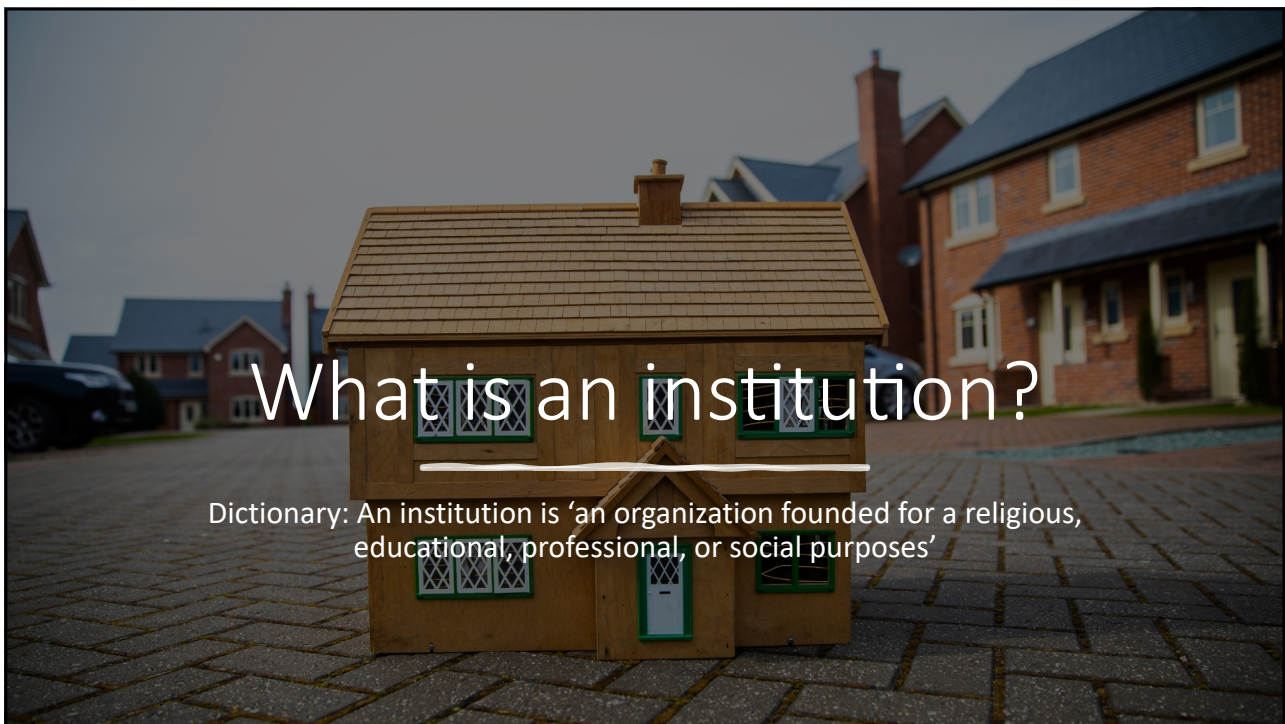



1



2



'Total institutions are forcing houses for changing persons; each is a natural experiment on what can be done to the self'

Goffman (1961)  
*Asylums*

3



## The law of institutions

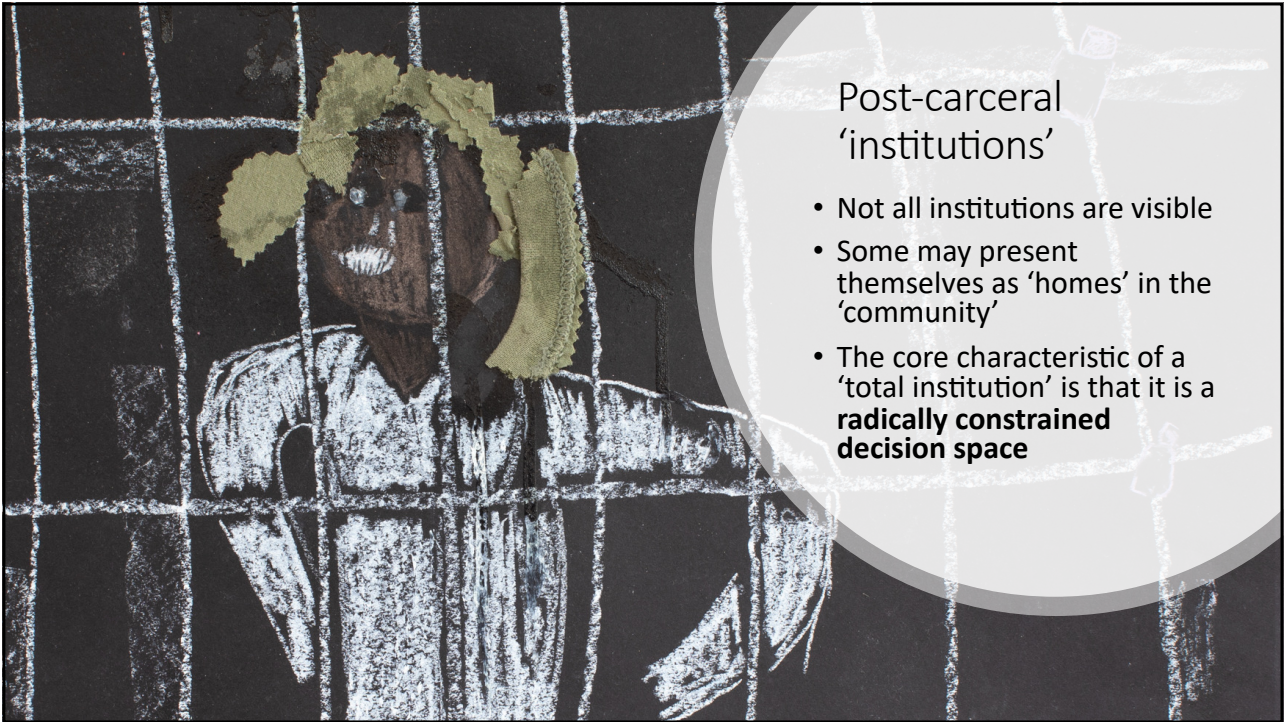
Regulating institutional confinement since 1774...

- 'Liberty safeguards' against wrongful confinement
- Licensing and monitoring to prevent 'abuse'

Does the law of institutions prevent or legitimate the problem?

4





5



6



## The inherent risks of institutions

- Depersonalisation
- 'Closed cultures' amongst staff
- Normalisation of coercion and violence
- Relationships of control
- Dependency on staff without control over staff
- No fully 'private' spaces
- Not being 'free to leave'
- Limited outside contacts
- Lack of relationships of trust

7



## Speaking up...

- The 'credibility gap' between staff and residents
- Lack of independent investigative responses
- Lack of trust in institutional responses to allegations
- Risk of backlash for allegations
- Non-speaking people and poor support for communication

8





## Barriers within the legal system

- Institutional immunities
- Legal capacity – instructing lawyers
- Legal capacity – giving evidence
- Lack of accommodations, and encountering prejudices, within the legal system
  - Police
  - Lawyers
  - Judges
  - Juries
  - Courts
  - ‘Systems’

9



## The limits of monitoring strategies

- Intermittent and often infrequent
- Staff will behave differently when monitored
- Not always private interviews
- Inspectors may lack expertise and communication skills in relevant disabilities
- Residents (and staff) may not feel safe telling inspectors what is happening
- Need to ‘triangulate’ evidence of poor practice (but not good!)
- ‘Regulatory capture’

10



How *can* we reduce  
the inherent risks  
of institutions...?

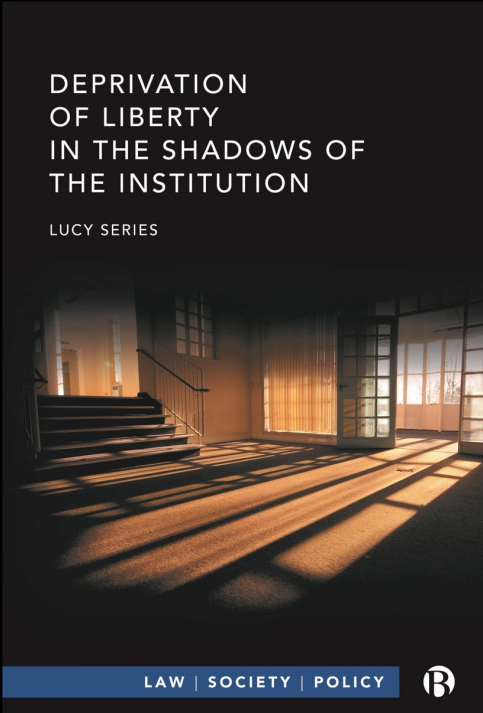
11

## Beyond the gilded cage

- Strengthen legal capacity across all areas of life
- Communities, not closed settings
- Eliminate coercion
- Rights-led safeguarding strategies
- Personal assistance not 'care'
- Tackle rooted prejudice
- Accessible justice
- Build, nurture, strengthen and recognise chosen relationships of trust



12



DEPRIVATION  
OF LIBERTY  
IN THE SHADOWS OF  
THE INSTITUTION

LUCY SERIES

LAW | SOCIETY | POLICY

**Where can I find out more?**

- Social care detention
- Distinguishing 'homes' from 'institutions'
- History of the law of institutions
- The limits of reform-based strategies for institutionalisation
- The challenges of abolishing institutions

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