavioural group work approaches in community-based settings. These were intended principally to examine psychological motivations and address distorted thinking (Barnett et al., 1990; Cowburn, 1990; Erooga et al., 1990). Currently, treatment practice with sex offenders in England and Wales takes place in both prison and probation settings (Beech and Fisher, 2004). The national prison service sex offender treatment programme (SOTP) was launched in 1991 (Beech et al., 1999, 2005; Grubin and Thornton, 1994; Mann and Thornton, 1998) and built on existing cognitive behavioural programmes from both the community and individual prisons (Cowburn et al., 1992; Mezey et al., 1991). The enactment of the Criminal Justice Act (CJA) 1991, however, was highly significant in transforming the ethos of both therapeutic and penal interventions with sex offenders. It marked a shift from voluntary to mandatory treatment for sex offenders and, at the same time, a distinct emphasis on retributive penal policies for sex offenders.

In the late 1980s and early 1990s there was a rapid increase in community-based treatment programmes for sex offenders (Barker and Morgan, 1993; Beckett, 1998). This increase has been attributed to a heightened public and media awareness of



sexual offending which subsequently placed demands on agencies such as probation and social services to develop more effective ways of working with sex offenders (Erooga et al., 1990: 172–174; Fisher and Beech, 1999: 240–243). Following the introduction of the CJA 1991, mandatory treatment became the sole vehicle for therapeutic work with sex offenders in the community. Courts now had the power to require sex offenders to undergo treatment either as part of the conditions attached to a probation order or longer post-release supervision (Fisher and Beech, 1999: 241). Increasingly, the rhetoric of these community-based programmes was premised on offenders being made to confront their offending behaviour (Beech and Fisher, 2004; Kemshall and Wood, 2007).

The move to nationally accredited prison treatment programmes also accords with this broader development. The emphasis of the core cognitive behavioural programme is not only on addressing denial and minimization, increasing victim empathy and controlling deviant sexual arousal, but also on dynamic structured clinical and actuarial assessment to identify and manage pro-offending ‘risky’ behaviour (Hanson and Thornton, 2000; Thornton, 2002). In practice, information about outcomes from sex offender treatment programmes feeds into the work of multi-agency public protection panels (MAPPPs), which are designed to assess and manage the risk of individual recidivism (Kemshall and Maguire, 2001; Maguire et al., 2001).

As a whole, contemporary therapeutic strategies have become embedded and subsumed within a broader penal rhetoric of risk management and public protection. The emphasis on effective programmes and practices, within probation in particular (Kemshall, 2002), encapsulated in the ‘what works’ (McGuire, 1995) or ‘something works’ (Sherman et al., 1997) approach, denotes a ‘new form of rehabilitation’ (Robinson, 1999: 427). As Kemshall (2002: 52) argues, drawing on Garland (1997: 6), traditional rehabilitative concerns have been ‘co-opted to an advanced liberal agenda’ and have become a feature of risk management.

In tandem with this, the CJA 1991 introduced a bifurcated approach to penal policy – less serious offenders were to be dealt with by diversionary measures while serious violent and sexual offenders were to be subject to longer custodial sentences in order to protect the public from serious harm. This legislative trend was to continue through the late 1990s into the next decade culminating in the indeterminate sentence for sex offenders under the Criminal Justice Act 2003.

In England and Wales, as in the USA, ‘postmodern penalty’ (Pratt, 2000a) on sex offending has been marked by a revival of the concept of ‘shaming as a punishment’ (Braithwaite, 1993; Foucault, 1977; McAlinden, 2007). Via a ‘criminology of the other’ (Garland, 2001), sex offenders are singled out as a special class of offender. As Kemshall and Wood (2007: 211) argue, ‘[e]ffective regulation is in effect secured by exclusion, either by selective incapacitation or by intensive and restrictive measures in the community’. Through a policy of ‘radical prevention’ (Hebenton and Seddon, 2009: 345), supervisory measures for managing sex offenders, in particular, effectively extend the sphere of control from prison into the community (Kleinmans, 2002: 244–246).

From the late 1990s onwards, there was a reactionary and sustained focus on the community surveillance of sex offenders within the broad political rhetoric of risk management and increased public protection (Kemshall and Maguire, 2001; Parton et al., 1997). The overt politicization of deviant sexual behaviour resulted in 'hyper innovation' (Crawford, 2006; Moran, 2003) and a flurry of regulatory activity to govern risk preventatively. A range of proposals to 'protect the public' by controlling sex offenders in the community more effectively (Home Office, 1996) eventually became embodied in comprehensive legislation. Two key areas, however, have been subject to significant legislative and policy focus – sex offender notification and pre-employment vetting.

Notification was initially provided for by Part I of the Sex Offenders Act 1997 and later replaced by much enhanced arrangements under Part 2 of the Sexual Offences Act 2003 (Thomas, 2003). The scheme, which applies to the whole of the UK, requires certain categories of sex offender to notify the police in person of their name and address and any subsequent changes to these details. The conditions attached to notification and the degree of public disclosure vary depending on the assessed level of risk. Part 2 of the Act also introduced risk of sexual harm orders and sexual offences prevention orders (Shute, 2004). The latter can be used to prohibit the offender from frequenting places where there are children such as parks and school playgrounds. The former seek to criminalize the preparatory acts involved in abuse, such as the 'grooming' of children, and can be used whether or not the individual has a prior record of offending. Similarly, the scope of notification has also been widened through two further measures – notification orders and foreign travel orders. The former require offenders who have received convictions for sexual offences abroad to comply with the legislation. The latter specifically prevent those offenders with convictions involving children from travelling abroad and targeting children in other countries. However, by and large, there are no reciprocal arrangements in place in other countries, which can have important consequences for effective risk management if offenders cross jurisdictional boundaries without notice.

In response to a number of inquiries into high profile cases of institutional abuse, further legislation has been enacted to prevent offenders from making contact with children or the vulnerable through organizations. This has included the Sexual Offences (Amendment) Act 2000, which made it an offence for an adult to engage in sexual activity with a child if they are in a position of trust. The Criminal Justice and Court Services Act 2000 made it an offence for convicted abusers to seek employment with children or for employers to appoint such people knowingly. Part V of the Police Act 1997 established the Criminal Records Bureau to provide a more effective means of carrying out criminal record checks. More recently, the Safeguarding Vulnerable Groups Act 2006 introduced a new regulatory framework (Gillespie, 2007), which gives legislative effect to many of the recommendations of the Bichard (2004) Inquiry.<sup>4</sup> The Act combines previously disparate lists and establishes a centralized on-line register and continuous criminal records monitoring of every person who works or volunteers with children or vulnerable adults.

The extensive remit of the new legislative framework means that an increased range of work, both paid and voluntary, will be intensely regulated (McAlinden, 2010).<sup>5</sup> As a result of these severe penalties, which harness the need to identify publicly and control sex offenders in the community, the civil liberties of the offender together with their chances of rehabilitation are displaced by broader community concerns (Jenkins, 2001: 147; Pratt, 2000a: 131).

## Continental Europe

The sex offender problem remains a highly serious and politically contentious issue throughout continental Europe. There are notable contradictions, however, in the policy focus across Europe as a whole where more inclusionary, but not necessarily any less punitive, policies have been adopted.

Several continental European countries have recently enacted more restrictive laws on sex offending. As will be discussed further below, the advent of a number of high profile cases in Belgium (Jenkins, 2001), Germany (Dessecker, 2008) and France was instrumental in bringing about more punitive sanctions on sex offending, largely because it highlighted weaknesses in existing criminal justice provision. In Belgium and Germany, for example, this was reflected chiefly in terms of a more restrictive framework on preventive detention and a renewed interest in chemical castration (Dessecker, 2008), rather than post-release control.

In terms of notification schemes only the Republic of Ireland has comprehensive legislation which obliges sex offenders to notify the authorities when they intend to travel abroad.<sup>6</sup> France has recently implemented a closed national directory of sex offenders, as has Austria where a range of movement restrictions on sex offenders on release from custody have also been implemented. Many Western European countries, however, do not even have a sex offenders' register. A number of jurisdictions such as Spain, Italy and Germany have objected to sex offender registration, as currently provided for in the UK, on rights-based grounds. Due process concerns about registration operating, in effect, as an additional form of punishment were also raised at the time of implementation of the original legislation in the UK (Soothill and Francis, 1998). The UK Supreme Court has also declared life-time registration, without periodic review, incompatible with the European Convention on Human Rights.<sup>7</sup>

Equally, regulatory vetting and barring schemes to prevent unsuitable individuals working with children or the vulnerable have not been pursued across Western Europe with the same vigour as in England and Wales. There are varying systems across Europe and disparities within and between countries in standardized criminal record information and arrangements to prevent unsuitable people from working with children or the vulnerable. In this respect, recent NSPCC research has highlighted the vast array of approaches within individual states. This presents significant challenges to inter-country exchange of information about sex offenders (Fitch et al., 2007: 2). For example, while England and Wales have recently extended vetting to all posts involving access to children or the vulnerable, in

Sweden health sector workers are not vetted, and in Poland most care home workers are employed without checks. Similarly, while criminal records are kept indefinitely in Northern Ireland, they are deleted in Germany when a person reaches age 24 and are 'wiped clean' in Sweden after 10 years if no subsequent offences are committed. Most significant of all perhaps, are the difficulties of vetting overseas workers unless information about criminal history or identifying information such as fingerprints or photographs are also provided (Fitch et al., 2007: 12).

The dominant and well-established approach across continental Europe tends to focus on treatment as opposed to management of the offender. There are comprehensive therapeutic programmes for sex offenders in place across Europe within a range of civil and penal settings. While most of these programmes are prison-based (e.g. Sweden, Spain, Finland, France, Italy, Austria, Poland and Ireland), and treatment is generally imposed by the courts, therapeutic contexts may vary. These can range, for example, from treatment in specialized departments within psychiatric hospitals in Germany (Pfäfflin, 1999), Denmark, Norway, Belgium and the Netherlands (Frenken et al., 1999) for sex offenders who have been found to be not criminally responsible, to outpatient facilities in Belgium (Cosyns, 1999), the Czech Republic (Weiss, 1999) and Switzerland.

The placement of sex offenders with severe personality or other mental disorders in maximum security psychiatric clinics can be almost as punitive, however, as treatment in a prison context, since this often amounts to indefinite placement in a highly controlled setting. Favouring a medical model, therefore, should not be confused with a 'soft' or entirely non-intrusive approach to sexual deviance. Western European countries such as Germany and Denmark favoured surgical castration as a method of treating sex offenders in the early 20th century, following the influence of the Eugenics movement (Floyd, 1990). The Czech Republic, however, is currently the only country in Europe which has retained the measure. The government of the Czech Republic has defended its use of the measure despite the fact that the CPT (European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment) has been very critical, describing it as 'degrading treatment' and recommending 'an immediate end' to its use in the context of the treatment of sex offenders (CPT, 2009: para. 44).<sup>8</sup> Some Western European countries, such as Denmark, Sweden, Spain and England, have adopted 'chemical castration' for high-risk sex offenders – the use of pharmacological treatments to suppress hormonal and sexual activity – usually on a voluntary basis (see Harrison, 2007). Poland, however, became the first European country to pass a law requiring certain sex offenders to undergo chemical castration. In this respect, the use of castration seems to blur the boundaries between treatment and punishment and could potentially be regarded as a pragmatic form of risk management.

In continental Europe, there is however, a rather more eclectic approach to treatment which comprises pharmacotherapy, including anti-androgen suppression, as well as psychotherapeutic interventions which aim to modify cognitive distortions and promote social reintegration. Even in Western European countries such as Germany (Pfäfflin, 1999: 383) and Belgium (Cosyns, 1999: 399) where penal

measures have recently been strengthened, the penal code explicitly recommends the integration of treatment interventions, and imprisonment is usually an option of last resort. In short, many sex offenders are not subjected to exclusionary regulatory measures as a rule but to various forms of intervention which combine therapy with internment often in community-based settings.

### **Existing explanations for cross-cultural differences**

This section of the article critically reviews existing theoretical frameworks which may help to explain why England and Wales have such a punitive framework for regulating sexual offending in comparison to many other Western European countries. In this respect, two significant lines of argument emerge – one based on the concept of ‘policy transfer’, the other on divergences in penalty linked to differing types of political economy.

#### *Policy transfer*

A large body of work on comparative penal reform has generally highlighted the spread of penal policies which appear to have originated in the USA concerning, inter alia, the emergence of ‘zero tolerance policing’, curfews and electronic monitoring and sentencing policies based on ‘three strikes and you’re out’ (Christie, 2000; Garland, 2001). The work of Newburn and Jones in particular (Jones and Newburn, 2006; Newburn, 2002) has pinpointed the process of ‘policy transfer’ between the United States and England and Wales in relation to crime control. Their central argument is that a range of factors including ideological proximity, shared political discourses and vernacular, and the dominance of symbolic and rhetorical politics, have contributed to harmonization in the regulatory concepts and substantive legal frameworks adopted.

The apparent convergence of penal policies on sex offender management between the USA and England and Wales provides a further example of the influence of penal ideologies derived from the United States (Jones and Newburn, 2005). One obvious example is the use of preventive detention with dangerous offenders. Perhaps the clearest example of this, however, is registration or notification. In the United States, a body of state and federal laws, known collectively as ‘Megan’s Law’,<sup>9</sup> requires certain classes of sex offender to register their personal details with law enforcement authorities and permits various forms of notification of this information to the public. Key aspects of the legislative framework in the UK have already been outlined above.

Reasons put forward for growing similarities in approach between the two jurisdictions by the authors include high profile cases of sexual abuse or murder of young children, which have acted as ‘precipitating events’ (Lieb, 2000: 423), related campaigns involving ‘co-victims’ or the immediate family and the pivotal role played by the media in garnering public support for these policy campaigns (Jones and Newburn, 2005). In addition, shared moral values concerning childhood

and sexuality (Hacking, 1999; Tavuchis, 1991) and in particular the neo-liberal turn of recent penal policy in both jurisdictions (Cavadino and Dignan, 2006) also help to account for this alignment of regulatory policies on sex offending.

Some of the key differences between the schemes in place in the USA and England and Wales have been eliminated over the last few years. These relate chiefly to the type of information required to be conveyed to the authorities and the degree of notification permitted to the local community. For example, the amendments introduced by the Sexual Offences Act 2003 which now permit the police in England and Wales to take photographs, fingerprints and national insurance numbers for future identification purposes, have narrowed this gap. Equally, there is an ongoing campaign for a similarly styled 'Sarah's Law' in England and Wales, which also calls for the authorities to make public the identities and whereabouts of known sex offenders. The campaign was recently given impetus by the announcement of the national piloting of a public disclosure scheme that allows single parents to check whether those with unsupervised access to their children have a record of sexual offending.<sup>10</sup>

The tentative progress of implementing 'Sarah's Law' in England and Wales, however, is illustrative of the limitations of policy transfer. As Muncie (2005: 37) notes in relation to policies on youth justice, the process is not 'one-dimensional', but is instead subject to important socio-cultural differences in the way in which policies are reformulated and reconfigured within national and local contexts (Crawford, 2006; Muncie, 2005: 44). In addition, while the policy transfer thesis may help to explain the recent partial emulation of penal policies on sex offenders in England and Wales, derived from the USA, it does little to illuminate one of the central issues of this article – the divergence of penal policies on sexual offending between England and Wales and the rest of Europe.

### *Political economies*

While there has been a global trend towards punitiveness and increasing rates of imprisonment<sup>11</sup> the shared features of the USA–England and Wales model of punishment do not translate fully across other Western European countries that share 'broadly similar standards of living and constitutional arrangements' (Grimshaw, 2004: 3). Penal and social policies adopted in the former jurisdictions are fixated upon forms of segregation and social exclusion of deviants, in which imprisonment plays a large and growing part (Petrunik and Deutschmann, 2008). The wider European model, however, is said to be rather more restrained and centrally concerned with applying and upholding basic human rights (Cavadino and Dignan, 2006; Grimshaw, 2004).

Cavadino and Dignan (2006) put forward a number of typologies to explain the differences in political economies which may act as 'social structural buffers' (Petrunik and Deutschmann, 2008: 499) against the adoption of punitive penal policies. In particular, they point to the dichotomy between 'neo-liberalism' and 'social democratic corporatism'. They argue that in 'neo-liberal' societies, such as

the United States and England and Wales, the demise of the 'welfare state' (Garland, 1985, 1996) has resulted in an ethos of individualism, and a tendency towards social exclusion and stigmatization of those on the margins of society. 'Law and order' or incapacitation is the dominant penal ideology and it is characterized by the exclusion of deviants and high rates of imprisonment (Wacquant, 2001). Within this specific context, scholars have also underlined what Lacey (2004) has termed 'criminalisation as regulation', where in the face of a heightened sense of insecurity about sexual crime, the State attempts to assert its authority via the penal system and a burgeoning amount of criminal sanctions (Ericson, 2007; O'Malley, 1999). As demonstrated above, this politics of severity has been clearly evident in England and Wales in relation to the risk regulation of sex offenders since at least the late 1990s.

At the other end of the spectrum is 'social democratic corporatism' with inclusionary social and penal policies, generous social rights and low rates of imprisonment deriving from a 'rights-based' ideology. Classic examples, such as Sweden and Finland, have much less punitive penal policies. Such societies are characterized by a communitarian ethos and 'penal welfarism' (Garland, 1985) in which offenders are regarded as social beings who should be included in society and who need rehabilitation and resocialization via correctional treatment rather than stigmatization and punishment (Pratt, 2008a: 130). As will be discussed further below, although societies such as Sweden have recently witnessed an erosion of the cultural and structural barriers which have traditionally prevented 'penal excess' (Pratt, 2008b), their systemic rights-based culture in particular, is one of the principal reasons why information is not routinely held on sex offenders. The EU White Paper proposal for the establishment of a dedicated European index of sex offenders was rejected as member states were not prepared to centralize such information (Council of Ministers, 2005). Despite renewed calls for a pan-European register in the wake of the disappearance of Madeleine McCann,<sup>12</sup> it is submitted that this is unlikely to be implemented quickly on an EU wide basis, given some of the fundamental jurisdictional differences in approaches to sexual crime as highlighted throughout this article.

'Conservative corporatism' lies between the two previous models. It is typified by 'mixed' levels of social exclusion in the form of limited participation in civil society for some groups, and 'mixed' modes of punishment, medium rates of imprisonment and rehabilitation/reintegration as the primary sentencing rationale. The archetypal example is Germany, as well as France, Italy and the Netherlands (Cavadino and Dignan, 2006). This model reflects the tension between 'social democratic corporatism' and 'neo-liberalism'. In this respect, countries such as Germany and France in particular, as discussed throughout, have grappled with this tension and have recently enacted more punitive, exclusionary penal policies on sex offending such as preventive detention and sex offender notification.

The significance of the tension between social-democratic and neo-liberal frameworks lies particularly in the modes of governance deployed. The former implies a public health approach which emphasizes a morally neutral stance on sex offending

and justifies treatment rather than punishment as the primary response (Kemshall and Wood, 2007). The latter is linked to a community protection model in which the reformative welfare agenda has been displaced by a concern with regulating the 'dangerous classes' (Garland, 2001; Kemshall and Wood, 2007; Pratt, 2000a). Within the neo-liberal framework, the State responds to public concerns about particular risks or crimes with a politics of punishment designed to express its strength and commitment to controlling the problem (Garland, 2001; Sparks, 2001). Such expressive and 'ostentatious punishment' (Pratt, 2000b) also serves to compensate for state ineffectiveness in other areas of risk management (Kemshall and Wood, 2007: 210).

However, while such theories have usefully classified the salient features of different types of society which have a bearing on penal policy arguably they do not engage with the crucial question which is why societies such as England and Wales have seemingly entrenched cultural and political intolerance of sex offenders, and resulting criminal justice policies have been based largely on an exclusionary, precautionary approach to risk. In this respect, an additional factor which helps to explain differences in penal policies on sex offending across Western Europe is the social construction of risk.

## **The social construction of risk**

Theorists have long conceived of risk as being socially, politically and organizationally structured (Manning, 1989; Reiss, 1989). Hawkins (1989), for example, notes how decisions about risk may be the subject of multiple social constructions, involving scientific, legal, professional and lay elements which may potentially compete with one another. Similarly, Sparks (2001: 169), drawing on the work of Garland (1990), argues that risk is a 'mixed discourse' encompassing 'moral, emotive and political as well as calculative' dimensions. Indeed, differences in punitivity towards sex offenders across Western Europe can also be explained in terms of the varying constructions of 'risk' and its control.

In England and Wales, risk is grounded in a 'wider politics of fear and insecurity' (Seddon, 2008: 312) concerning sex offenders, where professional assessments are often subjected to emotive and sometimes misplaced assumptions about future risk. The desire to govern pre-emptively risky behaviours or categories rather than simply risky individuals (O'Malley, 2004: 318–319) has led to the development of a range of broadly exclusionary and precautionary regulatory policies on sex offending, which often conflate anxiety and risk (Hebenton and Seddon, 2009: 354). Although there was some public opposition to the recent expansion of vetting under the Safeguarding Vulnerable Groups Act 2006,<sup>13</sup> for the most part, the interpretation of risk by the principal stakeholders has been largely congruent. It is argued that it is this synthesis in conceptualizations of the risk posed by sex offenders by the professional and public visages of the social and political economy which has ultimately ensured the expansion and continuity of pre-emptive regulatory policies designed to capture the perceived pervasiveness of sexual offending.



It is the 'cultural background' to legislative and policy formulation on sex offending which 'informs risk selection' (Hebenton and Seddon, 2009: 355).

In this respect, there are a number of inter-related factors which may account for social intolerance of sex offenders and retributive penal policies on sex offending. These relate principally to media coverage of violent and sexual crime and resultant punitive public attitudes which become part of the wider process of populist penal policy. 'Signal crimes' (Innes, 2004), in particular, in the form of high profile cases of sexual offending against children, have been instrumental in cementing social and political interpretations of the perceived threat posed by sex offenders and increasing levels of punitiveness.

### *Populist penal policy*

The social construction of risk and its control is firmly linked to the process of populist penal policy making (Simon, 1998). Various reasons may be postulated for a populist approach to penal policy. One is the presence of a vigorous, and at times vicious, media culture in England and Wales where policy is often driven by news headlines. There is in general a paucity of comparative research on the subject. However, it has been established that while crime is extensively reported in the British press, in Germany, for example, crime-related stories occupy much less reporting space and as a result attract less political attention and resources (Zedner, 1995). One study of media coverage of child murders from the 1990s onwards in the USA and England and Wales concluded that stories shared a number of features. Pictorial treatment was characterized by a greater focus on victims, the impact on their families and the emotionally charged response of society (Wardle, 2007). The overall effect is to convey the impression that sex offenders are living on every street corner, potentially threatening the safety of all children (Wardle, 2007). Intense media coverage of violent and sexual crime in particular means that penal policy is subjected to increased public scrutiny and debate (Pratt, 2008b: 286). Media coverage may suggest that such crime is more ubiquitous or threatening than is actually the case and that harsher punishment is required in response (Greer, 2003; Pfeiffer et al., 2005; Roberts et al., 2003). As the number of high profile cases of sex offending increases, so too does the demand for tougher penal policies. One obvious example is the media led campaign for a 'Sarah's Law' following the abduction and murder of Sarah Payne in Sussex in July 2000 (Ashenden, 2002).

The connection between high profile sexual crimes and rising punitiveness can also be discerned in the handful of Western European jurisdictions, such as Belgium, Germany and France, which, as noted above, have recently introduced more restrictive measures on sex offending. In Belgium, for example, the 2004 trial of released sex offender Marc Dutroux, who abducted as many as 15 young girls before raping and torturing and then starving them to death in a dungeon made international news headlines (Jenkins, 2001). Similarly, in Germany in 1996, seven-year-old Natalie Astner was killed by a convicted sex offender who

had been released from prison on parole 14 months earlier (Albrecht, 1997; Dessecker, 2008). The ensuing campaign for 'Natalie's Law' ultimately resulted in a range of harsher measures for sex offenders. More recently, serial sex offender Michael Fourniret, who was tried in 2008, raped and murdered at least seven young girls in both France and Belgium and possibly more European countries over a 14-year period, due to a supposed obsession with 'virgins'. In Belgium (Jenkins, 2001) and Germany (Dessecker, 2008) in particular, the customary trends of low levels of punitiveness and high levels of social tolerance have also been reversed in the aftermath of these cases. Similarly in Sweden, the onset of a range of factors including the tabloidization of the media and sensational and subjective media coverage of crime, has led to an increase in public debate concerning penalty and highly charged public attitudes concerning crime and punishment (Pratt, 2008b). These factors have in turn undermined the traditional 'culture of tolerance' and led ultimately to greater penal severity and what Pratt terms 'penal excess'.

Resulting legislation is often named after victims of sexual crime à la 'Megan's Law', 'Sarah's Law' or 'Natalie's Law'. These 'Memorial Laws' (Valier, 2005) appeal to popular emotions, such as fear and the desire for vengeance (Sarat, 1997; Simon, 1998), and are used expressively 'to lever up punitiveness' (Zedner, 2002: 447). This has also contributed to the 'emotionalization' (Karstedt, 2002: 231) of public discourse about sexual crime and punishment. This points towards a 'vicious policy cycle' (Brownlee, 1998; McAlinden, 2007: 27), whereby retributive penal policies simultaneously fuel the public fear of the risk posed by sex offenders and at the same time their demand for increased state regulation of their activities.

A second explanation is the general loss of faith in the 'rehabilitative ideal' and the promise of a 'cure' that is offered by therapy. International studies on public attitudes to crime and punishment have generally demonstrated that there are higher levels of punitiveness and concern about crime in Anglo-American countries such as the United States and England and Wales than in Germany (Oberwittler and Höfer, 2005) or other Western European countries (Petrunik and Deutschmann, 2008: 507). The 'culture of control' (Garland, 2001), however, cannot be justified solely on this basis. Many Western European countries have higher levels of sexual crime than England and Wales but these have not always translated into punitive practices.<sup>14</sup>

In this respect, recent research by Maruna and King (2009) in England has established that there is a correlation between 'belief in redeemability' and punitive public attitudes. The lack of belief in the ability of sexual deviants to change their ways may also be a crucial factor in explaining public support for harsher criminal sanctions. In England and Wales, we have witnessed a vociferous, emotive and at times violent public reaction to the presence of released sex offenders in their midst (McAlinden, 2007), which indicates a total absence of faith in the reformation of the offender. Certainly, the spread of 'Sexual Predator' laws in both the USA and England and Wales demonstrates that the public and official image of a sex offender has shifted from 'an immoral (but treatable behaviour) to an incurable dangerous perversion' (Roberts et al., 2003: 132).

On a related note, Melossi (2001) affirms that social, economic and political relationships and conditions which shape leniency or forgiveness on the one hand and punitivity on the other have their roots in religious traditions. His comparison of Protestant societies such as the United States or England and Wales and Catholic societies such as Italy in relation to differential rates of imprisonment reveals a juxtaposition of 'a rhetoric of strong penal repression' and 'soft authoritarian paternalism' (Melossi, 2001: 412). Scandinavian societies, however, although shaped by Protestantism, are traditionally more inclined to leniency. As noted above, these countries have recently witnessed a punitive turn due to the onset of a number of factors including sensational reporting by the tabloid press (Pratt, 2008b: 286–287) which would appear, to some extent at least, to have displaced the associated religious notions of clemency and redemption.

A third argument is the integrated nature of state–citizen relations in England and Wales. In Germany, for example, (Savelsberg, 1999; Zedner, 1995) state apparatuses are intensely bureaucratic and expert-driven and decision makers are afforded a greater degree of trust by the populace. The maintenance of law and order is expressly reserved for the State and there is no expectation that ordinary citizens should have an influence on or involvement in the policy-making process (Petrunik and Deutschmann, 2008). As Tonry (2001: 207) argues, this insulation of the legal system from political influence has halted the spread of 'penal populism' across much of Europe. This seems to ring true despite the spate of recent high profile cases of serial sex offenders. In a similar vein, Scandinavian countries have a tradition of social and cultural conditions, referred to above, which have generally prevented the spread of intolerant and punitive penal policies (Pratt, 2008a). The recent discrediting and suspicion of state and penal expertise has contributed to greater public interference in the policy process and increased punitiveness (Pratt, 2008b). It has also been argued in this context that late modernity is characterized by a public distrust of experts unless what they opine accords with its own worries and perceptions about risk (Best, 1990; Petrunik and Deutschmann, 2008).

As noted above, in England and Wales, sexual offending, particularly against children, has become an increasingly politicized issue in recent years, which makes it especially conducive to populist decision making. In the desire to appear 'tough on crime' in order to win votes, governments are seemingly mindful of public concerns about crime as represented in the popular press or public surveys (Tonry, 2003). A move from elitist to more populist penal policy making, where governments are aware of the views of ordinary people prior to formulating new crime policies (Johnstone, 2000), has ultimately resulted in harsher, less tolerant policies towards sex offenders.

## **Conclusion**

The penological dualism between treatment and punishment has polarized penal discourses on sex offending for at least the last quarter of a century. In England and Wales, there has been a significant and sustained policy focus on post-release

control of sex offenders via the adoption of retributive and exclusionary penal policies based largely on incapacitation, surveillance and the logic of precaution. Although a handful of continental jurisdictions have recently adopted more retributive measures on sex offending, others have maintained a generally more inclusionary therapeutic policy response via a range of rehabilitative methods.

In England and Wales, the tri-partite relationship between policy makers, the media and the public has resulted in a convergence of penal culture, policies and practices on risk and ultimately in more punitive and expansive penal policies on sex offending. Public anxieties and emotions about the perceived threat posed by sex offenders in the community drive the net widening process in the form of pre-emptive approaches to risk. In contrast, a number of historical as well as contemporary social structural factors have prevented the diffusion of punitive and exclusionary penal policies on sex offending across much of Western Europe. These relate chiefly to a media culture which is driven by objective and non-sensationalist reporting rather than market forces, and in particular to the segregated nature of state–citizen relations which has facilitated expert and elitist penal policy devoid of public sentiment.

This comparative analysis has merely scratched the surface of what is a relatively new and under researched field within criminology – that of comparative European penal policies on sex offending. Continental jurisdictions may configure the sex offending conundrum very differently but not necessarily any more effectively than Anglo-American ones. Fundamental differences in constructions of risk, however, may become vitally important when cases involve a cross-jurisdictional element and when seeking to establish collaborative arrangements. More detailed comparative research is needed, therefore, into the dynamics of European penal policies on sex offending and their effectiveness concerning the governance of this particular class of ‘risky’ offender.

### **Acknowledgements**

I would like to thank Kieran McEvoy and Shadd Maruna and the two anonymous reviewers for their helpful comments on earlier drafts of the article.

### **Notes**

1. Madeleine McCann disappeared in May 2007 from a holiday resort in Portugal, a few days before her fourth birthday. The case generated international media attention.
2. For example, in France, Tardieu (1878) describes post-mortem findings of sexual abuse.
3. Note, however, from 1997 until 2008, Scotland had lower rates of imprisonment than England and Wales (Council of Europe, 2011: 38). This increase has also been attributed to the influence of neo-liberal policies in post-devolution Scotland (Davidson et al., 2010; McAra, 2007).

4. School care taker, Ian Huntley, was convicted for the murders of Holly Wells and Jessica Chapman in Soham in 2002. The subsequent Bichard Inquiry examined vetting procedures in two police constabularies in England and Wales and, in particular, the effectiveness of information sharing.
5. This framework is to be scaled back under the Protection of Freedoms Bill 2010–2011.
6. See the Sex Offenders Act 2001.
7. The Supreme Court ruled that lifetime registration, without periodic review, breaches privacy rights under article 8 of the ECHR (*R (on the application of F and Thompson) v. Secretary of State for the Home Department* [2010] UKSC 17).
8. See also the response of the Czech government where it vigorously defends its actions and rejects the CPT's views: <http://cpt.coe.int/documents/cze/2009-09-inf-eng.htm>.
9. At the federal level, registration and notification are now governed by the Adam Walsh Child Protection and Safety Act 2006.
10. 'Tories back plan to extend "Sarah's Law" sex offender checks', *Guardian*, 24 January 2010. Available at: <http://www.guardian.co.uk/society/2010/jan/24/sex-offenders-check-parents-children>.
11. In recent years, over three-quarters of all countries worldwide have increased their rates of imprisonment (Council of Europe, 2011: 41).
12. See 'MEPS "want EU sex offender list"', *BBC News*, <http://news.bbc.co.uk/1/hi/uk/6958807.stm>, 22 August 2007.
13. See, for example, the campaign led by Philip Pullman which focused on categories of individuals to be excluded from such checks such as authors visiting schools.
14. For example, although Germany and Austria have the highest levels of sexual crime in Europe after the Republic of Ireland, this has not been met with a concomitant desire for custodial sentences (Van Dijk et al., 2005).

## References

- Albrecht H-J (1997) Dangerous criminal offenders in the German criminal justice system. *Federal Sentencing Reporter* 10(2): 69–73.
- Alexander S, Meuwese S and Wolhuis A (2000) Policies and developments relating to the sexual exploitation of children: The legacy of the Stockholm Conference. *European Journal on Criminal Policy Research* 8: 479–501.
- Ashenden S (2002) Policing perversion: The contemporary governance of paedophilia. *Cultural Values* 6(1): 197–222.
- Bagley C and King K (1990) *Child Sexual Abuse: The Search for Healing*. London and New York: Tavistock, Routledge.
- Barker M and Morgan R (1993) *Sex Offenders: A Framework for the Evaluation of Community-Based Treatment*. London: Home Office.
- Barnett S, Corder F and Jehu D (1990) Group treatment for women sex offenders against children. *Groupwork* 3(2): 191–203.

- Beck U (1992) *Risk Society: Towards a New Modernity*. London: SAGE.
- Beckett R (1998) Community treatment in the United Kingdom. In: Marshall WL, Fernandez YM, Hudson SM and Ward T (eds) *Sourcebook of Treatment Programs for Sexual Offenders*. New York and London: Plenum Press.
- Beckett RC, Beech AR, Fisher D and Fordham AS (1994) *Community-Based Treatment for Sex Offenders: An Evaluation of Seven Treatment Programmes*. London: Home Office.
- Beech AR and Fisher DD (2004) Treatment of sex offenders in the UK in prison and probation settings. In: Kemshall H and McIvor G (eds) *Managing Sex Offender Risk*. London: Jessica Kingsley.
- Beech A, Fisher D and Beckett R (1999) *STEP 3: An Evaluation of the Prison Sex Offender Treatment Programme*. A report for the Home Office by the STEP Team. London: Home Office.
- Beech AR, Oliver C, Fisher D and Beckett R (2005) STEP 4: The Sex Offender Treatment Programme in prison: Addressing the offending behaviour of rapists and sexual murderers. Available at: [http://www.hmprisonservice.gov.uk/assets/documents/100013DBStep\\_4\\_SOTP\\_report\\_2005.pdf](http://www.hmprisonservice.gov.uk/assets/documents/100013DBStep_4_SOTP_report_2005.pdf).
- Best J (1990) *Threatened Children: The Rhetoric of Child Victims*. Chicago, IL: University of Chicago Press.
- Bichard Sir M (2004) *The Bichard Inquiry Report*. London: Home Office.
- Braithwaite J (1993) Shame and modernity. *British Journal of Criminology* 33(1): 1–18.
- Braithwaite J (2000) The new regulatory state and the transformation of criminology. *British Journal of Criminology* 40(2): 222–238.
- Brownlee I (1998) New Labour – new penology? Punitive rhetoric and the limits of managerialism in criminal justice policy. *Journal of Law and Society* 25(3): 313–335.
- Cavadino M and Dignan J (2006) Penal policy and political economy. *Criminology and Criminal Justice* 6(4): 435–456.
- Christie N (2000) *Crime Control as Industry*. London: Routledge.
- Conrad P and Schneider JW (1980) *Deviance and Medicalization: From Badness to Sickness*. Philadelphia, PA: Temple University Press.
- Constantin S (2008) *Towards a European Criminal Record*. Cambridge: Cambridge University Press.
- Cosyns P (1999) Treatment of sexual abusers in Belgium. *Journal of Interpersonal Violence* 14(4): 396–410.
- Council of Europe (2011) Council of Europe annual penal statistics – SPACE I – 2009. Available at: [http://www.coe.int/t/dghl/standardsetting/cdpc/Bureau%20documents/PC-CP\(2011\)3%20E%20-%20SPACE%20I%202009.pdf](http://www.coe.int/t/dghl/standardsetting/cdpc/Bureau%20documents/PC-CP(2011)3%20E%20-%20SPACE%20I%202009.pdf).
- Council of Ministers (2005) Exchanges of information on convictions and the effect of such convictions in the European Union. European Commission COM (2005)10.
- Cowburn M (1990) Work with male sex offenders in groups. *Groupwork* 3(2): 157–171.
- Cowburn M, Wilson C and Loewenstein P (1992) *Changing Men: A Practice Guide to Working with Adult Male Sex Offenders*. Nottingham: Nottinghamshire Probation Service.

- CPT (European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment) (2009) Report to the Czech government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 March to 2 April 2008. Available at: <http://cpt.coe.int/documents/cze/2009-08-inf-eng.htm>.
- Crawford A (2003) Contractual governance of deviant behaviour. *Journal of Law and Society* 30(4): 479–505.
- Crawford A (2006) Networked governance and the post-regulatory state? Steering, rowing and anchoring the provision of policing and security. *Theoretical Criminology* 10(4): 449–479.
- Davidson N, Miller D and McCafferty T (eds) (2010) *Neoliberal Scotland*. Newcastle: Cambridge Scholars Press.
- Derks F (1993) Treatment and security: The dual nature of forensic psychiatry. *International Journal of Law and Psychiatry* 16(1–2): 217–240.
- Dessecker A (2008) Dangerousness, long prison terms, and preventive measures in Germany. Séminaire GERN. Longues Peines et Peines Indéfinies. Punir la dangerosité. Paris, 21 March. Available at: <http://champpenal.revues.org/document7169.html>.
- Downes D (1988) *Contrasts in Tolerance: Post-War Penal Policy in the Netherlands and England and Wales*. Oxford: Oxford University Press.
- Ericson R (2007) *Crime in an Insecure World*. Cambridge: Polity Press.
- Ericson RV and Haggerty KD (1997) *Policing the Risk Society*. Oxford: Clarendon Press.
- Erooga M, Clark P and Bentley M (1990) Protection, control, treatment: Groupwork with child sexual abuse perpetrators. *Groupwork* 3(2): 172–190.
- Feeley M and Simon J (1992) The new penology: Notes on the emerging strategy of corrections and its implications. *Criminology* 30(4): 449–474.
- Feeley M and Simon J (1994) Actuarial justice: The emerging new criminal law. In: Nelken D (ed.) *The Futures of Criminology*. London: SAGE.
- Finkelhor D (1979) *Sexually Victimized Children*. New York: SAGE.
- Fisher DD and Beech AR (1999) Current practice in Britain with sexual offenders. *Journal of Interpersonal Violence* 14(3): 240–256.
- Fitch K, Spencer K and Hilton Z (2007) *Protecting Children from Sexual Abuse: Safer Recruitment of Workers in a Border-Free Europe*. London: NSPCC.
- Floyd J (1990) The administration of psychotropic drugs to prisoners: State of the law and beyond. *California Law Review* 78: 1243–1285.
- Foucault M (1977) *Discipline and Punish: The Birth of the Prison*. London: Penguin.
- Foucault M (1978) About the concept of the ‘dangerous individual’ in 19th century legal psychiatry. *International Journal of Law and Psychiatry* 1(1): 1–18.
- Frenken J, Gijs L and Van Beek D (1999) Sexual offender research and treatment in the Netherlands. *Journal of Interpersonal Violence* 14(4): 347–371.
- Garland D (1985) *Punishment and Welfare: A History of Penal Strategies*. Aldershot: Gower.

- Garland D (1990) *Punishment and Modern Society: A Study in Social Theory*. Oxford: Clarendon Press.
- Garland D (1996) The limits of the sovereign state: Strategies of crime control in contemporary society. *British Journal of Criminology* 36(4): 445–471.
- Garland D (1997) Probation and the reconfiguration of crime control. In: Burnett R (ed.) *The Probation Service: Responding to Change*. Proceedings of the Probation Studies Unit First Colloquium. Oxford: University of Oxford Centre for Criminological Research.
- Garland D (2001) *The Culture of Control: Crime and Social Order in Contemporary Society*. Oxford: Oxford University Press.
- Gillespie A (2007) Barring teachers: The new vetting arrangements. *Education and the Law* 19(1): 1–18.
- Greer C (2003) *Sex Crime and the Media: Sex Offending and the Press in a Divided Society*. Devon: Willan Publishing.
- Grimshaw R (2004) Whose justice? Principal drivers of criminal justice policy, their implications for stakeholders, and some foundations for critical policy departures. Paper presented at the British Society of Criminology Conference, London, July.
- Grubin DH and Thornton D (1994) A national programme for the assessment and treatment of sex offenders in the English prison system. *Criminal Justice and Behaviour* 21(1): 55–71.
- Hacking I (1999) *The Social Construction of What?*. Cambridge, MA: Harvard University Press.
- Hanson RK and Thornton D (2000) Improving risk assessments for sex offenders: A comparison of three actuarial scales. *Law and Human Behaviour* 24(1): 119–136.
- Harrison K (2007) The high risk sex offender in England and Wales: Is chemical castration an option? *The Howard Journal* 46(1): 16–31.
- Hawkins K (1989) ‘FATCATS’ and prosecution in a regulatory agency: A footnote on the social construction of risk. *Law and Policy* 11(3): 370–391.
- Hebenton B and Seddon T (2009) From dangerousness to precaution: Managing sexual and violent offenders in an insecure and uncertain age. *British Journal of Criminology* 49(3): 343–362.
- HM Inspectorate of Probation (1998) *Exercising Constant Vigilance: The Role of the Probation Service in Protecting the Public from Sex Offenders*. London: Home Office.
- Home Office (1996) *Protecting the Public: The Government’s Strategy on Crime in England and Wales*. Cm 3190. London: HMSO.
- Innes M (2004) Signal crimes and signal disorders: Notes on deviance as communicative action. *British Journal of Sociology* 55(3): 335–355.
- Jackson S and Scott S (1999) Risk anxiety and the social construction of childhood. In: Lupton D (ed.) *Risk and Sociocultural Theory: New Directions and Perspectives*. Cambridge: Cambridge University Press.
- Jenkins P (1992) *Intimate Enemies*. Hawthorne, NY: de Gruyter.
- Jenkins P (2001) How Europe discovered its sex offender crisis. In: Best J (ed.) *How Claims Spread: Cross-National Diffusion of Social Problems*. New York: De Gruyter.



- Johnstone G (2000) Penal policy making: Elitist, populist or participatory? *Punishment and Society* 2(2): 161–180.
- Jones T and Newburn T (2005) Pressure groups, politics and comparative penal reform: Sex offender registration and notification in the USA and UK. Paper presented at the annual meeting of the American Society of Criminology, Toronto, November.
- Jones T and Newburn T (2006) Three strikes and you're out: Exploring symbol and substance in American and British crime control politics. *British Journal of Criminology* 46(5): 781–802.
- Karstedt S (2002) Emotions and criminal justice. *Theoretical Criminology* 6(3): 299–318.
- Kempe H (1978) Sexual abuse: Another hidden pediatric problem. *Pediatrics* 62: 382–389.
- Kemshall H (2002) Effective probation practice: An example of 'advanced liberal' responsabilisation? *Howard Journal of Criminal Justice* 41(1): 41–58.
- Kemshall H and Maguire M (2001) Public protection, partnership and risk penalty: The multi-agency risk management of sexual and violent offenders. *Punishment and Society* 3(2): 237–264.
- Kemshall H and Wood J (2007) Beyond public protection: An examination of community protection and public health approaches to high-risk offenders. *Criminology and Criminal Justice* 7(3): 203–222.
- Kleinhans MM (2002) Criminal justice approaches to paedophilic sex offenders. *Social & Legal Studies* 11(2): 233–255.
- Knopp FH (1984) *Retraining Adult Sex Offenders: Methods and Models*. Syracuse, NY: Safer Safety Press.
- Lacey N (2004) Criminalisation as regulation. In: Parker C, Scott C, Lacey N and Braithwaite J (eds) *Regulating Law*. Oxford: Oxford University Press.
- Laws DR, Hudson SM and Ward T (eds) (2000) *Remaking Relapse Prevention with Sex Offenders: A Sourcebook*. Los Angeles, CA and London: SAGE.
- Lieb R (2000) Social policy and sexual offenders: Contrasting United States and European policies. *European Journal on Criminal Policy and Research* 8(4): 423–440.
- Loader I and Walker N (2007) *Civilizing Security*. Cambridge: Cambridge University Press.
- Maguire M, Kemshall H, Noakes L, Wincup E and Sharpe K (2001) *Risk Management of Sexual and Violent Offenders: The Work of Public Protection Panels*. Police Research Series Paper No. 13. London: Home Office.
- Majone G (1994) The rise of the regulatory state in Western Europe. *West European Politics* 17: 77–101.
- Mann RE and Thornton D (1998) The evolution of a multisite sexual offender treatment program. In: Marshall WL, Fernandez YM, Hudson SM and Ward T (eds) *Sourcebook of Treatment Programs for Sexual Offenders*. New York and London: Plenum Press.
- Manning PK (1989) Managing risk: Managing uncertainty in the British Nuclear Installations Inspectorate. *Law and Policy* 11(3): 350–369.

- Marshall WL (1999) Current status of North American assessment and treatment programs for sexual offenders. *Journal of Interpersonal Violence* 14(3): 221–239.
- Marshall WL, Laws DR and Barbaree HE (eds) (1990) *Handbook of Sexual Assault: Issues, Theories and Treatment of the Offender*. New York: Plenum.
- Marshall WL, Fernandez YM, Hudson SM and Ward T (eds) (1998) *Sourcebook of Treatment Programs for Sexual Offenders*. New York and London: Plenum Press.
- Martinson R (1974) What works? Questions and answers about prison reform. *The Public Interest* 35: 22–54.
- Maruna S and King A (2009) Once a criminal always a criminal? ‘Redeemability’ and the psychology of punitive public attitudes. *European Journal on Criminal Policy and Research* 15(1–2): 7–14.
- McAlinden A (2006) Managing risk: From regulation to the reintegration of sexual offenders. *Criminology & Criminal Justice* 6(2): 197–218.
- McAlinden A (2007) *The Shaming of Sexual Offenders: Risk, Retribution and Reintegration*. Oxford: Hart Publishing.
- McAlinden A (2010) Vetting sexual offenders: State over-extension, the punishment deficit and the failure to manage risk. *Social & Legal Studies* 19(1): 25–48.
- McAra L (2007) Welfarism in crisis: Crime control and penal practice in post-devolution Scotland. In: Keating M (ed.) *Scottish Social Democracy: Progressive Ideas for Public Policy*. Brussels: Peter Lang.
- McGuire J (1995) *What Works: Reducing Re-offending? Guidelines from Research and Practice*. Chichester: John Wiley.
- Melossi D (2001) The cultural embeddedness of social control: Reflections on the comparison of Italian and North-American cultures concerning punishment. *Punishment and Society* 5(4): 403–424.
- Mezey G, Vizard E, Hawkes C and Austin R (1991) A community treatment programme for convicted child sex offenders: A preliminary report. *Journal of Forensic Psychiatry* 2(1): 11–25.
- Moran M (2003) *The British Regulatory State: High Modernism and Hyper Innovation*. Oxford: Oxford University Press.
- Muncie J (2005) The globalization of crime control – the case of youth and juvenile justice: Neo-liberalism, policy convergence and international conventions. *Theoretical Criminology* 9(1): 35–64.
- Nelken D (2000) *Contrasting Criminal Justice: Getting From Here to There*. Aldershot: Dartmouth.
- Nelken D (2007) Comparing criminal justice. In: Maguire M, Morgan R and Reiner R (eds) *The Oxford Handbook of Criminology*. Oxford: Oxford University Press.
- Newburn T (2002) Atlantic crossings: ‘Policy transfer’ and crime control in the USA and Britain. *Punishment and Society* 4(2): 165–194.
- Oberwittler D and Höfer S (2005) Crime and justice in Germany: An analysis of recent trends and research. *European Journal of Criminology* 2(4): 465–508.
- O’Malley P (1999) Volatile punishments: Contemporary penalty and the neo-liberal government. *Theoretical Criminology* 3(2): 175–196.

- O'Malley P (2004) *Risk, Uncertainty and Government*. London: The Glasshouse Press.
- Parton N (1985) *The Politics of Child Abuse*. Basingstoke: Macmillan.
- Parton N, Thorpe D and Wattam C (1997) *Child Protection: Risk and the Moral Order*. Hampshire: Macmillan.
- Petrunik M and Deutschmann L (2008) The exclusion–inclusion spectrum in state and community response to sex offenders in Anglo-American and European jurisdictions. *International Journal of Offender Therapy and Comparative Criminology* 52(5): 499–519.
- Pfäfflin F (1999) Issues, incidence, and treatment of sexual offenders in Germany. *Journal of Interpersonal Violence* 14(4): 372–395.
- Pfeiffer C, Windizio M and Kleinham M (2005) Media use and its impacts on crime perception, sentencing attitudes and crime policy. *European Journal of Criminology* 2(3): 259–285.
- Pratt J (2000a) The return of the wheelbarrow men; or the arrival of postmodern penalty. *British Journal of Criminology* 40(1): 127–145.
- Pratt J (2000b) Emotive and ostentatious punishment: Its decline and resurgence in modern society. *Punishment and Society* 2(4): 417–440.
- Pratt J (2008a) Scandinavian exceptionalism in an era of penal excess: Part I: The nature and roots of Scandinavian exceptionalism. *British Journal of Criminology* 48(2): 127–145.
- Pratt J (2008b) 'Scandinavian exceptionalism in an era of penal excess: Part 2: Does Scandinavian exceptionalism have a future? *British Journal of Criminology* 48(3): 275–292.
- Ramage S (2007) Data protection and criminal justice: Some recent developments in EU and domestic law. *Criminal Lawyer* 169: 7–8.
- Reichel P (2008) *Comparative Criminal Justice Systems: A Topical Approach*. Englewood Cliffs, NJ: Prentice Hall.
- Reiss A (1989) The institutionalisation of risk. *Law and Policy* 11: 392–402.
- Roberts JV, Stalans L, Indermaur D and Hough M (2003) *Penal Populism and Public Opinion: Findings from Five Countries*. New York: Oxford University Press.
- Roberts P (2002) On method: The ascent of comparative criminal justice. *Oxford Journal of Legal Studies* 22: 517–538.
- Robinson G (1999) Risk management and rehabilitation in the Probation Service: Collision and collusion. *Howard Journal* 38(4): 421–433.
- Rose N (2000) Government and control. *British Journal of Criminology* 40(2): 321–339.
- Ruggiero V, Ryan M and Sim J (eds) (1993) *Western European Penal Systems*. London: SAGE.
- Salter AC (1988) *Treating Child Sexual Offenders and Victims: A Practical Guide*. London, New Delhi and Los Angeles, CA: SAGE.
- Sansone J (1976) *Sentencing, Corrections and Special Treatment Services in Sweden, Denmark and the Netherlands*. Hartford, CT: Hartford Institute of Criminal and Social Justice.
- Sarat A (1997) Vengeance, victims and the identities of law. *Social & Legal Studies* 6(2): 163–189.

- Savelsberg JJ (1999) Knowledge, domination and criminal punishment revisited. *Punishment and Society* 1(1): 45–70.
- Seddon T (2008) Dangerous liaisons: Personality disorder and the politics of risk. *Punishment and Society* 10(3): 301–317.
- Shearing C (2000) Punishment and the changing face of governance. *Punishment and Society* 3(2): 203–220.
- Sherman L, Gottfredson D, MacKenzie D, Eck J, Reuter P and Bushway S (1997) Preventing crime: What works, what doesn't, what's promising: A report to the United States Congress. Available at: [www.ncjrs.org](http://www.ncjrs.org).
- Shute S (2004) The Sexual Offences Act 2003: (4) New Civil Preventative Orders – Sexual Offences Prevention Orders; Foreign Travel Orders; Risk of Sexual Harm Orders. *Criminal Law Review* 417–440.
- Simon J (1998) Managing the monstrous: Sex offenders and the new penology. *Psychology, Public Policy and Law* 4(1–2): 452–467.
- Soothill K and Francis B (1998) Poisoned chalice or just deserts? (The Sex Offenders Act 1997). *Journal of Forensic Psychiatry* 9(2): 281–293.
- Sparks R (2001) Degrees of estrangement: The cultural theory of risk and comparative penology. *Theoretical Criminology* 5(2): 159–176.
- Tardieu A (1878) *Étude Médico-Légale sur Les Attentats au Moeurs*. Paris and London: Ballière et Fils.
- Tavuchis N (1991) *Mea Culpa: A Sociology of Apology and Reconciliation*. Stanford, CA: Stanford University Press.
- Thomas T (2003) Sex offender community notification: Experiences from America. *Howard Journal of Criminal Justice* 42(3): 217–228.
- Thornton D (2002) Constructing and testing a framework for dynamic risk assessment. *Sexual Abuse: A Journal of Research and Treatment* 14(2): 139–153.
- Tonry M (2001) Penal developments in English-speaking countries. In: Tonry M (ed.) *Penal Reform in Overcrowded Times*. Oxford: Oxford University Press.
- Tonry M (ed.) (2003) *Confronting Crime: Crime Control Policy under New Labour*. Cullompton: Willan Publishing.
- Valier C (2005) *Memorial Laws: Victims, Law and Justice*. London: Cavendish.
- Van Dijk J, Manchin R, Van Kesteren J, Nevala S and Hideg G (2005) The burden of crime in the EU. Research report: A comparative analysis of the European Crime and Safety Survey (EU ICS).
- Van Swaaningen R (1998) *Critical Criminology in Europe*. London: SAGE.
- Wacquant L (2001) The penalisation of poverty and neo-liberalism. *European Journal on Criminal Policy and Research* 9(4): 401–412.
- Wardle C (2007) Monsters and angels: Visual press coverage of child murders in the USA and the UK, 1930–2000. *Journalism* 8(3): 263–284.
- Weihe HJW (1988) Sexual offenses in Norway and the need for treatment programs for sexual offenders. *International Journal of Offender Therapy and Comparative Criminology* 32(2): 135–141.
- Weiss P (1999) Assessment and treatment of sex offenders in the Czech Republic and in Eastern Europe. *Journal of Interpersonal Violence* 14(4): 411–421.

- Zedner L (1995) In pursuit of the vernacular: Comparing law and order discourse in Britain and Germany. *Social & Legal Studies* 4(4): 517–534.
- Zedner L (2002) Victims. In: Maguire M, Morgan R and Reiner R (eds) *The Oxford Handbook of Criminology*. Oxford: Oxford University Press.
- Zedner L (2009) Fixing the future? The pre-emptive turn in criminal justice. In: McSherry B, Norrie A and Bronitt S (eds) *Regulating Deviance: The Redirection of Criminalisation and the Futures of Criminal Law*. Oxford: Hart Publishing.

**Anne-Marie McAlinden** is Lecturer in the School of Law at Queen's University Belfast. She has published widely in the area of sexual offending and her book, *The Shaming of Sexual Offenders: Risk, Retribution and Reintegration* (Oxford: Hart Publishing, 2007) was awarded the *British Society of Criminology Book Prize* 2008.