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## Discuss critically how the criminal justice system has tackled drugs in England

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### บทคัดย่อ

ในบทความนี้ได้วิเคราะห์ถึงระบบยุติธรรมทางอาญาของประเทศอังกฤษในเรื่องการจัดการยาเสพติดเพื่อที่จะได้ทราบว่าจะระบบหรือวิธีการที่ใช้ในประเทศอังกฤษนั้นมันเหมาะสมหรือไม่สามารถแก้ปัญหาได้ มากน้อยเพียงใดทั้งนี้ ในบทความจึงได้มีการวิเคราะห์ถึงประวัติของปัญหา ยาเสพติดและกฎหมายที่ใช้ควบคุมยาเสพติดในระหว่างปีพ.ศ. 1900 ถึง 1979 เพื่อที่จะได้เห็นรากของปัญหา รวมทั้งการใช้ยาเสพติด และ อุปสรรค ในการใช้กฎหมายควบคุมยาเสพติดต่าง ๆ เมื่อได้มีการมองถึงปัญหาหรือพื้นฐานของปัญหาแล้ว การที่ได้กล่าวถึงการนำข้อกฎหมายที่ได้บัญญัติขึ้น มาปรับใช้กับปัญหาที่มีอยู่นั้นจะทำให้มองภาพของการ จัดการปัญหายาเสพติดได้ชัดเจนขึ้น เพราะภาคทฤษฎีกับภาคปฏิบัติก็ไม่ได้สอดคล้องกันเสมอไป และประเด็นร้อนที่มีความสำคัญจนทำให้เกิดการเปลี่ยนแปลงการจัดระดับความรุนแรงของยาเสพติดในช่วงปลาย ค.ศ. 2009 คือการเปลี่ยนแปลงระดับความรุนแรงของยาเสพติดชนิดหนึ่งในประเทศอังกฤษ ที่เรียกว่า กัญชาให้เป็นระดับความรุนแรงที่สูงขึ้นซึ่งในเรื่องนี้มีประเด็นที่น่าจับตามองเนื่องจากมีการเมืองเข้ามาแทรกแซงอย่างชัดเจน การที่ได้มีการจัดระดับความรุนแรงนี้เป็นเหตุโดยตรง ที่ทำให้มีการปะทะกัน ระหว่างนักการเมืองกับนักวิทยาศาสตร์ชื่อดังขึ้นหัวข้อที่ได้กล่าวมาทั้งหมดนี้ ผู้เขียนได้ชี้ให้เห็นถึงความสำคัญ ว่าน่าจะมีการเชื่อมโยงกันและสามารถทำให้เห็นภาพของการจัดการกับปัญหายาเสพติดในประเทศอังกฤษได้ชัดเจนยิ่งขึ้น และในบทสรุปตอนท้ายของบทความผู้เขียนได้เสนอแนะวิธีการที่จะจัดการกับปัญหายาเสพติดตามแนวความคิดเห็นของผู้เขียนเอาไว้เอง

### Abstract

This essay critically discusses how the criminal justice system in England has tackled drugs. In order to answer this question, many topics have been raised in the essay. Therefore, brief background histories on the British drug problem

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and drug control legislation between 1900-1979 are first mentioned because the history would make us see the roots of the drug issues. Then the essay starts to analyze how current legislations have been applied to solve those problems, whether they are appropriate enough or not. Furthermore, one of the hottest issues in late October 2009, the reclassification of cannabis, is raised in this paper to emphasize how the criminal justice system works when politics does intervene the system. Lastly, the author suggests her own idea to improve the method to tackle the drugs.

## Introduction

On 30th October 2009 Professor David Nutt, the chair of the Government's Advisory Council on the Misuse of Drugs (ACMD), was sacked by Alan Johnson, the Home Secretary. The incident was made public with media endorsement, with Professor Nutt himself speaking on various media outlets to defend his stance. The sacking of Professor Nutt provoked various discussions about the classification of drugs<sup>\*\*</sup>; looking into whether Johnson's actions were arbitrary or not.<sup>1</sup> This was not the first drug issue to induce media hype. Drugs have been a part of our society for a long time, and have been used for thousands of years. There are many repercussions of drug usage, such as early death, health problems, and crime.<sup>2</sup>

There is long history of and many issues surrounding drugs. This essay will attempt to discuss critically on how the criminal justice system has tackled drugs since the late 19th Century. Therefore, this essay will concentrate on the history of the British drug problem and drug control legislation, drug use in Britain and drug problems in Britain, the 1971 Misuse of Drug Act and the issue on cannabis. By looking into all of these issues one will effectively evaluate how the criminal justice system has tackled drugs.

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<sup>\*\*</sup>Britain measures the harmfulness of drugs in a three-point scale. The classifications are A, B and C; A being the most harmful while C is the least.

<sup>1</sup>"Blinded by Science" *The Economist* (London 7-13 November 2009) Britain, pp. 36-38.

<sup>2</sup>P. Reuter, A. Stevens, UKPDC, *An Analysis of UK Drug Policy: A Monograph Prepared for the UK Drug Policy Commission* (London: UK Drug Policy Commission, 2007), p. 33.

### Brief background histories on the British drug problem and drug control legislation (1900-1979)

Barton believed that “the period 1900 to 1926 was the birth of the British system” (Barton, 2003, p.13). At the beginning of this era the British state was hesitating about becoming associated with the use and control of substances. Yet the Government did show a concern over poisons, the proof being the introduction of the 1906 Poisons and Pharmacy Act; an amended of the 1868 Pharmacy Act. Despite this, the amendment was no real alteration to the original act. Due to the reduction of opiate use within the general populace in the early 1890s it was the misuse of substances such as alcohol that became the main concern of Government. Yet, there were two significant reasons that made the British Government change its stance; first, there was the emergence of international consideration which compelled Britain to take action to control certain substances; and, second, there was an increase in ethical anxieties concerning the use of substances, particularly throughout the First World War. The first amelioration that Britain took was in 1907 with the Anglo-Chinese agreement to decrease shipments of opium by 10% annually up until 1916. After this Britain signed in many drug conventions. One of the most important moves by the British Government was the Dangerous Drugs Act 1920 which was a repercussion of the Treaty of Versailles 1919.<sup>3</sup>

Through the period of 1926 to 1964 drug usage had declined and had become stable because of law enforcement efforts. There were no domestic problems, but there were international problems and it was these that had repercussions on the Dangerous Drugs Act 1920. Britain had to effectuate the Act to respond to international treaties. There were three changes; first, the Dangerous Drugs Act 1925 was changed to support the Geneva Convention; second, the 1932 Dangerous Drugs Act as a support to the 1931 Limitation Convention; third, the 1964 Dangerous Drugs Act, as a support to the 1961 Single Convention.<sup>4</sup>

From 1964 to 1979, there was an increase of drug use; and as a consequence, the legislation also increased. The main cause of the escalation in drug use was in young people from the working class. This reflected a burgeoning

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<sup>3</sup>A. Barton, *Illicit Drugs* (Wiltshire: RoutledgeFalmer, 2003), pp. 13-17.

<sup>4</sup>*Ibid.*, pp. 19-20.

youth culture because substance used grew more widespread among musicians and their fans. Due to the escalation of drug use through this period, the Dangerous Drugs Act 1967 was passed and four years later the 1971 Misuse of Drugs Act (MDA) was passed.<sup>5</sup> Since the 1970s, illicit drugs have received the eminent focus of public policy from politicians and the media, and drug use has been common to those who were born in the UK within and since this period of time.<sup>6</sup>

The Advisory Council on the Misuse of Drugs (ACMD) was founded by the 1971 MDA. From this Act, substances were classified into three classes; A, B and C, with punishments sorted by how detrimental the substances were to the subject. This Act also covered doctors, who were treating patients who were understood to be addicted to drugs, to inform the Chief Medical Officer; it even further regulated the ability of GPs to prescribe substitute substances such as diamorphine and didiponone.<sup>7</sup>

In the period of 1900-1979, eventually, Britain delivered the first Dangerous Drugs Act in 1920 and followed with the Dangerous Drugs Act 1925, 1932 and 1964. Even this last three Acts did not legislate because of a domestic problem but for a response to international treaties. This was the significant change of drug problems and the origin of 1971 Misuse of Drugs Act.

The beginning of the 1980s was a turning point for Britain. Formulated to 'think the unthinkable' in almost every form of public service provision, Margaret Thatcher became the prime minister in 1979. She declared a war on drugs. There were explanations for this change. First, the continuous increase in using drugs was both domestic and international problems; therefore, this had to be controlled. Second, the expansion in the rise of heroin use, particularly intravenous use, which caused a public health concern over the transmission of HIV and AIDS. Third, the influence from dance music caused young people used recreational drugs and a number of young people had continually increased. Some academics claim that drug use has now become 'normalized' from this occurrence and has been effected by the majority of young people. Youth culture is more widely

<sup>5</sup>A. Barton, *Illicit Drugs* (Wiltshire: RoutledgeFalmer, 2003), pp. 20-22.

<sup>6</sup>P. Reuter, A. Stevens, UKPDC, *An Analysis of UK Drug Policy: A Monograph Prepared for the UK Drug Policy Commission* (London: UK Drug Policy Commission, 2007), p. 19.

<sup>7</sup>A. Barton, *Illicit Drugs* (Wiltshire: RoutledgeFalmer, 2003), p. 22.

connecting to substance use. This was the same circumstance if one looked back to the 1800s; that people used drugs without moral condemnation.<sup>8</sup>

Thatcher's Government of the 1980s introduced a new policy, called 'Tackling Drug Misuse'. After this policy, there were 'Across the Divide', 'Tackling Drugs Together' and 'Tackling Drugs to Build a Better Britain' respectively. All these policies were the amalgamation of health and justice.<sup>9</sup> Many policies were created in this period of time and these were foundation of policies in the present day, and reflect today's legislation.

In the last quarter of the twentieth century, the use of drugs have been constantly increasing according to the number of heroin users, who have risen from approximately 5,000 in 1975 to this present day to roughly 281,000 in England.<sup>10</sup> In spite of this, there have been various acts passed through Parliament, there has been a considerable criminal justice's commitment, and there have been other resources that have been implemented to try and understand and tackle drug usage.<sup>11</sup> The following source shows the development and evolution of policy regarding the criminal justice system on tackling drug usage:

**"A brief history of drug control legislation"**<sup>12</sup> (This information is from Stevens and Reuter in An Analysis of UK Drug Policy, 2007, UKPDC)

#### **Introducing legal controls**

1868 - Pharmacy Act. First regulation of poisons and dangerous substances, limiting sales to chemists.

1908 - Poisons and Pharmacy Act. Specifically included coca in regulations on sale and labelling.

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<sup>8</sup>A. Barton, *Illicit Drugs* (Wiltshire: RoutledgeFalmer, 2003), p. 23.

<sup>9</sup>Ibid.

<sup>10</sup>P. Reuter, A. Stevens, UKPDC, *An Analysis of UK Drug Policy: A Monograph Prepared for the UK Drug Policy Commission* (London: UK Drug Policy Commission, 2007), p. 7.

<sup>11</sup>P. Reuter, A. Stevens, 'Assessing UK drug policy from a crime control perspective' in *Criminology and Criminal Justice*, 8 (4), p. 462.

<sup>12</sup>P. Reuter, A. Stevens, UKPDC, *An Analysis of UK Drug Policy: A Monograph Prepared for the UK Drug Policy Commission* (London: UK Drug Policy Commission, 2007), pp. 16-17.

### Creating a national system

1916 - Defence of the Realm Act, 1914 (Regulation 40B). Restricted sales and possession of cocaine to 'authorised persons'.

1920 - Dangerous Drugs Act. Limited production, import, export, possession, sale or distribution of Opium, cocaine, morphine or heroin to licensed persons.

1925 - Dangerous Drugs Act. Introduced control of the importation of coca leaf and cannabis.

1928 - Amendment to Dangerous Drugs Act to criminalise possession of cannabis (but doctors able to prescribe any drugs as treatment for general medicine or addictions).

### Increasing control

1964 - Dangerous Drugs Act. Ratified UN 1961 Single Convention and criminalised cultivation of cannabis. Drugs (Prevention of Misuse Act) criminalised the possession of amphetamines.

1967 - Dangerous Drugs Act. Required doctors to notify Home Office of addicted patients. Prescription of Heroin and cocaine for treatment of addictions restricted.

1971 - Misuse of Drugs Act. Set up the system classifying drugs according to their perceived harmfulness. Created offence of 'intent to supply' and set harsher penalties for trafficking and supply. Established The Advisory Council on the Misuse of Drugs (ACMD).

1985 - Controlled Drugs (Penalties) Act. Increased maximum penalty for trafficking Class A drugs from 14 years to life imprisonment.

1986 - Drug Trafficking Offences Act. Created an offence of making suspects aware of an investigation. Empowered police to compel breaches of confidentiality and to search and seize material and assets."

### Integrating criminal justice and health

1991 - Criminal Justice Act. Schedule 1A6 allowed for the condition of attending drug treatment to be attached to a probation order.

1998 - Crime and Disorder Act. Create the Drug Treatment and Testing Order (DTTO).

2000 - Criminal Justice and Court Services Act. Enabled police to drug test people charged with 'trigger' offences. Created the Drug Abstinence Order, the Drug Abstinence Requirement and testing for supervised, released prisoners.

2003 - Criminal Justice Act. Enabled restrictions on bail for some arrestees ('trigger offences') who test positive for Class A drug use. Created the generic Community Order, replacing the DTTO with the Drug Rehabilitation Requirement. Anti-Social Behaviour Act. Powers to close premises used for Class A drugs supply.

2005 - Drugs Act. Introduced drug testing on arrest. Criminalised possession and sale of unprocessed philycybin mushrooms. Made it illegal to refuse a required treatment assessment. Increased penalties for dealing near schools.

2006 - Police and Justice Act. Extends the conditional cautioning scheme to provide for punitive conditions attached.”

(Reuter and Stevens, 2007)

### **Drug Use in Britain and Drug problems in Britain**

The growth of the drug problem has become quite a concern, and, due to the increase in the number of young people who take drugs (cannabis being the most widely used), there have been critical discussions about whether drug use has become normalized in the UK. In Europe, the UK has the highest number of drug users.<sup>13</sup> The criminal justice system tackles drugs by collecting evidence to identify users in Britain. It does this with the help of data collected from various statistics and surveys, that are themselves collected by different sources and institutions. Problems have occurred when surveys have been collected in schools because they have been found to miss out the heaviest users of illicit drugs - because they are usually the school truants. Not only are school truants missed, but also the homeless and prisoners because it is hard to find them. Other people who are difficult to find are dependent users of cocaine and heroin, this is because they may be at a changeable address, and/or are generally unreliable when arranging or meeting for appointments. All the above have caused problems when collecting data for assessment; yet, it still can be evaluated on the occasional use of drugs but not on the number of dependent users of expensive and addictive illicit drugs.<sup>14</sup>

Focusing on drug use of the general populace, the data from the British Crime Survey in 2005 shows that people who are at different ages have used at least one illicit drug once in their lives. The first group were people who were born between 1961 and 1971 (aged 35-44 in 2005), of which approximately 33% had used some type of drug. The second group, were people who were born between 1971 and 1975 (aged 30-34 in 2005), of which the statistics had increased

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<sup>13</sup>P. Reuter, A. Stevens, 'Assessing UK drug policy from a crime control perspective' in *Criminology and Criminal Justice*, 8 (4), pp. 462-463.

<sup>14</sup>P. Reuter, A. Stevens, UKPDC, *An Analysis of UK Drug Policy: A Monograph Prepared for the UK Drug Policy Commission* (London: UK Drug Policy Commission, 2007), p. 18

more than 45%, and the last group who were born between 1976 and 1980 (aged 25-29 in 2005) the figure was up to 50%.<sup>15</sup>

According to the information above, the vast majority of drug use is cannabis, which accounts for over 40% of the drugs used by those born since 1975. Reuter and Stevens believe that this percentage is significant as it is more than class A drugs.<sup>16</sup> Yet, with long term drug users, the figures are much less than this.<sup>17</sup>

Figures from BCS (England and Wales) in 2005-2006 demonstrates the percentage of 16-59 years old who have been using drugs for life time by age group. The age group of 20-24, 25-29 and 30-34 have been using cannabis accounting for 44%. Cannabis is the highest proportion of all illicit drugs.<sup>18</sup> Cannabis is now the class B drug,<sup>19</sup> and its usage is a considerably different in proportion when compared to class A drugs in the same age group as above, as class A drugs account for average roughly 23%.<sup>20</sup>

Other sides of drug use is reported on sexes and ethnic groups. 40.6% of men have used drugs at least once, compared to women 29.4%. This data covers all age groups, different drugs, and lifetime use and the past year of use.<sup>21</sup>

Between 2001-2002 the BSC had investigated the correlation between ethnicity of 16-59 year-olds and their drug usage. The investigation covered different nationalities, as well as ethnicity. The report concluded that 25% of respondents were of mixed ethnic background; which was the highest proportion of the report. People who were from Asian backgrounds seemed to have lower rate of

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<sup>15</sup>P. Reuter, A. Stevens, UKPDC, *An Analysis of UK Drug Policy: A Monograph Prepared for the UK Drug Policy Commission* (London: UK Drug Policy Commission, 2007), p. 19.

<sup>16</sup>Ibid.

<sup>17</sup>Ibid., p. 20.

<sup>18</sup>P. Reuter, A. Stevens, UKPDC, *An Analysis of UK Drug Policy: A Monograph Prepared for the UK Drug Policy Commission* (London: UK Drug Policy Commission, 2007),

<sup>19</sup>Home Office, *Class A, B, C Drugs* [Online], available URL: <http://www.homeoffice.gov.uk/drugs/drugs-law/Class-a-b-c/>, 2010 (January, 9).

<sup>20</sup>P. Reuter, A. Stevens, UKPDC, *An Analysis of UK Drug Policy: A Monograph Prepared for the UK Drug Policy Commission* (London: UK Drug Policy Commission, 2007), p. 20.

<sup>21</sup>Ibid.

5%. White and black ethnic backgrounds had the same rates of 12%.<sup>22</sup> This information briefly covers drug usage in the general population to illustrate the proportion of drug use in different ages, sexes, and nationalities.

What also has to be considered are the number of seizures in comparison to the level of drug usage. Part of the criminal justice systems procedure in tackling drugs is by collecting data on seizures, statistics from three main agencies; first, HM Customs and Excise; second, the National Crime Squad; and third, from the various police forces across Britain. HM Customs and Excise and the National Crime Squad deal with seizures and arrests which normally mirror the classification of the drugs that have been seized and the point of their importation; yet, it is the 'general police' seizures that provide more information about the distribution of drugs at a home produced level. All three of these agencies cope with offences that infringe the 1971 Misuse of Drugs Act and the Drug Trafficking Act 1994. Addicts who first attend one of treatment agencies, or re-attends after a break of six months or more, will be recorded in a 'starting agency episode' in the Drug Trafficking Act 1994.<sup>23</sup> All statistics that are collected by the three main agencies are available at the Home Office and are published in the Drug Seizure and Offender Statistics series.<sup>24</sup>

The Home Office data in 1999 on cannabis and heroin seizures illustrates that the most regularly seized was the class A drug heroin, with 15,100 seizures and netting 2,342 kilograms; cocaine was the next most seized class A drug with 8,000 seizures netting 2,970 kilograms; seizures of LSD were 465, which provided 67,400 doses; 6,400 seizures netting 6,323,500 doses on ecstasy type drugs were seized; there were 102,000 cannabis seizures providing 68.9 tonnes, class B drugs; amphetamines were seized at 13,200 seizures grossing 2,017 kilograms.<sup>25</sup>

When one compares this data to the medical data in March 2000, approximately 31,800 addicts were reported to medical data. Also from the last six months this number had increased at 8%, and 51% were in their twenties and 14% were

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<sup>22</sup>P. Reuter, A. Stevens, UKPDC, *An Analysis of UK Drug Policy: A Monograph Prepared for the UK Drug Policy Commission* (London: UK Drug Policy Commission, 2007), p. 21.

<sup>23</sup>P. Bean, eds., *Drugs and Crime* (Devon: Willan Publishing, 2008), p. 2.

<sup>24</sup>A. Barton, *Illicit Drugs* (Wiltshire: RoutledgeFalmer, 2003), p. 35.

<sup>25</sup>Ibid., pp. 35-36.

under the age of twenty. The proportion between men and women were 3:1. The main drug use was still heroin, cannabis, methadone, cocaine and amphetamines respectively. Therefore there is a big difference in the number of drug users who get medical treatment and are reported to the Home Office. This is because, the medical data between 1971-2001 shows that the people who are reported as addicts remain the same, yet at the same time the number of seizures have increased. Therefore, Barton stated that the medical arms of British system cope with less people than the law and order arms.<sup>26</sup>

The statistics make sense because when people are arrested because of drugs, it does not mean that they are addicts. Consequently, it is impossible that the medical arms will deal with more people than the law and order arms. At the same time, the comparison of those proved that the number of seizures do not relate to the number of drug users.

The statistics from death certificates in 2004 provide evidence to demonstrate that the top three drugs which cause the most death are heroin and morphine, methadone and all benzodiazepines respectively. What has to be noted is that cannabis does not cause any death. The total number of people whose cause of death was caused by drugs in 2004 was over 1,700.<sup>27</sup>

The Government set a target to reduce drug-related death by 20% but Home Office was incapable of achieving it. The Home Affairs Select Committee suggested that a public health target should be included in the drug strategy, in spite of this the Home Office was not able to achieve a reduction to drug-related death, and they still insisted that they should not include a public health target.<sup>28</sup>

The largest concern pertaining drug-related health is infectious disease regarding injecting drug users, a problem which leads to the HIV issue. In 1986, occurrence of HIV among injecting drug users reached the peak and AIDS occurrence reached the peak in the mid of 1990s. By the end of 2005, the number of HIV cases that were attributed to injecting drugs reduced by 5.6% in all of the UK.

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<sup>26</sup>A. Barton, *Illicit Drugs* (Wiltshire: RoutledgeFalmer, 2003), pp. 34, 37.

<sup>27</sup>P. Reuter, A. Stevens, UKPDC, *An Analysis of UK Drug Policy: A Monograph Prepared for the UK Drug Policy Commission* (London: UK Drug Policy Commission, 2007), p. 35.

<sup>28</sup>Ibid., p. 36.

However, the UN recommended the percentage of HIV occurrence should be below 5% to be able to control it easily.<sup>29</sup>

This topic in this essay, Drug Use in Britain and Drug problems in Britain, provides a brief wide picture about drug use and problems in order to lead to understand current legislation.

### **The 1971 Misuse of Drugs Act**

The first tangible legislation was in 1920, which was the Dangerous Drugs Act 1920 and it was not for a long time after this that there were three other acts that were released in order to respond to international treaties, which were the 1925, 1932 and 1964 Dangerous Drugs Acts. The three main drug control acts in the 1960s, the Drugs (Prevention of Misuse) Act 1964, and the Dangerous Drugs Acts in 1965 and 1967, were superseded by the 1971 Misuse of Drugs Act (MDA).<sup>30</sup> The MDA was released in 1971, the current one<sup>31</sup>, which has been on the statute book for almost four decades.<sup>32</sup>

If one considers the MDA briefly one can see further evidence of how the criminal justice system has proceeded to tackle drugs; in section 1 one can see the founding of the Advisory Council on the Misuse of Drugs (ACMD) which was appointed the charge of guidance to the Government regarding the prevention of the misuse of drugs, and dealing with the social problems that link to drug misuse. In section 2 drugs are classified into classes in order to allow for easier control. Sections 3 to 6 distinguished the kinds of activities that become criminal offences under the MDA. Import and export, possession, supply, possession with aim to supply and the cultivation of the cannabis plant are considered as offences. The occupier and manager can become offences by allowing people to smoke opium and cannabis in their premises under Sections 8 and 9. In section 9 also particularly

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<sup>29</sup>P. Reuter, A. Stevens, UKPDC, *An Analysis of UK Drug Policy: A Monograph Prepared for the UK Drug Policy Commission* (London: UK Drug Policy Commission, 2007), p. 37.

<sup>30</sup>A. Barton, *Illicit Drugs* (Wiltshire: RoutledgeFalmer, 2003), p. 47.

<sup>31</sup>Ibid., p. 49.

<sup>32</sup>P. Reuter, A. Stevens, UKPDC, *An Analysis of UK Drug Policy: A Monograph Prepared for the UK Drug Policy Commission* (London: UK Drug Policy Commission, 2007), p. 49.

focuses on the distribution of materials or articles that can be managed in the illegal operation of drugs.<sup>33</sup>

It is necessary that medical profession, including dentists, pharmacists and scientific researchers would be able to carry on independently with their work. Therefore, section 7 gives them rights to order illicit drugs under the control of the MDA. Sections 10 and 11 authorise the Secretary of State Administration to create rules reigning over the majority of angles of drug management and operation, covering storing, labelling, transport, record keeping, destruction and prescribing. In section 11 specifically focuses on providing direction to the occupier of any buildings illicit drugs are to be stored. Sections 12 to 16 give the Secretary of State power to abolish the rights from medical professions to prescribe, administer or produce controlled drugs.<sup>34</sup>

The outline of police authorities for stopping and searching, the searching of premises and arrest are in sections 23 and 24. In England and Wales the police authorities have been replaced by the 1984 Police and Criminal Evidence Act, but still operate in Scotland. The highest penalties are in sections 25 and 26 for people who involve in Class A drugs and these sections are under the Crime (Sentences) Act 1997. Section 28 provides a right for defendants to prove their innocent that they are ignorance of harmful drugs. Yet, in the practical way for defendants is so hard to prove<sup>35</sup> as Runciman (1999) stated that “in reality, as a defence, section 28 is a high hurdle for defendant to overcome”.<sup>36</sup>

There are couple places that have to be noticed; first, the authorities of police for stop and search in sections 23 and 24 have been superseded by the 1984 Police and Criminal Evidence Act only in England and Wales; second, sections 25 and 26 about maximum penalties that are controlled under the Crime (Sentences) Act 1997.

Drug problems are one of the most concerned issues for policing and criminal justice and this created legislation such as the 1986 Drug Trafficking

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<sup>33</sup>A. Barton, *Illicit Drugs* (Wiltshire: RoutledgeFalmer, 2003), p. 50.

<sup>34</sup>Ibid.

<sup>35</sup>Ibid.

<sup>36</sup>Ibid.

Offences Act to authorise the law powers for dealing with seizure and forfeiture. In this decade, the concentration of enforcement was all about big traffickers and weighty drug confiscations<sup>37</sup> and also aimed to attain the targets of decreasing demand for drugs by arresting, penalising and sentencing drug users, suppliers and producers (covering asset seizures); disarranging the performance of wholesale and retail drug markets; confiscating drugs at the point to importation; and, elimination of harvests in countries of manufacture.<sup>38</sup> A general reaction to discern the drug enforcement is called decriminalisation or legalisation of drugs.<sup>39</sup>

The focus on enforcement mentioned above demonstrate how the criminal justice system tackle drugs regarding; drug importation, distribution and the crimes webs linked to both of these utilising an assortment of means are tackled by enforcement agencies. The aims can be interruption and disruption of supplying illegal drugs to the market<sup>40</sup>, arresting and punishing drug users, dealers and traffickers<sup>41</sup>, and predominantly elimination of crops in countries of manufacture.<sup>42</sup>

The best way to control drugs is by going to the very root of their production; therefore, the places that cultivate crops, frontiers that drugs go through, or the organisation of trafficking, are the enforcement targets.<sup>43</sup> For example, in the UK in 2006 90% of heroin supply derives from poppies cultivated in Afghanistan.<sup>44</sup> Even when the government spends a lot of money on eradicating crops, when supply is reduced (because of eradication) it will not be long before the Government will have to tackle importation from a new crop source. Consequently, the

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<sup>37</sup>K. Murji, *Policing Drugs* (Aldershot: Ashgate Publishing, 1998), p. 11.

<sup>38</sup>P. Reuter, A. Stevens, UKPDC, *An Analysis of UK Drug Policy: A Monograph Prepared for the UK Drug Policy Commission* (London: UK Drug Policy Commission, 2007), p. 57.

<sup>39</sup>K. Murji, *Policing Drugs* (Aldershot: Ashgate Publishing, 1998), p. 11.

<sup>40</sup>Ibid.

<sup>41</sup>P. Reuter, A. Stevens, 'Assessing UK drug policy from a crime control perspective' in *Criminology and Criminal Justice*, 8 (4), p. 469.

<sup>42</sup>P. Reuter, A. Stevens, UKPDC, *An Analysis of UK Drug Policy: A Monograph Prepared for the UK Drug Policy Commission* (London: UK Drug Policy Commission, 2007), p. 57.

<sup>43</sup>K. Murji, *Policing Drugs* (Aldershot: Ashgate Publishing, 1998), p. 12.

<sup>44</sup>P. Reuter, A. Stevens, UKPDC, *An Analysis of UK Drug Policy: A Monograph Prepared for the UK Drug Policy Commission* (London: UK Drug Policy Commission, 2007), p. 65.

crop programs are not worth law enforcement focusing on because it does not effect, nor change, the influx of drugs. The evidence suggests that instead of targeting crops, law enforcement should concentrate on traffickers and dealers.<sup>45</sup> This may cost more in the short term but the result should be appreciated more about reductions in harms and costs.<sup>46</sup>

Interdiction is mainly the method of stopping drugs at the border. There are two problems with interdiction. Drug traffickers are skilled at finding the best way in taking the least risk in transporting or importing drugs, while enforcement officers are under pressure to find advances on specific ways, quantities or approaches of importation. The interdiction therefore directly effects street prices of drugs, because when there is a shortage in the market, the retail prices level up to meet the demand, because the wholesalers are under arrested and all drugs have been seized. From this price problem one can evaluate enforcement efforts. Therefore this presents a dilemma; the interdiction of drugs may stop them entering into the market, but at the same time the laws of supply-and-demand push up the price of drugs. It is these higher prices which lead drug addicts to commit more crime in order to find money to buy drugs.<sup>47</sup>

To arrest and imprison the chief persons who are at the top of drug trafficking organisations, often dubbed 'Mr Big', is another method of law enforcement. When evaluating the practicality of this method one may conclude that it is not a very successful way of law enforcement. This is because Criminal organisations have a limited ability to resist the apprehension of one, or several persons due to ascendancy of 'Mr Big'. This enforcement tactic makes circumstances more complicated and is therefore not recommended.<sup>48</sup>

The attempt to decrease drug related crime through disruption of the supply of illegal drugs to the market, and arresting and punishing drug users, dealers and traffickers by law enforcement has yielded little proof that all of these

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<sup>45</sup>K. Murji, *Policing Drugs* (Aldershot: Ashgate Publishing, 1998), p. 13-14 and P. Reuter, A. Stevens, UKPDC, *An Analysis of UK Drug Policy: A Monograph Prepared for the UK Drug Policy Commission* (London: UK Drug Policy Commission, 2007), p. 67.

<sup>46</sup>Ibid.

<sup>47</sup>K. Murji, *Policing Drugs* (Aldershot: Ashgate Publishing, 1998), pp. 14-15.

<sup>48</sup>Ibid., pp. 16-17.

approaches are successful. Past results of these methods caused the retail price of cocaine to increase by fifteen per cent. Also, when police have arrested many drug dealers and seized large quantities of drugs, this does not show that drug related crime has been reduced.<sup>49</sup>

### The current issue on cannabis

The government reclassified cannabis from class a C drug to a class B drug in January 2009.<sup>50</sup> Before its reclassification in 2004 to class C, cannabis used to be a class B drug.<sup>51</sup>

In October 30th 2009, Alan Johnson, the Home Secretary and MP for Hull, sacked Professor David Nutt<sup>52</sup> who chaired the Government's Advisory Council on the Misuse of Drugs (ACMD). There were many criticisms of Alan Johnson regarding this issue on whether or not his actions were arbitrary. Chris Huhne, Liberal Democrat Shadow Home Secretary, stated that since 1978 every government has respected the advice from ACMD because it had contained the experts in this field.<sup>53</sup> Section 1 of the 1971 MDA founded the AMDA, which was given the charge of guidance of the Government on the prevention of the misuse of drugs, and dealing with the social problems that link to drug misuse.<sup>54</sup> Huhne disagrees to what Johnson did because he said:<sup>55</sup>

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<sup>49</sup>P. Reuter, A. Stevens, 'Assessing UK drug policy from a crime control perspective' in *Criminology and Criminal Justice*, 8 (4), p. 469.

<sup>50</sup>Home Office, 'Cannabis' [Online], available URL: <http://www.homeoffice.gov.uk/drugs/drugs-law/cannabis-reclassification/index.html>, 2010 (January, 13).

<sup>51</sup>Escobales, 'Police unequivocally support reclassification of cannabis' *Guardian* (London 5 February 2008) [Online], available URL: <http://www.guardian.co.uk/politics/2008/feb/05/uk.ukcrime>, 2010 (January, 9).

<sup>52</sup>'Blinded by Science' *The Economist* (London 7-13 November 2009) Britain, pp. 36-38.

<sup>53</sup>Chris Huhne: Ignoring drug experts sets a dangerous precedent *Yorkshire Post* (Yorkshire 2 November 2009) [Online], available URL: <http://www.yorkshirepost.co.uk/opinion/Chris-Huhne-Ignoring-drug-experts.5788364.jp>, 2010 (January, 9).

<sup>54</sup>A. Barton, *Illicit Drugs* (Wiltshire: RoutledgeFalmer, 2003), p. 50.

<sup>55</sup>Chris Huhne: Ignoring drug experts sets a dangerous precedent *Yorkshire Post* (Yorkshire 2 November 2009) [Online], available URL: <http://www.yorkshirepost.co.uk/opinion/Chris-Huhne-Ignoring-drug-experts.5788364.jp>, 2010 (January, 9).

“Politicians should know their limit that is why we delegate so many detailed decisions, like those over drug classification, to expert groups and committees (including now such hitherto highly sensitive decisions as the right level of interest rates, set by the Monetary Policy Committee of the Bank of England).”<sup>56</sup>

(Yorkshire Post, 2009)

Professor Nutt believes that cannabis should remain in class C due to all the reports from ACMD. Cannabis is the only drug that has ever been downgraded from class B to C in the entire drug history of the Act. The reason why the Government wanted to reconsider cannabis is because of a ‘skunk scare’ - skunk being a kind of cannabis which is a lot more dangerous than normal cannabis. In the third ACMD report on cannabis, there are some conclusions; cannabis is a harmful drug and spread to young people; there is a requirement for a concerted public health response to reduce the use dramatically; there is a causal connection between psychotic illness and cannabis use; and the harm caused by cannabis is not as bad as class B drugs; therefore, it should stay in class C drugs. The scientific analysis on schizophrenia caused by cannabis depicts that people who smoke cannabis are roughly 2.6 times more likely to have a psychotic-like experience than non-smokers. Compared with people who smoke tobacco likely to have lung cancer approximately 20 times than if you don’t smoke. From the University of Keele research on schizophrenia shows that there are no proof that there is a relationship between cannabis use and schizophrenia, and one of the most considerable reasons that government decided to upgrade cannabis to class B drugs is cannabis causing schizophrenia. Before the government upgraded cannabis, they gave out the survey to the public in order to know what the public response would be. The majority wanted cannabis remain in class C, a considerable number wanted it legalised and a small number wanted cannabis upgraded to class B. Not only this, but the people who wanted cannabis to be upgraded did not want there to be an increase in the penalty for the use or possession of the drug. Conse-

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<sup>56</sup>Chris Huhne: Ignoring drug experts sets a dangerous precedent’ Yorkshire Post (Yorkshire 2 November 2009) [Online], available URL: <http://www.yorkshirepost.co.uk/opinion/Chris-Huhne-Ignoring-drug-experts.5788364.jp>, 2010 (January, 9).

quently, Nutt analysed that the Government (i.e. Johnson) just wanted to scare people into avoiding trying cannabis.<sup>57</sup>

## Conclusion

Despite the best efforts of the criminal justice system nothing seems to have fundamentally changed drug usage, and therefore drug ‘problems’. To start with, law enforcement is empowered by the 1971 MDA and other legislation for controlling drugs production, which includes interdiction, seizure, arrest, and punishment. But when all these powers are used in a practical way, each one of these approaches faces their own problems. When the government demolish crops, seize drugs and stop drug traffickers at the borders, the problems are a raise in the price of drugs due to the reduction in supply, which causes more drug-related crime because drug addicts have to find money to buy more expensive drugs. The arrest of drug dealers also contribute to the already burdened and overflowing prison system. The criminal justice system has to accept these failures. One of the worst failures of the system can be seen by the upgrading of cannabis in January 2009, which was a total disregard to Professor Nutt’s advice and therefore the advice of the MDA. This is a clear sign of disrespect to the work of expert groups and committees, and demonstrates how arbitrarily central Government and the criminal justice system is on drugs.

## Recommendation

Perhaps a move for the legalisation of drugs should be considered; putting them into Government control. Following this, the problems of illegal drugs would no longer exist. It has to be accepted that the actions of the CJS have failed to tackle drugs. When drugs are legalised, the first action that should be taken is to give away all the drugs that have been seized for free to drug addicts who come to register. This will then give a good indication of the number of drug addicts and where they are located. By giving the seized drugs away for free it will allow for

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<sup>57</sup>D. Nutt, *Estimating drug harms: a risky business?*, Eve Saville Lecture 2009 (London: Centre for Crime and Justice Studies Kings College, 2009).

a period of time where drug barons and drug dealers are unable to operate in the market (as their business will no longer be lucrative), and consequently the Government can take a hold of the market and embark on a policy of taxation. This will prevent the wasting of billions of pounds every year for interdiction. While the Government gives the seized drugs away for free, it will be able to control the quantities of drugs, and educate and persuade drug addicts to take treatment. The money raised from these actions could be spent on human resources to help deal with the drug addicts. Also drug addicts do not have to live on the dark side of society any more. According to John Stuart Mills philosophy on the harm principle;

“The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used to be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinion of others, to do so would be wise, or even right... The only part of the conduct of anyone, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.”<sup>58</sup>

(John Stuart Mill, 1859)

If someone wants to consume drugs it is their choice. Do we have a right to prohibit them in doing so if they want to? All we can do is to educate people as best as we can to make them aware of drugs. One of characteristics that make human beings different from other animals is their ability to develop. We should not waste this ability.

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<sup>58</sup>J.S. Mill, ‘On Liberty’, in J. Gray, ed., *On liberty and other essays* (Oxford: Oxford University Press, 1998), pp. 13-14.

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# Solitary Confinement and Contemporary Forms of State Punishment

*Pattarawan Thongyai\**

## บทคัดย่อ

บทความเรื่อง การแยกขังเดี่ยวกับรูปแบบการลงโทษในปัจจุบัน (Solitary Confinement and Contemporary Forms of State Punishment) ผู้เขียนได้เปรียบเทียบข้อเหมือนและข้อแตกต่างของรูปแบบและปรัชญาการลงโทษจำคุกโดยการแยกขังเดี่ยว (Solitary Confinement) ในอดีตกับรูปแบบการลงโทษผู้กระทำความผิดในปัจจุบัน ได้แก่การควบคุมตัวไว้ในเรือนจำความมั่นคงสูงสุด (Supermaximum Security Prison) หรือที่เรียกกันโดยย่อว่า Supermax โดยมีเนื้อหาใจความสำคัญคือการลงโทษผู้กระทำความผิดเป็นปรากฏการณ์ทางสังคมอย่างหนึ่ง ซึ่งจะมีความแตกต่างกันออกไปตามยุคสมัย และค่านิยมของคนในสังคม ณ ขณะเวลานั้น ๆ ทั้งนี้ ปัจจัยทางด้านสังคมและการเมืองตลอดจนแนวโน้มนโยบายของรัฐเกี่ยวกับการป้องกันและปราบปรามอาชญากรรม ยังส่งผลประการสำคัญต่อการลงโทษ ดังจะเห็นได้จากการลงโทษแยกขังเดี่ยวในอดีต มีวัตถุประสงค์ในการแก้ไขผู้กระทำความผิดโดยเปิดโอกาสให้ผู้กระทำความผิดได้ใช้เวลาอยู่กับตัวเองเพื่อคิดทบทวนและเกิดความสำนึกต่อความผิดที่ตนเองได้กระทำลง ในขณะที่การแยกควบคุมผู้กระทำความผิดไว้ในเรือนจำ Supermax สะท้อนให้เห็นถึงนโยบายของรัฐและการบังคับใช้กฎหมายที่เข้มงวดมุ่งเน้นการป้องกันและปราบปรามอาชญากรรม (Tough Law and Order Policies) การลงโทษผู้กระทำความผิดจึงอยู่ภายใต้หลักการลงโทษเพื่อการข่มขู่ยับยั้งและป้องกันสังคมจากอาชญากรรมมากกว่าการแก้ไขฟื้นฟูผู้กระทำความผิดเพื่อการกลับคืนสู่สังคม

## Abstract

In the article Solitary Confinement and Contemporary Forms of State punishment, the author will discuss similarities and differences between the philosophies and forms of solitary confinement in the past and the contemporary forms of state punishment, namely Supermaximum Security Prison or the so-called

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“Supermax”. This article mainly contends that the philosophies and forms of punishment have been variably shaped by certain societies in distinct ways according to social values and crime-control priorities at that moment. Moreover, changes in social and political factors along with criminal justice system and crime-control policies have played influential roles in shaping the concepts of punishment. As can be seen from the traditional form of solitary confinement, prisoners would be kept apart at all time in separate cells. Such isolation contributed to morally beneficial in that it can provide prisoners the opportunity for reflection and self-examination. Meanwhile Supermax reflects the contemporary idea of tough law and order policies in that punishment imposed on offenders tends to be more punitive regardless of reformative ideal.

*‘In the silence of their cells, superintended by an authority too systematic to be evaded, too rational to be resist, prisoners would surrender to the lash of remorse’ (Offray de Mettrie, 1750).*

From a sociological perspective, punishment can be regarded as a system of power and control exercised by the state upon its citizens<sup>1</sup>. Like crime, punishment is socially-constructed and therefore varies across time as well as cultural and political contexts<sup>2</sup>. In considering state punishment in relation to social dimension, the shifts in the nature of citizenship alongside the nature of social inclusion and exclusion in contemporary societies suggest that penal policy and practice are more likely to respond to the needs and demands of a different dimension of audiences<sup>3</sup>. Concerning offenders as audience, the current penal regimes are shaped of both exclusionary as well as inclusionary modes of punishment. At the core of the exclusionary approach is the idea to reject the offender as a member of the

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<sup>1</sup>David Garland, **Punishment and Modern Society: a Study in Social Theory** (Oxford [England]: Clarendon Press; New York: Oxford University Press, 1991), p. 132.

<sup>2</sup>Tim Newburn, **Criminology** (Cullompton: Willan, 2007), p. 15.

<sup>3</sup>Sarah Armstrong, and Lesley McAra, “Audience, Borders, Architecture: the Contours of Control.” in **Perspectives on Punishment: the Contours of Control, Scottish Criminology Conference, (2003: Edinburgh, Scotland)**, S. Armstrong and L. McAra, 1st ed. (Oxford; New York: Oxford University Press, 2006), p. 7.

society, by shutting them out of the mainstream society. Such exclusive forms include: the supermax prison; curfew and electronic monitoring<sup>4</sup>. From exclusionary framework, an offender is considered as someone who needed to be controlled and managed, unable to reintegrate into the mainstream, and tend to fail into social and political marginalization. However the inclusionary dynamic regards the offender as an insider and seeks to maintain them within the community for the sake of social reintegration<sup>5</sup>. A good exemplar of this mode of punishment contributes to community-based penalties.

This article will discuss the concept of solitary confinement arose during the period of penal reform movement from 1750-1820 with the contemporary forms of state punishment focusing on exclusionary approach of imprisonment. Prior to the discussion, it is worth considering the historical development of the separation regime alongside its interpretation and explanation.

‘In the silence of their cells, superintened by an authority... prisoners would surrender to the lash of remorse’<sup>6</sup>. This conception towards imprisonment was noted by Offray de la Mettrie in supporting John Howard’s theory of penitentiary in the late eighteenth century when there was an emergent use of prison as a form of state punishment in its own right<sup>7</sup>. However, prior to 1775, it was used sparingly as a secondary punishment by local justices<sup>8</sup>. It was not until the mid to late nineteenth century that the prison had become the dominant method of punishment in England and most Western countries displacing the use of transportation and public execution. Such a move has been explained by two main groups

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<sup>4</sup>Sarah Armstrong, and Lesley McAra, “Audience, Borders, Architecture: the Contours of Control.” in **Perspectives on Punishment: the Contours of Control, Scottish Criminology Conference, (2003: Edinburgh, Scotland)**, S. Armstrong and L. McAra, 1st ed. (Oxford; New York: Oxford University Press, 2006), p. 11.

<sup>5</sup>Michael Cavadino, and James Dignan, **Penal Systems: a Comparative Approach**. 1st ed, (London: Routledge, 2006), p. 13.

<sup>6</sup>Michael Ignatieff, **A Just Measure of Pain: the Penitentiary in the Industrial Revolution, 1750-1850** (Harmondsworth: Penguin, 1989), p. 78.

<sup>7</sup>Yvonne Jewkes, and Helen Johnston, “Introduction: prisons in context.” in **Prison Readings: a Critical Introduction to Prisons and Imprisonment**, Y. Jewkes and H. Johnston, 1 ed. (Cullompton; Portland: Willan, 2006), p. 2.

<sup>8</sup>Tim Newburn, **Crime and Criminal Justice Policy**. 2nd ed. (Harlow: Longman, 2003), p. 9.

of historians from different paradigms namely Whig historians and Revisionist historians.

With regard to Whig tradition, development and impact of prisons has been described in terms of humanitarian movement and benevolent innovations which replaced barbaric forms of corporal punishment and death penalty<sup>9</sup>. The key figure of this traditional account is John Howard, a penal reformer, who played an influential role in prison transformation and the creation of new regimes of punishment towards the building of the penitentiary. At the heart of Howard's crusade is the idea to create well-regulated prisons, properly designed for the sake of prisoner reformation. Regarding his inspections towards prisons in his masterpiece, *The State of the Prison*, Howard hold that hard work, religion, and solitude were capable of changing prisoners into a law-abiding citizen<sup>10</sup>. Solitude and silence favorably engendered reflection and tended to lead prisoners to repentance. From a pragmatic perspective, the separation, particularly, at night also generated security as well as non-contamination among criminals in the sense that it would prevent escapes or make them more difficult to do so<sup>11</sup>. Denial criminal incorrigibility, Howard further argued that men were rational as well as capable of shame. They could therefore be reformed by awakening their consciousness of sin<sup>12</sup>. In this regard, religion was a driving force behind such transformation. More importantly, He considered gentle discipline to be more effective than severity in accordance with his favorite motto: 'It is doing little to restrain the bad by punishment unless you render them good by discipline'<sup>13</sup>.

Another advocate of this proposition is Jonas Hanway who regarded separated confinement coupled with proper profitable labor and a spare diet as the

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<sup>9</sup>Yvonne Jewkes, and Helen Johnston, "Part A the Emergence of the Modern Prison." in **Prison Readings: a Critical Introduction to Prisons and Imprisonment**, Y. Jewkes and H. Johnston, 1 ed. (Cullompton; Portland: Willan, 2006), p. 4.

<sup>10</sup>Ibid., p. 13.

<sup>11</sup>Sean McConville, **A History of English Prison Administration, Vol.1, 1750-1877** (London: Routledge & Kegan Paul, 1981), p. 96.

<sup>12</sup>Michael Ignatieff, **A Just Measure of Pain: the Penitentiary in the Industrial Revolution, 1750-1850** (Harmondsworth: Penguin, 1989), p. 67, 71.

<sup>13</sup>Ibid., p. 53, 74.

most humane and effective ways of bringing offenders to a right sense of their conditions<sup>14</sup>. In the similar vein, John Brewster stated that ‘To be abstracted from a world where he has endeavored to confound the order of society, to be buried in a solitude where he has no companion but reflection, no counselor but thought, the offender will find the severest punishment he can received,...Left alone and feeling alive to the string of remorse, he revolves on his present situation and connects it with that train of events which has banish him from society and placed him there’. As well as other advocates of Howard’s campaign on penal reform, Offray de la Mettrie in the same way noted that by leaving prisoners alone with their consciences, prisoners who made others suffer would in turn become their own tormentors and aware of their wrongdoings. Above all, the key rationale behind the penitentiary campaign initiated by John Howard is the idea to restore the legitimacy of legal system afflicted by the severities and arbitrariness of the Bloody code.

Howard’s contribution highly influenced the Penitentiary Act in 1779 in that the prisons were to have punitive as well as reformatory function. Due to the emphasis on hard labor, the prison was conceived as a positive way to reform prisoners<sup>15</sup>. In the light of the opening of Pentonville penitentiary in 1842 with its regime of silence and separation, the culmination of a history of attempts to establish a completely rational and reformatory mode of punishment had pervasively been witnessed. The origin of this innovation can notably be traced back to theory of penitentiary discipline initially developed by John Howard<sup>16</sup>. In brief, under the solitary confinement, prisoners would be kept apart at all time housed in separate cells. Isolation contributed to morally beneficial in that it helped prevent contamination among criminals and provide an opportunity for reflection and self-examination. Besides, it allowed the task of security and control to be easier<sup>17</sup>.

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<sup>14</sup>Sean McConville, *A History of English Prison Administration, Vol.1, 1750-1877* (London: Routledge & Kegan Paul, 1981), p. 97.

<sup>15</sup>John Muncie, “Prison Histories: Reform, Repression and Rehabilitation.” in *Controlling Crime*, E. McLaughlin and J. Muncie, 2nd ed. (London: Sage, in association with the Open University, 2001), p. 167.

<sup>16</sup>Ibid., p. 166.

<sup>17</sup>Tim Newburn, *Crime and Criminal Justice Policy*, 2nd ed. (Harlow: Longman, 2003), p. 9.

In sharp contrast with their Whig counterparts, the revisionist historians, such as Foucault, Ignatieff, Melossi, have regarded these changes as the ability of prisons as one of the state disciplinary institutions to control and regulate populations for the interests of the wealthy and governing class<sup>18</sup>. Regarding Foucault's work 'Discipline and Punish', the main focus is upon technologies of penal power in association with penal process. For Foucault, punishment is a system of power and control exercised by the state on a population<sup>19</sup>. In considering the penal transformations during the periods 1750-1820 throughout Western societies, Foucault noted that such changes in penal system resulted in the shift of the target of punishment from the bodies to the souls and the minds of the offenders<sup>20</sup>. In this regard, the modern form of punishment which Foucault called 'discipline' basically relied on surveillance, used many gentle and therapeutic techniques to control and manage offenders at all times instead of the brutal forms of bodily punishment so as to inculcate self-control within the offenders<sup>21</sup>. Foucault's principle has had an enormous impact on the social analysis of punishment in that changing nature of punishment can reflect social change. His work coupled with the impact of Labelling theory within criminological framework has also given rise to the focusing attention on the political aspects of crime control and penal practice<sup>22</sup>.

Regarding the contemporary forms of state punishment, imprisonment undeniably tends to preoccupy media debate, public and academic attentions as well as political discourse. The reasons for this preoccupation are not possibly too difficult to discover<sup>23</sup>. It is partly because imprisonment is the mode of punishment

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<sup>18</sup>John Muncie, "Prison Histories: Reform, Repression and Rehabilitation." in **Controlling Crime**, E. McLaughlin and J. Muncie, 2nd ed. (London: Sage, in association with the Open University, 2001), p. 173.

<sup>19</sup>David Garland, **Punishment and Modern Society: a Study in Social Theory** (Oxford [England]: Clarendon Press; New York: Oxford University Press, 1991), pp. 131-133.

<sup>20</sup>Ibid., p. 136.

<sup>21</sup>Tim Newburn, **Criminology** (Cullompton: Willan, 2007), pp. 324, 533.

<sup>22</sup>Sarah Armstrong and Lesley McAra, "Audience, Borders, Architecture: the Contours of Control." in **Perspectives on Punishment: the Contours of Control, Scottish Criminology Conference, (2003: Edinburgh, Scotland)**, S. Armstrong and L. McAra, 1st ed. (Oxford; New York: Oxford University Press, 2006), p. 2.

<sup>23</sup>Richard Sparks, "Prison Punishment and Penalty." In **Controlling crime**, E. McLaughlin and J. Muncie, 2nd ed. (London: Sage, in association with the Open University, 2001), p. 205.

which involves the deprivation of a set of fundamental values regarded as a dominant ideology within most liberal societies<sup>24</sup>. According to the study of Gresham M.Sykes (1979) on the impact of life in maximum security prison, there are five forms of deprivations arise in the prison, namely the deprivations of liberty, good and services, heterosexual relationships, autonomy and security<sup>25</sup>. Apart from this perception, the common sense basis upon the equation between punishment and imprisonment is so strong that for some people the community punishment is in other respect to release the offender. Therefore, it can be seen that the analysis and justification of punishment are particularly applied to imprisonment<sup>26</sup>.

In discussing the concept of solitary confinement with the current exclusionary forms of punishment, imprisonment in particular, this essay seeks to contend that prisons of the contemporary world have mostly mirrored their nineteenth century counterparts' models influenced by Howard's idea of penitentiary including long hours of solitary lockdown, sensory deprivation, and so on. Pratt holds that a different aspect between these two models of prison is that prison authorities in the advanced world have a more range of technological sophistication to manage their incarcerative control<sup>27</sup>. A remarkable exemplar of this proposition is arguably the increasing use of the new penal form, the American super maximum security prison, hereinafter referred to as "supermax"<sup>28</sup>.

In the light of the exponential increase in the prison population experienced by the American during the last quarter of the 20th century, one of the explicit features resulting from this change is a proliferation of the supermax institutions throughout the states. In general, these facilities aim at dealing with "the worst of

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<sup>24</sup>Richard Sparks, "Prison Punishment and Penalty." *In Controlling crime*, E. McLaughlin and J. Muncie, 2nd ed. (London: Sage, in association with the Open University, 2001), p. 206.

<sup>25</sup>Tim Newburn, *Criminology* (Cullompton: Willan, 2007), p. 702.

<sup>26</sup>Sparks Richard, *op. cit.*, p. 205.

<sup>27</sup>Yvonne Jewkes and Helen Johnston, "Introduction: prisons in context." *in Prison Readings: a Critical Introduction to Prisons and Imprisonment*, Y. Jewkes and H. Johnston, 1 ed. (Cullompton; Portland: Willan, 2006), p. 7.

<sup>28</sup>Craig Haney, "Mental Health Issues in Long-Term Solitary and "Supermax" Confinement." *In Crime and Delinquency*, 49 (1) [Online], available URL: <http://cad.sagepub.com>, 2008 (April, 16).

the worst” inmates who are considered to be dangerous or disruptive with the belief that these types of prisoners are prone to generate prison disorder. However there are still lacks of independent research in this arena<sup>29</sup>. Concerning the definition of supermax, The National Institute of Corrections’ survey in 1997 describes supermax as ‘facilities or units designed for inmates who have been disruptive or violent while incarcerated and whose behavior can be controlled by only separation, restricted movement, and limited direct access to staff and other inmates...’. (Another survey of the National Institute of Corrections defines supermax as ‘a highly restrictive unit or facility that isolate inmates from general prison population and from each other due to grievous crimes... the threat of escape from high custody facilities, or inciting or threatening to incite disturbances in a correctional institution’<sup>30</sup>.

These board definitions in return imply the purpose of supermax coupled with types of prisoners confined in this facility. Essentially, supermax is used to maintain internal security by isolating those considered to be the worst of the worst within the unit. In this regard, supermax offers the correctional administrators the tool to manage unruly incarcerated within the system<sup>31</sup>. For instance, in Tamms Illinois Supermax, there are two types of prisoners contained. One of which is disciplinary detainee who is transferred to Tamms while receiving a disciplinary punishment for prison offense in another prison<sup>32</sup>. In other respects, supermax unit is also used on the purpose of housing those receiving death sentences and residing on death rows for example, Arizona’s Supermaximum Security Housing Unit.

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<sup>29</sup>Roy, D, King, “The Rise and Rise of Supermax: an American Solution in Search of a Problem” In **Prison Readings: a Critical Introduction to Prisons and Imprisonment**, Y. Jewkes and H. Johnston, 1 ed. (Cullompton; Portland: Willan, 2006), p. 84.

<sup>30</sup>Leena Kurki, and Norval Morris. “The Purposes, Practices, and Problems of Supermax Prisons.” in **Crime and Criminal Justice**, [Online], available URL: <http://www.jrtor.org>, 2008 (April, 16).

<sup>31</sup>Mona Lynch, “Supermax Meets Death Row: Legal Struggles around the New Punitiveness in the US.” in *The New Punitiveness: Trends, Theories, Perspectives*, J. Pratt, 1ed. (Cullompton, Devon: Willan Pub, 2005), p. 68.

<sup>32</sup>Kurki Leena and Morris Norval, op. cit., p. 394.

In terms of conditions of confinement in supermax facilities, King (1999) establishes that prisoners housed in these units are routinely subjected to lock up for approximately 23 hours per day in isolated windowless cells which allow very little view of the outside. Moreover, not only do supermax inmates tend to experience severe restriction on possession, they are also denied access to meaningful activities. In this regard, social interaction is nearly made nonexistent<sup>33</sup>. In the same way, Kurki and Morris consider that supermax prisons basically have at least four main features<sup>34</sup>. The first characteristic concerns confinement which tend to be long-term, indefinite and, probably for the rest of the inmate's life. Such confinement is measured on the year basis. Secondly, the prison authorities have a wide discretion on the matters of administrative admission as well as prisoner transfer criteria and procedure. Thirdly, supermax prisoners are housed by almost complete isolation and deprivation of environmental stimuli. The design of supermax is on the purpose of limiting correctional staff to interact with the inmates and direct access to other inmates. For example, the architecture of exercise yards typically referred to as "dog runs" prohibit any view outside the units. Lastly, supermax prisoners don't have access to vocational or educational programs or activities.

Despite the proliferation of supermax custody in the United States, there has been relatively little interest in this penal form in the European countries, except for a temporary possibility to develop one or two supermax unit in Britain. Having considered this trend, there are two key explanations. This is probably because of the strength and efficacy of organizations such as The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment<sup>35</sup>. More importantly, the problems of prison disorder in the view of

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<sup>33</sup>Mona Lynch, "Supermax Meets Death Row: Legal Struggles around the New Punitiveness in the US." in **The New Punitiveness: Trends, Theories, Perspectives**, J. Pratt, 1ed. (Cullompton, Devon: Willan Pub, 2005), p. 68.

<sup>34</sup>Leena Kurkii and Norval Morris. "The Purposes, Practices, and Problems of Supermax Prisons." in **Crime and Criminal Justice** [Online], available URL: <http://www.jrtor.org>, 2008 (16 April 16), pp. 388-390.

<sup>35</sup>Roy, D, King, "The Rise and Rise of Supermax: an American Solution in Search of a Problem" in **Prison Readings: a Critical Introduction to Prisons and Imprisonment**, Y. Jewkes and H. Johnston, 1 ed. (Cullompton; Portland: Willan, 2006), pp. 85-86.

European countries are not resulted from prisoners themselves. Rather, such disturbance and violence are products of the prison system in general. Lord Justice Woolf's report on the 1990 prison riots concerning supermaxes in the United States suggested that improvement of prison policy, fair and respectful treatment towards prisoners, access to information on prison management can be regarded as key rationales to reduce the risk of disturbance<sup>36</sup>.

However in assessing the origin of this contemporarily solitary unit, Haney points out that there are two important factors within modern American corrections that help account for the spread of supermaxes<sup>37</sup>. The first significant factor is the dramatic increase in the incarceration rate which started in the mid 1970s and kept growing into the early years of the 21st century. Such increase resulted in the unprecedented overcrowding crisis within the prison system. The other key factor is the collapse in the faith of rehabilitative ideology which had guided the American penal policy for much of the twentieth century. This change in prison strategy generated a new ideology based on the idea that imprisonment was aimed at punishing offenders. In response to the pressure resulting from the overcrowding crisis and unheard of level of idleness, correctional staff turned to harsher mechanisms in dealing with such conditions within the system with hope to subside pressure of institutional control. It was in this context that there was a creation of supermax facilities to cope with such problems<sup>38</sup>.

As mentioned earlier, supermax prison has reflected the model of traditional solitary confinement in the early nineteenth century. However to compare supermax with the traditional model, there are five critical dimensions needed to be taken into consideration; goals and purposes of confinement, the penal philosophies behind, attitude towards prisoners, conditions of confinement, and the authoritative control.

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<sup>36</sup>Leena Kurkii and Norval Morris. "The Purposes, Practices, and Problems of Supermax Prisons." in *Crime and Criminal Justice* [Online], available URL: <http://www.jrtor.org>, 2008 (16 April 16), p. 415- 416.

<sup>37</sup>Craig Haney, "Mental Health Issues in Long-Term Solitary and "Supermax" Confinement." In *Crime and Delinquency*, 49(1) [Online], available URL: <http://cad.sagepub.com>, 2008 (April, 16), p. 127.

<sup>38</sup>Ibid., p. 128.

To begin with the goals and purposes of isolation, supermax custody seeks to maintain safety and security within the system. Its primarily purpose is to isolate the most disruptive and dangerous from one another and from the corrupted authority so as to generate double incapacitation. More precisely, not only do supermaxes separate inmates from the public, it helps separate the worst of them from other prisoners and the staff as well. Apart from incapacitative purpo, supermax also creates general deterrence and reduces disruptive behavior of prisoners in other units<sup>39</sup>. However, the ultimate goal and purpose traditional concept of solitude are to reform the offenders with the belief that isolation can offer prisoner opportunity for self examination resulting in repentance. However, such conventional practice also aims at preventing escape as well as contamination among prisoners.

In terms of philosophies of punishment, Cavadino and Dignan define them as ‘ideas about what might morally justify practice of punishment’<sup>40</sup>. Such philosophies also establish the aims which a morally justified penal practice should follow. In addition to incapacitation and deterrence, the penal philosophy which underlines the justification of supermax has been highly influenced by the concept of rational choice actor or justice model. Central to this principle, Lynch argues that ‘offenders have chosen their fate by exercising their free will in choosing to commit crime, thus the pains of punishment they must endure as a consequence are by their own doing’<sup>41</sup>. In contrast with the contemporary form, the old way of separation employed the reforming philosophy which seeks to reduce crime through moral messages regarding the wrongfulness of the criminal conducts<sup>42</sup>.

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<sup>39</sup>Leena Kurki and Norval Morris, “The Purposes, Practices, and Problems of Supermax Prisons.” In **Crime and Criminal Justice** [Online], available URL: <http://www.jrtor.org>, 2008 (16 April 16), p. 391.

<sup>40</sup>Michael Cavadino and James Dignan, **Penal Systems: a Comparative Approach**. 1st ed. (London: Routledge, 2006), p. xii.

<sup>41</sup>Mona Lynch, “Supermax Meets Death Row: Legal Struggles around the New Punitiveness in the US.” In **The New Punitiveness: Trends, Theories, Perspectives**, J. Pratt, 1ed. (Cullompton, Devon: Willan Pub, 2005).

<sup>42</sup>Cavadino Michael and Dignan James, op.cit. p. xii.

In considering the rhetoric about prisoners per se, those housed in the supermax facility are considered to be the worst of the worst in the sense that they are less likely to make adjustment to ordinary prison conditions<sup>43</sup>. Conversely, from the view of prison reformers such as John Howard, prisoners were described as rational and capable of shame as ordinary men. Therefore, they can be transformed into law-abiding citizens.

With regard to the conditions of confinement, supermax prisoners incur almost complete separation and deprivation of sensory stimuli without access to vocational programs and work opportunities. Under the age-old practice of solitary confinement, however, hard work is considered to be an important part of reformative mode of punishment.

Concerning the control, Haney notes that unlike traditional form of isolation, 'supermax prisoners are often monitored by camera and converse through intercoms rather than through direct contact with correctional officers<sup>44</sup>. With the use of this sophisticated technology, prisoners tend to experience relatively complete and dehumanized levels of separation and behavioral control in comparison with the conventional practice.

From these analytical comparisons between the traditional way of solitary confinement and supermax facilities, it can be concluded that supermax differs from its traditional counterpart in important respects despite its greatest similarity. Apart from the advanced technological transformation, harsher crime control and punishment regimes of the American can be regarded as a key explanation of such differences. In addition to overcrowding crisis and decline in the faith of rehabilitation, there are three primarily factors contributing to this "punitive turn"<sup>45</sup>

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<sup>43</sup>Leena Kurki and Norval Morris, "The Purposes, Practices, and Problems of Supermax Prisons." *In Crime and Criminal Justice*, [Online]. available URL: <http://www.jrtor.org>, 2008 (16 April 16), p. 391.

<sup>44</sup>Craig Haney, "Mental Health Issues in Long-Term Solitary and "Supermax" Confinement." *In Crime and Delinquency*, 49(1) [Online], available URL: <http://cad.sagepub.com>, 2008 (April, 16), p. 126.

<sup>45</sup>Mona Lynch, "Supermax Meets Death Row: Legal Struggles around the New Punitiveness in the US." *in The New Punitiveness: Trends, Theories, Perspectives*, J. Pratt, 1ed. (Cullompton, Devon: Willan Pub, 2005), p. 66.

towards this toughness on punishment; the advent of risk society, a politicization of crime and control policy, and the hegemonic of neo-liberal economy.

Risk can be regarded as one of the emergent narratives resulting from the changing themes of governance coupled with global tension. Risk narrative plays an important role in shaping the political discourse, institutional practices, social interaction as well as contemporary penal practices. On one dimension, risk discourse can generate a desire to exclude leading to the idea of “the outsider”, “the stranger”, and “the dangerous group”<sup>46</sup>. Hollway and Jefferson note that ‘probably the two most significant strangers are the criminal and the racial’<sup>47</sup>. Beck, in his work, *The Risk Society*, contends that risks and hazards are the outcomes of scientific and industrial development, pervasive in late modernity. Due to the fear of crime and risk victimization, people tend to seek for order or control offered by the state<sup>48</sup>. One of the implications of the risk society discourse is public protection. To protect public is at heart of the wholly crime control system. In this respect, prison functions as incapacitation rather than rehabilitation so as to stop offending to occur.<sup>49</sup>

Regarding the motif of social control, there have been shifted concerns from causes of crime towards the management and administration of crime problems. More precisely, there is the emergence of risk management strategy or what is termed by Feeley and Simon as “new penology” within the criminal justice arena. At the heart of this strategy are risk-oriented and assessment.<sup>50</sup> Concerning problem of crime, the actuarial calculation of risk focuses on harm minimization

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<sup>46</sup>Sarah Armstrong, and Lesley McAra, “Audience, Borders, Architecture: the Contours of Control.” In *Perspectives on Punishment: the Contours of Control, Scottish Criminology Conference, (2003: Edinburgh, Scotland)*, S. Armstrong and L. McAra, 1st ed. (Oxford; New York: Oxford University Press, 2006), pp. 4, 27.

<sup>47</sup>Wendy Hollway and Tony Jefferson, “The Risk Society in an Age of Anxiety: Situating Fear of Crime.” in *Criminological perspectives: essential readings*, E. McLaughlin and J. Muncie, 2nd ed. (London: Sage, 2003).

<sup>48</sup>Ibid.

<sup>49</sup>Tim Newburn, *Criminology* (Cullompton: Willan, 2007), p. 331.

<sup>50</sup>Ibid., p. 534.

rather than justice.<sup>51</sup> In this respect, such regimes are consistent with neo-liberal economy practice resulting in penal policies which are ‘dominated by rational choice models, the ratcheting-up of penalties...’<sup>52</sup> Politicians use such retributive form of justice as a legitimate source to call for or justify harsh political decision<sup>53</sup>. Therefore, the emergence of risk society in late modernity can be considered as an underlined cause of punitive policies.

At present, crime and criminal justice are at the core of political agenda. Regarding crime and control policy, the general trend in recent years has moved towards punitive alongside exclusionary approach under tough law and order political discourse. According to Beckett’s thesis, the “democracy-at-work”, increase in public fear of crime puts crime on the political agenda. This, in turn, gives rise to the demand for punitive punishments for offenders as well as pressure on the elected politicians in that they have to do something so as to subside the heightened fears<sup>54</sup>. In this regard, supermax is considered by some people to be a political symbol of toughness. More precisely, politicians use supermax as another symbol to confirm the public their commitment in accordance with tough on crime policies.<sup>55</sup> Thus, the exploitation of law and order ideology by the politicians can be attributed to punitive crime control and punishment policies<sup>56</sup>.

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<sup>51</sup>Jock Young. “The Exclusive Society: Social Exclusion, Crime and Difference in Late Modernity.” in **Criminological perspectives: essential readings**, E. McLaughlin and J. Muncie, 2nd ed. (London: Sage, 2003), p. 561.

<sup>52</sup>Tim Newburn, **Criminology** (Cullompton: Willan, 2007), p. 535.

<sup>53</sup>Ibid., p. 331.

<sup>54</sup>Tim Newburn, **Criminology** (Cullompton: Willan, 2007), 537 and Richard Sparks, “Prison Punishment and Penalty.” In *Controlling crime*, E. McLaughlin and J. Muncie, 2nd ed. (London: Sage, in association with the Open University, 2001), p. 230.

<sup>55</sup>Craig Haney, “Mental Health Issues in Long-Term Solitary and “Supermax” Confinement.” In **Crime and Delinquency**, 49(1) [Online], available URL: <http://cad.sagepub.com>, 2008 (April, 16), p. 129 and Leena Kurki and Norval Morris, “The Purposes, Practices, and Problems of Supermax Prisons.” in **Crime and Criminal Justice**, [Online], available URL: <http://www.jrtor.org>, 2008 (April, 16), p. 390.

<sup>56</sup>Robert Reiner, **Law and Order: an Honest Citizen’s Guide to Crime and Control**. (Cambridge: Polity, 2007), p. 139.

The increasing dominance of neo-liberalism since 1970s can be regarded as one of the driving forces of harsher penal policies and practices<sup>57</sup>. It has been commonly understood as an economic practice and theory based on the principle of free market capitalism<sup>58</sup>. The United States is regarded as the archetypal neo-liberalism<sup>59</sup>. Despite economic efficiency promoted by neo-liberal practice, it is important, however, to note that this economic policy engenders ethical harms, particularly, culture of egoism or egoistic individualism. This culture generates more sense of responsibility towards oneself but less concern towards others. In applying this conception within the neo-liberal American society, economic failure is perceived as individual fault rather than the responsibilities of the society. In the same way, criminal liability is regarded as the responsibility of the individual offender. From this perspective, punitive law and order is likely to be increasingly used. Cavadino and Dignan state that ‘And as neo-liberal societies have become even more neo-liberal in recent decades, so have they become more punitive’<sup>60</sup>.

In conclusion, from this comparative discussion of the forms of state punishment, the philosophies and forms of punishment have been variably shaped by certain societies in distinct ways according to social values and crime-control priorities at that moment<sup>61</sup>. Having considered the contemporary supermax prison, many fundamental conditions, particularly, architectural designs of prisons have similarly remained. However, significant factors underlying behind their differences are changes in social, political, and economic practices in the late modernity coupled with technological advancement. With the emergence of risk narrative, tough law and order politics and the dominance of neo-liberal economy, punishment imposed on offenders tends to be more punitive regardless of reformative

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<sup>57</sup>Robert Reiner, *Law and Order: an Honest Citizen’s Guide to Crime and Control*. (Cambridge: Polity, 2007), p. 1.

<sup>58</sup>Michael Cavadino, and James Dignan, *Penal Systems: a Comparative Approach*. 1st ed, (London: Routledge, 2006), p. 16.

<sup>59</sup>Ibid., p. 55.

<sup>60</sup>Michael Cavadino, and James Dignan, *Penal Systems: a Comparative Approach*. 1st ed, (London: Routledge, 2006), p. 24.

<sup>61</sup>Richard Sparks, “Prison Punishment and Penalty.” In *Controlling crime*, E. McLaughlin and J. Muncie, 2nd ed. (London: Sage, in association with the Open University, 2001), p. 203.

ideal. Therefore the discussion towards state punishment tends to be no longer talked of in the singular basis. Rather, wider knowledge and ideologies seem to be taken into consideration in the arenas of penal practices in relation to economic and political spheres which undeniably play influential roles in the contemporary era<sup>62</sup>.

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<sup>62</sup>Richard Sparks, "Prison Punishment and Penalty." In **Controlling crime**, E. McLaughlin and J. Muncie, 2nd ed. (London: Sage, in association with the Open University, 2001), p. 208.

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