Rethinking Imprisonment in Scotland:
The Dilemma for Prison Reform
and the Challenges Beyond

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“We are aware of all the inconveniences of prison, and that it is dangerous when it is not useless. And yet one cannot 'see' how to replace it. It is the detestable solution, which one seems unable to do without.”

Michael Foucault

INTRODUCTION

I welcome the establishing of a Prisons Commission to consider how imprisonment is currently used in Scotland and how this fits with the Government’s wider strategic objectives. It is also entirely right it should raise the profile of this issue to enable a more informed debate. I hope that the submission which follows will add value to your work and might provide some additional insights. I was privileged to have worked in the Scottish Prison System for a long time. I am now able to reflect with a degree of detachment.

If I were to indulge myself in looking back on a life’s work it would be nice to be able to justify one’s existence. But I do not intend to do so. Max Weber’s ‘Politics as a vocation’ helps us to understand that as managers, administrators or bureaucrats in a system, we may sometimes ignore or even subvert its overt goals to maximise our own satisfaction and gain social justifications and approval for what we do. I am not going to try and provide a validation for 33 years work in the prison system. I hope that for those who find themselves incarcerated in Scottish prisons the work I have undertaken, the initiatives, interventions and ideas I have pursued will contribute in some way to their rehabilitation. It is an entirely different question as to whether they should have been there at all and the purpose and goals of the system which put them in to prison. But working in a system for a long period, and having the ability to reflect on that, provides for something with slightly more utility. It provides us with an opportunity to learn.

I want to examine our use of imprisonment under the following headings:

1) How we got here
2) Debunking a couple of myths:
   a) Prison is a Deterrent
   b) The rates of crime and use of prison are linked
3) The cost of the unnecessary use of imprisonment

and provide the Commission with:

Some proposals for change and some concluding remarks.

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3 ’Politik als Beruf’ (Politics as a Vocation), Max Weber (1918), originally a speech at Munich University. Published in 1919 by Duncker & Hubmldt, Munich.
1. How we got here

Prison, or more accurately the use of imprisonment as we know it today, is a relatively recent construct. It was a ‘least worst’ solution to social changes which saw the reduction in the use of the death penalty and the resistance by our colonies to take convicts, who in an earlier age might have been hung, and were being transported abroad into servitude. As these, and the reduction in the use of corporal punishment began to impact, we found ourselves using imprisonment as a solution in its own right. As we know, before that, prison had been used primarily as a means of holding suspects before trial, or after conviction to await execution of sentence, which often was execution itself. In that sense, prison was used as a remand facility, for those awaiting further outcomes, or payments of debt.

A consequence of the growth in the use of imprisonment was the creation of a new language of punishment, where incarceration became a re-worked ideology. There then followed a struggle to define its use. Punishment and deterrence seem to have been accepted justifications, but superimposed were a whole set of moral philosophies, of retribution, incapacitation, reformation, expiation, reparation and a series of regimes or processes to achieve these aims, including the silent system, the separate system, treatment and training, moral education, to the modern-day language of ‘interventions’, ‘criminogenic need’, ‘assessment of need and risk’ and ‘addressing offending behaviour’.

Figure 1

What is the purpose of imprisonment?
Much of the impetus for fresh thinking came from The Gladstone Report of 1895. But before I turn to that, the Report also praised the centralisation of authority, the uniformity, the discipline and economy that the process of ‘nationalisation’ of prisons through the various Acts from 1835 to 1877 had brought. So our story starts earlier.

The first statutory provision for the erection and maintenance of prisons in Scotland was made in the reign of King James VI by an Act of 1597 which ordained that “Prison Houses suld be bigged within all Burrowes”. The liability for their management and cost remained with the burghs.

Scotland, like elsewhere in the UK, had a large number of establishments which purported to be prisons, and accommodated villains and debtors. They were run by local Burghs and Counties and conditions in the main were abysmal, unclean and unsanitary. Males and females mixed, there was communication with the outside world and many of those who ran such establishments were corrupt. The food was often inadequate and barely edible. Those who could access funds from family and friends could purchase better conditions, alcoholic drink and favours.

In 1835 “An Act for effecting greater Uniformity of Practice in the Government of the several Prisons in England and Wales, and for appointing Inspectors of Prisons in Great Britain” was passed. And later in that year the first Inspectors of Prisons in the UK were appointed. It was a move designed to regulate, reform, improve, centralise, and ultimately to control prisons.

Frederick Hill was appointed to be Scotland’s first Inspector of Prisons. In his first report, of 3 February 1836, he stated he had “carefully inspected between 20 and 30 of the Prisons in different parts of the country, some in large towns, others in small towns, and others in rural districts.” He found the prisons to be in a poor state and suffering from ‘a range of evils’: the want of means of separation of prisoners, want of employment, instruction for trade, mental, moral or religious instruction, incompetence of keepers, cleanliness,

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5 For example Brechin Goal (visited by the Inspector of Prisons, Scotland on 14 December 1835):
   “This is one of the worst prisons I have visited, and is in no one respect suited to the purposes to which it is applied. ... There are in the whole two cells, one for criminals and one for debtors; and in addition a damp vault, very properly designated the “black hole” which I was told the sheriff, when lately visiting the prison, had declared to be “unfit even for a dog”. The prison is very insecure, and there are constant attempts at escape, which are sometimes successful. ... The freest communication can go on between the prisoners and persons in the street; and files, knives and other instruments for escape are often handed in at the windows. ... On my entrance I found the inmates, consisting of three debtors, a criminal and a visitor, regaling themselves with a bottle of whiskey. ... [the gaoler] said he was sometimes obliged to put female prisoners, in the daytime, along with the male debtors; and ... the females had to remain there even while the male prisoners were obeying the calls of nature. ... the apothecary ... told me that he considered the state of the prison “certainly calculated to induce illness” ... the foul smell arising from the box which served as a privy.” Reports of the Inspectors of Prisons of Great Britain. IV. Scotland, 1836, at page 35.
ventilation and cost. In his first Report of 1836 he listed 13 principal evils. He found there was a lack of uniformity in the system, prisoners became worse after release and that imprisonment did not really deter: He suggested there should be a uniform system, large penitentiaries, separation of prisoner from prisoner (including females), prisoners should be required to work and should receive instruction.

His final recommendation, number 11, of his first report was: “The management of all the Prisons in Scotland to be placed under one directing Authority, to be appointed by Government; and the Cost of the Prisons and Prisoners to be defrayed out of one General Fund”.

His general findings were repeated over the following three years visits with the result that the Scotch Prisons Act of 1839 was passed. Parliament had come to the conclusion that “the prisons in Scotland are in general insecure and incommodious, incapable of admitting of the adoption of a good system of prison discipline therein”. The 1839 Act was designed “to improve Prisons and Prison Discipline in Scotland”. By 11 September that year The General Board of Directors of Prisons in Scotland had been established. The Act enabled the making of Rules for all prisons, and funding to establish the General Prison at Perth. The cost of the local prisons fell on the counties who were empowered to levy an appropriate assessment on the burghs in their areas. In fact there were some 178 Prisons when the Board was established: 70 Lock-up houses, 80 Small Burgh jails, and 20 Burgh prisons, Bridewells and County jails. By 1844 that number had dropped to less than 100. In the process standards improved and the worst excesses in lock-ups and local prisons were reduced.

In 1860, following the building of Perth General Prison, the Prisons (Scotland) Administration Act abolished the General Board and brought it under a new management body, with the Sheriff Principal of Perth, the Inspector of Prisons, the Crown Agent and one salaried manager appointed by the Queen. Thus began the professionalisation of prisons. The Act also provided powers to make Rules for the management of Perth prison, and also Local prisons. It was the start of a national system – where long term-prisoners, i.e. those serving 9 months or more, or sentenced to Transportation or Penal Servitude were removed to the General Prison at Perth. The Act also empowered the closing of 21 prisons. By 1877 the number of prisons in Scotland had decreased to 57.

Throughout the early 19th Century there had been a measure of conflict between central and local authorities. Inspection led to regulation and centralised administrative functions took over from local ones. Funding became a state burden, chains of command were established, linking local staffs and prisons into a national system with regulations. Although it was no doubt good that variation and inconsistency were reduced, it also reduced the autonomy of individuals. There was also a consequential increase in the penal infra-structure or bureaucracy.

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8 ibid pages 3 to 4
9 Inspectors Report 1836, op. cit. page 17.
10 Appendix to the First Report of the Board of the Directors of Prisons in Scotland, 12 February 1840 (p. 36)
The Prisons Acts of 1877 nationalised the prison system, bringing all prisons in the UK under the control of the government. The modern prison system, largely as we still know it today, was born\footnote{The Prisons (Scotland) Act of 1877 remained in force until the ‘new’ Act of 1952.}. The Act provided the Secretary of State with powers to make Prison Rules, to appoint prison officers and to ensure the control and safe custody of prisoners. Under the Act, the Prison Commissioners for Scotland were established as a body corporate. The authority, control, administration and cost moved from local authorities to the state. However, the links with local communities were retained. Local authorities, through the appointment of members of Visiting Committees, were to inspect independently and report to the Secretary of State.

This change also meant that the burden of cost transferred. Previously the cost of incarceration was met by local communities. But now, following the changes, the cost would be met from central funds so that local magistrates and sheriffs could send offenders to prison without worrying about the cost. When community options (such as probation) were made available following the Probation of Offenders Act of 1907 this new financial arrangement would remain a perverse disincentive from keeping people out of prison.

It is worth noting that after the 1877 legislation, the Inspectors Reports were no longer made public, and so a valuable source of information – and also a way to stimulate and engage public interest in what went on behind the bars and high walls in their name – was lost. It became a more centralised and secretive bureaucracy. As a consequence public interest was reduced, and with it, a sense of public responsibility\footnote{That is why the current Scottish Prison Commission’s remit to “Raise the public profile of this issue” is to be welcomed.}.

I recall seeing those rather timid internal reports from the 1970’s and welcomed the re-establishing of independent and public scrutiny. And independent it has remained. In 1981, in his letter to the Secretary of State for Scotland, Philip Barry, the first Chief Inspector said “The Committee of Inquiry into the United Kingdom Prison Services (The May Committee) which reported in October 1979 recommended that “There should be a system of inspection of the prison service distanced as far as may be practicable from the Prison department”.”\footnote{Report of Her Majesty’s Chief Inspector of Prisons for Scotland 1981 (August 1982) (D.A.P. Barry CBE) Cmnd 8619, Edinburgh HMSO.}

But let me return to my story. The process of centralisation and central control began in 1835 with the appointment of Inspectors of Prisons and culminated in nationalisation in 1877. However, what went on in prisons, and the purpose they served was a different matter. The Gladstone Report of 1895 held that prison discipline should be designed ’wherever possible to turn them out of prison better men and women physically and morally than when they came in.’\footnote{Gladstone Report, op. cit. para. 25.}
The Gladstone Report was, itself, a watershed in the history of British penal reform. The Committee considered that prison conditions might be designed to reform the criminal, recognising the need for improvement within prisons such as the abolition of useless forms of labour - the crank and treadmill, reduction in the use of solitary confinement, better food, more books and education, and work for prisoners. They also stated ‘Prison should have as its primary and concurrent objects, deterrence and reform.” Finally, the Committee recognised the problem of recidivism, which they called “the most important of all prison questions and it is the most complicated and difficult.” So we find in a report 112 years ago the notion of changing prisons to deter and reform offenders, and recognition of the need to reduce recidivism.

Sir Evelyn Ruggles-Brise, who became Chairman of the Prison Commission for England and Wales in the month the Gladstone report was published, set about its implementation, improving conditions, abolishing unproductive work, improving diet, cleanliness, education, visits, letters and books.

As we would now say, ‘on his watch’ there was a “significant development in the avoidance of prison as a punishment and the evolution of alternative penal or corrective measures” He also maintained that prison should be regarded as a punishment of last rather than first resort, and he was largely responsible for the introduction of the Probation of Offenders Act 1907. In 1908 the Children’s Act abolished the use of imprisonment for those under 14, and only allowed its use by special certificate of the court for those under 16. So we see the introduction of community sanctions as alternatives to imprisonment, but prison conditions continued to remain harsh.

As far back as 1910 there was already a determination within the English Home Office to try to effect a reductionist policy on prison numbers and the principal initiative in setting this direction was taken by Winston Churchill. Similar to today, the pressure for change in the English prison system was a reaction to the problem of overcrowding in that, by 1908 their prison population stood at 22,000, only marginally below the certified capacity of the prison system at the time. In a memorandum to the Prime Minister in September 1910, Churchill, then Home Secretary, described the main problem as being, ‘the immense number of committals of petty offenders to prison on short sentences’.

With the expansion of the use of prison came expansion in numbers of prison staff – paid, trained professional groups – officials or civil servants in the department, governors, prison management grades and officers (at one point some 10 ranks/levels of prison staff), probation officers, and later psychiatrists and psychologists. All having professional aspirations, their own specialist expertise and a desire to influence penal policy. All of us would want to represent ourselves in a positive, utilitarian way – providing services and

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15 See Joy Cameron’s account in her history of ‘Prisons and Punishment in Scotland from the Middle Ages to the Present’ (1983), Edinburgh, Canongate. (from page 131)
16 Gladstone Report, op. cit. para. 47.
17 Gladstone Report, op. cit. para. 18.
19 Cited in ‘Budget vote speech’ by Minister of Correctional Services, South Africa, 8 June 2000.
undertaking useful social tasks, representing ourselves as the technicians of reform.

David Garland\textsuperscript{20}, in his seminal work \textit{Punishment and Modern Society}, considered that the most evident result of the convergent processes of centralization, bureaucratization and professionalization has been that modern prison systems have been able to cope, reasonably effectively, with very large numbers of offenders. Weber also believed that bureaucracies were more efficient, but in the process they dehumanized and they operated in routinized and matter of fact ways. Feelings and passions have no place in such systems. In fact, we no longer make moral judgements or feel passionately about the crime or offender – only his behaviour and risk. “In effect, penal professionals tend to orientate themselves towards institutionally defined managerial goals rather than socially derived punitive ones. Instead of seeking to convey moral outrage, punitive passions, or vengeful sentiments, these agencies tend to neutralize the effect of penal process, to do their job in a professional manner, leaving the tones of moral opprobrium to the court and the public.”\textsuperscript{21}

These administrative developments have done more than simply enhance efficiency, or even de-personalise the environment. They have altered the cultural meaning of these sanctions and the way in which punishment is generally perceived.

At about the time Weber was developing his work, we were creating new ideologies and the language of reformation. We were redefining the use of imprisonment to also include education and training, and reformation to reduce recidivism. All laudable in their own right. That a person sent to prison should also be able to use the experience to turn them away from crime.

Garland states that the “professionalization of the punitive process has, in the twentieth century, reached a point where penal professionals have been able to redefine the social meaning of punishment.” One of the consequences is that punishment has been removed from the public consciousness. The managerialism came to replace the moral philosophy. Punishment has become reformulated as a question of social engineering and adjustment, where the role of the expert is central. Garland states “If we nowadays expect ‘results’ from punishing, it is in large part the doing of these groups and their self-descriptions”.\textsuperscript{22}

As a consequence of the process of justifying what we do, we the managers, the administrators, the bureaucrats have contributed to this problem. And we have created self imposed targets of programme delivery and educational services which have tended to be measures of input or consumption rather than outcome. But what would that outcome be and for whom?

Our problem is that the purpose of prison is confused and conflated. Early in the 20\textsuperscript{th} Century, with the introduction of Probation in 1907 and the

\begin{footnotesize}
\textsuperscript{21} ibid, p.184
\textsuperscript{22} ibid, p.183
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formalisation of Borstal in the same year the concepts and language used by the Gladstone Committee took root. Treatment and Training became part of the purpose of Borstal sentences and gradually spread to other aspects of imprisonment. The Gladstone Committee commented:

“We are of opinion that the experiment of establishing a penal reformatory under Government management should be tried.... The penal reformatory should be a half-way house between the prison and the reformatory [i.e., the modern approved school]. It should be situated in the country with ample space for agricultural and land reclamation work. It would have penal and coercive sides which could be applied according to the merits of particular cases. But it should be amply provided with a staff of capable of giving sound education, training the inmates in various kinds of industrial work, and qualified generally to exercise the best and healthiest kind of moral influence.”

Over the last decade or so, Scottish prisons have adopted a more interventionist welfare and rehabilitative role. Since the 1990’s prisons have wanted to help with addictions, with literacy, employability and programmes to reduce re-offending. But is that what a prison sentence is for? Is that why a judge sends or should send someone to prison? And, when in prison do they all receive the same dose – a concoction of vaccinations – or are we to tailor and individualize the interventions? Where do we need the resources? Are they to be in prisons or the community or both? We close community mental health facilities and open prisons when we know that a large number of those who come to prison have mental health needs.

The Scottish Prison Service (2002) explained its developing ideology in new language: “Historically, prisons with their high walls have been places of isolation and exclusion. This does not sit easily with concepts of inclusion and integration. SPS (The Scottish Prison Service) is having to undergo a cultural change which accepts the need to work in partnership with others if we are to maximise the opportunities for prisoners to be successfully re-integrated back into the community. We need to be more holistic in our approach to combating offending behaviour and understand that in tackling inclusion and promoting seamless throughcare and partnerships we are contributing to our twin goals of protecting the public and reducing re-offending.”

I have to confess authorship.

We also developed some interesting objectives or “offender outcomes” – and again I have to confess to their creation – about securing accommodation, improving employability, getting people off drugs, maintaining family relationships, the ability to live independently and so on – again all very laudable and promoting a useful social purpose. Indeed, positive language supporting the ideology of social inclusion. But, if we are sending them to prison because we think they will benefit from these ‘positives’, then it does seem somewhat perverse to do so when we know that in sending them there we are likely to destroy their continuity of tenancies, their holding down a job, the maintenance of family relationships, and taking away the ability to make decisions for one’s own life. Additionally, we put them into an environment where they may get involved with drug abuse – either because of the situation in which they find themselves (we know prison is a pretty horrible experience),

23 Gladstone Report, op. cit. pages 30-31, para. 84 (b)
24 Making A Difference (2002) Rehabilitation and Care Directorate, SPS.
or the company they have to keep, the pressures they face and the worsening financial debt with which they will have to deal on release. In particular, vulnerable individuals, such as those suffering from mental health problems, may find the experience harrowing, and for groups such as women and young offenders who have particular needs, prison may present them with the wrong experiences.

As Weaver and McNeill put it “We should use imprisonment sparingly because imprisonment frustrates desistance. Stopping offending is much easier where people maintain strong and positive social ties, where they can see beyond their label as a prisoner or an ‘offender’ and where they can reduce or avoid contacts with other ‘offenders’ rather than being forced to live alongside them. Prison makes all of these things much more difficult. For that reason investing in prisons is more likely to mean investing in reoffending than reducing it.”

Over the years, penal reform driven both externally and internally has pushed for improvements in prison conditions. We, those in the system, have responded and provided improvements, change, justifications and new interpretations of what prison is for. **In the process not only have we made prison better but we have made it more attractive.** Attractive for sentencers, politicians and the public because we claim for it a social purpose and benefit – an outcome – and one which is more than just punishment, incapacitation or deterrence. We need to get back to defining what prison is for, the purposes of imprisonment, and who should be sent there.

Someone recently asked me about the design of new prisons. What should we be creating? Over the following ten minutes I explained about the architecture, the need to design in softness, open spaces, light, calm, colour, normality in terms of functions – accommodation (one’s home), the shop, the health centre, the school or college – in fact like a village behind walls. But I also observed that none of this was of any use unless I could also be told what it was to be designed for – what was it’s purpose, what was it meant to achieve, what are the outcomes and who is to be incarcerated in it? How could one design an appropriate prison if you could not define its purpose?

In a speech made on 20 July 1910 in the House of Commons Winston Churchill as Home Secretary explained his philosophy with those oft quoted words:

“The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country.”

He continued with passion and a concern for human rights:

“A calm and dispassionate recognition of the rights of the accused against the state and even of convicted criminals against the state, a constant heart-searching by all charged with the duty of punishment, a desire and eagerness to rehabilitate in the world of industry of all those who have paid their dues in the hard coinage of punishment, tireless efforts towards the discovery of curative and regenerating processes and an unflagging faith that there is a

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26 Hansard: Official Report, Commons, 20 July 1910; Col 1354.
So, why have I taken you through a brief history? Because what we have now is not how prisons started out. And it was not such a long time ago. In fact it was after my grandmother was born that here in Scotland 130 years ago we nationalised, centralised and began the control of our prisons. In our bureaucracy we have given prisons and imprisonment new purposes and meanings. For my part I have tried to bring in families and improve family contact, have improved living conditions and conditions for remands, have introduced programmes to address offending behaviour, have developed throughcare and link centre facilities to improve re-settlement and social inclusion, proposed ‘offender outcomes’, and have pushed for single systems of case and information management through integrated case management. I hope all this has contributed to the lives of prisoners and their families, to assisting with social inclusion and rehabilitation. However, this is not the real issue that needs to be addressed. The principal question is not ‘did we help them?’. The real question is why were these people in prison in the first place?

Prison has gained from this re-working, updating and re-engineering. To reform and improve prisons to make them humane and fair is justifiable. Prison conditions require to meet the standards of our age, which change with time. **We need to improve prisons, but we must not make them more attractive.** By developing systems to help we have made them more attractive to sentencers, politicians and the public. The question we need to ask now, and to have answered, is should these individuals have been in prison and should they continue to be sent to prison?

But which prison are we talking about? The prisons which were created to resolve a problem when we abolished the death penalty and transportation – places of punishment and deterrence – or the prisons of today which we have continued to reform and improve so that they also appear to meet a modern social purpose. Are we sending individuals to prison for health services, addictions problems, educational needs, life skills, accommodation, clothing …? Is it because prison is sometimes seen as a safe refuge for vulnerable people? Is it because the State will always meet the bill, and local services are content to keep it so? Is it because the facilities in prison appear better, or at least accessible, when compared with what is available in the community? Why do sentencers continue to increasingly use prison?

Douglas Hurd, when Conservative Home Secretary, produced a Green (consultation) Paper in 1988. In it he said: “Imprisonment is not the most effective punishment for most crime. Custody should be reserved as a punishment for very serious offences, especially when the offender is violent and a continuing risk to the public. **But not every sentencer or member of the**
Two years later, his successor David Waddington, wrote in the White Paper: “It was once believed that prison, properly used, could encourage a high proportion of offenders to start an honest life on their release. Nobody now regards imprisonment, in itself, as an effective means of reform for most prisoners. If there is continued progress against overcrowding in prisons, the recent reforms should enable better regimes to be developed, with more opportunities for education, and work, and so a greater chance of turning the lives of some inmates in a positive direction. But however much prison staff try to inject a positive purpose into the regime, as they do, prison is a society which requires virtually no sense of personal responsibility from prisoners. Normal social or working habits do not fit. The opportunity to learn from other criminals is pervasive. For most offenders, imprisonment has to be justified in terms of public protection, denunciation and retribution. Otherwise it can be an expensive way of making bad people worse. The prospects of reforming offenders are usually much better if they stay in the community, provided the public is properly protected.”

So here we see the nub of it – prison does not work, except for retribution, protection and denunciation. And, in a sense, that is where we came in. We need to deconstruct the ideological edifice we have created, and strip it back to what prison was historically for: punishment, denunciation and perhaps deterrence. When we know that, we will again understand who should be sent there.

And, despite the good works of the prison service and its staff, it remains wrong to send people to prison to resolve addiction problems or for minor crime, or in someway which is perceived as being for their own good. What is even worse is that some offenders also believe that prison has more to offer than the community. Prison should only be used if the judge can satisfy the test that it is worthy of the final sanction, the last resort, in terms of the need to punish to that extent, and the need to protect the public where no other course of action, other than imprisonment, will be sufficient.

Indeed, we have added protection (or incapacitation) to the language. With the abolition of the death penalty in 1965 this seems a reasonable substitution of rationale. There are dangerous offenders, those perpetrating murder and violence, sexual offenders, terrorists and those responsible for serious organised crime for whom prison is an appropriate response in order to protect the public from their brand of menace and reduce potential victimization. It is a legitimate use of custody to ‘incapacitate’ those who would otherwise continue to seriously harm the public.

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29 “The female prison population is rocketing but for many...their lives are so bad they are far happier staying incarcerated than being free” The Herald, 18 June 2007, front page, page 13 and Leader page which states “there is now clear evidence that women are deliberately trying to get their sentences extended. That is one of the most damning indictments of life in Scotland in 2007 it is possible to imagine,”
2. Debunking a couple of myths

a) Prison is a Deterrent:

The jury is at least out, if not decided, on deterrence. Prison has never been proved to be an effective deterrent. For those who are affected by shame, guilt and the approbation of others, the thought that they might be charged by the police or the spectre of an appearance in court may be more than sufficient deterrence. For others, prison has never been the defining element which held them back. You and I know that certainty of detection has the most immediate impact. That is why we slow down before speed cameras and remove our cars when traffic wardens get too close! To be serious; all the research evidence shows that prison has little effect as a deterrent. But we cling to the concept or concepts, because we have two types: ‘individual deterrence’ where we are said to be put off from going back to prison, having already experienced a period in custody before. We know the fallacy of that argument because the government is still trying to work out how to reduce the rate of return to prison. The other sort of deterrence is ‘general deterrence’, when reading about cases in the papers and seeing reports on television, we re-affirm to ourselves that we would not want to commit crime because of its penal consequences. In this respect it supports the notion of shared values which Becker argued - that our laws, the criminal justice system and the use of punishment have a socially cohesive function since they re-affirm for the majority of citizens the values of society and define the boundaries of acceptable behaviour.30

You may gather that I am somewhat cynical about the value of deterrence. Much crime is spontaneous, some undertaken under the influence of stimulants or peer group pressure. The cognitive processes of consequences of behaviour or chances of detection are not always uppermost in the individual’s mind. However, some prisoners do say that they do not want to come back. Let us assume that the negative experience has created a deterrent effect. One of the best barometers of deterrence is said to be that of the relationship between, or the action and consequence of, murder and the death penalty.

The first comparative study on capital punishment was undertaken by Sellin in 1959. He applied a combination of qualitative and quantitative methods in an exhaustive study of capital punishment in American states. He used all the data that was available, together with his knowledge of the history, economy, and social structure of each state. He compared states to other states and examined changes in states over time. Every comparison he made led him to the “inevitable conclusion . . . that executions have no discernable effect on homicide rates”31. Sellin’s work has been replicated many times since, as new data became available, and all have confirmed his finding that capital punishment does not deter homicide32.

Homicide rates per 100,000 population in Texas, New York, and California.\(^{33}\)

Figure 2 is an example of the kind of chart Sellin prepared, using more recent data. The graph compares homicide rates per 100,000 population in Texas, New York, and California. The next chart (Figure 3) compares the murder rates in death penalty and non-death penalty states. What is interesting is that murder rates are significantly less where there is no death penalty.

Figure 3\(^{34}\)

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Enough on deterrence. Suffice it to say that there should be other good reasons for wanting to send someone to prison than to send them there in order not to come back. There is also much anecdotal evidence to suggest that once a person has experienced prison for the first time it never holds as much ‘deterrent’ value in the future. The utilitarian argument for prison acting as a deterrent is not proved.

**b) The rates of crime and use of prison are linked:**

Intuitively, one might feel that the level of crime and the level of prison population are linked. That if crime goes up then prison numbers will rise, and if crime comes down, then prisons will become empty. Not so. Of course there is some link between crime and prison – you have to have done the former to get the latter. But not all crime is serious or warrants imprisonment as a response. In fact, there is no research evidence to support the proposition that the two rates are linked or interdependent in any way. Below is a graph which shows the two rates in Scotland since 1950. The crime shown is that as reported to the police.

Figure 4

![Graph showing prisoners per 100,000 population and crimes per 1,000 population from 1950 to 2006/07](image)

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35 “it seems to lose deterrent value for those who have once experienced imprisonment; familiarity lessens its terrors, and the habitual petty criminal will sometimes prefer imprisonment to a fine.” *Use of Short Sentences of Imprisonment by the Courts* (1960), Report of the Scottish Advisory Council on the Treatment of Offenders, Scottish Home department, Edinburgh. (para. 19).

36 I am grateful to Tony Cameron, Chief Executive SPS, who prepared the original graph, for its use. I have updated it to 2006/07. The data is taken from annual Prison statistics, Reported Crime statistics and the Registrar Generals population statistics. To get both data on the same scale the rates are per 100,000 population for prison and per 1,000 population for crime.
Data from Scandinavia also demonstrates the absence of any link between the prison population and crime rates. The government in Finland decided as a matter of policy to reduce prison numbers. Prisoner rates in Finland fell (see Figure 5 below) but this was not due to falling crime levels. In fact, the opposite was happening: crime was going up while prison rates were coming down. In Britain we would probably have argued that this was because we were locking up fewer criminals who were now on the rampage. However, the rise in crime was not due to less criminals being imprisoned. The evidence showed that the same profile of rising crime occurred in the other Scandinavian countries (Denmark, Norway and Sweden) while their prison numbers remained approximately the same. On the other hand, Finland managed to reduce its prisoner numbers without any noticeable detrimental effect on the prevailing the regional crime rate.  

Figure 5
Prison rates and crime rates in Scandinavia 1950 - 2005

Tapio Lappi-Seppälä (2007) concludes his section on Crime Rates and Prisoner Rates thus:

“Prisoner rates are unrelated to victimization rates as well as to reported crime. The development of prisoner rates in 1980–2005 showed no consistent patterns, when compared with total recorded crime. In different times different countries showed different patterns. These results fit well with the conclusion from prior literature that imprisonment is largely unaffected by the level and trends in criminality. Crime is not the explanation, neither for differences nor for trends.”

Another way of attempting to measure crime is to ask people about the extent to which they feel victimized by crime. “The 2005/6 estimate of the total number of crimes was similar to the estimate produced by the first survey in 1992. In general, this stems from an increase in personal crime (in particular minor assault) balanced by a fall in household crime (particularly housebreaking).”

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39 Cross-Comparative Perspectives, op. cit. page 7.
In fact, there is no link and prison population has been rising whether crime goes up or down. Whether there are 5,000 or 10,000 in prison in Scotland will make practically no difference to crime rates. The question therefore must be asked: So why imprison more and more?

In a research report entitled “Unlocking America: Why and How to Reduce America’s Prison Population” the authors argue that the prison population in the USA is far too high and that prison expansion has not cut crime. They also conclude that: "Most scientific evidence suggests that there is little if any relationship between fluctuations in crime rates and incarceration rates. In many cases, crime rates have risen or declined independent of imprisonment rates. New York City, for example, has produced one of the nation’s largest declines in crime in the nation while significantly reducing its jail and prison populations." Crime reduction is not dependent on an increasing prison population.

Chapter 2. This was a household survey of people’s experiences and perceptions of crime, based on interviews with 4,988 adults (aged 16 or over) throughout Scotland.

41 ibid: data from Table A2.2: Estimates of the extent of victimisation in Scotland 1992 to 2005/6; and from Prison Scotland Statistics.


In its most recent Prison Population Projection\textsuperscript{44} SPS states “The projections do not depend on forecasts of crime levels for the years ahead, as it is the sentencing behaviour of the courts which most immediately determines the prison population.”

It should be of concern that a growth in the numbers of prisoners and thus an increase in the number of prisons could generate a culture where prison is seen as a normal or preferred response to criminal and even antisocial behaviour and becomes an accepted part of our society. The more common it becomes the more the view might prevail that there are so many prisons and prisoners that it cannot be that bad. In such a culture of prisonization even crime becomes more acceptable and fuels a burgeoning legal and criminal justice system. It could be that in societies where there is less resort to custody there is less crime as a consequence. It would not be in our psyche in the same way. It is curious that the rates of murder are significantly lower in the US States which do not have the death penalty than those that do, as shown in Figure 3 above.

Figure 7: Prison Population Rate per 100,000 population in 2006\textsuperscript{45}

Instead of viewing prison population rates as in someway linked to crime rates it would be better to suggest that prison numbers are a matter of public policy rather than crime. Why is the rate of imprisonment 183 per 100,000 in New Zealand (a similar culture to our own) while in Australia it is 125? Why


\textsuperscript{45} Prison Statistics Scotland, 2006/07. Scottish Executive Statistical Bulletin, CrJ/2007/7 (August 2007); Extracted from Chart 6 and Table 37.
can Slovenia manage to imprison 65 per 100,000 while Slovakia imprisons 158, the Czech Republic 189 and Poland imprisons 239 per 100,000? The most stark difference is that of Canada with a rate of 107 compared with its neighbour, the USA which last year held 2,245,189 in its prisons, a rate of 754 per 100,000. It is not crime which is the determinant factor for imprisonment, it is the wish of the state to do so. France imprisons 85 per 100,000, Germany and Belgium 93 and 91 respectively, Scandinavia between 66 and 82 and Ireland (Eire) 72. Why is Scotland now imprisoning at the rate of 141 per 100,000? If we wanted to have the same rate as France we would have to reduce our prison population to about 4,350.

Research shows us that changes in prisoner rates cannot be explained by changes in crime or vice-versa. Instead, the evidence points to differences in the nature of our societies. Where we have an adversarial system (e.g. a two-party system) which competes to be tougher than the other on crime and criminals we are likely to imprison more than in states with coalitions and consensual approaches. Similarly societies which demonstrate high levels of social cohesion and trust in their public institutions need to govern less through fear and the use of prisons. There is much evidence to show the link between poverty and crime. Growth in socio-economic inequalities and reductions in social expenditure can also be demonstrated to correlate with increases in rates of imprisonment. All these factors seem to be far more important determinants of our prison population rates than crime.

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46 Cross-Comparative Perspectives, op. cit.
3. The cost of the unnecessary use of imprisonment

This paper is entitled “Rethinking Imprisonment in Scotland – the Dilemma for Prison Reform and the Challenges Beyond”. I have touched on prison reform and how in Scotland we have tried to improve prison conditions to the point where we take into prisons persons who, in the past, would not have been sentenced to a term of imprisonment. But what do I mean by ‘the challenges beyond’? It seems to me that we are faced with two interlinked problems. The fact that prison takes people for what I shall call ‘erroneous purposes’ and the perception, real or otherwise, that availability or access to community based interventions is poor and their impact is unconvincing. So our other set of challenges is to work outside prisons, and to some extent outside the penal or criminal justice system, to enable services to work effectively, so that we reduce the mixture of social and personal pressures which lead individuals to crime, and improve the availability of other effective options which are deemed necessary as an alternative to custodial disposals. I will come back to it later, but our criminal justice system cannot sort out the ills of society. Nor should it be expected to do so.

It is perplexing and also destructive to human lives that at a time when crime is generally recognised to have been decreasing, or at least remaining fairly static, the numbers locked up in prison are rising. Increasing rates of imprisonment do nothing to increase community safety. We know that in terms of reducing re-offending prison doesn’t work. Nearly half of the prisoners released are reconvicted and back in prison within 2 years, and for male young offenders the figure is 57 per cent. Research evidence tells us that simply punishing by imprisonment is likely to increase reoffending by 1-3 per cent.  

The most recent Scottish statistics available for 2005/06 show that of 15,944 persons receiving a custodial sentence, 83% (13,203) were sentenced to under 6 months – that means that they served less than 3 months in prison. Indeed, 9,075 (57%) were sentenced to 3 months or less, which meant spending less than 1½ months in prison. SPS statistical projections use estimates of the time served in prison for their projections. For the total number serving less than 6 months, the average time spent in prison was 24.2 days.

“We wish to be equally emphatic in expressing our opinion about the ineffectiveness of short-term prison sentences. We are thinking of sentences not exceeding six months in length. … We have been impressed by the unanimous opinion given to us by prison governors and other persons, whose

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work brings them into close touch with prisoners, that the short-term sentence is harmful to the offender and a waste of public money" (1949)\textsuperscript{51}

“We have been led to the conclusion that the short sentence has only a limited value as a means of discouraging the offender from conduct which will lead to a further appearance in court. We can go even a little further than this. A study made for us … concluded that sentences of imprisonment for six months or less were less effective in preventing re-convictions than was either fining or sentencing to longer terms. (1960)\textsuperscript{52}

Figure 8

\begin{figure}
\centering
\includegraphics[width=\textwidth]{figure8}
\caption{15,944 Custodial sentences in 2005/06}
\end{figure}

83\% or 13,203 were for up to 6 months

So does this do any good?

- Scottish prisons cost the tax payer about £277 million to operate each year. With other charges, contracts and capital investment in new buildings the figure is considerably higher, about £396 million and set to rise to £480 million by 2010/11. It costs about £40,000\textsuperscript{53} a year for each prisoner place, or about £100 a day. It costs the tax payer about

\textsuperscript{51} The Scottish Prison System (1949) Report by The Scottish Advisory Council on the Treatment and Rehabilitation of Offenders. Scottish Home Department, Edinburgh. (para. 102)

\textsuperscript{52} Use of Short Sentences of Imprisonment by the Courts (1960) op. cit. paragraph 17 and Appendix F. SHD & IHO Research Unit examined subsequent history of 3,163 male offenders aged 17 and over who were first convicted in Scotland in 1947.

\textsuperscript{53} The real cost of imprisonment is difficult to estimate. SPS’s Annual Report gives the target annual average cost per prisoner place for 2006/07 as £35,000 and the outturn as £30,989. This excludes the Prisoner Escort Service (run on behalf of prisons, police and courts), capital costs of new buildings and prisoner compensation claims. SPS states the actual annual average cost per prisoner place, calculated on a resource accounting basis (including capital charges), in 2006-07 was £40,449; also the actual annual average cost per prisoner place including exceptional payments in 2006-07 was £33,925. However, the total cost to the taxpayer for all SPS operations and expenditure was in the region of £396.3 million for 2006/07 and for 2007/08 is £427.3 million. Excluding the escort service, the cost of SPS (£374m) divided by the average number of prisoners (7,183) gave a cost of £52,075 per prisoner.
£2,500 to send someone to prison for the average short-term sentence which lasts about 24 days in prison.

- Prison does not reduce reoffending. Indeed, about 48% return to prison within 2 years. Unsurprisingly, those convicted of dishonesty return at the highest rate (68% males = 64% adults, 74% young offenders) and those serving under six months have the highest rate of return, with half of them backing under 6 months! We also know that there are more effective and much cheaper ways of reducing reoffending using community alternatives to prison.  

Figure 9: Graph showing return to custody rates.

![Graph showing return to custody rates](image)

- The experience of being imprisoned is unpleasant, dehumanising and negative. It does harm to those locked up and should only ever be used as a last resort. It also does harm to an estimated 13,500 others each year - the children of those imprisoned.

- A similar situation exists in the use of remand imprisonment. In his review of the conditions of remand prisoners, Clive Fairweather, then HM Chief Inspector of Prisons, noted that only 46.3% of all remands in 1997 received a custodial disposal. At that time there were about 15,000 remand receptions. In 2006 the number was a staggering 64% of persons released from prison in 2003-04 were reconvicted within 2 years as opposed to between 33% to 61% for the range of community disposals. Reconvictions of Offenders Discharged from Custody or Given Non-Custodial Sentences in 2003-04, Scotland (October 2007), Statistical Bulletin, Criminal Justice Series, Scottish Government CrJ/2007/9.

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54 “We understand how destructive custody is, especially when it is delivered for such short terms. There are no positive outcomes of short periods in custody. … We know that if we use community-based alternatives for such offenders, we get much better outcomes in relation to reducing reoffending. … The cost of keeping someone on a probation order in the community for one week is £30.” Chris Hawkes, Chief Officer, Lothian and Borders Community Justice Authority; Justice 2 Committee Official Report 28 November 2006, Col 3070.

55 64% of persons released from prison in 2003-04 were reconvicted within 2 years as opposed to between 33% to 61% for the range of community disposals. Reconvictions of Offenders Discharged from Custody or Given Non-Custodial Sentences in 2003-04, Scotland (October 2007), Statistical Bulletin, Criminal Justice Series, Scottish Government CrJ/2007/9.


57 Figure provided by Families Outside (www.familiesoutside.org.uk)

In the last financial year 2006-07 the remand population rose by 26% on the previous year, and remand receptions rose by 18% to 23,181. Additionally, in 2006/07 some 5,963 people were sent to prison for fine default. The average length of sentence for them was 11 days and the value of the outstanding fine about £275. The saddest fact of all is that our prison population continues to rise unnecessarily. It was under 5,000 only 15 years ago, and remained around 6,000 till 2001. In 2005/06 the average was 6,857 and figures for 2006/07 show that the average population rose by 5% to 7,183. Although since 2001 the male population has grown by 20%, the female population has increased by a massive 71% over the same period. During 2007 the numbers have continued to increase and at times have been well over projections. Indeed, without the use by the Prison Service of early release on Home Detention Curfew (HDC), the number would have grown to average over 7,500. [At the time of writing the record level sat at 7,528 imprisoned on 17th September 2007, with a further 294 released early from prison on HDC]. If the Custodial Sentences and Weapons Act were to be implemented another 1,100 to 1,400 could be added to the system. Will this constant rise ever be halted?

Figure 10: Chart Showing the Average Daily Prison Population in Scotland chart reproduced by courtesy of Scottish Executive Criminal Justice Statistical Bulletin.

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59 Prison Statistics Scotland, 2005/06. Scottish Executive Statistical Bulletin, CrJ/2006/5 (August 2006); Table 15.
61 ibid, Table 29.
62 ibid, Tables 31, 32, 34 & 35.
63 ibid, Table 1.
64 ibid, Tables 1A and 1B.
Is Scotland such a bad and lawless place?

Scotland has areas of high deprivation, drug misuse, alcoholism and violence – but its level of crime is generally no worse than any other developed western society. A European Survey in 2005 showed that on all measures of crime Scotland is around the EU average and generally much lower than in England and Wales. Despite this, we imprison more people than nearly every other western European country. At 141 per 100,000 of our population we lock up nearly twice that of Norway, Finland, Denmark, Sweden, Northern Ireland or Turkey. Belgium, France, Germany and Greece all imprison less than 100 per 100,000. In recent research by Roger Houchin, taking a snapshot of the prison population in Scotland (on 30 June 2003), he noted that “the imprisoned population comes disproportionately from the most deprived communities.” The mean imprisonment rate for 23 year old men from the 27 most deprived wards in Scotland was 3,427 per 100,000 men. “That is, on the night on which our sample was taken 1 in 29 of all the 23 year old men in these communities was in a Scottish prison.” The inescapable conclusion is that we are imprisoning the poor and the disadvantaged disproportionately.

So why do we use imprisonment so much?

It is simply down to our culture, our traditions, the way we do things, and to our media, politicians and judges. When there is a crime committed and an accused convicted the tabloid media demand heavy punishment. Once convicted an offender is now much more likely to go to prison and for longer than in previous years. It is right that violent offenders and sex offenders are put in prison for the protection of society but this is not so justifiable for the petty criminal, the drug addict and the mentally disturbed.

Despite the courts imposing fines in 63 per cent of convictions (down 8 per cent from 1995/96) and giving community sentences in 16,481 cases, they still sent nearly the same number (15,967) to prison. Judges sometimes believe that alternatives to sending someone to prison are not available or ineffective, and this view has persisted for many years. It is up to the managers of the criminal justice system in Scotland to ensure that other options are available and to show that they are more effective than prison and, let us not forget, much better value. Scottish society needs to stop thinking that prison can cure the ills of society and instead to use some of the

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65 The Burden of Crime in the EU Research Report: A Comparative Analysis of the European Crime and Safety Survey (EU ICS) 2005, Gallup Europe; UNICRI, Italy, Gallup Hungary, the Max Planck Institute, Germany, CEPS/INSTEAD, Luxembourg and GeoX Ltd.
67 ibid p.20.
70 “not every sentencer or member of the public has full confidence in the present orders which leave offenders in the community.” Punishment, Custody and The Community, (July 1988) op.cit. (q.v. footnote 27 and main text)
money we spend on prisons to improve and change lives in the community.\textsuperscript{71} Our politicians need to have the courage to act on the evidence and legislate to ensure courts stop sending to prison those who do not need to be there.

**Who should not be in prison?**

Everyone agrees that the public need to be protected from murderers, rapists, armed robbers and the like. They should be in prison, should serve sentences of appropriate length and should only be released when it is safe to do so. Included in this number will be some who also suffer from mental ill health, addiction problems, have been victims of abuse or have poor life skills. We recognise the need to incarcerate them for public safety. However, for those who do not pose serious danger to society:

- We should not be imprisoning people with mental illness, those addicted to drugs and alcohol, the abused, weak and vulnerable, and the incapable. For them, the answer lies not in custody but in re-integration and support in their community. Community services, housing associations, health services, education and training should all feature. But we do. See “Who goes to prison?” below.
- We should stop locking up children under sixteen years of age in prison primarily because there is no room elsewhere in residential settings. In 2006/07 33 young people were admitted to prison on Unruly Certificates. 27 of them were aged 14 to 15 years. They spent an average of 16 days in prison, equivalent to a sentence of one month in prison!
- We should not send petty criminals to prison and we should think more carefully before we send women to prison\textsuperscript{72}.

Imprisonment exists to punish the offender and protect society and only those whose crime is so severe that it warrants custody as a punishment or are so dangerous that incapacitation is required for the safety of the public should be sent there. People should not be sent to prison in order to sort out their housing problems, deal with employment and employability issues, life skills, to help with literacy and educational needs, to assist with relationships, to tackle the scourge of drug addiction or alcoholism and to cope with medical and mental health problems. Prison cannot make up for the deficits of poor parenting or the social conditions existing within society because that is not the purpose of prison.

\textsuperscript{71}"Is it not surprising that what we know to be most effective gets the least resource, and what we know to be least effective gets the majority of the resource? There is a fundamental problem that needs to be addressed through resource transfer and the transfer of people away from short-term custody into community-based disposals.” Chris Hawkes, ibid. Col 3071

\textsuperscript{72}The Chief Inspector of Prisons for Scotland comments in his 2003-04 Annual Report (p.16) “This is not a cross-section of society: these are very damaged women. What will prison do for them?” In the Cornton Vale Inspection (2005) he found 98% had drug addiction problems, 80% had mental health problems and 75% had a history of abuse and very poor physical health. Also, see “Women in Prison in Scotland: An Unmet Commitment” Briefing Paper prepared by the Scottish Consortium on Crime and Criminal Justice (July 2006).
Who goes to prison?

What we do know from the profile of those who come to prison\textsuperscript{73}, from statistics in England and Wales, is that:

(note: figure in brackets are the comparison of frequency among sentenced prisoners compared with the general population)

<table>
<thead>
<tr>
<th>Family Disadvantage</th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ 47% ran away from home as a child (4½ x)</td>
</tr>
<tr>
<td>▪ 27% taken into care as a child (13 x)</td>
</tr>
<tr>
<td>▪ 43% have a family member convicted of a criminal offence (2½ x)</td>
</tr>
<tr>
<td>▪ 81% unmarried prior to imprisonment (2 x) and 85% since</td>
</tr>
<tr>
<td>▪ 25% of young offenders are themselves fathers (6 x)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Education</th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ 30% regularly truanted from school (10 x)</td>
</tr>
<tr>
<td>▪ 49% of males excluded from school (24 x), 33% of females</td>
</tr>
<tr>
<td>▪ 23% of males attended a special school (23 x), 11% of females</td>
</tr>
<tr>
<td>▪ 65% have numeracy at or below level 1, the level expected of an 11 year old</td>
</tr>
<tr>
<td>▪ 48% have reading ability at or below level 1</td>
</tr>
<tr>
<td>▪ 82% have writing ability at or below level 1</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Employment</th>
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<tbody>
<tr>
<td>▪ 67% unemployed in the four weeks before imprisonment (13 x)</td>
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<table>
<thead>
<tr>
<th>Health</th>
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</thead>
<tbody>
<tr>
<td>▪ 72% of males suffer from two or more mental disorders (14 x) and 70% of females (35 x)</td>
</tr>
<tr>
<td>▪ 64% of males have a personality disorder (12 x)</td>
</tr>
<tr>
<td>▪ 20% of males and 37% of females have attempted suicide in the past</td>
</tr>
<tr>
<td>▪ 66% of males and 55% of females had a drug misuse problem [In Scotland about 85% of men and over 95% of women who go to prison have a drug misuse problem]</td>
</tr>
<tr>
<td>▪ 80% of the above did not access treatment for their drug problems</td>
</tr>
<tr>
<td>▪ 50% were not registered with a doctor</td>
</tr>
<tr>
<td>▪ 0.3% of males and 1.2% of females suffer from HIV; 8% of men and 12% of women have Hepatitis B and 9% of men and 11% of women have Hepatitis C.</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Benefits and debt</th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ 72% were in receipt of benefits (5 x)</td>
</tr>
<tr>
<td>▪ 48% had a history of debt (5 x)</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Homelessness\textsuperscript{74}</th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ 4.7% slept rough prior to imprisonment (4,700 x)</td>
</tr>
<tr>
<td>▪ 32% not living in permanent accommodation (35 x)</td>
</tr>
</tbody>
</table>


\textsuperscript{74} Homelessness and rough sleeping figures need to be treated with caution as the discharge rates for those declaring themselves ‘no fixed abode’ are higher, although Home Detention Curfew conditions provide an incentive for prisoners to name a place of residence. (figures for England & Wales).
The Cost in taxpayers’ money.

Because contracts for private sector prisons have been let for 25 years calculations for new prisons (public or private) are now made for the whole project cost. The cost of £40,000 a year per prisoner place amounts to an enormous £1,000,000 for the life period of a contract\(^\text{75}\). The total cost of each 700 place prison over this period is likely to be at least £700,000,000 and rising towards £1,000,000,00 (£1 billion). Let us have a national debate on whether Scotland wants to commit the next generation to this burden.

The question we have to ask ourselves is whether we really want to pay this huge amount primarily to make things worse. It would be better value for money and for the community, victims and offenders to invest these huge sums to improve society, reduce re-offending through community disposals, cut the prison population and in the longer term save on this enormous drain on resources.

Victims

People in Scotland are not more punitive than elsewhere. The evidence suggests that victims want three things:

- reparation for the damage or hurt,
- to understand why it happened, and
- to ensure that it doesn’t happen again.

Punishment of the offender is not foremost in their mind. Neither should it be in anyone else’s. Communities and victims do not benefit from petty offenders being sent to prison for short sentences.

We know that people who are sent to prison are likely to\(^\text{76}\):

- Lose their accommodation
- Lose their jobs
- Suffer increased financial problems
- Lose contact with family and external supports
- Suffer deteriorating mental and physical health; indeed, a number attempt self-harming and suicide, and tragically some succeed
- Be introduced to the drug culture
- Become de-skilled through eroding thinking and life skills

Do we really want to spend up to £1,000,000 on each prisoner place to assist in damaging lives when we know that probation and supervision in the community can be provided at a fraction of the cost? It seems strange to offer this choice: we could assist 10 to 20 people in the community to regain a positive and crime free life for the cost of destroying one life in prison – and then opt to destroy the one. As a society we have to wake up to the choices and what we are doing.

\(^{75}\) See previous footnote 53 for explanation of costs.

\(^{76}\) Reducing re-offending by ex-prisoners, op. cit. at page 7 indicates that as a result of being sent to prison in England and Wales one-third lost their accommodation, two-thirds lost their job, over one-fifth suffered increased financial debt and over two-fifths lost contact with their families.
However, in Scotland it is not all gloom. The Scottish Children’s Hearings system, founded on considering primarily the needs of children rather than their deeds, is arguably the best of its kind in the world. Also, Scotland’s prison system provides some good practices, has good relationships in its prisons and, although often hampered by over-crowding tries to contribute to reducing re-offending and improving the chances of social inclusion. Additionally, Scotland is contributing substantially to the development of much needed skills and expertise in restorative justice practices\textsuperscript{77}. There is strong evidence from recent research that highlights the success of restorative justice in reducing serious repeat offending and addressing important psychological needs of victims\textsuperscript{78}. So there is a wealth of good-will to do things differently and more positively.


\textsuperscript{78} ‘Restorative Justice, the Evidence’ Sherman & Strang. Smith Institute, London 2007.
How might it be?

Everybody accepts prison is necessary for some. There are currently some 2,900 convicted long term prisoners in the Scottish prison system. These are people serving sentences of four years or over – which means they will serve at least two years in custody. This figure also includes those serving life sentences. Let us assume that we need space for 3,000 such long-term sentenced prisoners. These prisoners require security but they are also in need of interventions and treatment programmes so that when they do finally emerge from prison they will pose less risk to the public.

A Research Report The economic case for and against prison’ published in November 2007 examined the costs of imprisonment, interventions in prison and the community, and the possible savings generated to the taxpayer, both in the short term and longer term looking at wider issues such as victim costs in England and Wales. They found significantly higher cost savings for community interventions compared with prison alone. In cases where prison sentences are required they found that prison sentences with some form of treatment or training were more effective in reducing re-offending than prison without additional interventions. They also found that although enhanced prison interventions cost more than prison alone to deliver, they provided better value for money. Their conclusion was that prison population levels need to be maintained at a level where participation in prison-based interventions can be initiated and sustained. That is, prison populations should be reduced to those who need to be there (in the researchers’ terms “when a prison sentence is considered unavoidable, such as for reasons of public protection or punishment for serious or violent crimes).

For those who are not serious offenders and do not require to be imprisoned for public safety reasons or punishment - the many others - let us try to think again. If they really do require to be imprisoned let us try to house them as close to their homes and communities as possible. This makes sense because it is more likely to sustain family links, social work support, visits by lawyers and it also likely to reduce the costs generally, and of families visiting in particular (which for those who can ill afford to do so, for example those on benefits, is met from the public purse).

We should not imprison people unnecessarily. We do not need to spend more money on building further prisons, or to get new resources – it is about doing things differently, and where possible keeping people in the community and with their families where they belong and working with them. The new Community Justice Authorities which became effective in April 2007 have the power to transfer (non-core) resources from where they don’t work to where they can make a real difference. Money will need to be redeployed to speed

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79 The economic case for and against prison, Matrix Knowledge Group (November 2007). The interventions examined in this report predict that the cost savings per adult or juvenile offender receiving a community intervention rather than prison range from £3,437 to £88,469 for savings to the taxpayer only; £16,260 to £202,775 for savings to the taxpayer and the savings from fewer victims costs. For prisons with interventions the figures were £425 to £35,213 and £17,462 to £130,578 respectively. (at page 14).
80 SPS participates in the Assisted Prison Visits scheme (APV) and contributes around £¼m. to the costs of families travelling to visit prisoners in Scotland.
up the processes of justice, servicing courts, providing interventions and in providing support for youngsters.\footnote{Organisations such as Includem have demonstrated imaginative ways of turning round the lives of youngsters in trouble. Youth Restorative Justice projects are also examples of how Scotland is working with young people to reduce re-offending.}

In the longer term we can get three wins:
- reduced crime and reoffending
- reduced costs to the taxpayer
- fewer people in prison and fewer victims.

Shortly after becoming Home Secretary in 1910, Winston Churchill embarked upon an ambitious reform of the English prison system. He wanted 'to arrange matters so that next year there will be 50,000 fewer people sent to prison than this year'. Once he had achieved a massive reduction in the number of committals for petty offences, Churchill envisaged a radical reorganisation of the penal system. Churchill became First Lord of the Admiralty a year later and the dramatic changes did not come about, but we should take courage and follow his example and think how we could reduce the prison population and change the way we do things.

Let me make a few proposals as to how things might be:
4. Some proposals for Change

Proposal 1: Prison System

The Scottish Prison Service (SPS) is currently a national prison service which is run from the centre, as an agency of the Scottish Government. Although there are some prisons which more or less exclusively hold long term adult male prisoners, there are two central facilities for women and young offenders, and a number of local prisons which carry out a variety of functions. I propose that SPS should be restructured into a two tier system. There would be a national system responsible for looking after the long-term convicted population (which currently sits at about 2,900). The national prison system would look after dangerous and long-term prisoners who require security and from whom the public require to be protected. It would also be the task of the national system to assess risk and need and to provide programmes to address offending behaviour – such as sex offender and violence programmes. The national prison system would also sustain links with the local community from which the prisoner has come because his re-integration back into that community will be dependent upon proper throughcare being facilitated.

The remainder of the Scottish prison system should become a regional or local prison service providing local, community-based prisons whose primary function would be to facilitate remands for the court. It may be in time that large local prisons – which are arguably economically viable but not satisfactory at a personal level – should be reduced in size and, where necessary, replaced with small units in areas serving local communities.

Proposal 2: Community Justice Authorities

The funding for local prisons should be routed through the 8 new Community Justice Authorities (CJAs). These CJAs service local communities and are responsible for ensuring provision of offenders services in their areas. The Authorities are constituted and managed by a convener and elected members of the constituent Local Authority Councils.

CJAs should be given powers to manage the local prisons and remand institutions in their area. This involves the power to switch resources and to purchase bail, hostel or supported accommodation provision, programmes and other services required as an alternative to sending persons to custody.

These two provisions also would have the effect of i) reversing the ‘perverse incentive’ which makes it cheaper for local communities to send offenders to prisons (which have been funded from the central purse) than to provide services for them in their community; and ii) encourage CJAs to move resources from expensive prison places to more effective and more economic community interventions and services. Both of these aspects would create a downward pressure on prison numbers.
Proposal 3: Boundaries

Criminal Justice Authority boundaries should be coterminous with other criminal justice agencies. Sheriffdoms, the Crown Office and Procurator Fiscal Service, Court Services, Criminal Justice Boards and, where appropriate prison organisational structures, should be realigned. It would also make sense to look more broadly at the linkages with Health Boards and Community Health Partnerships, other Local Authority functions, and the Police Service.

Proposal 4: Remand Prisoners

The level of the remand population required should be discussed between the CJA and the local Procurator Fiscal Service so that a working maximum figure of remands held can be agreed. If or when this figure is likely to be exceeded the procurator fiscal should determine which remand prisoner is least in need of custodial conditions and they should then be bailed and if necessary conditions imposed which monitor or restrict movement. In other words, the remand numbers for each CJA should be capped. There is also the possibility of developing the further use of Bail Supervision services\(^\text{82}\).

Proposal 5: Overcrowding

Overcrowding in Scottish Prisons has been repeatedly condemned by the Chief Inspector of Prisons.\(^\text{83}\) It adversely impacts in many ways, on the individual and on the capacity of the system to deliver. The Chief Inspector lists “the nine evils of overcrowding” and describes how they do harm. I reproduce them in full below because of their pervasive influence\(^\text{84}\).

“The nine evils of overcrowding” Here are nine ways in which overcrowding does harm:
- It increases the number of prisoners managed by prison staff who, as a result, have less time to devote to screening prisoners for self-harm or suicide, prisoners with mental health problems and prisoners who are potentially violent. Risk assessments will inevitably suffer.
- It increases the availability of drugs since there are more people who want drugs and prison staff have less time to search.
- It increases the likelihood of cell-sharing: two people, often complete strangers, are required to live in very close proximity. This will involve another person who may have

\(^{82}\) Bail Supervision services can remove need for remand in cases where the court has doubts about granting “ordinary” bail without special conditions. This can mean that work on reducing re-offending starts immediately in the community, that the offender turns up in court on the due date, and can reduce the number of custodial sentences given positive reports to the court on the co-operation in the community during the period of bail. If such services were available to a significant proportion of remands there could be substantial savings to the prison system. (See SACRO services)

\(^{83}\) “Scotland's prisons are not full. Why? Because no matter how many people are crammed in to them, they cannot put up a "No Vacancies" sign. They have no option but to make more room somehow. Overcrowding is now so bad that every new prisoner admitted will certainly make things worse for all the others. Overcrowding makes things worse for everyone: for prison staff, prison managers, and prisoners. Yet again this year the prison population has reached record levels and is maintaining record levels.” Overview: HM Chief Inspector of Prisons for Scotland Annual Report for 2005-06 (November 2006). SE/2006/198.

\(^{84}\) ibid.
a history of violence and of whose medical and mental health history the prisoner will know nothing; and it will involve sharing a toilet within the cell.

- It increases noise and tension.
- It makes it likely that prisoners will have less access to staff; and that they will find that those staff to whom they do have access will have less time to deal with them.
- The resources in prison will be more stretched, so prisoners will have less access to programmes, education, training, work etc.
- Facilities will also be more stretched, so that laundry will be done less often and food quality will deteriorate.
- Prisoners will spend more time in cell.
- Family contact and visits will be restricted.

These nine things are wrong in themselves. It is also very important to recognise, however, that they dramatically reduce the impact which prison can make to reduce re-offending. Prisoners are less likely to emerge as useful citizens because of them. Every one of these nine points makes it more difficult for us all to live in safety. Defeating overcrowding in prison should be a goal of all those who want less crime. The Lord Chief Justice of England, Lord Phillips, recently warned that overcrowding in prisons was "absolutely fatal" for the treatment of prisoners."

Prison Governors now enter into a form of contract with the SPS stating the number of prisoner places they can provide. These are comprised of Available places and Additional places, but the number of cells may be significantly less. For example, from 1st October 2007 Barlinnie Prison is contracted to provide 1,253 available places with 1,548 being the number available on demand including additional places.  

Governors should be required to declare the maximum they can hold in legally compliant and decent circumstances, ensuring basic services and human rights can be maintained. They should not be allowed to admit prisoners in excess of this ceiling. Each prison should have the number of prisoners it can hold capped.

Proposal 6: Integrating health and education

SPS requires to speed up its integration of health services, including mental health and addictions services, with the NHS. SPS should no longer provide a separate service currently delivered through a private sector

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85 Schedule A2 of the SPS Public Sector Performance Contract (March 2007). SPS Web site: Library; Key Docs; Contracts.
86 The Governor of Barlinnie Prison speaking at the SPS Partnership Conference on 4 October 2007 on the impact of overcrowding stated: “Overcrowding is unacceptable and everyone acknowledges this but increasing numbers is worryingly regular and dare I say becoming reluctantly accepted at local level. Overcrowding impacts on every aspect of the running of an establishment. It must not stop us from progressing or be used as an excuse for inertia. Overcrowding and volume impact on the staff and the prisoners, prolific, persistent – on all, on the agency workers and on the visitors on the fabric, the regime of the establishment, on the pressure of workloads for delivery on throughcare. It creates concentration on process for staff and mundaneness for many prisoners. … We have 400 spaces for work programmes, training and education each day and 950-convicted prisoners. The numbers do not fit. With regard to the family, our priority is to try and ensure family contact. We have 4,000 visits per month with 10,000 visitors. We value family contact yet are offering the minimum legally required rather than heading towards maximising allowance for visits.
87 For example, in Norway total prison capacity is set, and they have a ‘prison queue’ system for those waiting to commence their sentence. If a dangerous or more serious offender is convicted and requires a prison place then a prisoner who is likely to pose less risk is released to make space.
contract. Interventions and healthcare provided in prison should be part of the ‘patients pathway’ determined by NHS practitioners and where appropriate followed up by provision in the community on release. Similarly, rather than ‘contract in’ educational provision, **education in prison should be integrated with community services** and be the responsibility of the Scottish Government’s Education and Lifelong Learning Directorate working in conjunction with Local Authorities and Colleges of Further Education.\(^{88}\) In particular, local and remand facilities should be linked in to local educational provision.

**Proposal 7: Young Persons**

Children under sixteen should no longer be admitted to prison on unruly certificates. This is contrary to the United Nations Convention on the Child and an affront to humanity and decency.

**Proposal 8:**

**Consideration should be given to raising the age at which a young person can receive a custodial sentence from sixteen to eighteen years of age.**\(^{89}\) Scotland should explore options for managing young people who have hitherto been imprisoned in other secure types of setting if these are required. This should be part of a broader examination of youth justice issues, with the possibility of raising the jurisdiction of the Children’s Hearing System to the age of 18. It is recommended that the Justice Committee establish an Inquiry to consider whether the arrangements for juvenile justice should be changed so that, except in exceptional circumstances, young people under 18 years of age are not dealt with by the Criminal Justice system but are retained within the Children’s Hearing system.\(^{90}\)

Not only are Young Offender numbers in custody growing, particularly on remand, but as a consequence of the pressure of places in the young offender system, some young people are being re-classified from ‘young offender’ status to ‘adult’ status before they reach 21 years of age. This enables them to be transferred to serve the remainder of their sentence in an

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\(^{88}\) Also see *No One Knows* (2007) Loucks, N. & Talbot, J. Prison Reform Trust. “The SPS appears to be the only significant provider of lifelong learning opportunities in Scotland not to be included in the Department for Enterprise, Transport and Lifelong Learning (ETLLD), which complicates the transition from custody to community”.

\(^{89}\) *A Safer Way: A Review of Community Disposals and the Use of Custody for Women Offenders in Scotland* (1998), Joint Review by Social Work Services and Prisons Inspectorates for Scotland. Recommendation 6 stated: “The Scottish Office should consult on how to ensure that by the year 2000, young women under 18 years of age are not held in prison establishments and on how and by when to achieve the same for males under 18. Young people under 18 who require a custodial environment should be held in secure accommodation.” Nothing has come of this recommendation to date.

\(^{90}\) The Scottish Advisory Council on the Treatment and Rehabilitation of Offenders (1949) op. cit. commented “We welcome the provisions of the Criminal Justice (Scotland) Bill of 1948 which will, if enacted, prevent a boy or girl of under 17 years of age being sent to prison and, at a later date, all persons under 21 years. Meantime it is our hope that the Courts will only make use of imprisonment for young offenders as the ultimate sanction and that an opportunity will be taken by the method of probation or by other appropriate means to ensure that young offenders of under 21 are given every chance to rehabilitate themselves without the handicap of the stigma of a prison sentence.” (para. 101).
adult prison. The Governor of Barlinnie reported that in the two years between October 2005 and October 2007, 132 young offenders were reclassified to adult status because of overcrowding.\(^91\)

On 30 June 2006\(^92\) there were 225 Young People under 18 years of age in prison establishments (under 16 years = 1; 16 year olds = 57; 17 year olds = 167). 549 Young People were received into prison on direct sentences during 2006-07 (under 16 years = 2; 16 year olds = 157; 17 year olds = 390). In addition 698 Young People between ages of 16 and 21 were admitted for an average of 2.2 days in default of payments of fines. It is not known how many of these were under 18 years of age at the time. The Inspectorates Joint Review, A Safer Way observed “Young People under 18 are open to bullying and are more in need of education; they are also subject to pressure by others, are most amenable to the introduction of criminal ideas and possibly more vulnerable to suicide”\(^93\)

SPS recently had to re-designate Darroch Hall in Greenock Prison as a YO facility to cope with the growing number of young people being given custodial sentences.

**Proposal 9: Women**

Particular consideration should be given to ensuring that only those women who require custody are sent to a penal institution. Although the average daily population of females held in prison during 2006/07 was 353, there were only 70 females serving long-term prison sentences\(^94\) and it could be argued that a small national resource may be required for them. If women and girls require to be kept in prison for remand or short-term sentences they too should be able to serve them in local facilities near to their communities and families. There is arguably a greater need for women separated from their children to be located as near to their home communities as possible. Women and girls should not be sent to prison just because the facilities provided by the prison service are deemed suitable and accessible\(^95\).

In A Safer Way, the Inspectorates Joint Review Team concluded that\(^96\):

- Women's offending and women offenders’ needs are often different to those of men.
- The number of women offenders who are sent to prison could and should be reduced.
- Community Service is used less frequently for women.

However, in 2006/07 there were 3,464\(^97\) receptions\(^98\) of females to penal establishments.

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\(^91\) op. cit. speech at SPS Partnership Conference, October 2007.  
\(^93\) A Safer Way, op. cit. Chapter 6, para. 16.  
\(^94\) Prison Statistics Scotland, 2006/07. Scottish Executive Statistical Bulletin, CrJ/2007/7 (August 2007); tables 1b, 4b and 5b.  
\(^95\) See SACRO’s web site for two case studies from Cornton Vale prison highlighting the inappropriate use of prison for some offenders www.sacro.org.uk/research/research.html  
\(^96\) A Safer Way, op. cit. Chapter 6.
Alternatives to the use of custody, such as the 218 Centre, should be developed. An evaluation report of the work of the 218 Centre in 2006 indicated:

“The effectiveness of a service like 218 is often difficult to measure in quantifiable terms, particularly in light of its broad remit and pragmatic development. Statistics able to identify changes in sentencing patterns and criminal justice outcomes will not be available until the end of 2006, while any meaningful attempt to establish reconviction data requires a 2 year follow up period. Nonetheless, interviews with sentencers and prosecutors have shown that they make use of 218 and value it as a resource. In individual cases, referrals to 218, such as through diversion from prosecution or direct bail, often successfully prevented female offenders from entering custody, at least in the short term. Quantitative and qualitative data indicate that women who have engaged in services at 218 have been actively involved in offending and that they fit the profile of female offenders in custody. So it is likely that women who engage with services at 218 are avoiding custody in the short and longer term. … It is also clear from this evaluation and other previous research that there are numerous benefits associated with the range and level of services provided at 218 which are not offered over the course of short-term custodial sentences.”

Proposal 10: Sentencing

The use of short-term prison sentences, i.e. those under 6 months (effectively under 3 months served in prison) should be abolished, unless for exceptional circumstances (e.g. public safety). **Sentences under six months should be served in the community.** Arguably, this period could be set higher, for example at 1 year. But, as we have already seen, already 83% of custodial sentences are for sentences of up to 6 months. While the breakdown of figures for 6 months to 1 year is not available to me, the 6 months to 24 months figure is 11%, and it is reasonable to assume that raising the bar to one year would then account for about 87% of current custodial disposals.

Also, it would be helpful if the Criminal Justice system could collect and publish separate data on those in the 6 months to 12 months sentence range. At present this is not available. It would make for better understanding and consistency to also publish data sets that are ‘like for like’.

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98 Counting convention used in Prison Statistics: ‘Receptions’ are not equivalent to ‘persons received’. Where a person has several sentences imposed on him/her by one court in one day this is counted as one reception. However, where custodial sentences are imposed on the same person by 2 or more courts in one day, 2 or more receptions are counted. Where a person is reconvicted while serving a sentence and a further custodial sentence is imposed on him/her this too is regarded as a further reception.

99 *Evaluation of the 218 Centre,* (April 2006), Nancy Loucks, Margaret Malloch, Gill McIvor & Loraine Gelsthorpe, Crime and Criminal Justice Social Research, Scottish Executive Justice Department.

100 Data sets are maintained with cut off points at 3 months; 6 months; 2 years; 4 years; 4 years and over; and life. It would also be helpful if the same categories and terms were used so that ‘like for like’ comparisons can be made. For example: Prisons count “Over 3 months – less than 6 months”, and “6 months – less than 2 years” while Criminal Proceeding in Courts measure “Over 3 months to 6 months”, and “over 6 months to 2 years” So prisons include someone receiving a 6 months sentence in...
Proposal 11: New Community Courts

I am proposing a new system and type of Community Courts for Scotland\(^{101}\). Less serious cases which do not warrant imprisonment (in the view of the public prosecutor, i.e. the procurator fiscal) should be referred to a new Community Court. As a consequence District Courts or Magistrates Courts should be re-structured and revitalized. They should be thought of as part of local community justice processes. There is a real role for lay Justices who are part of their communities. Further, the less serious offences should be removed from the Sheriff Summary Courts and referred through the new Community Courts. The Procurator Fiscal should, if diversion through non-criminal processes is not appropriate, route all non-serious cases through these courts.

a) The Magistrate’s or District Court should lose the power of sentencing to imprisonment; the same should apply to non-serious cases prosecuted in the Sheriff Summary Court.
b) These courts should be re-formed into a new ‘Community Court’;
c) The court should have wider powers of community sentencing, such as fines, compensation orders, probation orders and community service orders and/or mediation;
d) The court should have powers to seek advice, and to order services, from community services such as health, addictions, restorative justice, and employability/training;
e) The court should be required to take into account the ‘needs’ of offenders as well as their ‘deeds’ and balance these when making sentencing decisions, recognising the impact of the offender’s personal and social conditions on his capacity to change and reduce reoffending, and the possible requirement for a range of supports to be put in place to aid the rehabilitative process.\(^{102}\)
f) Resources for community services available to the court should be routed through, or co-ordinated by, the relevant Community Justice Authority.
g) Enforcement of Community Court sentences should remain with Community Courts and imprisonment should not be a response to a breach when the original sentence did not consider a custodial sentence as necessary. (The same applies to Fines).
h) The court should work swiftly and deal with cases as soon as possible after the offence. It may be that where an accused realises he will be dealt with through a community court, there may be a greater

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\(^{101}\) This is a different kind of proposal from the project proposed for West Glasgow.

\(^{102}\) The Kilbrandon Report [Children and Young Persons Scotland, Report. (April 1964), Cmnd. 2306. SHHD. Edinburgh, HMSO] and the establishment of the Childrens’ Hearing System which followed it was based on understanding the ‘needs’ of the child. The ‘adult’ Criminal Court system is concerned with the ‘deeds’ i.e. offending behaviour of the offender. The new Community Court should take account of both deeds and needs to arrive at a disposal which recognises the impact of the offender’s personal and social conditions on his capacity to change and reduce reoffending.
readiness to accept guilt (when appropriate) because the consequences (i.e. court disposals) do not include imprisonment.

i) Following a disposal by the Community Court, such as a community service order or probation order, the disposal should be actioned immediately after sentencing. There should be certainty of disposal.
In conclusion

Is this what the future holds?

New prisons for Dundee, Dunfermline, Paisley, Glasgow and Hamilton. Cumbernauld and Cambuslang also likely sites.

The Scottish Government today announced plans to build 5 extra new prisons to accommodate the additional 3,300 prisoners expected between now and 2031. Projections of Scottish prison populations show that by 2016-17 the population is likely to reach 8,500 and by 2030 10,600. These projections do not take account of recent changes enacted in the Custodial Sentences and Weapons (Scotland) Act. This could see another 1,100 to 1,400 additional places required and 2 more prisons. The total prison population could well reach 12,000 and require 7 new prisons. This would see the cost of prisons for tax-payers rise by £200-£250 million a year, with a bill of over £6 billion extra over the following 25 years.

It is also likely that the prisons at Aberdeen, Inverness and Dumfries will be bulldozed and replaced by larger ones.

So might a newspaper article run. There is nothing far-fetched about this. Of course, it is unlikely to appear, because each new prison would be announced separately, a few years apart. However, this is what will happen if increasingly we continue to lock up people in prison. Our rate of imprisonment will rise from 141 to 234 per 100,000 of the population. Is this where we want to be in 2031? Do we really want to spend between £500-£700 million (at today’s prices) each year on imprisoning men, women and young people?

Indeed, it is possible the figures could be even worse. The Prison Population, pre-Home Detention Curfew (HDC) is currently running between 450 and 600 more than last year. Without about 275 to 300 being released on HDC the number in prison would be over 7,500 and heading towards 8,000. Explanations are difficult, but the use of remand for all categories, and the short term and young offender populations are up, while those serving long sentences for serious crime are down. Thus a figure of 234 per 100,000 by 2031 is not unrealistic, and could, if present growth trends continue, be understated.
Figure 11: Possible prison population by 2031

So what are some of the wider issues?

Let us be clear. The Scottish criminal justice system cannot sort out the ills of society nor can it change social institutions or practices. It can, however, try to deal with those who are already in it. I have an image in mind – it is an image of two conveyor belts. The first and larger of the two represents some of the processes which impact on communities and their members. The conveyor is filled with those who cannot cope, who are vulnerable, have housing problems, suffer poor physical or mental health, are addicted to drugs or alcohol, are unemployed, have poor literacies or inadequate life skills. Many will be poor, some destitute and many on benefits. From this first conveyor some, but not by any means all, are drawn on to the second, smaller, Criminal Justice conveyor. Although some offenders are not from this background, and some are serious and dangerous offenders who warrant imprisonment, many others are a product of the society in which they find themselves. Some have poor experiences from their childhood, and have not much positive going on in their lives. What they have in common is that they end up in prison.

However, because too many who find themselves on the Criminal Justice conveyor end up serving sentences in prison, prison becomes overcrowded and the staff and resources can not cope with dealing appropriately with those who should be there. It would damage fewer lives and cost less to taxpayers if

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103 Figures based on extrapolated SPS Population projections (11/07); growth projected at rate of 125, 150 over two years (i.e. average of 137.5 per year) and the impact of the Custodial Sentences and Weapons Act of 1,400 places over an 11 year period, 2008/09 to 2018/19. Total 12,008 by 2031/32, or net excluding CS&WA of 10,608.
the number of people arriving on the second conveyor belt could be reduced, and it would make it a lot easier to work with those who do then end up as offenders. Society, and not the organs of the criminal justice system, has to sort out the first conveyor belt as it delivers many, far too many, into the hands of the second.

So we need to re-think our approach and make it fit for the 3rd millennium in Scotland. The growth of prisons, primarily throughout the nineteenth century, came at a time of huge social change and development. A period of industrialization and institutionalization. Much of our infrastructure – railways, water and sewage, gas and electricity, heavy industries and our postal services – and our large institutions, the grand infirmaries, sanatoria, academies and mental institutions all became embedded in our culture and traditions over the period.

But times, social structures and needs change. Where are the heavy industries of steel, coal and shipbuilding? They are no longer visible on any significant scale. Where are some of our large institutions? The workhouses, sanatoria and mental institutions now consigned to new approaches in health and social services, with the individuals cared for primarily in the community or, as I have heard suggested, now consigned to our prisons.

So why has prison succeeded in remaining and even growing against all the evidence that it does not do much good? Probably because it was seen as a simple and quick-fix solution. And where politics and the press compete to get tough on crime it is the offender and ultimately society that pays the price. Criminals in general and prisoners in particular do not gain public sympathy or win votes. It has always been easy to make a quick hit and gain a short-term win by blaming crime and criminals for the ills of society. Who, after all, is going to stand up and defend this minority group? ‘Simple’? Prison as a solution may have been, but a quick-fix it never was.

We also need to organize our services to meet offenders’ needs. Research from Includem tells us that the biggest gains are made when we engage with offenders for longer periods, up to eighteen to 24 months. We need to:

- Stick with the client and be there for them even if they tell you to get lost, and then to go back to them
- Build up a trusting and honest relationship
- Recognise that there will be lapses and try to understand why and derive learning from these events
- Do what we say; and
- Stay in there for the long haul

There are no quick fixes - while offenders learn and develop, work through problems, being supported until they don’t offend. Includem, working with the most chaotic and vulnerable of young people in Scotland has achieved a success rate of 85% after 24 months of engaging with the young person.

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104 It is widely recognised that 60-75% of people convicted will re-offend at some point. Includem, working with the most chaotic and vulnerable of young people in Scotland have succeeded in lowering young people’s re-offending rate to 15% after 2 years of engaging with them. The Includem model was described in the research report Promoting desistance and resilience in young people who offend.
This is not about what Includem does – but about the model that it uses and works to.

Somehow, we have to empty our prisons of those who should not be there, and transfer our energies to working with them in the community to achieve meaningful lives. But this will not happen overnight. To abandon crime, to desist from offending, the individual has to be able to achieve his/her goals through legitimate means. That probably means through engaging in some kind of work or training, in having accommodation, in having basic social, relationship, coping and literacy skills, and in tackling an addiction problem or receiving help for a mental health need. These solutions are not and should not be found in prisons. Indeed they cannot work in prison if we recognise the significance of the social contexts in which individuals operate. “In supporting desistance, we need to look beyond the individual because achieving desistance involves and requires much more than changes within the individual. Trying only to ‘fix’ offenders can’t and won’t fix reoffending. Desistance requires new networks of support and opportunity in local communities and a new attitude towards the reintegration of ex-offenders.”

At least we could transfer the resources of local prisons to CJAs – then it won’t be cheaper to send people to prison rather than keep them locally within the community. CJAs then could use the resources in the most effective way.

There are so many arguments against sending people to prison
  - It does no good
  - It costs a lot and prison diverts resources from where it is needed in the community
  - It tends to make matters worse in a whole load of ways

The premise should be the primacy of community interventions and prison should remain the option of last resort. Other countries seem to manage with lower rates of imprisonment and it seems to me that it is insufficient reason to send someone to prison simply because it is perceived that there is nothing else that can be done. As a nation this reflects a lack of imagination, courage, and that it's ‘aye been’. Maybe it is now time for a change.

Lastly

In this paper Rethinking Imprisonment in Scotland: the dilemma for prison reform and the challenges beyond I have tried two do two things:

First, to show that our understanding of what prison does and what it is for has changed over the last century and a half. I feel partly responsible for where we are, and because prisons offer more than just custodial warehousing, we are, in part, the authors of our own problems. The dilemma for prison reform and for us is to make prisons better without making them more attractive. To do so, we have to re-wind our ideologies and work out the necessary reasons for imprisonment. When we have worked them


105 Giving Up Crime: Directions for Policy, Beth Weaver and Fergus McNeill (June 2007), Scottish Consortium on Crime and Criminal Justice, (at page 1).
out, and they are understood and implemented, then nice justifications will be unnecessary, and the useful work which goes on in prisons can be seen as socially helpful add-ons. I hope, too, I have demonstrated that in the way we use prisons they are of relatively recent construct and we have grown them, their usage and attractiveness to a point which is no longer acceptable.

We lock up twice as many as are required for public safety and punishment. When we lock up 7,528 as we did recently, we did not impact on crime – which has remained at roughly the same levels for the last 15 years. In 2006/07 we admitted 8,603 people to prison on sentences of less than 6 months and on average they only spent 24 days inside\textsuperscript{106}. All we succeeded in doing was to disrupt lives, and create unemployment and homelessness.

To prevent crime and reoffending we don’t need more prisons or to make them tougher. Instead, we need to close half our prisons and spend those resources wisely in the community, on education and training, addictions services and healthcare, reducing poverty and inequality, improving community amenities and providing both cheaper and more effective services for offenders in the community.

Prison does not deter, at least not much, and there is no discernible link between the level of imprisonment and the rates of crime. We can choose how many or how few we want to keep in prison.

Investing in our communities, in health, education, housing, policing, leisure and creating prosperity – also will, in turn, contribute to the rehabilitation of offenders and the reduction of crime.

Second, like many before, I have tried to show that the use of imprisonment for minor offenders serving short sentences is costly and unproductive. In fact, as a society we are wasting our money and wasting human lives, and this needs to change. Prisons and other organs of the Scottish criminal justice system cannot sort out the ills of society nor can it change social institutions or practices. \textit{That is the challenge for beyond the prison wall.}

\textsuperscript{106} Prison Statistics Scotland, 2006/07 op. cit. tables 23 & 27. Additionally, prisons dealt with a further 5,963 fine defaulters who spent on average 2.8 days in prison. (Table 16; and Table B of Prison Population Projections, Scotland, November 2007)