Simon Pemberton

Deaths in Police Custody: The 'acceptable' consequences of a 'law and order' society?[1]

Summary

This article seeks to explain the acceptance of the rising numbers of police custody deaths in England and Wales over the last 20 years. It argues that these deaths are a consequence of the transformation in the U.K., from a social democratic to an increasingly neo-liberal mode of social organisation. The article links the characteristics of the authoritarian state, which emerged at this point in time, to the current profile of police custody deaths. Then, by using interview material with those who have investigated these cases, the article seeks to understand the narratives which are mobilised to legitimate these deaths as the 'acceptable' consequences of a 'law and order' society.

This paper seeks to explain the 'acceptance' of deaths in police custody in England and Wales. Moreover, it seeks to understand the legitimation of the increasing numbers of people dying in police custody be it from 'neglect' or 'brutality'. These deaths have risen from an annual average of 27 deaths in the 1970s to an average of 51 a year for the period 1981-2000 (HAC, 1982; Inquest, Personal Communication). There are a number of inconsistencies in the way statistics over time have been col-

lected; however, those available indicate that the number of deaths in police custody, over the past thirty years, have increased. This increase is despite the presence of successive 'regulatory' bodies – the Police Complaints Board, the Police Complaints Authority, and the Independent Police Complaints Commission – whose remit has included the scope to investigate cases and make policy recommendations. During this period no police officer has been successfully prosecuted for these deaths (Liberty, 2003).

The paper argues that the increasing number of deaths need to be situated within the context of the rise of 'law and order' society and the subsequent demise of the post war consensus in the United Kingdom. Over the past thirty years, the UK has undergone a number of fundamental changes. The 1970s signalled the end of the social democratic post war consensus; that the state should intervene in the workings of the market to reduce its most damaging excesses. These values were replaced with ones of a less progressive nature. This shift has been commonly associated with the administration of Margaret Thatcher and to a lesser extent with the subsequent administrations of John Major and Tony Blair. Thatcher's brand of 'new right' conservatism sought to reassert

the 'principles' of capitalism, in particular the work ethic, which she perceived to have been undermined by the 'permissive' society of the 1960s. Hall views this as a period of *'regressive modernisation'* dominated by an ideological project which sought to educate and coerce society into a *'regressive version of modernity'* – whereby the humanising elements of the social democratic consensus were to be retrenched in the name of free market individualism (Hall, 1988a: 2). Consequently, the welfare state and other means of social intervention have been increasingly exchanged for the state's coercive apparatus as a means to deal with 'social problems'. More specifically, this apparatus has grown to manage the conflicts, which have arisen as a consequence of the growing inequalities caused by the increasingly neo-liberal mode of social organisation. The increasing gap between the 'haves' and the 'have nots' has spawned escalating fears in the 'haves' for their property and personal safety. Thus, growing numbers of society's 'have-nots' are being drawn into the criminal justice system including an increasing number of vulnerable people who hitherto would have been dealt with by the welfare state. Unsurprisingly, the vast majority of the growing numbers of deaths in police custody are attributed to suicide or inadequate medical treatment of drink or drug dependent detainees[2]. These deaths are a logical consequence of the expansion of the criminal justice system to deal with social problems and to manage social conflict.

Whilst, this shift may be ideologically underpinned by what Hall (1980) has termed authoritarian populism, these deaths do raise awkward questions of the 'law and order' society. The questions posed represent a point of crisis in the hegemony surrounding the coercive apparatus of the state. Ultimately, these deaths must be explained to prevent the unravelling of this hegemony and the loss of the apparatus' legitimacy. It will be argued that these deaths are presented as a legitimate 'trade-off' for the security of person and property that the criminal justice system offers. At a conference where an earlier version of this paper was presented, a fellow academic described such a 'trade' to me: *'what is the problem that increasing numbers of people are dying in police custody, if we are arresting more people and our society is consequently safer? Are they not acceptable consequences?'* There are clear moral objections to such a position which are alluded to throughout this article. However, the article's aim is to understand the processes that underlie such a 'common-sense' view. The focus falls upon the role that the aforementioned regulatory system has played in reproducing and reconstituting the dominant narratives that surround such deaths and ultimately serve to legitimate them.

Two caveats should be added to the central arguments of the article. First, it is not intended that a reductionist version of social democracy and the pre 1980s welfare state is presented. Throughout its history the welfare state has been equally concerned with well being as it has, as a mode of governance, with discipline. However, it is my contention that a social democratic welfare state offers interventions into social problems which are infinitely more progressive than those offered by the criminal justice system. This is due to the fact that the latter system is founded upon the principle of punishment, whilst the former is based around notions of need, inclusion and well-being. Second, it is not the concern of this paper to argue whether the police, as individuals, are becoming more violent or neglectful.

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2 A Home Office research study has demonstrated that between 1990-1997 6% of deaths in police custody were related to restraint (Leigh et al, 1998).

In many respects this is irrelevant. The argument is a structural one concerned with shifts taking place in the UK at a macro level. These shifts relate to the ways we deal with the 'have nots' in our increasingly unequal society, the exchange of the welfare state for the criminal justice system and the increasingly militarised nature of policing interventions.

The article is divided into three parts. The first, places deaths in police custody within the context of the 'law and order' society. It seeks to relate the aspects of authoritarianism to the rising numbers of police custody deaths. The second, identifies a shift in moral thinking which has accompanied the drift toward the authoritarian state. It is argued that the narratives which follow from police custody deaths are constituted upon this ideological terrain. Drawing upon interviews with the Police Complaints Authority and Senior Investigating Police officers (those responsible for investigating deaths in custody[3]) the role this system has played in reproducing or reconstituting the hegemony of 'law and order' society will be examined at this point of crisis is demonstrated[4]. The final section, seeks to summarise the main points made in the article and, where possible, to develop some of these insights.

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3 On 1 April 2004 this system was reformed and the PCA was replaced by the Independent Police Complaints Commission. The IPCC do now have the capacity to use investigators who are not police officers.

4 Interviews were conducted between July – November 2000. I interviewed four Police Complaints Authority (PCA) Members and four Senior Investigating Officers (SIO). The PCA members were chosen because of their experience of supervising investigations into deaths in police custody. Similarly, the SIO's were selected because of their experience of investigating these cases. The SIO's held the rank of Detective Superintendent or Detective Chief Inspector and were drawn from one force.

Contextualising deaths in police custody: The demise of social democracy and the emergence of the authoritarian state

The emergence of an increasingly authoritarian state has been located by a number of commentators within the demise of the post-war consensus in the UK during the 1970s (Hall et al 1978; Hall, 1980; Scraton, 1985; Hillyard and Percy-Smith, 1988). During this period successive governments attempted, within the terms of reference of social democracy, to reconcile the conflicting demands of British society (Hall et al, 1978). The 1960s had witnessed the growth in aspirations of working people and the expansion of civil and political rights for disenfranchised social groups. Against the 'permissiveness' which had come to symbolise the 1960s, an authoritarian backlash was set in motion with the collapse of corporate government, increasing industrial conflict, growing ethnic unrest in the UK's inner cities and escalating political violence in the north of Ireland (Hall et al, 1978). The election of the Heath government in 1970, on a law and order mandate, signalled a shift from a state which had existed upon sponsored consent to one which now had to be *'consolidated by the exercise of a certain kind of force'* (Hall et al, 1978: 258). However, it was Margaret Thatcher's election victory in 1979 which confirmed the state's increasing coercive interventions and signified an intensification in the 'drift into law and order society' (Hall, 1980). As Stuart Hall famously remarked of Thatcher's administration:

> *Make no mistake about it: under this regime, the market is to be Free; the people are to be Disciplined* (Hall, 1980:5).

Taking each aspect of Hall's couplet in turn. Thatcher had unstinting faith in the market for two reasons: that competition allocates resources with the greatest efficiency; and the consequential losses experienced by some will be counterbalanced by increased economic growth. Thatcher saw the role of the state to be at the edges of the market to allow it to operate with freedom. In part, Thatcher believed, this could be achieved be restoring the incentives for individuals to generate wealth through low levels of taxation. Thus, public spending on services, benefits and so on, characteristic of social democracy, would need to be curtailed. A further strategy to 'free' the market was through maintaining low rates of inflation. In the 'post' post-war consensus landscape – which in its latter stages had been blighted by high inflation – Thatcher viewed low inflation as key to providing the market with conditions to operate freely. Due to Thatcher's faith in the market, those who offered opposition to it were to be disciplined. In particular, the goal of low inflation legitimated a number of disciplinary measures: the attack upon the trade unions (blamed for the wage inflation of the late 1970s (Hutton, 1995)); and her assault upon the welfare state (to create a reserve army of low waged labour (Callincos, 2001; Novak, 1988)).

Whilst, the institutions of social democracy were steadily being eroded, Thatcher turned to the criminal justice system[5]. The criminal justice system would increasingly deal with social conflicts caused by the retrench-

ment of the welfare state, as well as the social wreckage caused by rising inequalities. As Sim (2000:169) notes of the Thatcherite legacy, this period was marked by an intensification of *'coercive, militarised and authoritarian intervention'* into the lives of those who are identified as ideologically problematic. As a result, the police grew in numbers, received wider powers, and were increasingly equipped with 'lethal' and 'non-lethal' technology (Hillyard and Percy-Smith, 1988). Moreover, the police began to draw upon the experience of the British Military in the North of Ireland, utilising surveillance and riot control techniques in the inner city uprisings and miner's strike that punctuated the 1980s (BSSRS, 1985). Meanwhile, the courts were granted greater sentencing powers and due process measures, such as the right to silence, were curtailed. The remainder of this section will reflect upon some of these shifts in order to understand their relationship to the increasing numbers of deaths in police custody. Three aspects will be considered.

i) The police are increasingly using arrest as a disciplinary tool to maintain social order. A feature of the rise of authoritarianism in the UK over the last thirty years has been the expansion of police powers (Hall, 1980; Scraton, 1985; Hillyard and Percy Smith, 1988). In particular, powers of arrest have been widened considerably – the Police and Criminal Evidence Act 1984 represents the beginning of this trend. Perhaps, unsurprisingly, the increase in these powers has led to a dramatic increase in those being arrested. As Hillyard and Gordon (1999) observe arrests in England and Wales rose from 1.27 million in 1981 to 1.96 million in 1997. However, during this period they note prosecutions decreased (ibid). Hillyard and Gordon (1999) found that the number of arrests which resulted in no further action being taken rose dramatically between 1981-1993 from 13.1% of arrests to 43%. Thus, their findings

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5 This shift is evidenced in the figures upon government expenditure, when one compares expenditure (as a share of GDP) on the welfare state to the criminal justice process. UK government figures demonstrate that expenditure has fallen for both social housing – from 1.4% of GDP in 1984/5 to 0.6% in 2001/2 – and social security – from 11.9% of GDP in 1984/5 to 11.2% in 2001/2 (Glennerster, 2003). Law and order expenditure has continued to rise from 1.9% of GDP in 1984/5 to 2.3% in 2001/2 (Glennerster, 2003).

lend support to Choongh's (1997) social dis-
ciplinary model, which makes the distinction
between the use of police powers to achieve
'criminal justice goals' and 'police goals'.
Whilst, the former involves the construction
of criminal cases, the latter focuses upon the
reproduction of social control. Thus, the in-
creasing numbers of arrests that do not lead to
prosecution are indicative of the deployment
of police powers:

> …to remind an individual or a community that they
> are under constant surveillance: the objective is to
> punish or humiliate the individual, or to commu-
> nicate police contempt for a particular community
> or family, or to demonstrate that the police have
> absolute control over those who challenge the right
> of the police to define and enforce 'normality'
> (Choongh, 1998: 626).

According to this model it would seem that
the police are involved in a process whereby
those who threaten our social order are being
increasingly processed through a 'shadow sys-
tem' of police punishment distinct from the
formal justice system (ibid). The expansion
of the policing of social order, as Hillyard and
Gordon point out, is a characteristic of wider
social developments, in particular a reflection
of the shift to authoritarianism.

The increase in deaths in police custody is
undoubtedly related to the rising number of
arrests. Put simply: the more people who travel
through custody suites the more people are
at risk of death in this setting. Given that the
increasing use of arrest has become a strategy
of control deployed by the police to maintain
order; it would be logical that these develop-
ments are reflected within the profile of police
custody deaths. This would appear to be the
case. *Table one* provides a breakdown of the
offences victims were arrested for in deaths in
custody cases between 1997-2003.

Table One: Offence type for which victims were arrested or during the period 1997-2003[6]

Offence Type	Percentage of victims 1997-2003
Non-Violent Offences[7]	80%
Violent Offences[8]	13%
Potential Violent Offences[9]	7%

Source: (Home Office, 1998; 1999; 2000; 2001; 2002; 2003).

6 Excluded from these totals are the cases in which the offence is not given. The other cases excluded from these totals were Road Traffic Accidents, Shootings, or where the police have been called to the scene of a death and judged to have had minimal contact with the deceased who died from either natural causes or suicide.

7 This category consisted of the following offences: drugs possession/supply, criminal damage, motoring offences, theft, breach of the peace, public order, urinating in public, drunk and incapable, drunk and disorderly, drunk in charge of a push bike, indecency, immigration, Mental Health Act s.136, begging and burglary. Some of these offences may refer to violence as one element, such as public order, drunk and disorderly offences. However, the likelihood is, if a violent act has been committed then the individual would be arrested for another offence, such as grievous bodily harm.

8 This category consisted of the following offences: aggravated burglary, robbery, assault, attempted murder, false imprisonment, threat to kill, harassment, intimidation, indecent assault and affray.

9 This category consisted of offences linked to the potential commission of a violent act, or where the offence the individual was wanted in relation to was not specified: failing bail conditions, firearm possession,

As *Table one* demonstrates 80% of those who died in police custody between 1997 and 2003 were arrested/detained for non-violent offences. This category largely consists of offences relating to social order (although not exclusively), such as public order and drink offences. So the majority of individuals arrested who eventually die in police custody are seemingly arrested to 'maintain' social order and not as the culmination of a criminal investigation. Thus, the vast majority of police custody deaths could be located within the rise of social disciplinary policing.

ii) The criminal justice system is increasingly being used as a means to remove the 'unwanted elements' from our increasingly unequal social system. The police as the front line agency in the criminal justice system are heavily implicated within this process. A key development in the emergence of the authoritarian state has been the reliance upon punishment as a disciplinary tool, and for punishment read: incarceration. This was most clearly demonstrated during Michael Howard's period as Home Secretary, 1993-97. Howard pursued a strategy whose defining characteristic was prison works, a doctrine supported by the USA's 'success' in reducing crime through its incarceration policies. At this point in time there had been a number of events which had provoked concerns over 'british youth' and put the conservative government under pressure to respond[10]. Consequently, the newly re-elected Conservative government felt under pressure from New Labour's tougher policy line on crime. Howard decided to adopt a policy equivalent to America's war on crime and created a 27-point plan of *'emergency action to tackle the crime wave'* (Brownlee, 1998: 26). Subsequently, Howard infamously proclaimed his 'prison works' agenda and urged the court's use of imprisonment (Brownlee, 1998; Newburn, 2002b). The prison population rose from under 41,000 at the end of 1992 to over 65,000 by 2000. As the general election approached in 1997, Howard escalated his rhetoric in a 'punitive bidding war' with the Shadow Home Secretary Jack Straw with the idea of 'two strikes and you're out' and minimum sentences (Brownlee, 1998; Sim, 2000; Newburn, 2002b). Although, the Conservatives lost the 1997 election New Labour adopted these proposals in the Criminal Sentences Act 1997. Furthermore New Labour have done little to reverse this trend. New Labour inherited a prison population of approximately 65,000 and currently preside over a population of around 75,000. Similarly, they have periodically engaged in knee jerk reactions to moral panics[11] and devoted increasing levels of funding[12]. These policies have given rise to estimates that imprisonment will reach 109,000 by 2010 (Council and Simes, 2002).

A number of writers have sought to explain rising levels of imprisonment in liberal democracies, like the UK, within the demise of social democracy and the rise of neo-liberal forms of social organisation (Christie, 1993; Wacquant, 1999; Bauman, 2000; Garland, 2001). For Bauman (2000) and Christie (1993), the increasing use of incarceration is a response to the growth

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possession of an offensive weapon, breach of parole, and arrest warrant.

10 This included concern over 'joyriders' in deprived outer city estates in 1991; persistent young offenders; drug use; and then, crucially, the murder of James Bulger, in 1993 (Newburn, 2002a).

11 For example, former Home Secretary, David Blunkett's reaction to the 2003 New Year's Eve 'drive by' shootings in Handsworth, Birmingham, was the proposed introduction of a 5 year prison sentence for anyone convicted of an offence involving a gun – now contained in the Criminal Justice Act 2003.

12 For example, on the 1st May 2001, Blunkett announced the government was to commit £194 million to the building of 2,300 extra prison places (Home Office, 1/5/03).

in inequalities that have resulted from this shift in social organisation[13]. In other words, imprisonment is being used as a means of managing the conflicts which result from these inequalities. According to Bauman (2000) and Christie (1993) inequalities have driven the fears of the 'haves' of capitalist society for the safety of themselves and their property. The response to the 'haves' concerns for security and order have taken a specific form. As Christie (1993:13) puts it, liberal democracies are currently involved in a process of mass exclusion removing the *'unwanted elements from the social system'*.

These observations are borne out in the findings of two reports from the UK government's Social Exclusion Unit. In 2000 the SEU released a report which painted a startling picture of the 'revolving door' of prison for the members of the UK's most disadvantaged:

> *…of those prisoners released in 1997, 58 per cent were convicted of another crime within two years. 36 per cent were back inside on another prison sentence (SEU, 2000: 1).*

In 2002, the unit followed its earlier report with an in-depth analysis of the profile of our current prison population. In accordance, with Christie's claim that imprisonment resembles the removal of societies *'unwanted elements'*, the unit found that *'compared with the general population, prisoners are thirteen times as likely to have been in care as a child, thirteen times as likely to be unemployed, ten times as likely to have been regular truant'* (SEU, 2002:6). Moreover, the report found:

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13   The growth in inequality during this period was charted in the Breadline Britain survey: '*…the number of people living in poverty rose during the 1980's from 14% of households (approximately 7.5 million people), in 1983, to 20% of households (approximately 11 million), in 1990'* (Gordon and Pantazis, 1997: 235).

> *'many prisoners' basic skills are very poor. 80 per cent have the writing skills, 65 per cent the numeracy skills and 50 per cent the reading skills at or below the level of an 11-year-old. 60 to 70 per cent of prisoners were using drugs before imprisonment. Over 70 per cent suffer from at least two mental disorders. And 20 per cent of male and 37 per cent of female sentenced prisoners have attempted suicide in the past' (ibid).*

In other words, those who currently fill our prisons at an alarming rate are some of the most vulnerable and disadvantaged. Furthermore, those people who may have 30 years earlier received state assistance – in the form of benefits or support services – are arguably increasingly being processed through our burgeoning criminal justice system.

The consequences for the police of this process of removal are obvious. Whilst the criminal justice system is engaged in removing some of the most *'vulnerable'* members of our society, questions have to be raised over the suitability of police custody suites and police officers in dealing with the complex needs of these people. Clearly, other professionals and services are better suited to these demands. However, given the shift from welfare to criminal justice responses to deal with social problems – the police are increasingly dealing with these issues. A point clearly illustrated in the report, *'Healthcare of Detainees in Police Stations'* published by the British Medical Association (1994), in relation to mentally ill detainees. The report states:

> *…there is a widespread recognition that mentally disturbed people are increasingly coming into contact with the criminal justice system and this often results from a lack of adequate care, support, and on occasion, treatment in the community (ibid: 24).*

The report goes further, making specific reference to the consequences of policies that cut service provision for this group:

The Community Care Act has made worse the problems experienced by detainees in police stations. There is a perception that the police act as a safety net or dumping ground for vulnerable people. (ibid: 25)

The implications of the situation described above are evidenced in a Police Complaints Authority (PCA, 2003) research study which reviewed deaths between April 1998 and March 2003. The report revealed that *'just over half of the cases for which information was available (75/149, 50.3%) had a prior indication of mental health problems'* (PCA, 2003).

iii) *Police officer's are increasingly being equipped with lethal and 'non' lethal weapons.* As Hillyard and Percy Smith (1988: 239) note, *'the traditional image of the British bobby as a friendly convivial man armed only with a truncheon, if that was ever true, is now an image of the past…Police equipment, training and thinking are now much closer to that of the military'.* It is certainly true to say that over the past 25 years the rate at which the police have been equipped with lethal and 'non' lethal weapons has intensified. For example, Greater Manchester Police Force was the first British force to acquire machine guns in 1981 (Hillyard and Percy-Smith, 1988). Since then the police have been equipped with such weapons at an alarming rate. This can be demonstrated by the increasing numbers of Armed Response Vehicles carrying such weapons. For example, the Metropolitan Police force doubled the deployment of ARVs in the period 1996-1999 from 790 to 1,812 (Guardian, 5/8/01). This trend has been replicated in the case of 'non' lethal weapons. The first deployment of CS gas by the British police force in the 1981 Toxteth uprisings was considered a 'fitting extreme circumstance' (Scraton, 1982; BSSRS, 1985). However by 1996, CS spray had been deployed to beat-level officers nation-wide. Subsequently, what was once considered con-troversial has been 'normalised' into the everyday equipment of the British police force, in spite of continued fears over its safety[14].

Naturally, this trend has raised serious concerns with groups monitoring deaths in police custody. Inquest, an independent organisation who have monitored deaths in state custody for over 25 years, argued in their recent submission to the Joint Committee on Human Rights report on Deaths in Custody (2004):

> Casework in police, prison and psychiatric custody has revealed concerns about the excessive use of force generally including the use of CS spray, US style batons, firearms, strip cells and medication as well as the use of dangerous "control and restraint" methods such as body belts, "neckholds, and other restraint techniques resulting in the inhibition of the respiratory system, asphyxia and death". (Inquest, 2004: 3a)

To reinforce Inquest's argument are a number of case examples of police custody deaths in which excessive police force and 'non' lethal technologies/restraint techniques have been implicated. These include the US style baton, in the death of Brian Douglas, CS spray, in the death of Ibrahim Sey, body belts, in the death of Joy Gardner, and so on.

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14 These fears have long been in existence, for example the former Metropolitan police instructor Peter Hodgkinson lost between 40-50% of his corneas after he volunteered to be sprayed during trials (Wright, 2001).

Table Two: Police Custody Deaths – Restraint Issues Raised 1993-2003

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
All Forces	2	5	7	5	5	9	6	5	5	5	7
(Percentage)	6%	10%	15%	9%	9%	14%	13%	14%	15%	11%	18%

Source: Inquest (2004)

Thus, it would appear the militarization of policing over the last 20 years has increased the likelihood of harm, an argument that is evidenced by the rising percentage of total deaths connected with police restraint. For instance, during the period 1993-2003 deaths involving restraint issues have increased as a percentage of the total deaths in police custody (see table two).

In short, as with the other aspects discussed so far, the link between the increasing arming of the police and deaths in custody, is not difficult to make. What remains to be explained is how these deaths have been legitimated as the acceptable consequences of the 'law and order' society. The following section will seek to understand some of the ways that these cases have been presented in order to solicit societal acceptance for them.

Legitimating the consequences of 'law and order' society

In order to understand discourses which are deployed to legitimate deaths in police custody, we must first understand wider ideologies that have accompanied the shifts in capitalist society over the last 30 years (discussed above). For this task, Zygmunt Bauman's (1998, 2000) discussions of morality in late capitalist society seem entirely appropriate. His analysis focuses upon the consequences for morality in a period of significant restructuring in the bureaucratic and industrial structures of capitalist society. These changes have occurred as a result of the reorganisation of global capital, which was set in motion during the 1970s, and has been facilitated by the subsequent dominance of neo-liberal values in the policies of many nation states. Bauman's analysis concentrates upon the 'by-products' of the demise of social democracy, and in particular the increasing removal of the poor, as the losers in this social system, via the criminal justice system to prison.

For Bauman, the changes in the 'work ethic' have been integral to the reconfiguration in moral thinking. At one time the 'work ethic' existed to prepare populations in capitalist society for the labour market, now Bauman contends, it serves another purpose:

> … *to wash clean all the hands and consciences inside the accepted boundaries of society of the guilt of abandoning a large number of their fellow citizens to permanent redundancy (Bauman, 1998: 72).*

Thus, the work ethic now operates to legitimate the fate of the poor. As Bauman suggests the consequence of the loss of a sense of collective responsibility for the losers in the current organisation of the relations of production has been their expulsion from the *'universe of moral obligations'* (Bauman, 1998: 77).

One way this has been achieved, he argues, is through the reassertion of the link between poverty and criminality[15]:

> As actual or potential criminals, the poor cease to be an ethical problem – they are exempt from our moral responsibility. There is no more a moral question of defending the poor against the cruelty of their fate; instead there is the ethical question of defending the right and proper lives of decent people against assaults likely to be plotted in mean streets, ghettos and no go areas (Bauman, 1998: 77).

Accordingly the work ethic has ceased to be a statement of moral sentiments, and has become a tool of *'adiaphorisation'*. '*Adiaphorisation'* serves to remove 'ethical opprobrium' for morally unconscionable acts (Bauman, 1998: 78). This is achieved when an action is declared neutral, through the application of alternative moral criteria, which is unaccountable to other moral codes. In the context of late modernity, moral thinking in capitalist society has come to be colonised by the concerns of economic rationality and individualism (Titmuss, 1970; Fevre, 2000). Economic rationality, as the dominant moral code has come to subjugate *'being for the other'*, with the *'sober, rational calculation of costs and effects'* (Bauman, 1998: 81). Consequently, the work ethic has become a tool of '*adiaphorisation'*, as it supplies a benchmark to evaluate whether those enduring suffering are worthy of our compassion.

This process of adiaphorisation is in stark contrast to the moral thinking which characterises and predominates social democracies. To illustrate this point, is an anecdote used by Nils Christie, in his seminal text *Crime Control as*

Industry, where he gives possible reasons for Norway's resistance to the trend in rising prison populations across Europe. He argues that the activities of Norwegian group KROM played a major role in influencing penal policy. It is composed of a variety of 'stakeholders': practitioners, politicians, liberals, journalists, and prisoners and every year it holds a meeting in the mountains. Whilst, Christie concedes that those who have extreme 'law and order' agendas do not participate in these meetings, people attend from a diverse range of backgrounds. In spite of this diversity, the group produce a *'joint moral community'*, which is characterised by empathy and provides a situation in which *'pictures of monsters do not thrive'* (1993: 39-40). This community is underpinned by *'informal standards for what is considered acceptable to do in the name of punishment, and also the view that these standards are valid for all human beings'* (Christie, 1993: 40). The reasons why these standards exist, for Christie, are almost impossible to identify for certain. However, he surmises that the standards exist because of the actors *'imaginary power'*, *'the capacity to see oneself in the other person's situation'* (1993, 40). He concludes that this process of *'identification'* operates upon general standards for all, which prevent extreme measures resulting, because the group's reference point is: *'it could have been me, found guilty, brought to prison'* (1993, 40).

The remainder of this article will demonstrate the manner in which *'adiaphorisation',* rather than '*identification',* operates to secure moral indifference to the consequences of the 'law and order' society. It will be argued, that compassion has been removed for those who *'appear'* to fail to live up to the standards set by the economic/political elite and, consequently, are subject to increasingly authoritarian strategies of control. The individualistic moral calculus that predominates late modernity has negated the 'haves' empathy for the 'have-nots' who it

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15 The link of poverty and criminality is not new. Historically, policies such as the 'poor law' have been based upon this nexus. However, in the context of recent history with the demise of the 'post-war consensus' welfare based solutions have become colonised by those of the criminal justice process.

is argued threaten the order of our increasingly hierarchical societies. Consequently, indifference surrounds the fact that one person a week has died in police custody for the past 20 years. As suggested in the introduction for some this may be considered a price worth paying.

The remainder of this section will seek to understand the ways in which discourses resulting from the investigation of deaths in police custody have served to maintain populist support for our 'law and order' society. It will be argued that the identities constructed during these investigations serve to obscure some of the disturbing realities of deaths in custody. Moreover, the identities and subsequent narratives of culpability which are constructed in the wake of these cases are integral to the process of adiaphorisation, ultimately ensuring societal indifference to these deaths.

i)   The reality of deaths in police custody

Deaths in custody fall into two categories: restraint and care cases. Restraint cases usually raise the greatest amount of controversy. Not only are they characterised by high degrees of police violence, but the victims are disproportionately represented by ethnic minorities. As Ward and Coles (1997: 109) note, *'since 1990 those who have died as a result of police restraints or physical force (other than the use of guns) have been almost exclusively drawn from ethnic minority groups'*. The levels of violence involved in these cases have brought into question the boundaries of reasonable force within which the police operate.

Richard O'Brien died as a result of an arrest following a disturbance at a social club in South London in 1994. A pathologist's report found him to have 30 separate areas of injury sustained during the arrest (Ward and Coles, 1997). Brian Douglas died as a result of his arrest in Clapham, in 1995. Independent medi-

cal experts at Douglas's inquest testified that the fatal baton blow Douglas recieved was '*the equivalent of him falling 11 times his own height on his head'* (Guardian, 30/3/01). Shiji Lapite was stopped by officers for 'acting suspiciously' on the 16th of December 1994. Lapite died as a result of the restraint which ensued from his arrest. The pathologist instructed by the Metropolitan Police Commissioner found 45 areas of injury on Mr Lapite's body which included a kick to the head and a bite mark. The fatal blow was served to Mr Lapite whilst in a neck hold, the force of which fractured the thyroid cartilage in his voice box and led to his suffocation (Inquest, 1998). In short, these deaths are characterised by extreme levels of violence, which serve to undermine the 'legitimacy' of the force wielded by the British police force.

These restraint cases raise warranted concerns over British policing, however so do deaths resulting from the omission of care which form the majority of the deaths in police custody. These cases have manifested themselves in all too familiar scenarios of cell suicides, and deaths due to drug or alcohol intoxication. Furthermore these deaths are characterised by a startling degree of neglect[16]. This is illustrated by the comments of a number of PCA members:

> *What happened with this case in area c, I know exactly what happened, this guy was absolutely revolting, they just took one look through the window and thought he's a nasty smelly old drunk and they didn't bother to check him properly. Sometimes, it*

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16   PACE code of practice (c) 9.3 is clear: a detainee should be visited at least every 30 minutes, unless a health care professional has advised otherwise. During these visits the detainee must be roused, have their condition assessed, and where necessary have clinical treatment arranged. Annex H, to the code of practice considers rousability to mean: can they be woken?; can they give appropriate answers to questions posed?; and can they respond appropriately to commands?

is a give-away because riga mortis has set in before they have found them. I remember one guy died on the loo in his cell and his legs were purple. I mean he'd been there for hours. They are supposed to be checked every half-hour. That is a give away (PCA Member).

This guy was kept in really, really dreadful conditions for I think 14 hours or something, he was in custody. He was on the floor of the cell and he was covered in faeces and vomit…They took him to hospital and he died two weeks later of a fractured skull (PCA Member).

Given the stark reality of the deaths in police custody, these cases raise a number of uncomfortable questions of the 'law and order' society. In particular, at stake in these cases are the core principles of policing; the use of legitimate force against 'dangerous' individuals, and the right to incarcerate individuals exhibiting 'anti-social' behaviour. Arguably, these two principles are central to the well being of any 'law and order' project.

The maintenance of these values was central to the interviewees' attitudes to issues which related to specific cases. A variety of strategies seemed to be deployed in order to uphold these principles. The first strategy used in relation to restraint cases attempted to draw a distinction between their established expertise on policing matters with that of the lay person. This is illustrated by the remarks of a PCA member:

…If you haven't actually seen it, it is very hard to imagine! It could take twelve large policemen to hold you down, if you are completely out of your head on something. The public don't understand that, you probably wouldn't take someone who was being a bit difficult and bung them on the floor and hog tie them and sit on their backs.

Through the use of the pronoun *'you'*, the PCA member asserts their role as expert, 'qualified' and 'experienced' to comment on the matters

of what constitutes reasonable force. This experiential device serves to confer credibility upon the claim that in these cases appropriate force is used. The second device used by the interviewees served to conscript others into the ethos of the law and order project. This was again achieved through the use of pronouns. The following example demonstrates the appeal for public consensus over the use of custody for those exhibiting anti-social behaviour:

It is something Reiman calls 'moral street sweeping', someone has got to do it. You and I don't like seeing people lying out there in the street and we want someone to come along and pick them up and take them away. The fact that might not be the best place to take them is besides the point (PCA Member).

By appealing to *'you'* and *'I'* the interviewee seeks to establish a consensus that there is little alternative to this situation if the quality of our neighbourhoods are to be maintained. In short, the PCA member appeals to the 'trade-off' we must make between our own security and the well being of the 'drunk' or 'drug addict'.

Key to both devices discussed above and, ultimately, the well being of the 'law and order' project, is the ability to locate these deaths within narratives of 'danger' and 'disorder', thus increasing their likelihood of populist consumption and the acceptance of the deaths.

ii) Constructing 'law and order' identities

At the point of legitimacy crisis for the 'law and order' project – which these deaths often represent – specific narratives are mobilised. As suggested above, these narratives are crucial to maintaining consent. Furthermore, as this article will demonstrate, central to the construction of these narratives are the mobilisation of 'law and order' identities. Thus, the interviewees in attempting to explain these

deaths make reference to 'violent' and 'feck-less' identities, as well as those of the 'vulner-able' officer. The following subsection seeks to demonstrate the role played by the interview-ees in reproducing/reconstituting the 'law and order' identities that legitimate – as Christie puts it – the removal of societies '*unwanted elements'*. As Scraton and Chadwick note:

> *The continua related to this process – rough/re-spectable, dangerous/conforming, undeserving/de-serving – are employed to construct identities which then justify harsh and differential responses in the enforcement and application of the rule of law (Scraton and Chadwick, 1987a: 213).*

The identities highlighted by Scraton and Chadwick can be evidenced in the investiga-tion and policy processes which follow from a death in custody. Scraton and Chadwick (1987a,b) observed in the context of inquests, those police custody deaths which cannot be officially explained as *'normal'* or *'natural'* require specific institutional attention. These responses have involved the construction of negative personalities through images of *'vio-lence'* and *'inadequacy'*.

The acceptance of these identities not only allows the regulatory actor to adopt the ideol-ogy of law and order but also raises questions about their ability to challenge the accounts of the officers they are supposed to scrutinise. The accounts of officers in restraint cases have sought to mythologise the strength and size of their victims. One example being the descrip-tion of the 5' 10" Shiji Lapite by a police of-ficer as '*the biggest, strongest, most violent black man'* he had ever seen (Inquest, 1998). This is tragically ironic when one considers the magnitude of injuries sustained by Lapite (described earlier). The language of the inter-viewees when describing restraint cases was consistent with the identities officers and their superiors promote. There were two consistent

images of violence, that of the naturally physi-cally strong individual and the uncontrollable drug user:

> *Well he was a strong man anyway. One of the offic-ers who gave us a statement said that he hit his leg, he said that when he hit it he felt like he had a towel around his thigh. It was so hard, he thought it didn't make a dent…That was a police officer hitting him very hard and that is no doubt due to the cocaine making people strong, he is already a big strong man (Senior Investigating Officer) (SIO).*

> *The speed of this change from somebody who is as strong as an ox taking several police officers to hold him, to lying dead on the floor was very, very, rapid (PCA Member).*

The first of the above quotes demonstrates how culpability can be projected upon the victim when an 'uncontrollable' identity is constructed. The force needed to restrain such an individual is raised according to the 'su-perhuman' qualities the individual displays. This quote is taken from the description of a restraint case, where officers had confronted a suicidal individual with a knife. Neither the PCA member nor the SIO mentioned any in-juries sustained by the officers involved, yet throughout their account of the case the vic-tim's behaviour was described as violent.

The identity of the 'violent' victim does not exist in isolation – as suggested earlier – they are developed alongside those of the 'vulner-able' officer. In light of the aforementioned restraint cases – Douglas, O'Brien, Lapite – it is difficult to reconcile their details with the claim of officers 'vulnerability' in these situ-ations. By claiming a vulnerable identity for the officer, this removes the reality from the ex-perience of these deaths and projects a victim status onto the aggressor in these situations. The removal of the officer from the role of perpetrator was achieved in a number of ways, one of which is illustrated below:

I mean often where there are a lot of sad situations, where officers are as far as I can see are trying very hard to contain a violent situation or a violent person as best as they possibly can (PCA Member).

The reality of these deaths is again obscured in the content of the member's statement, in this instance through the use of the euphemism '*trying very hard to contain a violent situation or a violent person*'. This serves to deny the high degrees of police violence that have characterised these deaths. Another strategy, which reinforces the victim status of the officer, is to remove the true victim from the description of the event:

I did first in a fatal shooting about a year go…officers also go through a considerable amount of shock and this is an extreme of that, is where an officer has fired and killed (PCA Member).

Throughout the PCA member's description the victim is removed from the *'fatal shooting event'*, hence the causal path of the officer shooting the victim is disrupted. For instance, when the member describes the officer having '*fired and killed*', the subject to whom the act was being done has been removed from the sentence. The removal of the deceased from the quote enables the only actor remaining to have the status of victim conferred upon them. In this example the officer is constructed as the victim of 'shock'.

The 'psychological harm' sustained by police officers after violent confrontations was a constantly recurring theme amongst those interviewed:

All those twenty-eight officers have been through the mill and back. I have still got their uniforms, we had to buy them new boots they have been through it and they are young people fundamentally, they have never experienced it before. If they did it again there might be heightened awareness about, 'he

is a bit glazed around the eyes, I bet he has taken cocaine' (SIO).

The Senior Investigating Officer's description highlights the factors that compound the psychological damage inflicted by the fatal arrest. This is achieved by emphasising the symbolic importance of the removal of the officer's uniforms for forensic purposes, as it represents an apparently unwarranted mark upon their professional integrity.

The construction of the identities of the victims of omission cases are deeply ingrained in moralistic liberal notions of personal adequacy. Those parts of society who '*we don't like to see*' in the public sphere, 'the drunk', 'the drug addict', and 'the mentally-ill' are central to the construction of these identities. The fragility of the victim was constant throughout the interviewees' descriptions of these cases:

People die of natural causes, they die of alcoholic poisoning, the police come along and take them out of the gutter and put them in a cell. They would have died there if they had been left there (PCA Member).

The identity of the deceased is subsequently constructed around their 'self-inflicted' death, be it choking on their own vomit through alcohol intoxication, cocaine toxicity and so on. The inevitability of this death was often developed through the pathology of the individual's condition. In the following example, the inevitability of the victim's demise was achieved through a racially imbued pathology:

Basically he was a stereotypical paddy labourer, he worked hard, he built roads, he was a road builder, he had been a road builder all his life. He worked hard and drunk hard (SIO).

Other roles and qualities of the deceased are subjugated to this condition, the condition be-

comes dominant, it is their 'lifestyle', which serves to reinforce the inevitability of the individual's demise. As a consequence the investigation into these cases becomes less concerned with the events preceding a death and focus more upon building a narrative, which surrounds the victim's lifestyle:

> *So we had gone into his background and if you like made sense of … why was he in such a state… we had a man with a large sum of money who had considerably upped his (heroin) dose…Of course the effects of suddenly running out of money would have been very, very difficult for him to cope with. It was the coming off the drugs which caused him his big problem, in terms of wishing to end his life (SIO).*

The intertwining of the victim's character to their physiological condition results in their dehumanisation. Thus once the individual's identity becomes synonymous with their condition they become less deserving of our consideration. This serves to legitimate the inadequate medical treatment they receive. This is illustrated in the following comment of a PCA member:

> *…it may not help when you are trying to examine someone on the floor of the cell where the lighting is not very good. Particularly if they are disgusting…This guy was absolutely revolting, they just took one look through the window and thought he's a nasty, smelly old drunk and they didn't bother to check him properly.*

Furthermore, inadequate care is legitimated if the individual is deemed 'violent'. The decision whether to medicalise or criminalise, for example the 'violent drunk', is integral to the construction of the identity of the officer. Some of the Senior Investigating Officer's interviewed demonstrated empathy for officers caught in the medicalisation/criminalisation dilemma:

> *They are worrying times when all they are trying to do is to look after a bloke who has actually got himself drunk. As I say ninety-nine times, kick him out the next day when he has sobered up with a handshake and a 'please don't come and see us again'. It is a difficult area for the service, because it is an area we are forced to deal with but I think out of choice we wouldn't want to* (SIO).

The notion of the 'catch-22' situation which the officer is thrown into because someone has 'got himself drunk', serves to reinforce the deceased as a victim of their own inadequacy. Furthermore, the officer becomes the real victim of this 'worrying time'.

To summarise, the association of victims with violent and feckless identities has served to remove them from what Bauman terms the 'universe of moral responsibility'. Meanwhile, victim status is conferred upon the officers involved in these cases due to the barrier they provide between the 'haves' and 'have nots' of capitalist society.

Concluding thoughts: Deaths in police custody and the construction of a 'law and order' common sense

It has been argued that the state, with the demise of the post war consensus, is being increasingly required by the 'haves' in capitalist society to intervene in the conflicts caused by growing social inequalities. According to Gramsci (1999: 235) an inequitable social order requires a state consisting of two elements: '*an apparatus of coercive state power'* which controls unruly elements that threaten the social order; and an ethical apparatus that '*manages to win the active consent over whom it rules'*. Thus, as Hall (1980) has demonstrated the coercive management of 'suspect' populations by the state may only be achieved if there exists suf-

ficient support from the many and varied social groups that constitute the historical bloc. So for authoritarian state interventions to be maintained there must exist equal measures of 'authoritarian populism'. However, the support of the historical bloc should not be thought of as permanent, but rather as temporary and in constant need of renewal (Hall, 1980). For example, when a death in custody occurs which demonstrates police disregard for the victim, in terms of excessive force or neglect, then that hegemony can unravel and legitimacy can be lost. In such a legitimacy crisis, it is the role of state talk to manage and renegotiate hegemonic agreement for the form and nature of coercive state interventions.

This article has attempted to demonstrate some of the ways in which this hegemonic agreement is sustained despite the challenges to it presented by the cases (and others) mentioned – particularly given the relationship between the shift to authoritarianism and rising police custody deaths. Drawing upon interview material from those who investigate deaths in police custody, the article has sought to illustrate the discursive formations and practices that have underpinned the consent for the state's coercive apparatus. Integral to this process, it has been argued, are the construction of 'law and order' identities. As Barry Howard, whose brother Glenn Howard died as a result of a police restraint, remarked *'whenever there is a death in police custody…it would seem that the system sets about trying to blame the victim for their own demise'* (Guardian, 20/3/02). It is apparent from the accounts of families and friends of those who have died in police custody, that these processes are put into motion immediately, as Bernard Renwick brother of Roger Sylvester recalls:

> *Even when Roger was still on life support, the press was manipulated to portray negative images of him; you see, when someone dies in custody and it*

is suspicious this is what usually happens. Immediately, the press is used to blame the victim for their death…No opportunity was missed to demonise Roger (Taken from www.rsjc.org.uk).

These discursive formations naturally resonate with the ideological images promoted by 'authoritarian populism' and underpin the support for coercive interventions in the lives of the 'dangerous' and 'feckless' who threaten our social order. Consequently, the identities which are constructed after an individual dies in police custody are situated within this ideological context. Drawing upon such devices these interviewees reproduce and reconstitute dominant ideological images. For instance, the victims in restraint cases are often portrayed as 'superhuman' in strength and 'uncontrollably' violent. These identities are often developed alongside racist stereotypes of black criminality. However, these images run counter to the 'realities' of these cases. The disjuncture between the 45 separate areas of injury found upon Shiji Lapite's body and the police description of the 5'10 Lapite as *'the biggest, strongest, most violent black man'* illustrate this point (Inquest, 1998). At the same, the interviewees starkly juxtapose the identity of the 'violent' or 'feckless' victim against the *'vulnerable'* police officer. Thus officer's come to be portrayed as victims threatened by the 'violence' of the deceased, due to their vulnerability to external criticism and, ultimately the stress caused by these situations.

Consequently, the interviewees have unquestionably accepted the 'state' talk of the police service – which misrepresents the threats presented to the police force (Sim, 2000; 2004). Sim (ibid) argues this is achieved by inflating the threats posed to the police whilst obscuring the realities of police violence and neglect. The above paragraphs have demonstrated that this talk has inflated the threat posed by certain sections of the public to legitimate the violence

and neglect the police are implicated in. Table one demonstrated that 80% of individuals who died in police custody between 1997-2003 were arrested for non-violent and, in the majority of cases, minor offences. It would appear that contrary to the assertions of 'state talk' those who die in police custody do not actually conform to the label of 'dangerous' or 'unruly' which is often attributed to them.

A further aspect of state talk is illustrated by contrasting the reality of deaths in police custody to the reality of the dangers faced by on-duty police officers (Sim, 2004). Between 1994 and 1998, a total of 28 officers died on duty: 4 were murdered; 21 died in Road Traffic Accidents; of the remaining 3, one collapsed in their office, one died from a heart attack while baton training and another died in a helicopter crash. However, as Sim points out, during the period 1994-1997/8, 215 people died in police custody. These figures seriously challenge state talk and its construction of the dangers posed to modern day policing.

Whilst the 'law and order' identities constructed by the interviewees are clearly contestable they have served to obfuscate the culpability of police officers in these cases. In particular, the identities ascribed to victims operate to implicate the individual within their own demise. This is clearly illustrated by the Roger Sylvester case. On the 11th of January 1999, two Metropolitan Police Officers found Roger Sylvester, naked outside his home in North London. They were soon joined by another six officers who brought Sylvester to the ground to restrain and handcuff him. He was detained under s136 of the Mental Health Act (1983) for his own 'safety' and taken to St Ann's hospital. It was there whilst being restrained by the arresting officers for some 20 minutes that he slipped into a coma and was taken to the Whittington hospital. Seven days later his life support machine was switched

off. In the wake of Roger Sylvester's death, the Metropolitan Police Force (alongside other state actors) sought to shape an identity for Sylvester, portraying him as a *'mentally-ill drug user'* (Inquest, 2003). Thus, utilising the many negative societal stereotypes that surround young black men, the Metropolitan Police Force sought to discredit Roger Sylvester as a 'bona fide' victim.

This process began whilst Sylvester lay in a coma. On 14th January 1999, Scotland Yard claimed in a press statement that a 999 caller suggested that he was behaving in an *'aggressive and vociferous manner'* (Guardian Newspaper, 28/4/99). However they were later forced to admit that no caller had made any such claim, yet refused to accept the claim was inaccurate (Guardian Newspaper, 28/4/99). At the opening of the inquest into his death, the Coroner's pathologist Dr Patel made unfounded remarks to the press implying Sylvester had, prior to his death, been under the influence of crack cocaine (Inquest, 2003). The remarks were made in an 'off the cuff' press briefing to journalists (Inquest, 2003). On 30th January 1999, this allegation alongside others made by the Metropolitan Police Force, were reproduced in a full-page article in the Times Newspaper. The article claimed that Sylvester's death was caused by his heart being 'swollen by crack cocaine' (Inquest, 2003). This claim has subsequently been discredited by the recent inquest into his death, which returned a verdict of unlawful killing, citing the police restraint of Sylvester as the likely his cause of death[17].

17　The jury foreman cited the following reasons for returning this verdict: *'One – held in restraint position too long. Two – Lack of medical attention. Three – no attempt was made to alter his position of restraint'* (Guardian Newspaper, 3/10/03). However, this decision was recently overturned in a High Court ruling because of the guidance given by the coroner to the jury during the inquest.

Aspects of the Sylvester case resonate with Cohen's (1993) notion of 'implicatory' denial. According to Cohen, the 'implicatory' denial of the 'uncomfortable' by the state does not seek to deny an event outright, rather it involves the negotiation of an account that serves to distort its realities. Such accounts heavily rely upon the 'dehumanisation' of the victim. In the context of this case, the portrayal of Roger Sylvester as an 'aggressive' 'crack cocaine addict' was intended to neutralise the uncomfortable moral implications of his death for a 'law and order' society. Moreover, the legitimation of these deaths is underpinned by the process of 'adiaphorisation'. Whereby, compassion and 'identification' with the plight of the other has been replaced by individualist concerns for one's own property and safety. The indifference of the 'haves' for the victims of these cases is secured because of their 'association' with the 'dangerous' or 'feckless' and, consequently, the threats these groups pose.

Returning to the trade-off presented in the introduction (by a fellow academic); that these deaths may well be the acceptable consequences of a 'law and order' society which provides increased levels of security. It is clear that the identities promoted by the interviewees in this study have contributed to a 'common sense' view that the haves must choose between the trade between the benefits offered by a 'law and order' society and its consequences. Leaving to one side the morally unpalatable nature of such a trade, the realities of deaths in police custody do not match the trade which is presented to society. The article has demonstrated that those who are increasingly being drawn into our criminal justice system are from society's most vulnerable groups and despite the images of danger and disorder that surround death in custody victims these people, are in the majority of cases, arrested for non-violent offences. These are the realities which must continue to be spoken if deaths in police custody are to no longer be considered as the 'acceptable' consequences of a 'law and order' society.

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