Interview with Professors Andrew Ashworth and Lucia Zedner

by Assist. Professor Tonia Tzannetaki and Dr. Emmanouil Billis

In this issue of *The Art of Crime* online journal we have the honour and pleasure to host an interview with Professors Andrew Ashworth and Lucia Zedner, two of the most prominent academics in and beyond the common law world. Andrew Ashworth is Emeritus Vinerian Professor of English Law at the University of Oxford and a Fellow of the British Academy. He is a distinguished scholar internationally in the fields of English criminal law, sentencing, criminal process, and human rights. Lucia Zedner is Professor of Criminal Justice in the Faculty of Law at the University of Oxford, Senior Research Fellow at Oxford's All Souls College, and Fellow of the British Academy. She is a leading expert in security and counter-terrorism, immigration and citizenship, penal theory, and philosophy of criminal law. Together, Professors Ashworth and Zedner, *inter alia*, co-edited the collective volume *Prevention and the Limits of the Criminal Law* (2013) and co-wrote *Preventive Justice* (2014).

The interview, which consists of two distinct parts, was taken by Tonia Tzannetaki, Assistant Professor of Criminology and Penology at the School of Law, University of Athens, and Emmanouil Billis, Research Group Leader at the Max Planck Institute for the Study of Crime, Security and Law in Freiburg. It was carried out at All Souls College with the participation of one of the interviewers, Emmanouil Billis, who also presented the written questions posed by Tonia Tzannetaki.

Its first part focuses on contemporary sentencing theory and policy as well as on the American and British policies towards anti-social behaviour and on restorative justice. The second part deals with the themes of prevention, pragmatism in criminal justice, and the limits of criminal law in the new security paradigm as well as with more general issues of academic teaching and criminal law research.

Our warmest thanks to Professors Ashworth and Zedner for their readiness and patience in answering a wide array of questions, covering multiple themes, as well as for their enlightening and highly stimulating reflections.

First set of questions

(by Tonia Tzannetaki)

Tonia Tzannetaki (TT): *Dear Prof. Ashworh, out of your many and diverse fields of interest I would like to single out one as the focus of my first four questions, namely sentencing policy and, moreover, your preferred rationale for it, i.e., the Just Deserts model. Given your deep understanding of sentencing in both theory and practice, what do you regard as the main contribution of the desert model during the almost 50 years that have passed since its inception? What are in your view its comparative advantages vis a vis alternative rationales of sentencing, such as those prioritising crime prevention via deterrence, incapacitation, or rehabilitation or even the rather extraneous to continental law "cafeteria system" –as you have succinctly called it–, where courts are allowed extensive discretion to choose amongst a wide range of aims as well as methods at sentencing individual offenders?*

Andrew Ashworth (AA): Well, the first thing I would say is that the main achievement of the Desert Model is to get people thinking about proportionality issues, about what proportionality means and what a proportionate sentence might be. This has its benefits, it also has its limitations. And I think a lot of discussion has been about those benefits and limitations. So proportionality I think is the main issue there. However, I would also say that it is important to have a structure of rationales of sentencing; so those systems which say simply that you have a choice of rationale, it can be deterrence, it can be desert, it can be incapacitation or rehabilitation, I do not believe that this is satisfactory. All those theories have their place, but this place ought to be structured, so that it is not simply a free choice of the judge in the individual case, and I think those are some of the advantages that have come from the progress with desert sentencing in the last 50 years.

TT: *Professor Zedner would you like to add anything to this?*

Lucia Zedner (LZ): I would only say that very few desert theorists are pure desert theorists, and many accept a hybrid model with desert as the over-arching rationale which allows room for these other aims that you described to be considered. And, indeed, some desert theorists now propose a theory of limiting retributivism, which places desert at the top of the hierarchy, as Professor Ashworth says, but only in the form of setting maxima, within which other aims and purposes and indeed alternate methods could be considered, provided they fall within a sentence range which is deemed proportional to the gravity of the offence.

TT: *Professor Ashworth, in the book "Proportionate Sentencing", which you have co-authored with Andrew von Hirsch, you appear highly skeptical about extending the duration of sentences for dangerous offenders beyond the limits prescribed by the principle of proportionality between crime and punishment. Both of you are indeed skeptical even though you concede that it is possible to normatively justify narrowly drawn exceptions from the proportionality principle*

in the case of exceptionally dangerous offenders. Could you elaborate on the reasons which make you err against the adoption of extra confinement for the dangerous?

AA: I think this is one of the areas where desert theory conflicts with another theory which is incapacitation. And the reason why I would be sceptical about incapacitation is that the empirical evidence on which this is based is really not very strong. So that is why I would be very restrictive about the use of incapacitative sentencing, not ruling it out absolutely, since there may be situations where there is a very strong impetus to detain someone for longer than it is proportionate. But on the other hand, the experience of the last 15 or 20 years in England and Wales, where we had an incapacitative sentence called IPP (Imprisonment for Public Protection), which applied for many, many crimes and resulted in long-term detention, way beyond what is proportionate for many offenders, that I think is something that I would absolutely reject, and that is a very sad time for the English penal system.

TT: *One of the differences between the Desert Model and its most influential hybrid version, namely Limited Retributivism, concerns the relative weight to be accorded to the principle of parsimony vis a vis that of equality before the law. In your writings, Professor Ashworth, you are sceptical about downward departures from ordinal proportionality for the pursuit of parsimony in individual cases, e.g., the imposition of a lower sentence on an offender with steady employment so that she retains her job. The decremental strategy which you favour might of course bring about the same result whilst avoiding at the same time discriminatory distinctions between employed and unemployed offenders. But what if across the board sentence reductions seem politically unfeasible for the foreseeable future in a given country? Should equality before the law still be given prominence over parsimony in individual cases or –as you have aptly characterised it– "opportunistic" parsimony?*

AA: Conflicts between the principle of equality before the law and the principle of parsimony are always difficult to resolve. I can understand why some authors, such as Norval Morris and Michael Tonry in *Between Prison and Probation* (1990), give preference to the principle of parsimony, so as to bring about some reductions in the overall severity of penal measures. However, I believe that these battles should be fought on the political stage, and I would give preference to the principle of equality before the law. I do not believe that it should be left to individual judges to decide whether to reduce a sentence for reasons of parsimony. That would amount to "opportunistic parsimony" and would not be compatible with the rule of law. Morris and Tonry criticise my insistence on equality before the law as producing "equality of misery", but I would say that that is an argument to be played out when deciding what is politically feasible or unfeasible.

TT: *During the last 30 years and until the enactment a few months ago of a new Criminal Code, the Greek legislature has used front- and back- door penal sanctions and measures to the excess in its attempt to curb the chronically acute overcrowding of the country's prisons.*

To explain: successive legislative interventions in penal measures preventing the execution of a prison sentence, such as the monetary conversion and the suspended sentence, culminated in the non-implementation –as a rule– of prison sentences up to five years. The time requirements of parole were, moreover, gradually curtailed to the (beneficially calculated) 1/10, 1/5, and 2/5 or the (actually served) 1/3 of the prison sentence imposed by the courts, depending on its duration. All the above provisions were, moreover, rendered mandatory or semi- mandatory for the courts. This policy of excessive indirect reductions of sentence severity produced multiple perverse effects, one of which was the disconnect between the sentences prescribed for crimes of differing severity and the sentences imposed, or between the sentences imposed and those actually carried out. Do you think, in view of the above, that the notion of "Truth in Sentencing" and perhaps also that of "Truth in Legislating", i.e., the avoidance of double- talk on the part of the legislature, has any normative force for sentencing policy by itself? Or is this notion subsumed, in your opinion, by the principle of proportionality?

AA: The principle of proportionality requires sentences to be proportionate to the seriousness of the offence, in terms of both ordinal and cardinal proportionality. This is undermined, in my view, if there is a substantial difference between the sentence announced in court and the sentence actually imposed. This is not to say that there must be no difference: a portion of the sentence can properly be used for parole or some other form of supervised early release, which is why I am not a supporter of absolute "truth in sentencing". How large the difference may be is a matter of judgment, but the principles are clear. The position is more difficult if there is a substantial difference in the sentences as announced and the sentences as executed, and the latter is subject also to executive discretion – i.e., if there is an agency (not the sentencing court) that can decide how early a prisoner may be released. This would be contrary to the rule of law, and would tend to undermine proportionality.

TT: *How do you comparatively evaluate the American "zero tolerance" policies towards disorderly behaviour, emanating from "broken windows", with the British policies aimed at preventing anti-social behaviour in the form of the ASBO (Anti-Social Behaviour Orders) as well as the Civil Injunction and CBO (Criminal Behaviour Orders) which replaced them? Could you briefly explain your interesting notion of "under-criminalisation" in relation to the above British preventive measures?*

LZ: OK yes, "broken people". So, this is a very interesting set of questions. And it is certainly the case that the American theories of "zero tolerance" and of "broken windows" have had quite a lot of influence in the UK, but they have also been subject to very serious academic criticism and indeed research which contests them –and one might think of the work of people like Bernard Hardcourt; his book *The Illusion of Order* really takes on the idea that broken windows approach is plausible and that it works, and to that extent I think there are questions to be asked about those policies. The variance of those policies in the UK, the ASBO, as you described, has been replaced

by some measures which are more constrained and offer more procedural protections, but it is also being replaced by some measures which actually extend administrative and executive discretion. So the notion of under-criminalisation that Professor Ashworth and I wrote about was a concern, which may seem paradoxical, to demand more criminalisation at a point, or at least appear to demand more criminalisation, at a point of which academics like Douglas Husak in the US were writing about “over-criminalization”. However, the point really is a simple one, namely that if one is pursuing penal-like policies and penal measures without the protections of the criminal process, then, particularly in the case where those measures are pursued in the civil process and are backed up by criminal sanctions for breach of the terms of the order, those cases might indeed entail under-criminalisation, to the extent that they do not afford the individuals who are subject to those measures and who are subsequently criminalised any of the protections that they might be thought to be owed to in terms of due process and the right of fair trial.

AA: I entirely agree with what Professor Zedner has said. We are told that there are now about twenty-five of these preventive orders in English law. Although they slightly vary in content, what is important about them is that they are not criminal orders, a very few of them are, one or two criminal behaviour orders. The vast majority of them are not orders which require a criminal court to make them, they are orders which can be made by a civil court, or by a criminal court on civil principles. For example, the sexual offences’ orders. The police could ask for such an order, they could come to Magistrates’ Court sitting as a civil court and ask for such an order, and if the court is satisfied that there is the likelihood that this person will or may be a danger to children or to another group, then they would impose certain conditions on that person, such as not going near to a swimming pool, not going near 200 meters of a childrens’ playground, all those sort of things. Then once the conditions are set, breach of any of those conditions is a criminal offence, a strict liability criminal offence, that just says anyone who without lawful authority or without reasonable excuse does this, is guilty of a crime…and the sort of penalties that we are looking at there could be …

Emmanouil Billis (EB): *I am sorry to interrupt you, but there has to be some kind of intent required?*

AA: No… yes, this is just the non-observance of the conditions that are made for them. And we are talking here of sentences of imprisonment up to five years in theory, six months in magistrates court, five years in a criminal court, in many of these cases.

LZ: Many of these orders are of a form that impose strict liability. And one about which I have written is something that is not imposed upon individuals but upon places called “the public spaces protection order”, advertised only by small notices stuck on lampposts, there is no requirement otherwise notified formally; and anybody within that space, who contravenes the term of the order, lying down, sleeping, drinking, spitting, swearing, whatever the terms of the order are, would be in breach of the order and would be liable for an on-the-spot fine of

50 pounds, which, if it's not paid will see them in Court, where the fine can increase to 1000 pounds, non-payment of which is an imprisonable offence. So this is why we worry about lack of criminal procedural protections attaching to the original imposition of these orders.

TT: *Professor Zedner, given your expertise in the field of restorative justice can you envision a major restructuring of European criminal justice systems around the principles of restorative justice? What do you regard as the crucial contingencies on which the prospects of restorative justice depend?*

LZ: There are several things one could say about this. One might be that actually to a remarkable extent there has been such a restructuring at a low level. So, for example, it is the policy of the police authority of the Thames Valley, which is the area in which the city of Oxford sits, to presumptively refer young offenders to restorative justice panels before seeking their prosecution for low level offending; that seems to me quite a major restructuring! Obviously it does not apply, there are limits to its applicability, I think rightly so, as we move up the criminal tariff to more serious offences. But it has captured the imagination, certainly in the United Kingdom, of the police and other criminal justice officials to a degree that very few people anticipated, similarly though to less expert, very much less expert practices of "Wiedergutmachung" and "Täter-Opfer-Ausgleich" in Germany, and other such restorative practices. In terms of the contingencies on which its prospects depend, there are many. One of them is the degree to which this is regarded by the general public as being an acceptable or reasonable or efficient way to respond to low level criminal offending. The responses of victims, their willingness actually to participate in these proceedings. And in the UK as compared say to Australia the levels of victim participation are extremely low, barely above 10% as compared to Australia where in some places they have been as high as 80% or 90%. So that then raises the question of whether this is really restorative justice or simply a therapeutic form of justice for offenders alone.

TT: Professor Zedner and Professor Ashworth, thank you so much. It is time for Mr. Billis' questions and the second part of the interview.

Second set of questions

(by Emmanouil Billis)

Emmanouil Billis (EB): *At the University of Oxford many important criminal lawyers have been working and teaching as professors. Nevertheless, at the Faculty of Law in Oxford there is no autonomous department or centre for criminal law. You have, however, a very well-organised centre for criminology, which is oriented towards sociological, socio-legal, and criminological studies, including studies in the prison system, global policing, security law, international and transitional justice, or empirical studies on gender crimes, mental disorders etc. Is this where*

you think modern penal sciences should focus on? And could you perhaps identify some current trends in criminal law research as well?

AA: Well, in the first place…I think that the idea of creating autonomous departments or centres is not normal in English universities, it is starting a little bit more now, but in Oxford you know, you say there "have been important criminal lawyers working here", but there have been important lawyers in every field working here. So criminal law is really no different from that. What has happened over the last 50 or 100 years is that when there has been an attempt to move into a new area, like criminology, like socio-legal studies, like European Law, which was not talked very much until the 1970s, here, then there were created centres to deal with that. That is why we have an autonomous criminology centre, because it was a new step into a new field, similarly with socio-legal studies, similarly with European law and one or two others. So, it is just purely historical. I do not seek to justify this particularly. But Scottish universities, for example, are different: they do have departments of criminal law, or civil law, or some other law.

EB: *What are the current topics on which criminal law doctrine focuses in the UK? Are there any new themes or the discussion remains primarily about the old questions?*

AA: A lot of old questions are still being discussed. But I think probably the main topic for the last 15-20 years is the criminalisation theory. There is a lot of discussion of the criteria for criminalisation. There is a series of 5 or 6 books now on that. And there is a new textbook that was already mentioned. This is one of the topics which attracts a lot of attention and has led to some really good books, the von Hirsch book, for example, among others.

LZ: Yes, I would agree with that entirely. And if one is thinking about criminal law, I would say, the more important interdisciplinary activity for criminal lawyers has been in the workings and relationships with legal philosophers, with political theorists, and, not least, in this area of criminalisation. What criminalisation depends on, what are the principles of the criminal law, those developments have been at least as important as any interrelationship with criminology.

EB: *Systems like the US and English common law are better known for the central role of case-law in the evolution of criminal justice delivery than for systematic theoretical or doctrinal analysis – dogmatische Analyse, as it is called in Germany – of legal concepts and institutes. But is the lack of an organised centre for criminal law studies not a bit worrying? After all, the works of both of you on criminal law and procedure and on terrorism and security law respectively definitely include extensive dogmatic analyses similar to the traditional Continental-European way.*

AA: I do not think it is similar in the sense of the textbooks, the leading textbooks do not tend to be as dogmatic as the German texts that I have looked at for example. On the other hand, probably the leading English textbook now, which is Simester and Sullivan's *Criminal Law*, is quite a philosophical book. And I think you would not have that sort of book 50 years ago or 70 years

ago. There have been one or two major figures, like Hart, in English criminal law theory. But really I think the tendency is being for English books to be very pragmatic and very practical about this, and not to go into theories about anything.

EB: *The study and practical application of substantive criminal law in common law systems is based primarily on the thorough analysis, on the one hand, of important case law and, on the other, of general legal concepts and terms as explained and debated in prominent books such as Professor Ashworth's famous "Principles of Criminal Law". At the same time, although the UK is the mother country of common law, its contemporary criminal justice system is heavily based on exhaustive rules, statutes (acts of parliament), written regulations and provisions, including with respect to matters of procedure, evidence, the specific constituent aspects of modern crime types, and sentencing. Have any thoughts been given more recently to the notion of providing the same certainty by legally defining in a general and concise way and in writing, 'once and for all', the way civil law countries typically do in their penal codes, basic principles and legal concepts like the autonomy principle (e.g., with respect to fair warning and the individual aspects of the nullum crimen principle), mens rea, intent and negligence, causation, liability for acts and omissions, etc? In other words, would this be a good time for a general part of English substantive criminal law?*

AA: No, this would not be a good time (laughter). What this means, if we are to be serious about the whole thing, is to create parliamentary time to handle something so big. That has been the problem in the past. We have a code from the 1980, which is written, bits of different codes, a code, a draft code. But the government and the parliamentarians say we cannot handle it…it's too big, too big, too big. Should we do it in smaller chunks? It's never got any traction. However, there is now an interesting side issue here, which is that English sentencing law is in a terrible state and has been worse and worse. Now the law commission has created something which is a sentencing code of kinds and which may be presented to Parliament quite soon. Which will then do what they call "a clean sweep" of English sentencing law. So there will be something like a continental code insofar as sentencing is concerned. There are, however, no measures being taken currently to do that for the substantive criminal law or for the general part, as you mentioned. I am quite interested in, but I have never been an evangelist for a code. Because a code…if we woke up tomorrow and there was a code, I would be happy…but to spend years and years working and dealing with objections…

LZ: I think that the fact that we had a fully worked out draft criminal code, which failed to find acceptance and failed to become a formal code, suggests that the experiment has been tried, it did not succeed then, and it is unlikely to succeed now. And I think part of the issue might be that many English lawyers would struggle with the idea of any document being once and for all, because of the rapidly evolving nature of human activity; think about cyber-crime, terrorism, international crime. Having a system which is malleable and rapidly adaptable and very rapidly adaptable is also to have some benefits, albeit not ones that outweigh the lack of a code.

EB: *Now leaving for a moment conventional criminal law aside: As you know, a new department for security law has recently been established at the Max Planck Institute for the Study of Crime, Security and Law (formerly Max Planck Institute for Foreign and International Criminal Law) in Freiburg. And although it is too soon to be able to tell with certainty what precisely the topics of interest will be within this new department, research on security law in Germany has so far mainly focused on administrative police law, the practices of intelligence agencies, the preventive identification and "blacklisting" of potentially dangerous persons for the public order, etc. What is your understanding of this much-debated new security architecture in today's globalised society —and what are, in your opinion, the main challenges for conventional criminal law and its traditional principles and protective guarantees in this context?*

LZ: It is a very interesting set of questions, because the concept of security law has, insofar as I'm aware, no analogy in the English or perhaps even in the common law world, where, as yet, maybe, we will follow Germany, but as yet we think of issues relating to security as properly residing in criminal law, certainly also in immigration law, where a lot of our security measures now lie. And in a bespoke body of counter-terrorism and security law; but that's a sacred area which sits largely outside criminal law, although some of it also creates new criminal offences. So, I think in the UK, or at least in England or Wales, we would struggle to identify something that could be called security law as opposed to different areas of substantive law that have security as their focus. On the question of what the main challenges for conventional criminal law and its traditional principles and guarantees are, there has been in the US and in the UK a very lively debate about whether we would do better to seek to meet the greatest security challenges outside the criminal law, through executive action, through exceptional measures and so on, and there has been quite a powerful debate that we had better to domesticate, if you like, those laws by bringing them back under the criminal law with all its protections of procedure and fair trial rights; one counterview is that when one does that, one risks criminal law principles to fall hostage to the imperatives of the demands of security. So it is not a helpful answer, but I think there is a real tension in providing the protections of the criminal law and the criminal process without doing, what I described in an earlier article, "terrorising the criminal law itself".

AA: Only to say that Professor Zedner's last point is a difficult one, as far as I am concerned. How to manage to keep the safeguards for individuals when you have this really strong imperative, pushed by public opinion often, which requires heightened security against, for example, terrorists? I think that it is really difficult to assess how individual rights should be protected, how we can do that. And this is important, this is what I have been wanting to look at.

EB: *This contemporary shift of the limits of criminal law and the recent focus on the concepts of prevention and security even among legal scholars seem to be primarily justified by the rationales of effectiveness and efficiency. In this context, one may even witness the occasional instrumental-*

isation of classic principles and values such as personal freedom, proportionality, the interests of justice and of the public, etc. What are, in your opinion, the merits but also the dangers of pragmatism compared to the "foundationalist's approach" in criminal justice? We should not forget that one of Professor Ashworth's most famous books is called "Principles of criminal law".

AA: Yes, well, I am not sure I have got much to add to what we have been saying previously, which is that the dangers of pragmatism to me are the attacks on rights and safeguards, so we need to know what rights and safeguards individuals have. The tendency is in England to take a very isolationist sort of view on this and to not wish to recognise the case law of the European Court of Human Rights any more than we can possibly manage. So, I think there is an issue there. I would like to see some of these matters spelled out at European level so that they can be incorporated in the European human rights law, and thereby into English law and the domestic law of the other countries. That is what I would like to see. That is what I have been arguing, for human rights, in the things that I have written. And that is the way, in my view, to combat this sort of creeping pragmatism, which takes peoples' minds and eyes away from what is being done to the individuals concerned. It is not a question of being soft on terrorists, as far as I see it, but it is a question of trying to identify what really are the basic rights which we must protect at all costs.

LZ: I have very little to add to Professor Ashworth's comments; interestingly I think I would argue in the United Kingdom the language of effectiveness and efficiency, although it is quite prominent in other spheres, is not one that I can think of being used very much in respect of criminal law, but it might be that the fact that it is not being used does not mean that it is not there. So to give you one example: two weeks ago the British Government passed a new piece of legislation, the Counter-Terrorism and Border Security Act 2019, under schedule 3 of which anyone suspected of hostile activity, which is not defined, can be stopped and searched and denied access to a lawyer for up to an hour; and when they, if they are given access to a lawyer, the interview happens within the sight and hearing of the border official or the police officer, which is a grave erosion of the rights of legal privilege. The rationale for that is not said to be effectiveness or efficiency, but it would seem that that is its actual aim, which is to permit officials to obtain information with a view to prosecution of individuals who might be suspected of hostile activity. And that does seem to me a gross and very unfortunate undermining of classic principles of due process.

EB: *An interesting example of pragmatism is the "myth of full enforcement". Based on practical grounds of justice administration, alternative and informal crime control mechanisms aimed at circumventing full prosecutions and trials in accordance with the provisions of substantive penal law have been implemented in a significant number of systems irrespective of their legal cultures and traditions. What is the position, however, of the traditional purposes of punishment and of the symbolic function of criminal law (if we accept there still is such a function) in contemporary justice systems operating on the basis of such pragmatic notions?*

AA: It adapts them. Because if you think of some of the measures that have been taken in England in the last 10-20 years, take for example penalty notices for disorder: the police have the power now to issue these notices which are basically on-the-spot fines; you can do this for public order offences, in the streets they can do this for theft from shops and things like that. So, these are all things which are criminal offences normally, but for which you can give a penalty notice for disorder…an instant justice. Now it is true, if we are talking about safeguards, that you can refuse a penalty notice for disorder and say to the police you must go to court if you want to prosecute me, which apparently according to the statistics 1% of the people actually do. But there is some recognition of individual rights there. But in terms of the connection with traditional notions of punishment, a penalty notice for disorder you can say that it is proportionate or deterrent. There are issues which you could discuss and you could come out with the idea that it is either proportionate or not. But the main problem is that in general this does not involve a court and it gives police officers the powers of sentencing effectively. So, in practice, in the 99% of cases where this goes through, the police officers in effect are sentencing the individual. So yes, there are many other forms of these measures in England, you have conditional cautions, you have simple cautions, you have cannabis warnings, all kinds of measures. But what they have in common is that they do not involve the court. And therefore they need careful justification on grounds of punishment, deterrence and all those issues, and particularly proportionality, I think. Because poor people can come out very badly over these things.

LZ: I would raise a question as to whether there is even a myth of full enforcement. Discretion is a byword in the UK and the police have enormous discretion to respond as they see fit, and my memory of the figures is perhaps a little out-of-date, but the last time I looked of all cases reported to the police in England and Wales, only 2.2% result in a caution or a conviction. So the levels, perhaps rightly, through the criminal process are exceptionally high and there are many reasons why a case would fall away or result in being marked “no further action”. But the idea that somebody who is accused of crime will have their day in court…I think this was never the case and certainly is not the case now. So, I think there is a myth of full enforcement. I think the expectation is that discretion should be exercised in the UK, perhaps in contrast to some other jurisdictions. But there has, as Professor Ashworth said, also been a proliferation of alternate routes of de facto punishment handed down not only to the police, but actually also to council officials and in many cases now to private law enforcement agencies, who are either employed by the council to enforce regulations, or enforcement is contracted out without a fee and the way the private companies make money is by the collection of fines.

EB: *And finally, a more personal question: You are both fellows of the All Souls College which has welcomed us warmly for this interview. All Souls College is primarily a research-oriented college, the only one in Oxford, I believe, so you have no teaching responsibilities anymore. But*

both of you have taught extensively in the past. Do you miss teaching and, if so, what aspect of it exactly do you miss?

AA: As a professor I did have teaching responsibilities. It depends how you get here. Lucia is a senior research fellow here, so she has no responsibilities or she can agree to teach. I was here as a professor and there were 20 professorial posts located at this college, and I was the same as any other professor, I had to do the teaching to a normal rate. The teaching load of an Oxford professor certainly of my type was quite low, so in fact I had a lot of research time. And it was very nice to be able to spend it in this College but it would have been the same amount if I had been in another college.

EB: *Which do you prefer?*

AA: I was lucky that the balances I did have were quite favourable to me. I had a lot of research time, but I was quite involved in teaching graduate level. So, I just had a wonderful experience. I just feel I have been very, very lucky.

EB: *And Professor Zedner, do you miss teaching? Not many teaching commitments for you now, right?*

LZ: No, I now teach mainly at graduate level, and not because I have to but because I choose to. As a research fellow [at the All Souls College] I am not obliged to teach. But I taught for 27 years in the law faculty here at Oxford and also at the LSE (London School of Economics). And teaching, for example, criminal law for 27 years requires one to keep absolutely abreast of the latest developments, because you can be quite certain that the students will do so and will need to do so in any event in order to sit their exams. So there is a close interaction between teaching and research, that I think is often underplayed, as is keeping on top of one's field and being challenged in one's thinking and particularly where teaching and research come closer together with the graduate students. And we have very large number of research students; they become part of a larger research endeavour in some ways and raise questions which then feed into one's research. So I see them both as beneficial.

AA: I think the signature degree by examination, which is the BCL (Bachelor of Civil Law), provides brilliant minds. We are very fortunate, these people come from all countries across the world, we get really clever people. As Lucia said, it carries over to your research because these people make you think. So we are very fortunate to have such good students.

LZ: The graduate students that we get here are quite exceptional and indeed some of them are quite terrifying. It keeps one very alert and obliges one to read very widely, perhaps more widely than one would if one only pursued a particular body of research.