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The crisis of penal populism: prison legitimacy and its effects on women's prisons in the UK

Abstract

Considering the closure of one of the oldest and infamous prisons in London, HM Holloway female prison, and the controversy which had followed the plan concerning the use of the land, this study provides a brief review of the penal policies affecting women's prisons in the UK since the 1990s. The review draws attention to the problematic concept of penal populism and how the government has been using the prison system as a pawn in their political battleground. Therefore, it is argued that the failings in the prison system cannot be attributed solely to its nature, but it is also essential to consider the temperament of politics in this area.

Keywords: penal populism, prison legitimacy, women's prisons in the UK, HM holloway female prison

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Susanna Menis

Associated Lecturer, University of London, London

Correspondence: Susanna Menis, Associated Lecturer, Honorary Researcher (2017/18), School of Law, Birkbeck, University of London, Malet Street, London WC1E 7HX, Email s.menis@bbk.ac.uk

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Introduction

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In light of the closure of one of the oldest and most infamous prisons in London, HM Holloway female prison, and the controversy which followed the plan to use the land for the building of luxury apartments, this study provides a brief review of the penal policies affecting women's prisons in the UK since the 1990s. Significantly, the discussion draws attention to the enhanced relationship the government has had, since the 1970s, with the prison system. The Thatcherism of the late 1970s transformed the prison system into a political battleground.¹ Criminologists have associated this new era with managerialism and penal populism, where not only is penal policy approached as a business, but it is also adopted in the belief that the policy will be popular with the public, especially at a time of political elections.² Therefore, the failings in the prison system cannot be attributed any longer solely to its nature, but it is also essential to take into account the political temperament in this area. This review will start by addressing the Woolf report published in 1990; it will then move on to consider the conflict brought about by the New Labour 1997 policy 'tough on crime and tough on the causes of crime'. Next, the review will assess the rehabilitation revolution of the Coalition government and how it was replaced by a newer 'transforming rehabilitation' policy. Finally, the review will conclude with an assessment of the recent closure of HM Holloway women's prison in London.

Prison as a last resort

The starting point of this review is the policy dynamic marking the 1990s. An inquiry led by Lord Justice Woolf following a number of prison riots in 1990. The Woolf Report³ was seen as an opportunity, as expressed in the debate in the House of Commons: 'for major reforms of our squalid and socially damaging prisons'.⁴ The Home Office had already noted a year earlier that imprisonment 'can be an expensive way of making bad people worse' (1990). Criminologists have considered that the Woolf report brought to the forefront what they called the 'crisis of legitimacy'. For example, Cavadino et al make some reference to the legitimacy of the existence of the prison penalty.¹ Indeed, it could be argued that Woolf's report was

less concerned with challenging the prison penalty; rather, it aimed at reinstating its legitimacy. It drew upon the damaged prison environment, voicing the view that imprisonment did not appear 'to help prisoners lead law abiding and useful lives in custody and after release';³ hence the great focus on prisons refurbishment.³ The Woolf report's recommendations brought about a number of significant changes to the prison environment; however, it could be argued that some of these improvements well illustrate the sometimes-awkward nature of prison reform. Drawing upon only one example here, one of the major achievements after Lord Woolf's recommendations was the improvement of the prisons' sanitary conditions. Up until then, prisoners did not have toilet facilities and running water in their cells, where normal practice was the use of chamber pots; the pots were emptied once the prisoners were unlocked in the morning.⁵ Such a practice would be unimaginable today, although in 2010, the Independent Monitoring Board (IMB) reported the existence of 2000 prison cells across ten prisons which lacked in-cell toilet facilities.⁵ On the face of it, en-suite cells appear to guarantee dignity and humane treatment, principles which the Inspectorate of Prisons has been monitoring since 1999.⁶ However, as pointed out by Casale⁷ in her review of the post-Woolf reforms, the open-toilet (whether screened or not) became counter-productive to the initial aim. First, the refurbishment created a smaller living space in a cell originally designed for one person but now being shared by two prisoners; subsequently, cell-mates became openly exposed to each other's most private practices. It is difficult to accept that such an, albeit improved, environment can promote human dignity, one of the requirements assessed by the Inspectorate of Prisons. This was indeed one of the concerns voiced by a recent report by the charity Women in Prison⁸ where the newly refurbished HMP Downview failed to provide screened toilets or toilets without lids 'next to beds and in full view of door hatches used by male prison officers'. It was pointed out by Player⁹ that the Woolf report did not target issues specifically related to women prisoners; however, in her review on *Women's Prisons after Woolf* she speculated on the possible impact that the recommendations might have on the women's prison estate. Player suggested that the effects of the report on prison policy might lead to equal treatment of male and female prisoners, and thus break away from what has been defined as the 'medicalisation' type of approach; an alternative possibility, she argued, could be the mere accommodation by female

prisons of prison policy which was originally designed for men. Indeed, future demonstrates that both case scenarios have had bearings on the women's prison estate; this will be further discussed throughout this review. Moreover, although Player was writing soon after the Woolf recommendations and therefore outcomes were not yet visible, she nevertheless drew attention to the fact that there was 'no single division exclusively devoted to the development of a female service'.⁹ This concern has been identified by this report as a feature lacking throughout the period discussed. Indeed, reports throughout the 1990s provided evidence of the struggle presented by women's prisons. For example, a report by Nacro² explained that 'it is little wonder that just over a third of women released from prison commit another crime within two years', and that 'a positive strategy for the resettlement of women' was needed. Moreover, the 1997 review on women's imprisonment by the Inspectorate of Prisons uncovered an alarming situation. Although the inspection undertaken was meant to address Holloway prison, the Inspectorate found 'serious inadequacies in the overall organisation and management of prisons for women in this country', and were thus outside the control, or indeed influence, of the Holloway prison Governor and staff. The Inspectorate identified one of Player's concerns discussed above, that following the Woolf inquiry's recommendations the female prison estate would be required to adopt policies created originally for the male prison estate; indeed, it found that 'many aspects of the regimes had been constructed as if male rather than female prisoners were being held in these establishments'.¹⁰ Despite the above drawbacks, it appears that legislation following the Woolf inquiry led to a substantial reduction in prisoner numbers in a very short period of time. Indeed, the Criminal Justice Act 1991 was an attempt at reducing the number of offenders going through the prison gate by diverting them instead to community penalties. The focus of the Act might have been an enhanced approach to prison alternatives, but it could be argued that it was also a fundamental step in re-legitimising imprisonment in itself. The diversion of non-violent offenders away from custody can be seen as essential in order to guarantee that those who were inevitably sentenced to imprisonment were met by a system, which according to the Woolf report,³ could provide a humane and just service; thus, in turn, reducing re-offending and justifying the prison penalty. Interestingly however, despite this potentially effective outcome which was evidenced by a reduction of about 5000 in the prison population in less than three months,¹ the general view was that this reform reflected a 'soft' approach to criminality.

Prison works

Significantly, using imprisonment as a 'last resort' as encouraged by the Woolf report and the Criminal Justice Act 1991 failed to visibly demonstrate to the public that justice was being done. The limitations imposed on judges by the 1991 Act in relation to their discretion to sentence people to prison were challenged. Lord Chief Justice Taylor, expressed the concern shared by many other judges that the Act 'put judges into an "ill-fitting straitjacket"' and that 'it is of prime importance that the sentences passed should not be so far out of touch with the expectations of ordinary law-abiding citizens as to create discontent'.¹¹ This was backed up by media headlines such as, for example: 'Free the judges to jail the thugs',¹² and 'A wicked way to abuse our law; To defy the moral sense of law-abiding citizens brings criminal justice into disrepute and turns the law into a tyranny'.¹³ What followed is a significant lesson in penal populism: the initial recommendation to use imprisonment as a last resort was transformed into what became known as the Conservatives' 'prison works' agenda.¹ The Home Secretary Michael Howard famously declared

in the Conservative party conference in 1993 that Prison works. It ensures that we are protected from murderers, muggers and rapists - and it makes many who are tempted to commit crime think twice ... This may mean that more people will go to prison. I do not flinch from that. We shall no longer judge the success of our system of justice by a fall in our prison population.¹⁴ This penal rhetoric was further fuelled by the New Labour slogan 'tough on crime and tough on the causes of crime' in 1997.¹ Indeed, prison legitimacy was revisited once again. Under this new discourse of zero tolerance, the prison penalty was portrayed as essential not only to the locking up of criminals-serious and petty- but also, to the eradication of the causes of crime, hence introducing measures to tackle anti-social behaviour.¹ At face value, it appears that during the period of the Labour government there had only been a 2.4% increase in yearly prison receptions from 1998 to 2009. The actual total prison population during these ten years increased by 25%;¹⁵ however, what is significant here is that this increase was mainly due to a dramatic 85% increase in sentences of immediate custody.¹⁶ Unsurprisingly, the tough on crime agenda affected disproportionately women offenders. Indeed, in comparison to a 0.4% increase in male yearly prison reception from 1998 to 2009, the female yearly reception for the same years experienced an increase of 26%.¹⁵ The 60% increase in women's prison population between 1995 and 2010 Bromley briefing¹⁷ was inevitably due to increased severity in sentencing. The records of 2010 indicate that 63% of women sentenced to prison committed non-violent offences where there was an increase of 50% of women sentenced to imprisonment for indictable offences.¹⁷ Moreover, the number of women sentenced to remand was raised too, where an increase of 196% between 1992 and 2002 was reported by the Corston Report,⁸ also, the Bromley Report¹⁷ indicated an increase of 5% only for the year 2010. In addition, due to the petty nature of the majority of offences committed by women, the majority served prison sentences shorter than six months. Indeed, Lord Woolf, quoted by *The Times* in 2001 ("We still fail our prisoners")¹⁸ in a speech he gave to the Prison Reform Trust, thought that 'the whole of my report, ten years ago, was intended to encourage a culture where the scourge of overcrowding would not occur. We all know what has happened since then, especially the deeply disturbing figures as to women prisoners'. In 2004 *The Mirror*¹⁹ reported a 140% increase in women in prison in the past ten years, and according to the tabloid, the imprisonment rate was higher than in Libya or China. On the face of it, the criminal justice policy promoted zero tolerance for crime, hence the increased use of imprisonment. However, the safety and security that this approach promised was merely an illusion. Indeed, the urge by the Corston Review in 2007 for a 'radical change in the way we treat women through the whole of the criminal justice system' (p.2), illustrates exactly that. Similar views were voiced in the media and official reports; for example, readers of *The Independent* were told in 2000 that 'a Putting woman in prison only perpetuates the cycle of crime' and that 'th[e] burgeoning population may satisfy some strange desire for revenge. But it does nothing to protect society and prevent crime'.²⁰ Moreover, The Bromley briefing reported in 2006 that 65% of the women released from prison in 2002 reconvicted within two years; and reporting in 2010, the briefing indicated that in 2004 not only were 41% of the women homeless upon discharge, but 64.5% of the women released from prison were reconvicted within two years. However, the failings in the system during this period were predominantly due to a lack of a strategic management, something which had already been pointed out ten years earlier.¹⁰ Reflecting Player's concern discussed above, the Corston report in 2007 and the Inspectorate of Prisons in 2010 confirmed that there was a 'yawning gap in the national structures'²¹ and that no 'planned strategic approach

to women's prison estate' meant that women prisons were 'subject to changes that respond instead to the need of men'.²² The Inspectorate of Prisons clarified that although many of the prisons had resettlement strategies, 'they were not based on needs analysis' specifically related to women.

The rehabilitation revolution

The 1990s events described above illustrate the problematic dynamic of the prison penalty in terms of its aims and legitimacy; it could be argued that this was an important phase in what was yet to come. Indeed, from a penal populist point of view, the 2010 Coalition government was quick to highlight the failure of the previous government, where 'despite a 50% increase in the budget for prisons and managing offenders in the last ten years almost half of all adult offenders released from custody reoffended within a year'.²³ The prison sentence as it stood, it was argued, was counterproductive because the swelling of prisoner numbers led to early releases; it was suggested that this, in conjunction with shorter sentences, was 'the fundamental failing of policy' as well as the 'lack of a firm focus on reform and rehabilitation'.²³ This new policy by the Justice Secretary Ken Clarke was presented by the media as 'radical'; imprisonment, as it was, did not work, and there was need for what the Justice Secretary called a 'rehabilitation revolution'.²⁴ The changing dimension of the justification of imprisonment is clearly evident in the Green Paper *Breaking the Cycle*: protecting the public, punishing and rehabilitating offenders.²³ The tough on crime rhetoric was re-shaped to target not sentencing, but imprisonment itself. Indeed, the Georgian and Victorian term 'hard labour' was replaced with 'hard work', where it was advised that 'prisoners will increasingly face the tough discipline of regular working hours'.²³ Moreover, Eden's and Bentham's idea of 'labour houses' (introduced by the Penitentiary Act 1778), also appeared to feature in the 2010 Green Paper as 'working prisons'; in hindsight, it can be safely stated that neither of these plans was eventually implemented. However, although it is not clear how the 2010 idea of 'hard work and industry' came about, it appears that it was to fulfil the aim of making 'punishment more rigorous' while at the same time allowing for the learning of vocational skills. Interestingly, Ken Clarke's new policy, as reported by *The Guardian*, was meant to 'mark a breach with the "prison works" philosophy introduced by Michael Howard in 1992'.²⁵ Yet the Green Paper reveals a different discourse: 'prison does not work' if policy was to continue with the Michael Howard approach; however, 'prison [can] work' if imprisonment was to be reinvented- promising a reduction of at least 60% in re-offending in four years.²⁵ Surprisingly, the Green Paper *Breaking the Cycle* made the point that the rehabilitation revolution would be achieved by 'learning the lesson from the approach to managing women offenders and applying them more broadly' no indication however was given as to what the desired approach was. It may well be that the government was inspired by the drug detox services, social care and mental health provisions available in women's prisons; however, this was not perceived in the same way by, for example, the Prison Reform Trust, which in 2011 suggested that 'women's prisons appear to have become stopgap providers'.²⁶ On the face of it, prison legitimization could not be more evident here, where the *Breaking the Cycle* plan was to be extended to male prisons. However, women's prisons showcased a gloomy reality during this period: the chair of the Women's Justice Taskforce, Fiona Cannon, was shocked by 'the waste of lives, time and money behind the cold statistics and the evidence' the Taskforce team heard during their inquiry- there was little strategy behind any of the governmental policies.²⁶ Indeed, this was confirmed in the report *Women offenders: after the Corston Report* by the House

of Commons Justice Committee, 2013-14.²⁷ The Committee identified 'a perceived weakening in governance arrangements for further progressing the Corston agenda'. Moreover, despite a new Women and Equalities Group managed by NOMS, the Committee observed 'a lack of visible governance'. Finally, evidence given by the charity Women in Prison argued that: The women's custodial estate as it exists is not suitable for women with multiple and complex needs. It is not a deterrent, it struggles to be a place of rehabilitation, the re-offending rates and level of self harm evidence it does not work. On the actual life in prison, evidence was given by a prisoner: The conditions are disgusting. I was put in a new cell where the thin item they call a mattress had hundreds of stains of every type on and stank to high heaven, under the bed were sheets stinking of urine and just left there and I was told it was up to me to remove and wash the sheets.

Transforming rehabilitation

Breaking the Cycle was very quickly abandoned, not least because Ken Clarke was replaced by another minister, and a new strategy to penal policy followed. Similar to Ken Clarke's approach, the 2013 policy by Chris Grayling was to target rehabilitation. The plan as set forth in *Transforming Rehabilitation: A Strategy for Reform* was aimed at enabling 'flexibility to tailor rehabilitative work, with an emphasis on responding to the broader life management issues that often lead offenders back to crime'.²⁸ The strategy promised a 'new statutory rehabilitation extended to all 50,000 of the most prolific group'. The 'rehabilitation' proposed by the new policy embraces what is now referred to as 'resettlement' provided just before release. According to Chris Grayling, 'this may include support in finding accommodation, family support, mentoring and financial advice'. However, the first two lines in a note found in the diary of an imprisoned woman who committed suicide in prison²⁹ exemplify the lack of consideration given to the actual life in prison and how this affects prisoners' wellbeing in the first place: No one knows how I really feel Is this a nightmare or is it real? Indeed, reports by the Inspectorate of Prisons between 2012 and 2015 repeatedly indicated that prisons 'did not pay sufficient attention to the rehabilitation of the prisoner and protection of the public'.³⁰ The 2013 report explained that prisons are faced with a limited number of programmes aiming at facilitating rehabilitation. Moreover, the resettlement haven envisaged by Chris Grayling still appeared to be non-existent in 2014; indeed, according to the Inspectorate: It will be important that those prisons designated as 'resettlement prisons' in the new arrangements urgently begin to create the 'whole prison' approach to resettlement that is too often lacking at present.³⁰ However, it appears that the new policy of *Transforming Rehabilitation*, perhaps for the first time since the 1990s, has introduced strategic objectives specific to the female prison population. For that purpose, the Advisory Board for Female Offenders was established with the aim of carrying out the government's objectives, such as: ensure that there are robust and effective sentencing options in the community that address the specific needs of female offenders; that the women's custodial estate is tailored to their needs, and that our Transforming Rehabilitation reforms support better life management to reduce women's reoffending.²⁸ This initiative was not without controversy. A House of Commons Justice Committee on women prisoners (2015) expressed its concern in 2015 that the 'high turnover of Ministers and, therefore, Advisory Board Chairs, during the Board's short existence appears to have impeded progress against the priorities set out in March 2013'; the justice committee suggested that a 'strategy' was still lacking. Moreover, it was argued that the Board was merely an advisory group with limited powers. Overall, the Justice Committee welcomed the 2013 Transforming Rehabilitation's

plans to design women's prisons as resettlement prisons, suggesting a greater focus on preparing women for their release. However, once again, the Committee also thought that the reforms had been designed primarily to deal with male offenders. In oral evidence given before the Justice Committee in 2013 it was suggested that the government 'designed everything around men and tweaked it for women'. These concerns were matched by a visit made in 2015 by the UN Special Reporter on violence against women.³¹ In relation to women in prison it was suggested that: More needs to be done to increase the funding base, increase the proportion of female staff, and also to shift the focus away from punitive goals, towards support and services that address rehabilitative aspects. Moreover, most women in prison do not present a threat to society and the consequence of their incarceration includes enormous personal, economic and social costs. Creativity in sentencing decisions could lead to more orders of a non-custodial nature. The 2015 forthcoming election stood as an opportunity to reflect penal populism once again. The Conservative election manifesto proudly stated that the prison service could contain a greater number of prisoners, suggesting a 'tough on crime' policy; also, the party promised that they 'will make further savings by closing old, inefficient prisons, building larger, modern and fit-for-purpose'.³² As for women prisoners, the one sentence suggesting commitment read rather vaguely: 'we will improve the treatment of women offenders, exploring how new technology may enable more women with young children to serve their sentence in the community'. However, it was not long before the Prison Reform Trust highlighted in their 2016 Bromley Briefing that: There is no argument that the current female estate represents anything other than historical accident, with a variety of locations for prisons decided on the basis of their availability and, as often as not, their unsuitability for occupation by male prisoners. Indeed, a report produced in 2017 by the charity Women in Prison confirmed that there has been no substantial reform to the issues raised by the 2007 Corston report.

The closure of holloway prison

At the apex of the crisis of penal populism must be the recent closure of HM Holloway women's prison. The prison's closure followed what the government termed a 'radical' reform, launched in 2015 by the Lord Chancellor and Secretary of State for Justice, Michael Gove. Accordingly, Michael Gove announced 'a new beginning for female offenders with women prisoners serving their sentences in more humane surroundings better designed to keep them out of crime'.³³ The government's plan was welcomed; some called it a 'smart' approach.³⁴ Juliet Lyon, director of the Prison Reform Trust³⁴ thought that 'selling off Holloway is the clearest message to the courts that prison is not the place to dump vulnerable women who have committed petty, non-violent offences'. Others however, pointed to the fact that Holloway prison had been, albeit surprisingly, doing well. The Inspectorate report undertaken in 2015 found that: After many years of being very critical of the treatment provided to women at Holloway, at our last inspection, in 2013, we reported a much improved picture this inspection found a prison which had contributed to improve in all but one of our healthy prison tests. The IMB at Holloway prison, in its final report in 2016,³⁵ noted that 'the announcement came as a complete surprise to everyone associated with the prison at a time when Holloway had greatly improved on many measures'. The Board's concern was that all those efforts achieved by the prison in supporting vulnerable women and the specialised teams and their depth of experience built up over the years would be lost. The IMB also recognised that the closure meant there would be no prison in London for women. The IMB questions to the government in their

HMP Holloway³⁶ annual report addressed fundamental issues related to the implications of the closure. For example, the Board asked: What practical measures are being put in place to encourage families to visit establishments which are more expensive to reach and geographically further away to visit? And: How does the government anticipate providing the range of services which were available in Holloway as a Central London Prison? Will it provide grants for organisations like Women in Prison and Choice for Change which have, to date, been funded by the local authority? These questions were never answered³⁵ and it is yet to be seen what would be the consequences of moving away from inner London women sentenced to imprisonment whose families might be living in a comfortable commuting distance from the prison. Since February 2016 courts have started to divert women sentenced to prison to HMP Bronzefield and HMP Peterborough;³⁷ some of the remaining women were moved in May 2016 from HMP Holloway to HMP Downview.³⁸ HMP Bronzefield has not been visited by the Inspectorate of Prisons since the changes, but drawing upon the 2015 report, women transferred to this prison might expect an environment with 'a highly complex and challenging' population, where levels of feeling unsafe and victimised are high. The IMB has not yet produced its 2016/17 report for HMP Bronzefield,³⁹ but in the previous year, the Board recorded as the second highest number of referrals by prisoners to the IMB (after health related concerns) issues concerning staff/prisoners and bullying.⁴⁰ On HMP Downview the IMB reported in 2016/17 some significant issues: the re-opening of the prison after 30 months of non-operation did not follow the original plan to accommodate male prisoners but it had to resolve the pressure 'on accommodation within the female estate following the decision to close down HMP Holloway'. Subsequently, the prison staff teams and facilities had to be re-developed and operationalised very quickly, drawing on previous Downview staff and new recruits. There was a change of Governor shortly after re-opening. Much of the accommodation required extensive refurbishment, and the prison increased its prisoner roll quickly. As a result of these multiple pressures, many aspects of the regime had to be developed whilst the prison was taking in women. Despite refurbishment and upgrade, Downview's original accommodations are, surprisingly, still Victorian.⁴¹ However, it is on a different matter that the closure of Holloway prison has been controversial. It is an irony that for years Holloway prison has been in the spotlight for its inability to deliver decency and welfare. It is only now, that it has been identified as standing on prime real estate, that the prison's inadequacy has become a convenient justification for its demolition. What is clear is the questionable strategy chosen by the government concerning the land on which Holloway prison is standing. Following the announcement of the closure of Holloway, the government suggested that the land would be used to build new homes.⁴² Given the 20,000 households on Islington's housing waiting list, it was expected that the property development would be diverted to that purpose.⁴³ However, it appears that bidders have made offers of about two hundred million pounds with plans to build luxury flats.⁴⁴ The fate of Holloway prison is still a mystery and in the meanwhile campaigners are battling to make a case for reclaiming the land for social housing. Indeed, the Holloway affair is a fiasco, and it emphasises the familiar formula of placing governmental and corporate financial interests before individuals' and society's well-being. As put by the social activist Sara Hyde.^{45,46} 'Closing Holloway Prison to make room for a luxury flat isn't a triumph - it's just cruelly ironic'.⁴⁷ What has been defined as political penal populism really disguises governmental inability to formulate coherent policies aimed at benefiting society rather than merely attracting voters.⁴⁸ Strategy is missing and policy and the people

affected by it are at the mercy of 'a spur of the moment'⁴⁹ interest, usually of a financial nature. The message is clear: 'prisons are here to stay'.⁵⁰ Only the arguments for legitimating this mantra change over time, not least because no attempt at justification lasts for long.⁵¹ Sadly, the 2017 statistics do not support the hopes voiced by prison campaigners at the announcement of the closure of Holloway prison⁵² that this would bring a reduction in the number of women sent to prison. The Prison Reform Trust identified early in 2017 an almost 45% decline in the use of community sentences,⁵³ a 9% increase in the number of women sent to prison on remand and a 3% increase in women serving a custodial sentence.⁵⁴ The question to be asked is what will be the next political move aimed at securing, once again, the failing legitimacy of imprisonment and flimsy prison policy.

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Conflicts of interest

The author declares that there is no conflicts of interest.

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