Special Edition
The Future of Prisons

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Editorial Comment

In November 2016, the Secretary of State for Justice, Elizabeth Truss, published the White Paper *Prison Safety and Reform.*[1] **This claimed to herald 'the most far-reaching prison reforms for a generation'. Given the ambition of this programme, it deserves close attention, scrutiny,** *discussion and debate.* **This edition of** *Prison Service Journal* **attempts to offer a forum for engaging with some of the most important issues.**

In the Foreword to the White Paper, Elizabeth Truss drew upon the historical example of 19th century prison and social reformer, Elizabeth Fry. Truss called for 'a huge cultural and structural change within our prisons — a transformation away from offender warehouses to disciplined and purposeful centres of reform'. She also recognised that this could only be achieved by improving safety and addressing the current high levels of violence, drug misuse and suicide, stating that 'we will never be able to address the issue of re-offending if we do not address the current level of violence and safety issues in our prisons'.

The White Paper sets out how this reform will be achieved. The main approach will be to transfer responsibility for centralised bureaucracies, and instead offering greater 'empowerment' to governors to determine what services they provide to prisoners and who they commission to provide those services. This delegation of responsibility will be accompanied by 'strengthened' and 'sharper' accountability with the Inspectorate of Prisons reporting on the management of prisons as well as conditions for prisoners, and their reports potentially triggering formal intervention in prisons that are not judged to be performing well enough. There will also be league tables produced, based upon a range of quantitative performance indicators, in order to offer a form of public and organisational accountability.

There is significant investment announced within the White Paper. This includes 2500 additional prison officers, who will support the reform efforts by providing 'a dedicated officer to support, mentor and challenge' each prisoner. There is also significant investment in the prison estate with 10,000 new places being created at a cost of £1.3billion, with the intention that older prisons will be closed down as these new places become available.

The articles in this edition respond to the White Paper, its themes, and even its omissions. Together, they offer alternative voices and visions of the future of prisons.

In the first article, Richard Garside, Director of the Centre for Crime and Justice Studies, offers a wide ranging critique of the White Paper. He particularly laments the absence of debate about the number of people being imprisoned in England and Wales, which has doubled over the last three decades and is high by Western European standards. He argues that unless this is addressed then the progressive ambitions of the White Paper will be futile. He also argues that the strategy of greater 'governor empowerment' along with strengthened accountability has profound and hidden implications. In particular, he suggests that this is a way of distancing politicians from the consequences of chronic problems of providing and funding public services, as well as opening up commercial opportunities for private enterprise. This contribution is serious, thoughtful and provocative, offering a challenging, critical response to the White Paper.

Sentencing is also the concern of Julian V. Roberts and Lyndon Harris, who argue that like NHS accident and emergency departments, prisons have an imbalance between demand and resources. The solution, they argue, is to address the overuse of imprisonment so that there can be more effective concentration on a smaller number of people in prison. They focus on sentencing policy, guidelines and practice, making concrete proposals for reform that could achieve some measured decarceration.

The following two articles examine aspects of the infrastructure of prisons. Professor Yvonne Jewkes reflects upon the current plans to update the prison estate, drawing upon her international research on prison architecture. From her informed perspective, she laments the lack of imagination in current prison design and laments that an opportunity to think differently about prison space is being lost. Although the White Paper does not explicitly discuss the role of technology in prisons, this is inevitably significant to the future of prisons. Dr Victoria Knight and Steven Van De Steene, two people with expertise in this field, discuss the innovative use of technology, including Belgium's PrisonCloud, which enables all prisoners to access digital content. They also discuss more widely the role of technology and draw upon a range of international examples, highlighting both the potential and limitations.

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1. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/565014/cm-9350-prison-safety-and-reform-_web_.pdf

The process of the United Kingdom leaving the European Union is a change of historic proportions. Again, this is not addressed in the White Paper. This topic is addressed in an interview with international penal law expert, Professor Dirk van Zyl Smit. In this interview, he reveals that the most significant European institutions shaping prison law are the Council of Europe, the Committee for the Prevention of Torture and the European Court of Human Rights. These institutions are distinct from the EU and the UK will remain part of them even after Brexit. Nevertheless, van Zyl Smit describes how the cultural impact of leaving the EU, as well as the increasing role of the EU and European Court of Justice in prison law, mean that there is likely to be more divergence between the UK and EU members on penal practice in years to come.

The edition closes with Dr David Scott's article envisaging a future without prisons. He argues that this is not unrealistic utopianism, but is possible. He sets out approaches that can be taken now in order to realise this radical change. This is a considered piece, which confronts conventional justifications and dull acceptance of the inevitability of prisons. Instead, Scott advocates for an approach rooted in social justice and equality, taking in not only alternative approaches to dealing with social problems, but also problematizing harms that are currently acceptable such as dramatic economic inequality.

Prisons have been much in the news over recent months. Many people who have taken little interest in what happens behind the walls are suddenly concerned and open to new ideas. Inside the system, there has also been significant discussion about the White Paper and its proposed approaches. This edition of *Prison Service Journal* attempts to enter the fray. In doing so, it offers contributions that may be critical or even controversial. Nevertheless, they are an attempt to take seriously the claim that this is a historic moment. As such, it is important that the issues are open to scrutiny and discussion not only from a practical perspective, but also by going beneath the surface to excavate the values and ideologies that they reflect. Equally valuable, is the opportunity to bring into relief the omissions of the White Paper, particularly in relation to sentencing and the prison population. To a significant extent, it is these numbers that will shape the future of prisons.

Can prisons contribute to social justice?

Interview with Richard Garside

Richard Garside is the Director of the Centre for Crime and Justice Studies. He is interviewed by Paul Addicott, a prison operational manager, currently seconded to Business Development Group in HM Prison and Probation Service.

Richard Garside is the Director of the Centre for Crime and Justice Studies, and Senior Visiting Research Fellow at the Open University. He joined the Centre in 2003 and has been the Director since 2006. Prior to joining the Centre he worked for Nacro as Head of Communications.

The Centre for Crime and Justice Studies was created in 1931 and has been at the forefront of developments in psychotherapy and criminology. Previously known as the Institute for the Study and Treatment of Delinquency, it created a number of leading organisations including the Portman Clinic, renowned for its psychotherapeutic work with people who display disturbing sexual behaviours, criminality and violence. They were also prominent in the development of criminology after the Second World War, establishing an academic forum which then went on to become the British Society of Criminology. The Centre also founded and published the British Journal of Criminology, a world-class academic journal.

Today the Centre remains a prominent and influential research institute, promoting evidence-based approaches, rooted in a concern for social justice and protecting the most vulnerable from harm.

This interview took place in February 2017.

PA: Can you tell me about your interest and involvement with prisons?

RG: The Centre for Crime and Justice Studies works across the criminal justice system. As well as prisons, we look at policing; courts; probation, as well as allied areas within education; youth studies; family support; health and so on. It is important to mention this as we are not a prison focused organisation, we are a criminal justice focused organisation. That said, prisons are a very important and significant part of our work. I have a personal interest and background from my time working in Nacro and since. I have never worked in prisons nor am I a regular visitor to prisons, but I have been involved in this sector for 20 years. There are strengths and weaknesses to this. I don't have detailed knowledge of day-to-day in prison matters, but I do think it can be an advantage as it does mean I can take an outsiders view, which has its benefits.

My main interest lies with prisons as social institutions, and with decarceration, ultimately in abolition. I am not a utopian abolitionist, I don't think it's possible to just get rid of prisons. You need to think of the role prisons play in society and why they occupy that space in society. Any serious thought of abolition would need to consider the role of health, education, family, employment policy, for instance.

PA: Let's first consider the current changes and challenges within our prison system. What are the key points you have taken from discussions about prison reform and the recent release of the White Paper about the future of our prisons?

RG: The White Paper fires the starting pistol on a new round of prison building and prison expansion. It is very clear from the White Paper and the comments of Liz Truss and her colleagues that the government is not interested in what I and others consider the fundamental problem facing the prison system. We have far too many people in prison; unnecessarily imprisoned, which puts a strain on the staff and system as a whole. The reduction of prisoner numbers, which should be a key policy objective, is entirely absent from the White Paper. This is not a great surprise, but it is a missed opportunity. This is reinforced by the commitment to renew the estate. There is nothing wrong with renewing the estate and buildings, but without a clear view on the how big the estate should be, it effectively becomes a licence to grow and expand the estate. This is what we are likely to see.

The other striking development in the White Paper is paper is how it builds on Michael Gove's ideas around reform prisons, and so called 'governor empowerment'. In essence, this is about further marketisation and establishing governors as commissioners of a range of services. Establishing prisons as individual business units has some profound implications in terms of governance, accountability and purpose of regimes.

In summary, I am disappointed but not surprised by the White Paper. It continues the direction of travel of prisons policy for some years, and it is a missed

opportunity to do anything fundamental or important in prison policy, which needs to be focused around decarceration and downsizing.

PA: You have briefly mentioned freedoms for governors. What does this really mean?

RG: Freedom is a lovely word. If you are to look at the detail of the White Paper there is broadly speaking two dimensions to it. There are the powers that governors will have that they currently do not have, at least without involvement from the centre, such as commissioning of health services and education. There are also the commercial freedoms to cut deals with local businesses, effectively turning prisons into business units, and potentially commercial operations. I am concerned about this direction of travel.

The other side of freedom comes with the accountability. The degree to which the governors are being placed under scrutiny; to be held accountable for the delivery of certain objectives, which they are not necessarily in a position to deliver upon. There are so many factors that the governor is not in control of, such as who comes into prison and where they go on to. This all strikes me as a recipe for greater levels of stress for governors and for staff as a whole. It is arguably a clever move from central government to shift responsibility to for managing inadequate budgets to governors. This is consistent with what is happening in other areas of government: notably local government. It is being sold as freeing up governors from the dead hand of NOMS bureaucracy, but is about a lot more than that. If you have a prison system there needs to be some degree of central coordination and management and regulation of it. In as much as this White Paper is trying to steer away from this, it's quite troubling.

PA: Building on the accountability you have described, in the White Paper we see the emergence of the prison league table, what will this mean for the way prisons are assessed?

RG: We have league tables in other areas, such as schools and health. There will be the same problems with the prison league table as with these other areas. There is a perverse incentive for staff to 'game' the system and only focus on what is being measured rather than what is necessarily the right thing, or what matters. There is also a question about who the customers and consumers of this league table are? If you take a school league table at face value then the customers of a league table are the parents of potential students. Who are the customers for prison league tables? Prisoners are not going to be looking at prisons they want to go to depending on which is most likely to help them rehabilitate. The league table is there as a tool for management oversight, a way of measuring the performance of the governor and members of staff. Perhaps there is an argument for that, but whether it should be made available and put in the public domain is another matter. It is an eye-catching initiative. I cannot see that it is a particularly positive development.

PA: I want to move on to discuss what you see as risks of the direction to the future of the prison service. You have mentioned already that your preference is a move to abolition and reduction in prison numbers. What would you suggest needs exploring further to mitigate these risks?

RG: The first thing to say is that we have got used to the idea that we live in a society with a high prison population per capita, but this is a relatively recent development. A generation ago, we were operating with roughly half the prison population we now have. This increase has happened slowly over time, it's not like we went to bed one day with a population of 40-45,000 and woke up the next day where we are now with a population of 80-85,000. This is a mistake that people make sometimes when they think about how you decarcerate; there is this image that you just open the gates and let everyone out. But actually the prison population grew slowly, but over a sustained period of time. The population grew by roughly 5 prisoners a day, every day, over the last 20 years. A target to reduce the prison population by an average of five prisoners a day, if successfully met, would deliver a population of around 80,000 by the time of the planned 2020 general election; 70,000 by 2025; 61,000 by 2030 and around 52,000 by 2035. This is why I think the conversations about decarceration and abolition are to some degree two sides of the same coin. Before Christmas, Ken Clarke, Nick Clegg and Jacqui Smith called for a long term target to get the prison population down to the levels of the Thatcher era, which would have been around the levels of 40-45,000. Achieving this target will probably be done incrementally, rather than all at once. That's why I say the White Paper is a missed opportunity. The government could actually set a target like that and configure policy around that target. The average person in the street wouldn't notice. We actually had a period

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of time under Ken Clarke where the prison population did decline by 5-6 a day and no one noticed. The youth population has come down two thirds over recent years, it was 3000 and is now under 1000. It is possible to deliver decarceration and do it in a way that you could build on political and public support.

If we managed to decarcerate and close prisons, it would open up many exciting possibilities. The Centre for Crime and Justice Studies is leading on a project around the now closed Holloway prison site, and doing work with the local community about what they want it to be used for. We are considering options of whether it should be used for housing development; community development; an art space or a public park. Particularly in cities such as London where new land is very scarce there is an opportunity for a long term decarceraion that could deliver genuine social benefit. We would save by locking up fewer people unnecessarily, and also free up the land using this for community and social investment. Not the high end housing developments that we have seen but business parks, or community resources; affordable houses for local people. We tend to think in silos: in terms of prison policy, or policing policy, health policy, or local parks policy rather than seeing how they are a big interconnected whole.

PA: I would like us to now look back at some other developments from the White Paper. What are your views about the role of HM Inspectorate of Prisons moving forward?

RG: This an interesting point within the White Paper. One way of reading it is that the inspectorate might perform more of a regulatory function in future, rather than an independent inspection function. It is important that we have something in place independent from political interference, for inspectors to set their own agenda in line with international norms, taking an independent view on the health of regimes. If instead they are to be encouraged to move towards a regulatory role, ticking off how well prisons are doing according to the ministers' expectations, this will be a reduction in independence. What if the priorities set by ministers are wrong?

The other thing is we have three justice jurisdictions across England and Wales, Scotland and Northern Ireland, and what we are seeing is further divergence in the way the roles unfold. We have a potential for fragmentation of the inspection functions across the different jurisdictions across the UK.

PA: What does 'rehabilitation culture' mean to you and how can this be achieved?

RG: The first question is whether we feel like we ought to achieve it? If you want to give it a positive gloss it is about making prisons a place of rehabilitation rather than places of punishment. It sounds like Ken Clarke's 'rehabilitation revolution', and it is pretty hard to argue with that. You want people in prison to be treated with dignity and respect, and places that aren't ghastly and grim, where people living in prison have a better chance of not returning to prisons again. However, all the evidence over years of attempts at this, is that it is pure fantasy. Prisons are places of punishment. Our prisons are not nice places to be and they aren't nice places to be for prison staff as well as prisoners. It strikes me as a mistake to think that prisons can be places of rehabilitation. It is really important that prisons operate to international standards in relation to treating people with dignity and respect, where human rights standards are embedded in these institutions. Everyone who enters the premises should feel valued as human beings and treated appropriately. This is however a long way from saying prisons can be places where you can send people in order to be rehabilitated. Prisons, in my view, are the main cause of crime, and the main cause of reoffending. If we really want to reduce crime we should have fewer people in prisons, prisons are criminogenic. This is not a criticism of those who work in them, those working in prisons are doing their best to stop them being criminogenic, but prisons are criminogenic by their nature. Whilst I respect and value the work done by people in prisons to provide services such as resettlement, education, literacy, arts and all sorts of things that go on in prisons, it is at best mitigating the damage of being in prison rather than doing anything that will change the life course of anyone going into prison.

PA: There are a wide range of changes happening within the prison service at present, and a lot of uncertainly in society as a whole with issues such as Brexit. What do you think

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the prison service may look like in five years' time?

RG: If we have not had another major reorganisation we will be probably due one, it seems like an organisation that is constantly being reorganised. I suspect we will see a larger estate or at least not a smaller one. Some sites earmarked for closure probably will have been closed, but not as many as planned. There will be new capacity and new institutions being built so I think the footprint will be larger or at least as large. What I find fascinating about prisons policy is how circular the discussion is. A colleague of mine found an article from decades ago which is full of all the rehabilitation talk that we are having now. There is an endless circularity the prisons policy debate. I expect the prison estate will look somewhat similar to what it does today. I expect we will not see any dramatic improvements on reconviction rate.

I would like to see the progress that has been made in the youth estate continue, and possibly be replicated in other parts of the estate, I think it is possible to see some significant changes within the women's estate including reducing the population. I would like to see something similar in the male estate. But taken in the round, the estate probably won't look significantly different to now.

Brexit will have an impact on some areas in the criminal justice system, things like arrest warrants, the sharing of information, but I'm not sure about the prison system. I don't get the impression that prisons are likely to be significantly affected, although there will be issues around trans-national prisoner transfers.

Mass imprisonment is a relatively recent phenomenon. Taking a longer view, it is arguably naïve to think that prisons will always be with us. It is important to be open to the possibility that one day prisons won't occupy the space in society that they do today. It is possible to think of a society where we don't need prisons to address what we term as crime, I would like to think that ultimately prisons don't have a future. But I'm realistic that this is a long view perspective that may well not come about in my lifetime.

Addressing the Problems of the Prison Estate:

The role of Sentencing Policy[1]

Professor Julian V. Roberts holds a Chair in Criminology at the University of Oxford and **Lyndon Harris** is a barrister and academic at the University of Oxford.

Hospitals and Emergency departments in England and Wales are over-burdened and under-resourced. In fact, they are overburdened *because* they have been under-resourced — relative to the funding necessary to accommodate current patient caseloads. In response, NHS trusts have implemented a range of remedial measures, most of which are diversionary in nature. The objective has been to reduce the volume of patients admitted by screening out those who can be effectively treated in community-based facilities. The measures reflect recognition that hospital and emergency ward treatment is being compromised by over-crowding.

Prisons, too, are failing their clients, most of whom emerge no better off than when they were admitted. Small wonder, then, that ex-prisoners return to offending, resulting in re-conviction and re-admission to custody.[2] Despite this failure of the prisons, no equivalent sense of urgency has arisen in devising solutions to the problem of the revolving prison door. The coalition government imposed spending cuts on prisons and reduced the average spend per prisoner, and stressed the need to reduce recidivism rates. Yet there was no discussion of reducing admissions, reflecting acceptance perhaps, that all admissions to custody must have been necessary, and that no alternative sanctions had been appropriate for these cases. Our contention is that only by reducing the volume of admissions can the prison service devote sufficient time, attention and resources to addressing the needs of the inmate population. The focus of this paper therefore is upon the question of how to reduce the size of the prison estate. Specifically, we address two questions: (i) *who* is responsible for addressing the problem of the high use of imprisonment as a sanction, and (ii) *what kinds* of reforms need to be considered?

Overview of Article

This article contains three parts. Part I summarises recent prison trends and reviews current projections for the future. Part II discusses the causes of the problem, which in large measure consists of an absence of political will and divided responsibility for prison policy. Part III advances some proposals to reduce the number of committals to custody. Numerous academics have advanced a wide range of remedial suggestions; our proposals build upon those prior efforts.[3] What is needed is a more energetic effort to reduce the number of penal 'bed-blockers' who silt up the prison estate, preventing the institutions from doing little more than warehousing prisoners prior to their eventual release.

1. Prison Trends

In December 2016, the prison population was close to its useable operational capacity[4] of 86,834 prisoners.[5] For this reason, an analysis of current trends and annual projections is of particular importance. Last year (2016) saw riots inside numerous prison establishments,[6] leading to claims that the prisons are in crisis.[7] In the year March 2015 to March 2016, there

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1. Views expressed herein are solely those of the authors.
2. This is particularly the case for short term prisoners. A recent (2016) publication by the Ministry of Justice reports that 60 per cent of persons released from serving sentences of less than 12 months re-offended within a year (p. 6, Proven Reoffending Statistics, Quarterly Bulletin, January to December 2014.)
3. See for example Allen (2017); British Academy (2014); Howard League (2013) and Ashworth (2012).
4. There are two measures used to define prison capacity. Operational capacity is the total number of prisoners that an establishment can hold without serious risk to good order, security and the proper running of the planned regime. Certified Normal Accommodation (CNA) represents the good, decent standard of accommodation that the Service aspires to provide all prisoners. See HM Chief Inspector of Prisons for England and Wales Annual Report 2014-15, HC 242, for more details < http://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2015/07/HMIP-AR_2014-15_TSO_Final1.pdf> accessed 7 November 2016.
5. Prison Population Projections 2016 – 2021 England and Wales, Statistics Bulletin, Ministry of Justice, London, 5 < https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/548044/prison-population-projections-2016-2021_FINAL.pdf> accessed 7 November 2016.
6. Birmingham and Cardiff prisons in December 2016; Bedford prison, November 2016, Lewes Prison October 2016, Lincoln Prison, September 2016.
7. Cavendish, A., 'How the scale of UK's prison crisis is kept under wraps', politics.co.uk, < http://www.politics.co.uk/comment-analysis/2016/08/18/how-the-scale-of-uk-s-prison-crisis-is-kept-under-wraps> accessed 7 November 2016.

were 22,195 assaults on staff and inmates in the prison estate.[8] The rates of suicide and self-harm in prisons are also cause for concern. During the 12-month period to March 2016, there were 105 self-inflicted deaths and 34,586 reported incidents of self-harm in relation to 10,012 prisoners.[9] The average number of incidents per self-harming female was 6.7, an increase from 6.1 on the previous 12-month period.[10]

A recently published Ministry of Justice statistical bulletin projected a small increase in the prison population to 85,400 in November 2016 followed by a reduction in prison numbers, to around 83,700 by 2019.[11] Those figures are to be interpreted against the recent trends in the wider criminal justice system; a reduction in the number of court appearances since 2014 has seen a drop in the size of the remand population, yet 'underlying growth is expected in the determinate population due to recent trends in the offender case mix'.[12] However, a recent Ministry of Justice Statistics Bulletin noted that first-time admissions to custody continue to decline, most significantly in the youth justice system.[13] Changes to sentencing legislation, such as the abolition of the IPP sentence (resulting in more offenders receiving extended determinate sentences) and the addition of post-licence supervision for those released from short custodial sentences have increased in the determinate sentence population. Additionally, an increase in the recall population[14] has contributed to the increased pressure on the prison system. Finally, the government's projections anticipate the over 50, over 60 and over 70 year-old populations will rise both in absolute terms and as a proportion of the total prison population, thereby placing new and greater strain on the already scarce resources.[15] Thus, while the number of cases coming before the courts has declined, the courts are sending more people to prison, and for longer periods.

These statistics make for worrying reading. The Ministry of Justice published a White Paper in November 2016. *Prison Safety and Reform*[16] set out a commitment to 'huge cultural and structural change' and the 'biggest overhaul of our prisons in a generation'. In particular, the paper committed to giving frontline staff 'the time and the tools they need to supervise and support offenders so they can turn our prisons into places of safety and reform'[17]

However, former Justice Secretary and Lord Chancellor Ken Clarke MP reacted to the White Paper, commenting that the proposed prison reform would not be successful without a commitment to address the 'prison works' policy of the 1990s which has led to the dramatic increase in sentences of imprisonment in the past two decades.[18] More recently, prominent politicians have also argued that the problems of the prison estate can only be resolved by reducing significantly the volume of committals.[19] It is against this background we briefly explore how these issues could be addressed.

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2. Who's Responsible for Regulating the Prison Population?

A vacuum of responsibility is largely responsible for the seemingly intractable problem of a high prison population. Under the separation of powers, Parliament

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8. Wainwright D., 'Are prisons becoming more dangerous places?' BBC News, 7 November 2016 < http://www.bbc.co.uk/news/uk-england-37702964> accessed 7 November 2016.
9. Safety in Custody Statistics Bulletin England and Wales, Ministry of Justice, London, 6, < https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/543284/safety-in-custody-bulletin.pdf> accessed 7 November 2016.
10. Ibid, 10.
11. Prison Population Projections 2016 – 2021 England and Wales, Statistics Bulletin, Ministry of Justice, London, 5 < https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/548044/prison-population-projections-2016-2021_FINAL.pdf> accessed 7 November 2016.
12. The statistical bulletin refers explicitly to the rise in sexual offence prosecutions.
13. Criminal Justice Statistics Quarterly Update to March 2016: England and Wales, Ministry of Justice Statistics bulletin, (Ministry of Justice, London).
14. Padfield, N. 'Justifying indefinite detention – on what grounds?' [2016] Crim LR 797, 798.
15. Ministry of Justice (n 2), 9.
16. Cm 9350.
17. Ibid, 5.
18. Travis, A., Ken Clarke: prison changes won't work until sentencing is reformed, The Guardian, 3 November 2016 < https://www.theguardian.com/society/2016/nov/03/ken-clarke-prison-reforms-sentencing-liz-truss> accessed 7 November 2016.
19. Clegg *et al* in Times article.

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recognizes the independent authority of the courts to determine sentence in individual cases. The legislature has placed the objectives of sentencing and a number of key principles on a statutory footing, and sentencers apply these objectives and principles. Yet no direction has been given to courts to consider prison conditions or prison effectiveness and costs in their sentencing decisions. Accordingly, it has fallen to the courts to consider this issue as and when it has arisen.

In the 1980s, the then Lord Chief Justice Lord Lane gave two judgments in appeals against sentence to the effect that the fact that the prisons were 'dangerously overcrowded' was a factor relevant to sentence and that the prison overcrowding then present required sentencers to pay particular attention to what has since become known as the custody threshold.[20] In the late 2000s, the issue of overcrowding returned to the Court of Appeal (Criminal Division) when the Lord Chief Justice Lord Phillips restated Lord Lane's comments and noted that sentencers ought to 'properly bear in mind that the prison regime is likely to be more punitive as a result of prison overcrowding'.[21] However, this view quickly fell out favour, as demonstrated by the decision in *R. v Suleman* [2009] EWCA Crim 1138 in which the court (Thomas LJ, Treacy J and HH Judge Stewart QC)[22] described a submission that the sentencing judge had failed to take account of prison overcrowding as 'misconceived'.

Indeed, it is hard to see how an individual court could reasonably take the prison estate into account; determining sentence requires individualization, while the questions of the prison population are institutional in nature. Conditions in prisons vary: for example, in July 2016, just over than 60 per cent of prison establishments were overcrowded.[23] In September 2016, HMP Kennet was at 180 per cent of its certified normal accommodation, whereas HMP The Mount was at 100 per cent.[24] To maintain a degree of consistency in the application of prison overcrowding as a factor in

Conditions in prisons vary: for example, in July 2016, just over than 60 per cent of prison establishments were overcrowded.

sentencing, courts would require evidence on which to base any such finding, and guidance would be necessary to provide structure and clarity to the process by which reductions in sentence were awarded. Courts therefore properly sentence blind to the size of the prison estate.

Sentencing law has long been an area of interest for Parliament. With major sentencing legislation in 1991, 1997, 2000, 2003, 2008 and 2012, it is somewhat surprising that Parliament can be criticised for lacking the political will to change the status quo. But such a view belies reality; while there is interest in sentencing law, there appears to be little will to change prison law and policy. This is in part attributable to penal populism and the 'public' nature of sentencing as opposed to the more hidden nature of custody rates, prison conditions and the state of resources in the prison service, resulting in an increase in the prison population.[25] The emphasis on being 'tough on crime' was present in the political right from the 1960s, however, the early 1990s saw the stance also adopted by liberal and social democratic politicians.[26] This desire to tackle crime (and gain favourable press coverage) has resulted in numerous pieces of criminal justice legislation over the past quarter of a century, but, none has stemmed the burgeoning prison population. In fact, the reverse is true. As noted above, the advent of indeterminate sentences in 2005[27] saw a dramatic increase in the prison population. Additionally, the commencement of Schedule 21 of the Criminal Justice Act 2003, significantly increasing sentences for murder, has, rightly or wrongly, intentionally or unintentionally had an inflationary effect upon sentence lengths in other violent crime.[28]

The consequence of all this is that sentencing policy regarding the use of imprisonment drifts, and often in an upwards direction. Moreover, it is moored to a rate of custody which is high relative to other western nations. It is by now trite to observe that the prison

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20. *R. v Bibi* (1980) 71 Cr. App. R. 360 at p.361. See also *R. v Upton* (1980) 71 Cr. App. R. 102.
21. *R. v Seed and Stark* [2007] EWCA Crim 254; [2007] 2 Cr. App. R. (S.) 69 at [1] to [5].
22. Thomas LJ is now Lord Thomas, CJ, and Treacy J is now Treacy LJ, Chairman of the Sentencing Council. The view of the Court of Appeal (Criminal Division) is therefore unlikely to change from this position in the near future.
23. Prison Population Statistics: Briefing Paper SN/SG/04334, 4 July 2016, House of Commons Library, House of Commons: London
24. Prison Comparison, The Howard League for Penal Reform, <http://howardleague.org/prisons-information/> accessed 1 September 2016.
25. Pratt, J., (2007) Penal Populism, Routledge: London and New York, p.23.
26. *Ibid.*
27. See Criminal Justice Act 2003 ss.224 et seq.
28. This was recognised by the Court in R. v Wood [2009] EWCA Crim 651 [2010] 1 Cr. App. R. (S.) 2 (p.6) and *Attorney General's Reference (Nos. 60, 62 and 63 of 2009) (R. v Appleby)* [2009] EWCA Crim 2693; [2010] 2 Cr. App. R. (S.) 46.

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population in England and Wales is high — relative to other western European countries such as Germany, the Netherlands and France. More offenders are sent to prison and for longer periods in this country.[29] The differences between prison populations between jurisdictions with low rates (e.g., Germany) and high rates (e.g., England and wales; Scotland) cannot be explained by differences in the volume or seriousness of crime trends.

Manifestations of the Problem

Two potential problems may be identified: (i) an excessively high (in comparison to countries with comparable levels of crime) prison population; (ii) a relatively recent uplift in either the volume of prison terms or the length of prison sentences. The question then becomes who can or should address these two trends.

Since the inception of statutorily binding sentencing guidelines, a number of academics and commentators have pointed their fingers at the Sentencing Council. The Council issues offence-specific guidelines which contain sentence recommendations including specific sentence ranges. For example, the guideline for ABH contains 3 category ranges, the middle of which runs from a low-level community order to 51 weeks custody. Amending these sentence ranges would affect the number of offenders sent to prison as well as the duration of time spent in custody. In other words, adjusting the guideline sentence ranges could rapidly increase or decrease the size of the prison population. In many US guidelines, this is possible because all offences are contained within a single grid, and proportionality may be maintained across offences while reducing the volume and duration of prison sentences. This would not be possible in England and Wales, where each offence category carries its own guideline, and amending guideline sentence ranges involves a protracted period of consultation.

The practice of adjusting sentences to reflect prison population changes is also problematic since it allows an unprincipled consideration to determine the severity of sentencing. On a more general level, we may ask whether the Council is the appropriate body to reduce the number of people in prison? We think not and for the following reasons.

First, it has no mandate to implement wider policy changes, such as reducing the overall number of people in prison to, say a level closer to the European norm. The Council's mandate is clearly set out in the **Coroners' and Justice Act 2009**, and the most relevant provision is the following:

(11) When exercising functions under this section, the Council must have regard to the following matters —
(a)the sentences imposed by courts in England and Wales for offences;
(b)the need to promote consistency in sentencing;
(c)the impact of sentencing decisions on victims of offences;
(d)the need to promote public confidence in the criminal justice system;
(e)the cost of different sentences and their relative effectiveness in preventing re-offending;
(f)the results of the monitoring carried out under section 128.

Nothing in the Act provides the licence to amend sentence ranges in order to reduce the size of the prison population. Subsection 11(e) suggests that Council should ensure that the sentence recommendations reflect the latest research on the relative effectiveness of different disposals, but this is a far cry from adjusting sentence ranges to curb or reduce admissions to prison or prison durations.

The second reason relates to the composition of the Council which is a primarily judicial body. As such it should not be determining sentencing policy — which lies ultimately for the legislature to resolve. The size of the prison population is a matter for the government to manage and parliamentarians should hold the government to account for problems such as the high prison population or worsening conditions in prison. The House of Commons Select Committee, for example, could launch an inquiry into the size of the prison population. Such an inquiry might generate proposals for the government to consider.

The third reason is practical, and addresses the latter of the two problematic trends. Suppose the Council were aware that there had been a recent change in the average severity of, say, sentences for

> Nothing in the Act provides the licence to amend sentence ranges in order to reduce the size of the prison population.

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29.   The most recent (11th) edition of the world prison population makes this clear. England and Wales reports a rate of 153 per 100,000 population, significantly higher than most other western European countries. See:
       http://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_11th_edition_0.pdf

economic crimes. Many steps would have to precede any attempt to correct the courts. Council would have to determine whether there were any legally-relevant factors which might explain the uplift. For example, had the seriousness of fraud cases increased? Had there been any judgments from the Court of Appeal which might justify an uplift by trial courts? Determining that any increase in severity was due simply to a shift towards more punitive sentencing *unrelated to any legitimate influences* would be challenging, to say the least. If the courts were changing their sentencing practices, and becoming more punitive in order to align sentences for a given offence in a way that made them more proportionate, it would hardly be appropriate for the Council to undermine.

In short, there are principled as well as practical problems to be overcome before the Council could serve to correct any unprincipled drift in judicial practice. More tellingly, there seems no scope for the Council to take it upon itself to attempt to reduce the overall rate of imprisonment or the size of the prison population. That is a matter for the legislature.

The Sentencing Council does have discretion to 'promote awareness' in relation to 'the cost of different sentences and their relative effectiveness at preventing reoffending'.[30] On this subject the Council has been relatively quiet. The Council could exercise this discretion in at least two respects; by providing sentencers with up-to-date information regarding the cost and effectiveness of the sentences they impose, and by publishing material to garner public and political support towards rehabilitative disposals as opposed to custodial disposals. A more ambitious approach would entail the development of 'penal equivalents'. This would consist of tables of sanctions in which a given sentence — say 3 months in prison — was accompanied by a typical noncustodial sanction which would carry the same penal value. In this way, courts would have a tool for systematically substituting a community penalty for a short prison sentence.

The Example of Scotland

The Scottish government provides an example for Parliament to follow. In 2010, it recognized that the size of the prison population in that jurisdiction was high — relative to other EU countries — and legislated a presumption against the imposition of short terms of custody. **The Criminal Justice and Licensing (Scotland) Act 2010** introduced a presumption against sentences of less than three months, requiring the court to (i) only pass a sentence of three months or less if no other appropriate disposal is available and (ii) record the reasons for this. If the volume of short sentences were to decline, this would effectively reduce the prison population since a significant number of admissions to custody. To date, the courts have not reduced their use of such sentences, and the Scottish government has launched a public consultation[31] to assess public and professional reaction to proposals to strengthen the presumption against short prison sentences.

The point however, is that the legislature which ultimately must approve legislation to change the size of the prison population is the appropriate authority.[32] Sentencing guidelines authorities such as the Scottish and English Councils exist to promote more principled and consistent sentencing, and not to determine sentencing policy, or to maintain the prison population at any given level.

Having set out what we consider to be the key causes of the problems facing the criminal justice system in relation to prison numbers, we consider steps which could effect meaningful change. In so doing, we suggest some modest measures which could achieve a reduction in prison numbers even at a time when there is a complete lack of political will to take a lead on reformative prison policy.

3. Remedial Measures

Penal Audit

When academics argue that there are too many people in prison it is often dismissed as representing a partisan view of criminal justice. In 2014, the British Academy sponsored an academic analysis which made the case for reducing the use of imprisonment and proposed a number of specific mechanisms to achieve reductions in the volume of admissions. The report was thorough, comprehensive — and sank without trace. This is another example of the failure of the academy to

> The point however, is that the legislature which ultimately must approve legislation to change the size of the prison population is the appropriate authority.

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30. CJA 2009 s.129(2)(b).
31. See http://www.gov.scot/Publications/2016/03/8624/
32. Scotland also has a Sentencing Council, and it is significant that the government has not assigned the task of reducing the prison population to the Council.

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influence penal policy and practice. In light of the fact that many people fail to accept that the use of custody in England and Wales is excessive, a different approach to making the case is necessary.

Returning to the world of hospitals, the British Medical Association has claimed that approximately 40 per cent of admissions to A and E departments in England and Wales were unnecessary — meaning that these patients could have been effectively treated in the community. Can we estimate the penal equivalent of this statistic in terms of the number of prison admissions who could have been effectively held accountable for the crimes by means of a noncustodial sanction? What is needed is a cross-party examination of the prison estate with a view to determining whether there is any consensus about the proportion of prisoners who could have been sentenced to a community-based sanction. This exercise would subject the files of a snapshot sample of prisoners to an independent review, the question being: *Could this person have been sentenced in the community without compromising public safety, or the principles of sentencing?* The review would be carried out by a primarily judicial panel. The findings could then be extrapolated to the general prison population. We would be in a position to conclude that x per cent of the current prison population had been committed to custody when an alternative sanction would have been appropriate.[33]

> ## Could this person have been sentenced in the community without compromising public safety, or the principles of sentencing?

An exercise of this kind would inform the search for solutions in two ways. First, by quantifying the proportion of prisoners for whom a community penalty would have been a credible alternative, and second, by identifying the reason why this case was committed to custody. On the first point, we need to know how much room there is for considering greater diversion away from custody. Are the academics correct in assuming that a significant proportion of the prison population could be diverted, or is the number actually much smaller? On the second point, the audit would identify the cause of committal to prison. For example, was it a case of an offender whose criminal record was so long that the court saw no reasonable alternative to imprisoning the offender? Or rather a case of an offence the seriousness of which convinced the court that the imprisonment of the offender was inevitable? If the former, this may suggest a search for ways of punishing multiple recidivists without custody; if the latter it may suggest putting the case to some kind of community test. Is it the case that the community would have found imposition of an alternative unacceptable? Research using case summaries has shown significant public support for alternative sanctions (e.g., Hough and Roberts, 2012), but a direct test of cases admitted to custody has not been conducted.

Custody threshold and previous convictions

The concept of the custody threshold has for more than two decades troubled the courts, practitioners and academics. Although the clarity of the language used in the statute appears difficult to improve upon, the concept remains vague and problematic.[34] Frequently, the precise meaning of the phrase has been queried, along with more fundamental questions such as whether the concept ought to be rejected entirely.[35] The Court of Appeal has attempted to better define the provision, though this was later held to be flawed and unhelpful.[36] Following much academic and Court of Appeal discussion, it appears that it is not possible to define the custody threshold in its current form. Accordingly, in this brief article we focus on just one aspect of the custody threshold, namely the use of previous convictions to 'push' an offender across the custodial threshold in circumstances where the seriousness of the offence alone would result in a non-custodial penalty.

The custody threshold is contained currently in the Criminal Justice Act 2003 s.152. Subsection (2) reads:

> *The court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified for the offence.*

It therefore appears to concern *offence* seriousness, employing a retributive approach to

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33. Independent case reviews are common in other areas of criminal justice decision-making and other jurisdictions.
34. Harris, L. et al, Response to Sentencing Council's consultation paper on the imposition of custody and community sentences, (2016) 1 Sentencing News 12, 15.
35. Padfield, N., 'Time to bury the custody threshold?' [2011] Crim LR 593.
36. *R. v Bradbourn* (1985) 7 Cr. App. R. (S.) 180 and *R. v Howells* [1999] 1 Cr. App. R. (S.) 335.

determining how much punishment to inflict upon an offender based on their offence. However, s.143 — a supplementary section entitled 'Determining the seriousness of an offence' — expands the remit of the custody threshold beyond the offence, including the existence of any previous convictions. Some scholars would argue that this is not incompatible with a retributivist approach, on the basis that an offender with previous convictions who commits an offence is more culpable than one of good character, and so previous convictions are an offence based factor relevant to the determination of offence seriousness. Others would argue it is not a permissible consideration in a purely retributive scheme. Whatever one's view, it is our contention that the role of previous convictions in relation to determination of sentence type — that is whether to imprison or not — ought not to give prominence to the existence of previous convictions. Undue prominence to previous convictions (or any other matter of limited significance to the question of offence seriousness) undermines the principle of proportionality. Legislating to limit the influence of previous convictions at sentencing can therefore be viewed merely as an act of preserving proportionality.

We do not go so far as to suggest that previous convictions should play no role; we merely suggest that their influence should be limited, but with an 'exceptional circumstances' provision enabling a court to depart from the general limitation where it was appropriate to do so. For the persistent petty offender who repeatedly commits low level offences in the tens or even hundreds, we regard it as inappropriate that he or she be sent to custody for their record alone. We regard this measure as a method of reducing admissions to prison but also specifically reducing the number of short term prisoners, which put undue strain on the prison estate and, with the advent of post-licence supervision, the probation case load.[37]

Increased use of suspended sentences

The present regime governing the use of suspended sentences of imprisonment is contained within the CJA 2003. It provides the court with a wide discretion. The court must have already determined that the offence(s) cross the custody threshold and that the appropriate length of the custodial sentence is of at least 14 days and no more than 24 months. In those circumstances, the court may suspend the sentence if it considers it to be 'appropriate'.[38] Since 2005 there has been a sharp increase in the number of suspended sentences, from less than 10,000 in 2005 to 57,000 in 2015.[39] In 2015, suspended sentences accounted for approximately 38 per cent of the number of custodial sentences imposed. In the year ending March 2015, over two-thirds of custodial sentences were of 12 months or less.[40]

In October 2016, the Sentencing Council published its definitive guideline on the Imposition of Custodial and Community Sentences. After a public consultation which urged the Council to provide more guidance, *inter alia*, on the issue of suspension, the definitive guideline provides courts with a 'steer' as to the type of case which might be appropriate for a suspended sentence order. While this undoubtedly advances matters, providing greater consistency and clarity to the issue of short custodial sentences and whether or not they ought to be suspended, we see an opportunity to make a more fundamental change without fettering the court's discretion.

One proposal is to create a presumption that short custodial sentences, perhaps of up to 12 months, would be suspended in the absence of exceptional circumstances. This would focus the court's mind on the issue of suspension, requiring a robust justification for an immediate custodial sentence of up to 12 months and an increase in the number of sentences of less than 12 months which are suspended. The result would be fewer admissions to custody and very few immediate custodial sentences of a short duration.

Conclusion

The continuing high use of imprisonment — relative to comparable EU countries — is likely to remain as long as the government and Parliament decline to accept some responsibility. The inevitable consequence will be more prison disturbances, high recidivism rates and escalating prison costs. The country needs more, and deserves better from its elected representatives.

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37. From 1 February 2015, short custodial sentences are now subject to a post-licence supervision regime, breach of which can result in a custodial penalty. See ORA 2014 for more details.
38. CJA 2003 s.189.
39. Final Stage Resource Assessment: Imposition Of Community And Custodial Sentences Guideline, Sentencing Council of England and Wales, October 2016 < https://www.sentencingcouncil.org.uk/wp-content/uploads/Final-resource-assessment-imposition.pdf> date accessed 8 November 2016.
40. Criminal Justice Statistics Quarterly Update to March 2015: England and Wales, Statistics bulletin, Ministry of Justice, London, 16 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/453309/criminal-justice-statistics-march-2015.pdf.pdf accessed 8 November 2016.

Prison Planning and Design:

Learning from the Past and Looking to the Future

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Introduction

This article offers a brief discussion of the 'new for old' prisons policy currently being implemented in England and Wales, in the context of previous waves of expansionism and in light of some of the well-publicised problems that have taken hold of the prison system. It draws on the views of experts who voiced their criticism (in the *British Journal of Criminology,* published in 1961) of the architectural stagnation that characterised prison planning and design during the last major prison construction programme, and repeats their exhortation that we must stop looking to the past when designing new custodial facilities. With a prison population that has almost trebled in the half century since they wrote their critiques, and new prisons being built with a capacity of over 2,100 prisoners, compared to establishments with 400 beds being considered 'very large' in 1961, there has arguably never been a more pressing time to radically re-think what prisons are for and how they might be designed differently — to hold prisoners more safely and offer them genuine hope of rehabilitation, but also to support a substantial reduction in the prison population.

A time of crisis and reform

In November 2016 the Government outlined plans to make prisons 'a place of safety and reform', and 'create a modern, fit for purpose estate which offers hope, empowerment and opportunities to offenders'.[1] One month later, disturbances occurred at HMP Birmingham so serious that they reminded many of the riots at Strangeways a quarter of a century earlier. As prisoners were moved from Birmingham's trashed wings to over-stretched prisons elsewhere in the country, those of us who have been awaiting further news about the planned new additions to the estate could not help but wonder if the disturbances (not only

at Birmingham but at other establishments, including HMP Bedford and HMP Lewes) would be an obstacle to radically new thinking about what the new prisons should look and feel like. Back in July 2015 the Secretary of State for Justice, Michael Gove, had boldly stated that the prison estate would be modernised 'to design out the dark corners which too often facilitate violence and drug-taking'.[2] His stated desire to build a prison estate 'which allows prisoners to be rehabilitated' was reinforced by then Prime Minister, David Cameron who, in February 2016, pledged to support his minister in the 'biggest shake-up of prisons since the Victorian era', and announced that in addition to the new facilities, a further six existing establishments would become 'reform prisons' with executive governors given greater autonomy over the financial and operational management of their prisons. Conceiving of the new establishments as places of care, as well as punishment, both Gove and Cameron acknowledged the extent to which the buildings and spatial design of prisons are conducive to rehabilitating offenders and helping them 'find meaning in their lives'.[3]

However, following Gove's doomed leadership campaign, the Justice minister on whom so many reformist hopes were pinned was unceremoniously sacked and replaced by Liz Truss, whose promises of continuing her predecessor's reform agenda have been inflected with a hard-line edge that suggests the new Conservative administration might be returning to business-as-usual in matters of criminal justice (while Home Secretary, current Prime Minister Theresa May said 'Prison works but it must be made to work better').[4] Ms Truss's similarly uncompromising approach was laid bare in her statement following the disturbances in December. 'Violence in our prisons will not be tolerated', she said, 'and those responsible will face the full force of the law'.[5]

Many commentators have vehemently criticised the minister for her obdurate stance, especially in the context of record suicide rates in prisons in England and Wales in 2016. 119 people killed themselves; an

1. Ministry of Justice (2016) 'Prison Safety and Reform' policy paper available at https://www.gov.uk/government/publications/prison-safety-and-reform
2. https://www.gov.uk/government/speeches/the-treasure-in-the-heart-of-man-making-prisons-work
3. https://www.gov.uk/government/speeches/prison-reform-prime-ministers-speech
4. *Guardian*, 14th December 2010, cited in Moran, D., Jewkes, Y. and Turner, J. (2016) 'Prison design and carceral space' in Y. Jewkes, J. Bennett and B. Crewe (eds.) Handbook on Prisons, revised 2nd edition, Abingdon: Routledge.
5. *Guardian*, 17th December 2016.

increase of 29 (32 per cent) on the previous year and a doubling of the prisoner suicide rate since 2012. To put it in further context, in 2016, suicides in our prisons occurred at a rate of one every three days.[6] While a causal relationship between the architecture, design and spatial layout of prisons and the human misery experienced within their walls is difficult to establish, numerous prisoner autobiographies attest to the impact that the environment has, not only on suicide ideation, but on drug dependency, mental health problems, bullying, self harm, violent assaults and poor prisoner-staff relationships.[7]

The topic of new prison building is, of course, highly controversial. With multiple crises currently blighting the system, many criminologists, pressure groups and other commentators have called for a moratorium on prison construction.[8] The other side of the prison estate transformation plan, as reported by Cameron in 2016, involved relinquishing the parts of the estate (mostly some of the establishments built in the nineteenth century) that are no longer adequate to their task. Such prisons, he commented, were barely fit for human habitation when they were built, and are 'much, much worse today'.[9] While it is highly debatable that 'old' necessarily means 'bad' (and even more questionable whether 'new' equates to 'good' prison design), it is certainly the case that those earliest prisons, built for a 'separate system' of total solitude, are among the bleakest and most inhuman, for that was the intention when they were designed and built. For example, even as the last bricks of HMP Pentonville were being laid in 1842, social commentators of the day were expressing their views that the new prison would be 'unnecessarily cruel' and that 'madness will seize those whom death has spared'.[10]

Yet in the six years following Pentonville's construction, 54 further prisons were built to the same radial template and, nearly two hundred years later,

> The White Paper published in November 2016 announced plans for six new adult male prisons and five new community prisons for women.

many are — in the words of the former Prime Minister — 'ageing, ineffective, creaking, leaking and coming apart at the seams'. And certainly we might speculate that the architect of Pentonville, Joshua Jebb, would be surprised that his prison remained in operation 175 years after it was built and that his influence is still to be seen in the radial wings, galleried landings, cellular compartments, and other design features of prisons constructed in the 21st century.

A once-in-a-generation opportunity to design prisons differently

The White Paper published in November 2016 announced plans for six new adult male prisons and five new community prisons for women.[11] At this point, we simply do not know what these new prisons will look like, but it is hard to feel optimistic, especially since it has recently been announced that the previously mothballed HMP Wellingborough site is to be redeveloped with treble its previous capacity (taking it to 1,600 beds). With an investment of £1.3 billion to build up to 10,000 new adult prison places in the next four years, the current Government seems committed to building warehouse-style 'mega-prisons', despite a multitude of academic evidence and Inspectorate reports showing that small prisons are more operationally effective and are better than larger facilities at housing prisoners in safe and secure conditions, providing them with meaningful work, education and training, encouraging purposeful activity, and fostering healthy relationships between prisoners and prison staff.[12]

One of the most depressing aspects of the current prison modernisation plans is that they represent a once-in-a-generation opportunity to build facilities, not only that are 'fit for purpose', but that genuinely offer the hope of prisoner rehabilitation, and yet we do not seem to learn from the mistakes of the past. In theory,

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6. *Guardian*, 26th Jan 2017.
7. See, for example, Hassine, V. (2010) *Life Without Parole: Living and Dying in Prison Today*, New York: Oxford University Press.
8. https://www.crimeandjustice.org.uk/news/reclaim-justice-network-calls-moratorium-prison-building; 'Building more prisons is not the answer', Letter to the *Guardian*, 26th Jan 2017.
9. Cameron, D. (2016) *op cit*.
10. *Times* 20th May 1841; cited in Johnston, H. (2015): 109) *Crime in England, 1815-1880: Experiencing the Criminal Justice System*, Abingdon: Routledge.
11. Ministry of Justice (2016) *op cit*.
12. For example: Liebling A. with Arnold, H. (2004) *Prisons and Their Moral Performance: A Study of Values, Quality, and Prison Life*, Oxford: Oxford University Press; Johnsen, B., Granheim, P.K. and Helgesen, J. (2011) 'Exceptional prison conditions and the quality of prison life: prison size and prison culture in Norwegian closed prisons', in *European Journal of Criminology* 8(6): 515-529; Madoc-Jones, I., Williams, E., Hughes, C. and Turley, J. (2016) 'Prisons: "Does size still matter?', Prison Service Journal (Sept) no. 227, pp. 4-10.

the reform plans offer an opportunity to debate and perhaps entirely re-assess what prisons are for and how their design might assist with the philosophies that underpin them. Yet, we need look no further than an early special issue of the *British Journal of Criminology* devoted to the theme of 'prison architecture' to witness how the concerns of current critics have been previously rehearsed. Published in 1961 at the time of the then 'largest [prison] building programme to be undertaken in this country for a century' (Editorial), these early BJC articles — written by Chairman of the Prison Commission, AW Petersen, sociologist John Madge, architect and professor of architecture Norman Johnston and architectural theorist Leslie Fairweather — persuasively argue that new prison buildings should reflect both the most up-to-date academic scholarship and the most progressive penal philosophies of our European neighbours. As Jewkes and Moran[13] intimate, that seems enlightened in 2017, let alone in 1961. So why is it, that 56 years later, the future of prisons looks ominously like the past? Why, when Fairweather and his fellow contributors were lamenting the failure of prison planners and designers to learn from previous mistakes, are we still failing to absorb the lessons of poor prison design? And with prison reform now very much on the agenda, what are the chances that those politicians and policy-makers with the power to bring innovation and creativity into the prison design process will do so?

In a forthcoming chapter for the *Oxford Handbook of Criminology*, Yvonne Jewkes and Dominique Moran highlight some of the points made by the distinguished contributors to the 1961 issue of the *British Journal of Criminology* that remain unresolved over half-a-century later. To take just a few examples; all the *BJC* contributors emphasize the importance of enabling as many prisoners as possible to serve their sentences within a reasonable distance of their home; an argument still being made by contemporary desistance theorists and commentators on the 'collateral damage' inflicted on prisoners' families when a parent is incarcerated.[14] The question of why the use of small institutions should be economically prohibitive is another concern that has become even more salient since Johnston and Petersen raised it in 1961, when the

maximum number of prisoners envisaged for any given establishment was 450. The fallacy of creating standardized prison designs, with only minor differences applied (e.g. to strength of construction materials) depending on the level of security required is an issue raised by Fairweather and Johnston, anticipating current concerns about 'value engineering' and 'future proofing' prison designs. Relatedly, the need, identified by Fairweather, to build custodial facilities that meet known demand, rather than future projections, speaks to actuarial assessments of risk and is a perennial concern to criminologists who write about the tendency of the media to exaggerate potential threats in times of particular sensitivity to risk. The 'moral panic' had not yet been named in 1961, but scaremongering news reports inflected political debates about how the prison estate should respond to the abolition of the death penalty in the early 1960s, just as, arguably, they continue to do today, with possible terrorist attacks uppermost on media and political agendas.

> So why is it, that 56 years later, the future of prisons looks ominously like the past?

As Jewkes and Moran observe, these examples from volume 1, issue 4 of the *British Journal of Criminology* (and there are many others within its pages) underline that the history of imprisonment is characterized by continuity and consistency. Every major prison expansion programme of the last two hundred years has been a knee-jerk response to predictable problems — rising prisoner numbers, chronic overcrowding, buildings that become dangerously outdated, and prisoner frustration and despair that has resulted in serious disturbances and suicides.

New era, old ideas

In his *BJC* contribution, Leslie Fairweather condemns the prison estate as 'an embarrassing legacy of extremely permanent buildings expressing an outdated and outworn penal philosophy'.[15] This statement arguably goes to the heart of the current debate about the new planned prisons — what they should look like; what materials they should be constructed from; what form the living accommodation should take; what kinds of work,

13. Jewkes, Y. and Moran, D. (2017) 'Criminology, carceral geography and prison architecture' in A. Liebling, S. Maruna and L. McAra (eds.) *Oxford Handbook of Criminology* 6th edition, Oxford: Oxford University Press.
14. See, for example, McNeill, F. and Schinkel, M. (2016) 'Prisons and desistance', in Y. Jewkes, J. Bennett and B. Crewe (eds) *Handbook on Prisons 2nd edition*, Abingdon: Routledge; Scharff Smith, P. (2014) *When the Innocent are Punished: The Children of Imprisoned Parents, London:* Palgrave.
15. Fairweather, L. (1961) 'Prison architecture in England', in *British Journal of Criminology* special issue on 'Prison Architecture' 1(4): 339-361 (p. 340).

education and health spaces should be designed; how the architecture might shape modes of interaction between prisoners and staff; and where the prisons should be sited. Having now conducted research over the last three years on prison architecture and design,[16] and had the opportunity to speak to and/or work with numerous prison architects (in Norway, Denmark, Spain, Australia, New Zealand, the Republic of Ireland and Scotland, as well as England and Wales) I have often found myself wishing that I could erase all prior knowledge of 'what prisons look like' and 'who prisoners are' from their memory and cultural repertoire, and give them a blank sheet of paper, along with some alternative perspectives about what prisons might achieve if a different philosophy underpinned them. Even the most well-intentioned and socially responsible architects who are prepared to challenge commissioning authorities about the level of humane, 'normal' or imaginative design content they can include, tend to fall back on designs they have tried and tested previously, with the result that evolution in prison architecture and spatial layout occurs at snail pace.

Richard Wener astutely observes that the design process is 'the wedge that forces the system to think through its approach and review, restate, or redevelop its philosophy of criminal justice'.[17] Yet it appears that we are destined to keep building prisons that look very much like their forebears — only bigger. A case in point is the newly opened HMP Berwyn in North Wales, built in a similar style to, and with the same capacity (2,106) as, HMP Oakwood in the English midlands (opened in 2012); itself a faithful reproduction of many prison establishments that came before it. In fact, one of the astonishing features of new prisons is how similar they look and feel to their Victorian predecessors. The paint might be brighter, the ceilings higher and the sanitation more hygienic, but wings and cells remain the preferred living arrangement (and are not materially altered by the new preferred terminology of 'corridors' and 'rooms'), the windows (where there

> Yet it appears that we are destined to keep building prisons that look very much like their forebears — only bigger.

are windows) are still needlessly barred, the workshops remain stuck in a time when there was a plethora of manufacturing jobs awaiting people when they finished their sentences, and there are few, if any, spaces for quiet reflection, aesthetic/sensory pleasure or even just tuning out of the institutional culture. In 1961, Leslie Fairweather wrote of the newly constructed prison at Everthorpe Hall in Yorkshire that, like its Victorian predecessors, it consists of 'long, noisy, open halls with banks of cells rising on each side' which are, he says, 'abhorrently familiar features of our prison system [that] need no further description' (1961: 340). This narrative might just as easily have been written about any of the prison house blocks constructed in the last five years.

Must history repeat itself?

Given the conservatism that characterises the commissioning, planning and construction of new prisons — a pervasive cautiousness perpetuated by an intricate network of individuals, companies and capital, and driven primarily by concerns for security, cost and efficiency[18] — perhaps we should not be surprised that 'history repeats itself', as Fairweather says. Commenting on Everthorpe he laments that it is 'hardly surprising… but bitterly disappointing, that the first new prison of major importance to be built in this [the 20th] century …should be a very close imitation of the type of prison erected during the previous century'. It was, he states, 'completely out of date before it even left the drawing board'; and 'a depressing reminder of the consequences of architectural stagnation'.[19]

Concurring with this view, President of the Prison Reform Trust, Lord Douglas Hurd denounced the prison designs of the post-war decades as 'shoddy, expensive and just a little inhuman';[20] a description that could equally be applied to the sterile prison warehouses erected in the current century.[21] As Home Secretary (1985-89) Hurd said he was never asked to adjudicate on matters of prison design, nor was the subject raised

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16. ESRC Grant ES/K011081/2: '"Fear-suffused environments" or potential to rehabilitate? Prison architecture, design and technology and the lived experience of carceral spaces' (with Dominique Moran, University of Birmingham and Jen Turner, University of Liverpool).
17. Wener, R.E. (2012) *The Environmental Psychology of Prisons and Jails: Creating Humane Spaces in Secure Settings*, Cambridge: Cambridge University Press (p.7).
18. Moran, D., Jewkes, Y. and Turner, J. (2016) op cit.
19. Fairweather, L. (1961) op cit. (p. 340).
20. Hurd, D. (2000) Memoirs, London: Little Brown, cited in Moran, D., Jewkes, Y. and Turner, J. op cit.
21. Jewkes, Y. and Moran, D. (2014) 'Bad design breeds violence in sterile megaprisons' The Conversation, https://theconversation.com/bad-design-breeds-violence-in-sterile-megaprisons-22424

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in official reports or by pressure groups. Now, however, we have the opportunity to try something different. The Government have promised a shake-up of prisons and it would be nice to think that Ministers would take notice of the growing clamour for a radical reduction in prisoner numbers (which is not confined to the voices of academics, activists and reformers — even former Home Secretaries Ken Clarke and Jacqui Smith and ex-Deputy Prime Minister Nick Clegg have joined in the calls for a halving of the prison population[22] — though it rather makes one wonder why they did not do something about it when they were in power).

Looking forward, then, there is now an opening to radically alter the prison estate over the next four years or more, as the proposed modernisation programme brings the opportunity not only to radically reform the prison landscape, but in doing so, to nurture a different philosophy of punishment in the minds of politicians, policy makers and the public at large. One aspect of this might be to look at examples of good practice in prison design in other parts of the world, especially those with lower rates of recidivism and lower numbers of suicides, self-harm and violent assaults than those that blight our own penal system. Once again, those who are sceptical about political will to embrace truly reformist ideas might point to Petersen's article in the special issue of the *BJC*, which notes that the Prison Commission had taken account of 'recent work in foreign countries… [including] several Scandinavian establishments'.[23] Unfortunately, their influence is difficult to determine in the facilities that were built.

One of the most significant factors in not following the lead of our Scandinavian neighbours in applying to the design of new prisons architectural and aesthetic principles that encourage personal and intellectual creativity, is the perception — fuelled by the popular press — that there is no public appetite for it, and therefore no votes in it. Politicians habitually employ 'public opinion' and 'public interest' to justify Draconian policies and, while prison designers in Norway, Iceland and Denmark have experimented with progressive and highly stylized forms of architecture, and internal prison spaces that explore more open, flexible and normalized spatial planning, with comfortable furnishings, attractive colour schemes and a maximum exploitation of natural light, even tentative discussions about how to humanize prison environments in England and Wales have met with concerns from politicians and civil servants about whether they would pass the '*Daily Mail* test'.

Interestingly, both Northern Ireland and the Republic of Ireland are proposing a more progressive design agenda for future prison planning, while Scotland has three new prisons established since 2012 — HMP Low Moss, HMP Shotts and HMP Grampian — all of which are relatively striking in appearance and are viewed as a 'nod to Scandinavia'[24] Of course, the idea of a new prison simply being a bold design statement or architectural vanity project would be as unpalatable as the deliberate designing-in of bleakness or ugliness as a punitive aesthetic. But in the Scottish examples, their progressive, 'community-facing' designs signal an explicit commitment to the principles of desistance. Moving away from a traditional 'deficits-based' approach of identifying what's wrong with offenders and trying to fix it, towards an 'assets-based' model of identifying offenders' strengths and building on them (rhetoric which was echoed in David Cameron's speech in February 2016), HMP Grampian et al have been characterized as a statement of Scottish separatism — the ambition of a Nationalist government seeking to 'do punishment differently, and specifically, differently from England'.[25]

In England and Wales, meanwhile, two-hundred-year-old discourses of legitimacy and non-legitimacy have resurfaced in criticism of modern prison warehouses that do little to rehabilitate the offender and arguably do even less to engage the public with questions about the purpose of imprisonment and the harms that prisons do. Their high-security architecture

> Of course, the idea of a new prison simply being a bold design statement or architectural vanity project would be as unpalatable as the deliberate designing-in of bleakness or ugliness as a punitive aesthetic.

22. Letter to The Times, 22nd December 2016.
23. Petersen, A.W. (1961) 'The prison building programme' and 'The prison building programme: a postscript', *British Journal of Criminology* special issue on 'Prison Architecture' 1(4): 307- and 372-375.
24. Armstrong, S. (2014) 'Scotland's newest prison is another nod to Scandinavia', *The Conversation*, https://theconversation.com/scotlands-newest-prison-is-another-nod-to-scandinavia-24145
25. Ibid.

(to hold medium-security prisoners) might be regarded as a barometer for understanding the methods and parameters of state power, as security in prisons has run parallel to its rise in prominence in an increasingly risk-attuned and retributive society.[26] Such changes as have occurred in penal architecture and design over the last two centuries have reflected evolving penological ideas, from John Howard's philosophies about reform and 'healthy' prisons, to a Victorian emphasis on order, discipline, deterrence and repression, through a faith in individually-tailored treatment and rehabilitation in Fairweather et al's time, to the challenge of an administrative focus known as the 'new penology'.[27] As the aesthetics of carceral spaces have reformed and rationalized the delivery of punishment, resulting in 'deeper', 'heavier' and 'tighter' experiences of incarceration,[28] a resurgence of the doctrine of less eligibility has led to public acquiescence and apathy about the conditions that prisoners are held in.[29]

Nonetheless, a growing recognition that our bloated penal system is unsustainable (in both human and financial terms), and is failing in numerous respects, has precipitated a change in government rhetoric. The notions of 'reform' and 'healthy' prisons are once again in common currency, in ways that might even be recognizable to John Howard (1726-1790). Moreover, for those who believe that 'building more prisons is not the answer',[30] one might respond that it depends on the question. Advocating a more progressive prison design agenda is not akin to applying lipstick to a pig, as a colleague recently put it, nor is it about creating 'softer' or 'prettier' prisons, while doing nothing to challenge the institution of the prison itself. Rather, a focus on designing smaller prison spaces for a reduced prisoner population that supports rehabilitation and desistance could be a vital component in achieving radical justice reform, including de-carceration. Put

> Put simply, prisons that are designed to be hard, ugly and either sensorially depriving or sensorially overloading support a view of the prisoner as deserving of such brutal environments.

simply, prisons that are designed to be hard, ugly and either sensorially depriving or sensorially overloading (which prisons often are simultaneously), support a view of the prisoner as deserving of such brutal environments. However, when a prison communicates positive attributes (e.g. decency, hope, trust, empathy, respect), the design challenges the cultural stereotype of what a prison is — and through this — who prisoners are, and it becomes considerably harder to hold the view that prisoners 'deserve' to be held in inhuman(e) conditions. Taking this a step further if, through design, the idea of housing people in a 'prison' is not significantly different from housing people in a well-designed hospital or student hall of residence, it may not be a huge conceptual leap to connect the prison to notions of justice that can be achieved while convicted offenders remain in the community.[31]

Learning from past mistakes

Although a few of the prison closures already made by the Government have been criticised because the prisons in question were operating effectively (HMP Shrewsbury, for example), it is undeniable that some of the oldest prisons in the estate are experiencing crises that are exacerbated by their antiquated design and worn out fixtures. For example, a recent HMIP report on HMP Exeter (built in 1853) describes the situation at the prison as 'fragile' with a marked decline in positive outcomes for prisoners and a significant rise in numbers of violent assaults, self-inflicted deaths and self harm incidents since the last inspection.[32] While shocking, none of these findings are especially surprising when placed in the context of first night cells that lack basic facilities and are dirty (para.1.8; p.20); a 'segregation unit that is 'dark and grubby' (para.1.51; p. 25) with damaged, poorly furnished and graffitied cells adjoined by two 'cage-like' exercise yards; and some residential

26. Drake, D. (2012) Prisons, *Punishment and the Pursuit of Security*, London: Palgrave.
27. Feeley M. M. and Simon, J. (1992) 'The New Penology: Notes on the Emerging Strategy of Corrections and its Implications', *Criminology*, 30(4): 449-74.
28. Crewe, B. (2009) *The Prisoner Society: Power, Adaption, and Social Life in an English Prison*, Oxford: Oxford University Press.
29. Jewkes, Y., Slee, E. and Moran, D. (2016) 'The visual retreat of the prison: non-places for non-people', in M. Brown and E. Carrabine (eds.) *The Routledge Handbook of Visual Criminology*, Abingdon: Routledge.
30. Letter to the *Guardian*, 26 Jan 2017; *op. cit.*
31. Jewkes, Y. and Lulham, R. (2016) 'Provoking criminal justice reform: a presentation in the Empathy "Things" Workshop', 50th Anniversary Design Research Society Conference – "Future focused thinking", June 27-30, Brighton, UK.
32. HM Chief Inspector of Prisons (2017) *Report on an unannounced inspection of HMP Exeter* 15-26 August 2016 (p. 5).

wings that the Inspectorate describes as 'very poor-quality accommodation' (para.2.2; p. 29) with window fittings 'often consisting of a piece of Perspex propped up against the window frame' which fail to protect prisoners from the elements (para.2.2; p. 29).

Perhaps even more shocking is that, though built relatively recently (1994), HMP Doncaster has also come under heavy criticism recently by HMIP for its high rates of violent assaults, incidents of self-harm and deaths in custody; all of which also may be a partial consequence of poor environmental conditions, including cells 'in a terrible state, with filth, graffiti and inadequate furniture',[33] stinking, unscreened toilets, broken windows, exposed wiring, dirty bedding and areas that were littered and contained vermin.[34] One might take this as a sign that, if prisons continue to be designed as they have been over the last 150 years, 'modern' prisons will continue to inherit 'Victorian' problems, as Fairweather predicted in 1961, and as has been documented by the Prisons Inspectorate numerous times since.

Given the wealth of evidence that has been accumulated in the half century since Fairweather, Madge, Petersen and Johnston were asked to comment on the last major wave of prison expansion, it is hoped that, as they continue the process of transforming the prison estate, government ministers will take notice of the opinions of experts with 'open, fertile and creative minds'[35] and accept that our recent history of building 'huge impersonal blocks of cells where the individual is dwarfed by the overpowering size of the structure'[36] has had profoundly negative effects; and on staff, as well as prisoners. Just as in 1961, when Madge warned of the futility of preserving established practice, given all the evidence that prison avowedly does not 'work', and appealed for a 'more adequate prison architecture' in a time of experimentation, the planners, architects and designers currently working on the template for the new facilities that will provide 10,000 beds indisputably have a decisive influence on the success or failure of imprisonment for several generations to come. It is hoped, then, that the designers of the new prisons employ aesthetic and spatial values and practices to support a different model of criminal justice than the one that has, over the last two hundred years, singularly failed to achieve any of the aims of imprisonment, other than (usually) temporary incapacitation and retributive punishment. A new approach to prison architecture and design is at least 55 years overdue. As Jewkes and Moran urge, let us finally learn from the mistakes of the past.[37]

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33. HM Chief Inspector of Prisons (2016) *Report on an unannounced inspection of HMP Doncaster* 5-16 October 2015, London: HMIP (p. 5).
34. ibid (p. 17).
35. Madge, J. (1961) 'Trends in prison design', *British Journal of Criminology* special issue on 'Prison Architecture' 1(4): 362-371 (p. 371).
36. (Fairweather, L. (1961) *op cit*.
37. Jewkes, Y. and Moran, D. (2017) *op cit*.

Digitizing the Prison:

The Light and Dark Future

Dr Victoria Knight is a senior research fellow for the Community and Criminal Justice De Montfort University. She has published several academic articles and her book Remote Control: Television in Prison *was published in 2016 with* **Steven Van De Steene**. **Steven Van De Steene** *is an Enterprise Architect and Technology for Corrections Expert. He works as a consultant in the area of innovation and technology strategy for prisons and probation services and is the coordinator of the Technology Solutions Group for the International Prisons and Corrections Association (ICPA).*

This article takes a rather unusual form blending an interview with my own reflections on the digitization of our prisons. Its focus is based on an interview with Steven van de Steene[1] who is a corrections technology expert. He previously led the design, development and implementation of Belgium's PrisonCloud[2] for the Federal Public Services Justice as IT Director. Heralded as innovative, PrisonCloud has received much attention from other countries, especially those aspiring to develop their own prisons' digital capability. To date the Belgium's PrisonCloud implementation still remains one of the only catch all digital provision that prisoners can access, other examples are closely following and different technologies are ready to support this intergrated approach. In this interview Steven draws our attention to important features of digitization identifying the successes and challenges for making this valuable transition within the context of the prison. Steven's insights provide us with some thoughts on prisons of the future.

The Birth of PrisonCloud

VK: How was Belgium's PrisonCloud developed?

SS: It has been a long process, because at that time we were overwhelmed by questions related to access to technology. We had a lot of questions concerning telephony and especially the fact that it's very expensive and its very time consuming and often difficult for the inmates to access. We had some problems with the change of television because the public television was going to digital, so a lot of analogue TV Channels we had in the prisons were not supported any more by the television providers… So it was really a mess. Instead of finding a solution for every individual question we said we needed to design an organisation wide solution that starts from the real needs.

And we developed first of all a concept, a concept where we said OK we need to have a kind of system that supports all kinds of digital service delivery, not only in the cell but at every location inside the prison. Also what is very important for me is that it has to have the possibility to make it tailored to the individual. So that we can allow them to access this service from this location during this time.

And so we worked a lot to develop the concept and discussed also internationally with some people. I was at that time involved in a European project called Licos. It was mainly collaboration between different countries to develop a new learning system adapted to the prison environment based on the open source product Moodle. And so finally we went from the concept to the design. We talked to many different companies and listened to the solutions they had, but mainly they were proposing some part of the puzzle not the whole.

VK: So you couldn't find a solution?

SS: No because what I really wanted was to have a platform that supports the concepts, the vision behind it. So I didn't want to have a classical virtual desktop environment because first of all it's too complicated to use. You have to have the basic PC knowledge already before you can work on a PC, so I wanted to really have an easy to use interface and intuitive system. Finally we met some people who were not used to working in the justice environment, but had a huge experience in working in other very secure environments. It was the company called EBO Enterprises who had a secure content delivery platform and they could offer us the possibility to deliver any kind of digital content at any location and device at any time in a very secured way.

1. Steven@smartcorrections.com
2. PrisonCloud http://www.ebo-enterprises.com/en/prisoncloud (accessed 8.2.17).

Rethinking Solutions and Product Development:

VK: Talk me through that process of making the developers understand the prison.

SS: …it was challenging to understand the real business needs inside. For them it was rather easy to understand the security needs. You have a lot of IT companies who are, especially if they work in government, mainly focused on delivering good services for people who are used to sitting at a their normal office desktop but not for people in the field, in operations. I really didn't want to have a physical computer installed in every cell, for me it was crazy because we already did that and it was very hard to secure the computer hardware. As long as you have computing power inside a cell and you have people out there with the knowledge and a lot of time they will break it. So the process of working with the company went very well, the advantages are also it is a very small company so we had direct access with all levels of the company. We also spoke the same language so that helped.

I am convinced that the most important aspect of PrisonCloud, and also the main reason for all the attention we had from all over the world, is on the concept rather than the product.

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> I think the most important thing is to have flexibility to tailor your solutions to what you really need or what the inmate needs.

your solutions to what you really need or what the inmate needs. And that is the biggest challenge. What I am seeing happening to much in the current prison world is that they start the discussion with the device or the product. In the Netherlands for example there was a whole discussion up to Parliament about allowing inmates to have a tablet or not. The discussion has nothing to do with the tablets, and that's really a big problem. You hear vendors, politicians and also a lot of prison practitioners only talking about tablets when they talk about digital services and solutions. The tablet seems to have monopolized this whole discussion. I have nothing against a tablet. This type of device could be in some occasions a good solution or the method for delivering, giving image access to some services, yes it could be. But you cannot convince me to say that a small seven-inch tablet is suitable for intensive training of inmates. Or you cannot teach them computer skills with that for example. What I really want to focus on

doing is convincing these people to look at what they need before talking about the solution.

Our relationship with technology is not straightforward and the context of the prison adds a further layer of complexity. The need for security, decency and safer custody drives discussion continually towards the device itself- the hardware, as Steven suggests. As Gabriel reported in his study of our narratives about technology highlight that many of us have uneasy, clumsy relationships with technology.[3] Digital progress has now and is beginning to thrust prison managers and policy makers into a changing and for many, an alien environment. We use technology, for those of us who are competent or functioning users, to achieve an outcome; transfer money, listen to music, shopping and connect with our friends. How the technology permits that doesn't necessarily concern the average user. Our relationships are fundamentally emotive and led by gratification. Our prison decision makers may well be 'digital natives'[4] but they are not necessarily experts. As Nellis suggests

…telecommunications are by their nature hidden, their working opaque to many and understood only by a few, and until recently — by dint of this hiddenness — not easily incorporated into social, political (or criminological) theory…[5]

Technical decision making is often made cautionary and anxiously. This is especially relevant for the prison as the shadow of technical malfunction, security breaches combined with public opinion can threaten an already fragile reputation. In over coming this Steven goes on to say how some of these anxieties were woven into the development stages of the PrisonCloud project.

SS: The first tests were not in a real prison situation: we did had a pilot environment in a prison in

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3. Gabriel, Y. (2000). *Storytelling in organizations: Facts, fictions, and fantasies: Facts, fictions, and fantasies.* OUP Oxford.
4. Prensky, M. (2001) *Digital Natives, Digital Immigrants Part 2: Do They Really Think Differently?* On the Horizon, Vol. 9 Iss 6 pp. 1-6.
5. Nellis, M. (2005). Out of this world: the advent of the satellite tracking of offenders in England and Wales. *The Howard Journal of Crime and Justice,* 44(2), 125-150.

Hasselt which helped us engage both staff and inmates into the project, but it was in a separate room, not in a cell at that time. We also had a pilot environment in the Head Office in Brussels where we did some testing. We did the first real installation with the opening of a new prison in Beveren in 2014.

VK: And did it require much adjustment or redevelopment after that test period?

SS: It did, again on the security and technology level there were no big issues. Mainly also thanks to the fact that we had a newly built Beveren prison where all the network was ready to use. But the development of PrisonCloud itself is in fact a programme of different projects. Every single service has to be managed like a different project. Because you have different stakeholders, you have also different target groups, you have different kinds of complexities…we already had an e-learning system in Belgium so we had an advantage that we already had a lot of experience. But even for that we had to work closely together with the Flemish education community to talk to them, what do they think about it and what they would like to do with it. What is very complicated is the change management around the interaction, direct and digital interactions from inmates to the staff. But I was very lucky to have the full commitment from top-level management and was at the same time surrounded with a project manager and technical staff who both had the advanced technical skills as well as the understanding of the concept and real business needs.

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These changes in systems and processes do have significant social and psychological impacts on the people within these organisations. As Knight[6] and others[7] have documented elsewhere the introduction of mass media to prisons played a vital role in the management and control of prisoners. In England and Wales the introduction of in-cell television coincided with policy guidance on the Incentives and Earned Privilege scheme

(IEP).[8] Television, along with other goods, services and opportunities for prisoners is governed by the introduction of rewards for compliance and good behaviour by prisoners. Whilst this model of managing prisoners wasn't a radical shift in the management of prisoners it did trigger change in practice and galvanised an era of managerialist agendas. As Knight found staff were using mass communications to undertake aspects of care (as well as control). One of the consequences of this meant that prisoners looked to television for comfort and care in order to cope with lengthy periods of isolation and boredom as well as separation from their loved ones. In this way the cell became a much more attractive space. Prisoners were in the main much more happy to retreat to their cells. Staff began, in their eyes, distanced from the people in their care and television was in many instances blamed for this distancing and withdrawal. Staff felt impotent because television began to undertake some of their 'work'. In a study conducted by Core Systems[9] they found that significant time-savings were made by the use of a digital application to deal with meals, shopping and requests. The largest time saving was 88.8 per cent and they observed how a paper-based process was reduced from 12 handling steps to 3 steps. As Steven suggests here the innocent introduction of technology is not neutral and in the case of PrisonCloud this might have benefited from a whole service response to account for the needs and behaviours of all stakeholders including staff.[10]

SS: …we underestimated the change management needs…We put a lot of energy and training in and the change management focused on the inmates, also on the politicians and the media outside…But really working with the staff we

6. Knight, V. (2016) *Remote Control: Television in Prison* Palgrave Macmillian.
7. Jewkes, Y (2002a) Captive Audience: Media, masculinity and power in prison Collumpton, Willan.
8. Her Majesty Prison Service (2011) Prison Service Instruction 11/2011 Incentives and Earned Privileges www.justice.gov.uk/.../psipso/.../psi_2011_11_incentives_and_earned_ privileges.doc (accessed 10/12/13)
9. Core Systems http://coresystems.biz (personal correspondence 8.2.17).
10. van De Steene, S. & Knight, V. (2017- forthcoming) *Digital Transformation for Corrections: Developing A Needs Based Strategy* Advancing Corrections Journal.

underestimated in the beginning. So we saw that by giving the inmates the possibility to have direct communication with the prison governor the staff felt excluded, they lost a part of their role, a kind of power, and we under estimated that. Before PrisonCloud they were always aware of what is happening because all paper notes were passed through them. And now they were excluded from this communication. An inmate could send a message directly to the governor for example. So there were a lot of problems and it's an on-going learning process to resolve this. Close collaboration with the staff is needed to design this new kind of interaction and the processes behind it. Privacy also has to be taken into account, for example an inmates request to the healthcare people are only allowed to be seen by the doctor and not by the people on the staff.

In this instance technology facilitates and enhances methods of efficient working. Furthermore monitoring and the capacity to observe the prisoner is amplified when technology is introduced, whilst at the same time giving the user confidence that their request is being dealt with. However the regulation of privacy is brought into the fore. This is because our digital footprints leave an indelible trace and these compound fears about our rights to a private life. We know imprisonment by its very nature forces the prisoner into a state of constant observation and technology can refine these features even more. Whilst the prison is heralded as surveillance par excellence digital technology has the capacity to amplify transparency and permanency but as Nellis suggests 'Cruelty has made a comeback. Technocorrections are developing'.[11] There is a sinister, dark side to the development of technology within the context of punishment.

> Close collaboration with the staff is needed to design this new kind of interaction and the processes behind it.

User Responses

VK: And what was the feedback from prisoners?

SS: Most of the feedback was very positive although we had some negative reaction on…the

existing telephone contract, forced to charge expensive rates for a making phone calls that was one of the main things because you give inmates a lot of possibilities for example renting movies and you need to charge them for that. So I think it is very important to analyse this and make a good balance. We have tried to focus on using similar rates as in the outside world. But also for this you need to take into account that they need to have the money so you have to focus on labour and give them the possibility to work.

Belgium is not an isolated case here. Digital technology providers are charging out their service, many of which are at the prisoner's and their family's expense. These contractual arrangements between digital providers and prison services have come under scrutiny. For example in North America, lobby groups have identified that video visitation (video conferencing) charges families a fee for each 'visit'. In some States it is claimed that these visits have replaced face-to-face visits. Whilst for many families the video visit helps reduce expensive travel costs, the quality of the visit is compromised both in terms of the picture and sound as well as the benefits of lengthier co-present face-to-face contact.[12] The marketization of prisoner services means that inflated costs impact directly on deprived populations. These services are impossible to deliver without cost and there is a trend to transfer all these costs to the prisoner and thus not at the expense of the prison. The perceived luxury of goods and services for our prisoners is linked to eligibility and entitlement. The framing of these provisions, it seems, needs to satisfy or at best appease public acceptability based of punishment and rehabilitation. As Steven describes sometimes these services fail and the user, the prisoner, is paralysed — they can't pick and choose the best service provider — they are reliant on those chosen for them. Getting the provision of technology right, like any other service is challenging. In the case of PrisonCloud whereby all inmates are expected to engage

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11. Nellis, M. (2013) *Future punishment in American science fiction films.* In Mason, P. (ed) (2013) *Captured by the Media,* Collumpton Willan.
12. Knight, V. (2015) *Some Observations on the Digital Landscape of Prisons Today* Prison Service Journal July 2015 No 220 pp3-9.

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with the service to order their meals, book their visits, manage their money, make requests, contact family, and so they become very quickly dependent on this service — they need it to manage their life in prison. Opting in or opting out is not a possibility for these users- it has become a necessary part of their everyday lives. This transfer of responsibility is a major shift and digital technologies are instrumental in helping prison services to achieve efficiency in their delivery. These kinds of successes then make decision makers commit and invest. Steven explains there is a commitment to extend PrisonCloud to all Belgian prisons.

SS : …it has been put in writing inside the governmental agreement., but it will take some time… PrisonCloud is a concept, it's the concept and platform to provide inmates access to digital services, it's more than giving a product or device to an inmate. Mainly the aspiration is to introduce a digital service for every inmate in Belgium prisons. But it doesn't mean that it will be the same [provision]. It also doesn't make sense to have the same installation [in-cell], as in Beveren everywhere. We have prisons where the context is completely different.

Innovation

VK: What is innovative about services like PrisonCloud?

SS: The most initiative thing I think is the concept behind it. I have been working very intensively in all kinds of digital governance projects. Many governments are putting a lot of energy into improving their citizen services and digital governance. I have been in some discussions with other colleagues across Europe. One of the biggest problems with this is what to do with people who don't have access to the internet or don't have the abilities to work with a computer. This made me realise that we have a big population of people incarcerated who do have the capabilities of using it but we just don't allow it. So I think what is different about PrisonCloud is it's a platform and it allows the inmate to go digital and have access to all kinds of digital services and tailored to

what they need and what the security limits are. The tailored aspect is very innovative I think, the possibility to deliver any content — your own developed content or even content directly from the internet — in a very controlled and secure way towards any location or device where you need it.

VK: To specific individuals, so you can target services?

SS: Yes you can say OK this inmate is allowed to go on the internet in a classroom and when he is in his cell he is only allowed to consult the intranet services and watch a movie, but for making a call he should use the Kiosk system in the community area. Giving inmates access to the internet that's a typical discussion of YES internet or NO internet. And in fact there is no such thing as the internet in this discussion: there are different sources linked to each other by a huge network of which you can decide. And it does make sense to allow an inmate to search for a job a couple of months before he is released, but maybe it doesn't make sense for someone who is a lifelong prisoner to look for a job outside.

> # Digital provision in Australia has witnessed much success for prisoners who engage in distance learning.

Secure Access

Digital provision in Australia has witnessed much success for prisoners who engage in distance learning. E-readers have been trialled in a number of prisons that allow their prisoners to have an on-line experience within limits. Farley and Pike describe this as a 'walled garden'[13] and in essence builds a virtual and secure perimeter around an on-line service. Steven helpfully reflects on this concept.

SS: I really like the idea, but I think that we have to avoid making the fences the same for every inmate. I know that is very difficult to convince people that we are not looking for a solution for the inmate, we are looking for a way of tailoring their individual needs. And that's also the basic aspect of security because if you really want to have a secure system you have to avoid abuse by understanding when and why people are abusing it. Of course there will always be a limited number of inmates who will — despite all professional risk assessments done before — will take advantage of the facilities you offer them. But this is a smaller group, there are already many systems in place to react and so

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13. Farley, H., & Pike, A. (2016). Engaging prisoners in education: reducing risk and recidivism. *Advancing Corrections: Journal of the International Corrections and Prisons Association, 1,* 65-73.

finally the real security threat is often not that high. We had one incident in Belgium where we opened a website where they can look for a job. One of the features in that website is if you find a job you have a small text box where you can put in an email address. So we had one guy send out a message from this system to a commercial television or newspaper… it was broadcast in the media, so thanks to PrisonCloud the inmates were able to communicate freely to the outside world. This was completely ridiculous of course but it just showed me again the modern motivation to say OK please provide services that make sense for the individual, so abuse will be limited. And you need to have a platform that facilitates this.

VK: How digitally innovative are our prisons?

SS: I think there are not many prisons that can be termed as digitally innovative, most of them are still very old fashioned. The only exception maybe is where it comes into technology purely for security purposes. We see everything that is digital as a risk, not only for inmates but also for staff. If I see how many prisons are really prohibiting their staff to go and do internet or even sending out emails outside, we are really conservative on that. What is digital? If you look at the usage of technology inside prisons there is not a lot of adaption of technology. So especially not for inmates but also for staff. And the way governments are trying to improve the services to the citizens in other departments and other areas it's amazing what is happening. But I haven't seen this in a lot for prisons. Of course we had some good ideas of a portal system where families can request a visit and things like that but even those basic things are so limited in prisons.

> *The disparity or lag of digital transformation is stark compared to the developments outside. As I have documented[14] elsewhere basic services like email remain restrictive and limited in contrast. Two recent international surveys highlight the extent of this disparity and often mirror the global disparities of digitization of society. Northern Europe, Australia and North America at present seem to be leaders in correctional digitization. And even in these jurisdictions where provision is made they are small and localised. Explanations for these disparities are deeply rooted in the invisibility of our prisons and further compounded by risk management, and public acceptability. In England and Wales, for example, prisoners who benefit from self-service technology tend to be located in a smaller number of private prisons.*

VK: Why do you think our prisons are being forgotten in these discussions about e-governance?

SS: I think they are forgotten, I think there is such a huge thing in our minds that a prison equals security and so it doesn't matter what or how, it will never be good enough for security. And also there is no big drive of putting a lot of energy in prisons. So I think some countries focus almost only on security, and many countries don't have the means to invest into technology. Even in the more modern countries like Norway for example you don't see a lot of digital innovation inside. In Halden prison (Norway) I have been told an inmate is only allowed to call 20 minutes a week to the outside. This prison has been stated as one of the most modern prisons in the world with a huge focus on the principle of normality. I don't understand that in today's society an almost complete denial of access to the digital world is anywhere close to normal.

The e-Prison

VK: Consider a prison in 50 years time what will that prison of the future look like?

SS: What I think, and what I hope are maybe two different things. I hope that the prison of the future won't be a prison like we have it today. It should not have any walls. It will be more like a way of 'treating' people, surrounding people with both security related measures and decisions on and guidance to enable them to do their sentence and to stay living a life. So I really hope that we could find a more human solution without a lot of concrete, walls and bars.

VK: And digital technology has a role to play in managing that security then?

SS: Yes because I am very convinced that technology can help, all kinds of technology and also technology that is not yet used inside prisons or even has not been invented maybe, that can facilitate again a more tailored approach and tailored reaction on crime. And it has to be a mixture of more innovation

> What is digital? If you look at the usage of technology inside prisons there is not a lot of adaption of technology.

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14.   Knight, V. (2015) *Some Observations on the Digital Landscape of Prisons Today* Prison Service Journal July 2015 No 220 pp3-9.

within technology, but also more innovation within justice and corrections. Because legislation forces limits into what we can do. By trying to be clear and equal for everyone, it's often limiting the possibility you have to react on an individual basis. So the prison of the future, I hope more like open facilities or areas with smaller living units close to relatives and society, a lot of open communication, a lot of training and treatment programmes. There is also a need to reshape 'the punishment' part, making it more meaningful for victim, society and the offender and that should be less focussed on the purely physical complete isolation of people. Helping them to take responsibility of the things that they have done and the one way they have to improve their life and getting back into society.

e-Rehabilitation

The 'treatment' of prisoners is nothing new and the introduction of mass communications, like in-cell television[15] certainly align to 'quasi-therapeutic'[16] measures. Here the technology is used to deliver care. Clinical interventions are also gaining credence in our prisons. Elison et al[17] for example trialled an addiction therapy service through on-line and mobile devices in England and Wales. This too offered on-going support for addiction recovery through the gate whereby support didn't cease at the prison gates- it went with them back into the community. As Steven points out there are significant concerns about the replacement of direct interventions — that the user and practitioner is abandoned in favour of an on-line service. Satisfying managerialist agendas present significant challenges at this juncture in transformation. The current evidence base is small and research can only be undertaken when services pilot digital services. Organisational confidence is key

> The 'treatment' of prisoners is nothing new and the introduction of mass communications, like in-cell television certainly align to 'quasi-therapeutic' measures.

and services reticence to implement digital transformation is a measure of their nervousness.

SS: It's very interesting to see tele-health systems being used in countries like Mongolia where the size of the country so there is a need for that. Those technologies are also used for people outside because there are just no medicines in every village and also distances are huge. The opposite is that this technology is only used as cost cutting things like you see sometimes in the States. There is a balance between being useful to improve your service or being useful for cutting cost without improvements. You see technology can help a lot for example in developing countries. I saw an idea in Kenya who said why don't we use drones to ship medicines to areas, because now we are flying in planes and they are so expensive. But I'm always afraid about the misuse of technology for cost cutting and to not increase the level of service you give. The same with PrisonCloud a lot of people who are critical of those kinds of solutions they say OK you want to lock up your inmates more in cells and I say no you can save a lot on security staff costs and instead using that to train people or to get staff inside prison to intensively work with prisoners, instead of pushing buttons and being the postman. I think the technology will be adopted and unfortunately driven by costs of rather than rehabilitative approaches. But I think those don't have to be opposites — you can save costs and at the same time improve the services. The technology should come only at the end of a well thought-through design process, driven from your mission, visions and objectives and supported by evidence[18].

Robo-Guards

Nellis'[19] description of the origins of electronic monitoring takes us into a world of fantasy and sci-fi- an imagined society where dystopian forces like crime, disease,

15. Knight, V. (2016) *Remote Control: Television in Prison* Palgrave Macmillian.
16. Rose, N. (1999) *Governing the Soul: The Shaping of the Private Self* London, Routledge.
17. Elison, S., Weston, S., Davies, G., Dugdale, S., & Ward, J. (2016). Findings from mixed-methods feasibility and effectiveness evaluations of the "Breaking Free Online" treatment and recovery programme for substance misuse in prisons. *Drugs: Education, Prevention and Policy,* 23(2), 176-185.
18. see van De Steene, S. & Knight, V. (2017 forthcoming) *Digital Transformation for Corrections: Developing A Needs Based Strategy* Advancing Corrections Journal.
19. Nellis, M. (2005). Out of this world: the advent of the satellite tracking of offenders in England and Wales. *The Howard Journal of Crime and Justice,* 44(2), 125-150.

disorder are eradicated in favour of 'good' 'normal 'functioning' and 'clean'. Technology in its broadest sense are pivotal in this endeavor and our collective imaginations are littered with visions of technology — the human-less machine assisting the public good. Korean prison services have piloted robotic guards,[20] there is work currently underway across Europe to introducing gaming to help long term prisoners experience the outside world[21] and developments to monitor vulnerable prisoners by measuring heart rate and sleep patterns by body worn and cell sensors. Whilst these are assistive, the translation of enhancing security, safer custody and resettlement there are some important ethical and legislative factors that remain unanswered and perplexing. If we look at wider debates about the Internet of Things and Web 3 our digital footprints provide the state and private corporations with a whole raft of data that the ambivalent user may not even contemplate when, for example, they make a purchase on-line. In the context of the prison these dimensions present additional challenges as well as opportunities.[22]

VK: What about the idea that we can microchip our pets, could we be micro-chipping citizens?

SS: No I don't believe that, I think that is a fundamental ethical question. What I do believe is that thanks to new technologies like wearables and the 'quantified self' — measuring all kinds of body properties like blood pressure, heartbeat, the basic electronic monitoring (EM) concept will be extended. EM is already accepted almost everywhere in the world. But there will be additional features on those kinds of devices like using sweat analysis for regarding if there was some substance abuse and things like that. So there will be some evolution on that. But there is for me at least a big difference in putting something on the body or putting something inside the body. But maybe that can change I don't know.

VK: What kinds of moral, ethical and legal considerations were you having to take into account when PrisonCloud was developed?

SS: You have to take into account the staff and their relation with the prisoners, and the importance of the human interaction…trying to increase the interpersonal dialogue between staff and offender. There is criticism about technology saying you lose human interaction, but we have to be honest and look inside the facilities today: what is the quality of human interaction between prison guards and inmates? We need to be realistic about this; it's a very complicated question. Current legislation is mainly not prepared for this kind of innovation inside prisons. For Example: there might be a legislation that an inmate has the right to contact his lawyer. But what is contacting his lawyer? Could an email be allowed, or even just be better to guarantee his rights?

If you have been declaring your taxes online and you are incarcerated afterwards you won't receive any paper forms any more. So you cannot declare your taxes anymore because you don't have access to the tax declaration website. So we had to convince the Ministry of Finance and make an exception for that for all incarcerated people to send again the paper forms, its stupid and its happening everywhere. So not only legislation but any general regulations and things have to be modified. But I think what has to be done is modify the way you are dealing with those kinds of digital environments inside prison.

VK: Can technology make our prisons good?

SS: No, I am convinced they cannot be made good. They can facilitate and improve our prisons. We need to work more to tailor to what needs prisoners have. And I am convinced that technology can help a lot with that. It's not only about technology but technology can facilitate working more efficiently, enabling work with the inmate rather than doing administrative things like pushing buttons or watching cameras. It is the way you use technology of course. Of course it makes a difference because even the prison guards in the more high security prison is not surveying

> You have to take into account the staff and their relation with the prisoners, and the importance of the human interaction…

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20. Kim, L. (2012) *Meet South Korea's New Robotic Prison Guards* http://www.digitaltrends.com/cool-tech/meet-south-koreas-new-robotic-prison-guards/ (accessed 8.2.16).
21. Primedia http://www.epea.org/pri-media/ (accessed 8.2.16).
22. Knight, V. (2016) *The Technology of Confinement and Quasi-Therapeutic Control: Managing Souls with In-cell Television* in Mcguire, M. (2016) The Handbook of Technology and Crime, Routledge.

you into your cell 24 hours. So you don't do that with a camera. As soon as you start to do that with the camera we are crossing some ethical boundaries that always have to limit our ways of using technology. The environment itself with the combination of cameras and scanners and thick concrete walls and fences, it does something to the human being- it is negative. It is not technology itself it is how we use it, you have to be careful with it, you have to be careful with replacing some human processes for example by technology.

As Jewkes and Johnson[23] helpfully outlined the deprivation of digital technology is extensive for our prisoners wide reaching for the prison. New generations of prisoners will be 'digital natives'[24] — competent users of technology in which their everyday lives have digital technologies woven into its fabric. It is anticipated these losses will be amplified when they enter prison. As Gary described to Knight[25]

…as emails now rapidly replace letters and very few people even consider letter writing anymore. I have been in the prison system for 6 years so far with another 16 to go…I am in the position where I can watch as everything changes…Some of us even find those people you grew up with or once were

so close to, forget your there because you're no longer around digitally. (Gary — prisoner)

The digitization of our prisons is, as Steven's interview helpfully outlines, is enabling and yet challenging for users and service providers. For prisoners like Gary the foundations of his presence in society were grounded in his participation with the on-line world. There is an inevitability and certainty that digitization of our prisons will be accomplished- somewhere in the future, not now, not even soon but later, in the distance. Whilst onlookers may consider this a narrowing of or even eradication of the 'digital divide' and policy makers can sit back and observe this accomplishment digital disparity and inequality won't fully be overcome. As Selwyn suggests it not just a matter of giving technology to those 'without'.[26] The 'plurality of technologies' encompasses a whole range of services, applications, information and processes and in this sense the 'digital'[27] will never be fully completed in our prisons — because it is prison. A glimpse at prison in our future can shed both light and darkness on the complex matter of incarceration.

23. Jewkes, Y., & Johnston, H. (2009). 'Cavemen in an Era of Speed of Light Technology': Historical and Contemporary Perspectives on Communication within Prisons. *The Howard Journal of Criminal Justice,* 48(2), 132-143.
24. Prensky, M. (2001) *Digital Natives, Digital Immigrants Part 2: Do They Really Think Differently?* On the Horizon, Vol. 9 Iss 6 pp. 1-6.
25. Knight, V. (2016) *Remote Control: Television in Prison* Palgrave Macmillian.
26. Selwyn, N. (2004). Reconsidering political and popular understandings of the digital divide. *New media & society, 6*(3), 341-362.
27. Ibid. pg347.

What does Brexit mean for prison law and policy?

Interview with Dirk Van Zyl Smit

Professor Dirk van Zyl Smit is Professor of comparative and international penal law at the University of Nottingham, and is interviewed by Dr Jamie Bennett, Governor of HMP Grendon and Springhill.

Dirk van Zyl Smit is Professor of comparative and international penal law at the University of Nottingham. He has previously held posts at University of Cape Town and New York University School of Law.

His publications include *Principles of European Prison Law and Policy*,[1] *European Penology?*[2] and *Life imprisonment and human rights*.[3] In South Africa, he was actively involved in law reform as the primary consultant for the Correctional Services Act 1998 and a member of the National Council on Correctional Services from 1995 to 2004. He was also project leader of the committee of the South African Law Commission investigating sentencing and author of its report and draft legislation: *A New Sentencing Framework* (2000). Internationally, he has advised the governments of Bangladesh, Bosnia and Herzegovina, and Malawi on new prison legislation and Malaysia on legislation on the international transfer of prisoners. He was expert adviser to the Council of Europe on the European Prison Rules (2006), the European Rules on Juvenile Offenders subject to Sanctions or Measures (2019) and the Recommendation on the Foreign Prisoners (2012). For the United Nations Office for Drugs and Crime he prepared its *Handbook on Alternatives to Imprisonment* (2007)[4] and, with Roisin Mulgrew, the *Handbook on the International Transfer of Sentenced Persons* (2012).[5]

This interview took place in December 2016.

JB: In June 2016, the U.K. referendum resulted in a narrow majority of those who voted choosing to leave the European Union (EU). The main continental institutions concerned with prisons and human rights are the Council of Europe (CoE), the European Court of Human Rights (ECtHR) and the Committee for the Prevention of Torture (CPT). How will these institutions be affected by the referendum?

DVZS: Legally speaking, the relationship of the UK with these institutions will not be affected at all, because the UK will remain a member of the Council of Europe, the ECtHR, and the European Convention on the Prevention of Torture, which is a separate treaty that gives the CPT its powers. There will, however, be different political pressures around this.

JB: Judgments of the ECtHR have been controversial in the UK, for example in 2010 following a case relating to prisoner voting rights, the then Prime Minister, David Cameron said that the thought of enfranchising prisoners made him feel 'physically ill'.[6] There have also been proposals to replace the European Convention on Human Rights (ECHR) with a British Bill of Rights. How important has European prison and human rights law been in framing the debate about the relationship between UK and EU?

DVZS: It has been very important, although technically the ECtHR is distinct from the EU. This distinction is not always clear in the mind of the public, which often sees 'Europe' as a collective. It does therefore have an influence. The reaction to the decisions of the ECtHR did impact on the debate. The Prime Minister's response on this issue was utterly unacceptable. One would expect more of a Prime Minister than for him to say that he dislikes something and it therefore makes him feel physically ill. There are arguments that can be used to justify prisoners not being allowed to vote, but that is the worst one that could be made.

1. Van Zyl Smit, D. and Snacken, J. (2009) *Principles of European law and policy: Penology and human rights* (Oxford: Oxford University Press).
2. Daems, T., van Zyl Smit, D. and Snacken, S. (eds) (2013) *European Penology?* Haywards Heath: Hart.
3. Van Zyl Smit, D. and Appleton, C. (eds) (2016) *Life imprisonment and human rights* Haywards Heath: Hart.
4. Available at https://www.unodc.org/pdf/criminal_justice/Handbook_of_Basic_Principles_and_Promising_Practices_on_Alternatives_to_Imprisonment .pdf accessed on 10 January 2017.
5. Available at http://www.unodc.org/documents/justice-and-prison-reform/11-88322_ebook.pdf accessed on 10 January 2017.
6. See http://www.telegraph.co.uk/news/politics/8317485/Prisoner-vote-what-MPs-said-in-heated-debate.html accessed on 10 January 2017.

JB: In conflating those different institutions into a collective whole, it is often ECtHR decisions that are cited as examples of an alien European culture being imposed upon the UK.

DVZS: That has been aided and abetted by that type of response from the former Prime Minister. I blame politicians in general, but in particular David Cameron for doing this. You also have the press, which is generally hostile to the entire human rights enterprise. The idea that human rights are somehow alien is nonsense. The UK was one of the founders of the Council of Europe, which was created initially in order to reflect what were perceived of as being 'British values' at the end of the Second World War and into the early 1950s.

It is somewhat surprising that the prisoners' voting case gained such prominence. Initially I thought it would just blow over. The solution to it was simple. Had the government responded and said that they would give some prisoners the vote, the problem would have been resolved. In the *Hirst*[7] judgment, which was the foundation of the prisoner voting controversy, the ECtHR went out of its way to be conciliatory, saying that it was not telling the UK government precisely what they should do. The ECtHR simply asked that they should think again about taking the right to vote away from all sentenced prisoners. In good faith the ECtHR said that perhaps Parliament had not thought about this properly. The Parliamentary establishment took enormous umbrage at this. Perhaps the ECtHR's comment was unfortunate. The subsequent Parliamentary debates showed a response that was largely emotional. There wasn't a clear consideration of what prisoners' right to vote should or could mean. In my experience, when you expose people to the issues, they often concede that allowing some prisoners to vote is appropriate. The problem is often that people don't want to feel that 'Europe' is telling them what to do.

JB: What is the case for a pan-European approach to prisons and human rights?

DVZS: The broadest case is that a country, any country, does not see its own shortcomings. The prisoner voting case is a good example, as I don't think

> The UK was one of the founders of the Council of Europe and it was created initially in order to reflect what were perceived of as being 'British values' at the end of the Second World War and into the early 1950s.

people had thought about it very much. The ECtHR said that, as a matter of principle and having reflected upon the issue, the UK should be thinking about prisoners' right to vote. The wider benefit is that a whole body of law is developed that can then interact with what individual countries do. Countries on the geographical edge of Europe, such as the UK and Russia, are not as closely involved in the human rights project as many other countries. In these more peripheral countries in particular, European prison law can have a positive influence.

JB: What have been the most important achievements of the European courts in the field of penology?

DVZS: The single most important achievement has been stressing the positive purpose of the implementation of prison sentences. That may sound abstract, but the ECtHR has, over a number of years and in an increasingly sophisticated way, recognized the right not just to have basic needs met such as food, clothing and shelter, but also that the purpose of prisons is to rehabilitate, re-socialise, and re-integrate. That means that imprisonment needs to be approached differently. The ECtHR used this effectively to enable positive reforms. A non-British example is the decision of the Grand Chamber last year in the *Khoroshenko*[8] case involving Russia. This case turned on visits for life sentenced prisoners where the policy was that for the first ten years, there were almost no visits. The ECtHR asked why this was being done and the Russians were honest in admitting that they were doing this in order to punish these prisoners more harshly. The Court was able to say that is not an approach that is taken in Europe and instead we have to look to what is most effective in rehabilitating people. This broad principle was therefore used to inform this specific practical issue.

This approach is seen in a range of cases. This includes the major decisions involving the UK. For example, in the *Hirst* case, one of the reasons for wanting (some) prisoners to exercise the right to vote is that you will be returning prisoners to society as full citizens and you should be aiding them towards that end.

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7.   Hirst v United Kingdom (no.2) [GC] 6 Oct 2005 (74025/01) (2005) ECHR 681.
8.   Khoroshenko v Russia [GC] 30 June 2015 (41418/04) ECHR.

In another case, why should Mr. Dickson, who is a prisoner, and Mrs. Dickson[9] have the right to have a child? It is because we know that having a family is a positive experience that can also help after release.

Why should lifers, such as *Vinter, Bamber and Moore,*[10] have some prospect of release? It is because we have established that is the ultimate purpose of the prison. I see that principle as the core legal development. One of the reasons for the problems in the relationship between the UK and ECtHR is that the UK has not set out clearly what it sees as the purpose of imprisonment.

JB: You have described the abolition of the death penalty and the embodying of a human rights approach towards imprisonment as part of the 'European cultural heritage' and 'European penal imaginary'. Is that also part of the U.K. national culture or is this at risk without European protection?

DVZS: These are two different questions. In relation to the first, yes I do believe it is part of UK culture. I came across an interesting speech by Tony Blair in which he was trying to explain the role of the UK as a bridge between the United States and continental Europe. He identified some aspects of the culture here that are more like the US, but his most prominent example of the differences and similarity with continental Europe was the death penalty. He said that this was one area where we are highly European. That applies equally and, I hope, increasingly to other forms of severe punishment. My own current research interest is in life imprisonment and I see that as the next step along this line.

Do I think that those developments are threatened by the changing relationship with Europe? Yes, I do believe there is a risk. It is not a short-term risk, as legally at the moment we are locked into these wider European bodies. I do worry about the fraying of this European cultural heritage. The two countries that are moving simultaneously away from the broad approach to penology based upon the Council or Europe, are the UK and Russia. Exactly the same arguments that are made here are increasingly made in Russia. This is a threat.

JB: The UK has become an outlier in Western Europe in relation to its greater use of imprisonment. It has been argued that the UK emulates the US rather than Europe in its penal policy. How do you envisage this trend developing in the future?

> … Trump […] campaigned on issues including crime, even though like in the UK, the last 20 years have seen crime rates decline generally …

DVZS: I am concerned that our system will become more like the US. Things can change very quickly. Before the election of Donald Trump, there seemed to be a move in the US towards a consensus that prison numbers should be reduced. The state of New York has reduced its prison numbers by almost a third. There seemed to be a consensus being built between liberals and conservatives around this. The Trump campaign has turned this all on its head because he campaigned on issues including crime, even though like in the UK, the last 20 years have seen crime rates decline generally, although there has been a small rise recently. I can't see the death penalty being reintroduced quickly in the UK but I worry a great deal about the move away from the European ideal of reducing the use of imprisonment.

JB: In you book on European prison law and policy, you noted that 'The United Kingdom remains somewhat reluctantly committed to the European ideal and the official opposition [then the Conservative Party] threatens to change the law so as to reduce the national impact of the ECHR, if not to withdraw entirely from the convention' (p.381–2). Is the likelihood of leaving the Convention on Human Rights altered by the UKs changing relationship with Europe?

DVZS: It's interesting that as Prime Minister, Theresa May has backed off leaving the ECHR. In the short-term it is perhaps less likely to happen. There is, however, another important change that is coming. The Council of Europe and the European Union, although distinct bodies, are moving closer together. The Court of Justice of the EU (CJEU), which is the EU judicial body, is adopting more of a human rights approach in its decisions. In prisons, I believe the EU itself is going to become a more active body in asserting prison standards, something it has refused to do up until now, leaving that to the Council of Europe.

The decision earlier this year of the CJEU around the European arrest warrant was significant. In this case the CJEU said that the arrest warrant can be refused if the human rights of the individual who would be sent to the requesting country would be infringed.[11] This directly involved the EU in setting prison standards as the arrest warrant is at the core of the EU security policy. One potential way to deal with this issue would

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9. Dickson v United Kingdom [GC] 4 Dec 2007 (44362/04) (2008) 46 EHRR 41.
10. Vinter and others v The United Kingdom [GC] 9 Jul 2013 (66069/09) ECHR 645.
11. Judgement in Joined Cases C-404/15 and C-659/15 PPU Aranyosi and Căldăraru CJEU 5 April 2016.

be for the EU to publish standards that they expect prisons to meet and this is being debated in Brussels at the moment. At this stage, we do not know to what extent the UK government will be involved with the European arrest warrant. There is some irony here, as this was the issue that Theresa May identified in order to explain why she was a (reluctant) supporter of remaining in the EU. It may well be that the government tries to negotiate some position that enables it to continue to use the European arrest warrant and to continue to use the directive on the transfer of sentenced prisoners. If the UK does that and the EU starts to set standards for prisons, then the UK will be caught up in that framework again.

JB: Are you suggesting that for those countries that remain part of the EU, there will be even stronger harmonization of prison laws?

DVZS: Yes, but also stronger bureaucratic support. The cases involved Germany wanting to send prisoners to Hungary and to Romania. In the local jurisdictions, the people argued that the conditions in those countries were poor and as a result their human rights would be infringed. The court said that inquiries should be made with the country they are being sent to but in extreme cases poor conditions may justify them not being deported. This is because the right not to be tortured or subjected to inhumane or degrading treatment is a fundamental right. The response in Brussels has been to discuss whether standards should be set that EU countries have to meet. That, of course, works both ways. Someone may argue that they should not be sent to Bulgaria, for example, because their prisons are so awful, but equally, you could have someone in the Netherlands saying that they should not be sent to the UK because it doesn't meet the standards. You can, therefore, see how the standards come in through this back door. These are practical matters because the UK remains interested in using the arrest warrant and transferring non-UK national prisoners out. To access this, however, may require submitting to the authority of the CJEU and the wider rules on prisons that may be developed by the EU.

JB: The months following the referendum saw a rise in levels of reported hate crimes, In addition, the campaign itself focused on concerns about migration. How do you see those issues playing out in the criminal justice system?

DVZS: I don't have the expertise to talk about how this might play out in wider society, but it does have implications for people who run places of detention, which I would comment upon. One of the practical issues is whether you can expel migrants if they are convicted and sentenced to imprisonment. We have weak controls over migration once people are in the country, primarily because we do not have a system of positive identity documents, like there is throughout most of the rest of Europe. The prison then becomes an important player in the detention and eventual expulsion of these people. I can see a significant problem developing here. This parallels the US, where they have an estimated 11 million people there illegally. Every time one of those people is arrested or imprisoned, there is a huge bureaucracy that goes into action. The impression I get in the UK is that people are often convicted, imprisoned and complete their sentence before the immigration process can be completed. That is likely to become a more extensive problem.

> The impression I get in the UK is that people are often convicted, imprisoned and complete their sentence before the immigration process can be completed. That is likely to become a more extensive problem.

JB: In 2016, a High Court Judgment found that Article 50, formally notifying the EU of the UK's intention to leave, could only be triggered following a vote in Parliament, not by the Prime Minister alone. This resulted in significant media criticism of the judges, including being branded 'Enemies of the people' by the *Daily Mail*. How do you respond to such fervid reaction to a judicial decision?

DVZS: Frankly, with horror. I felt this was a low point in British public life. We already have the difficulty that there are few institutions that have a great deal of public respect. I was reflecting on the contrast between the UK and Germany. In the German system, the Federal Constitutional Court is by far the most admired political institution. It is routine that any major controversy is referred to the Court, which reflects upon the constitution. It has a great deal of public acceptance, more than elected politicians. There may well be difficulties with the process in the UK, and I have been critical of the UK courts for their lack of imagination in protecting human rights, but they start from the position of a weak constitution. They are, however, independent and that is worth conserving. That is why I reacted with horror. The headline seemed

designed to undermine that independence in the mind of the public. It is a very dangerous thing to do.

JB: You have worked with many states undergoing historic, constitutional transformations, such as South Africa and Bosnia-Herzegovina. What lessons would you draw from these experiences that would be relevant to the UK in the post-Brexit transition?

DVZS: The lesson I would draw is how important prison law is in creating frameworks for a humane and just prison system. One of the problems with Brexit is that it may weaken the human rights tradition. There has been a lot of talk about an enforceable British Bill of Rights, and if that were to come to pass, it would be wonderful, but I don't see that happening anytime soon. The reaction of the *Daily Mail* is happening in a context where judges have very little power. If we had a judiciable Bill of Rights, judges would have a lot more power and we could expect a lot more attacks upon them.

Prison legislation should spell out clearly the basic rights and duties of both prison authorities and prisoners. I stress that it should include prisoners. There is legislation to go through parliament soon, which will include major changes to prison law. One planned change is that it will attempt to define the purposes of imprisonment. This will be the first time this has happened in the UK and would be a positive development. That should, however, be complemented by an equally clear statement of the rights and duties of both prisoners and prison authorities. That was done in South Africa and Bosnia, and is particularly important in uncertain times. The statement of purpose would go some way towards this, but there should also be a provision that prisoners have a right to have their human dignity respected and authorities have a duty to foster this. This should be supplemented by legislation setting out requirements for areas such as accommodation, clothing, health care and access to opportunities for rehabilitation. Such primary legislation would serve an important function, not only for prisoners but also for the prison authorities, who could then demand the resources they need to meet these statutory requirements. The strength of prison law is particularly important in these uncertain times.

What is to be done?
Thinking about abolitionist alternatives

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The prison is unequalled in pain. Uniquely designed and operationalised through deliberate pain infliction it performs a key function in the maintenance of blatantly unequal societies through the control of poor, marginalised and disproportionately BME male lawbreakers.[1] But diagnosis and critique of the pains and harms of penal incarceration is not enough. It is also essential that consideration is given to feasible, policy relevant and progressive interventions that can challenge gross economic and social inequalities and mitigate the humanitarian crises confronting contemporary penal practices, without abandoning the broader obligation to promote radically alternative responses to troublesome human conduct and the logic of capitalist accumulation. This necessitates recognition and engagement with the problems and possibilities of our historical moment alongside a disruption of the ideological limitations placed upon what are considered appropriate and feasible means of social and penal transformation. Such engagement must be rooted in a normative framework — what I have described elsewhere as the 'abolitionist compass'[2] — that can assist our navigation away from deeply entrenched social inequalities and the problems associated with the criminal process.

Abolitionist alternatives to Liberal Market Capitalism and the penal apparatus of the Capitalist State should be informed by the principles of human rights, social justice and democratic accountability. Principles of human rights precipitate the recognition of a fellow human beings innate dignity and the symbolic and cultural respect of other people's shared humanity and provide a basis for critiquing *dehumanisation* through valorising basic human characteristics that must be promoted and protected at all costs. Principles of social justice problematise the current application of the criminal label, which overwhelmingly punishes the poor, and actively promotes interventions that aim to meet human need alongside aiming to foster values of care, love, kindness, forgiveness and solidarity. Principles of democratic accountability highlight the importance of adhering to democratic values which require unhindered participation, processes of shared decision making and validity for the voices to all concerned in the creation of social norms, whilst at the same time emphasising the importance of legal guarantees and safeguards. To 'remain in the game' alternatives must also be able to 'compete' with advanced capitalism and the criminal process by drawing upon interventions grounded in historically immanent potentialities and simultaneously possess an *emancipatory logic* that 'contradicts' current institutions and practices of repression by undermining capitalist and punitive rationales. Interventions dealing with troublesome human conducts should be non-punitive and in practice it must be demonstrated that they actually do *replace* a penal sentence of the criminal courts.

The very idea of 'abolitionist alternatives' has in recent times, however, been questioned by some radical critics of the criminal process, who have argued that what is required instead are 'transformative solutions'[3] and 'zemiological transpraxis'.[4] Those advocating such interstitial (i.e. non-engagement with the Capitalist State) approaches argue that when abolitionists take the penal system 'as their starting point against which they offer 'alternatives', they cannot help but reify that framework'.[5] In other words through their arguments to abolish the existing penal system abolitionists actually reproduce the existing 'regime of truth' that prisons and punishment are indispensable. For such thinkers, it is imperative that critics of the criminal process avoid entirely the contaminating logic and language of the penal apparatus of the Capitalist State. Whilst interstitial initiatives (i.e. those which are framed and promoted independently of the

1. For overview of contemporary debates and discussion in penal theory see Scott, D. (ed) (2013) *Why Prison?* Cambridge: Cambridge University Press.
2. Scott, D. (2013) "Visualising an abolitionist real utopia: principles, policy and praxis" in Malloch, M. & Munro, W. (eds) (2013) *Crime, critique and utopia* London: Palgrave Macmillan.
3. Moore, J.M. and Roberts, R. (2016) "What lies beyond criminal justice? developing transformative solutions" in *Justice, Power and Resistance*, Foundation Volume, September 2016.
4. Copson, L. (2016)"Beyond critique: realistic utopianism and alternatives to prison" in Justice, Power and Resistance, Foundation Volume, September 2016.
5. Ibid p.85.

legal process) are undoubtedly important, this 'clean hands approach' of non-engagement has never been the strategy of penal abolitionists in Britain, nor indeed many places elsewhere. For abolitionists it is crucial they are prepared to get their 'hands dirty' via direct engagement with *penal realities as they are in our present*.[6] It is only via directly confronting the Capitalist State and its penal institutions, such as through contributing to debates in penal policy and practice, that abolitionists can meet their humanitarian impulse to acknowledge human suffering in all its different manifestations. Whatever the dangers, 'abolitionist alternatives' remain absolutely essential for progressive transformations.

It should be made clear at this point that it is not my intention to explore each of the abolitionist alternatives reviewed in this article in great depth or outline all of their strengths and weakness. Rather my hope is that through highlighting a number of feasible, realisable and immanent interventions I illustrate *existing potentialities for progressive radical change* and demonstrate that with sufficient political will, economic and social inequalities and penal colonisation can be dramatically reduced. In other words, my purpose is not to be comprehensive but to simply show that *immediate change is possible*. It should also be recognised that the historical experience of any country or region is unique and that both penal culture and penal change are embedded within given geographic, historical, socio-economic and political contexts.[7] Each nation has its own specific risk and protective factors and what works best in terms of penal reductionism is likely to vary on a country by country basis.[8] This being said, the problems of global hyper-incarceration and the penal colonisation of social welfare and state detention must be located within wider structural contexts. Effective challenges to penal excess must first address the economic and social inequalities which plague advanced capitalist societies, meaning that radical social policies calling for the redistribution of wealth *must* be promoted on a *global* scale.

Abolitionist 'real utopian' alternatives[9] requires the realisation of at least the following nine interlinked strategic objectives.

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1. Acknowledgment that social inequalities and penal responses are intimately tied

It is now more than 100 years since the Dutch pioneer of critical criminology, Willem Adrian Bonger,[10] identified in *Criminalité et Conditions Economiques*[11] that the problems associated with inequalities and 'crime' — and subsequently those of punishment — are intimately connected. Political recognition and action are long overdue. Economic and social inequalities breed anxieties, insecurities and the need for scapegoats[12] and provide fertile ground for the rapid growth of penalisation.[13] Both inequality and the deliberate infliction of pain destroy human health and well being. In the long term rampant social inequalities and penalisation are likely to make society less caring, weaken social bonds, and create more problematic incidents.[14] In our time of increasing social polarisation, prisons maintain the status quo by disciplining and controlling certain segments of the working class.[15] It is time for politicians all around the globe to stand up and tell the truth about the collateral consequences of advanced capitalism and the absolute failure of the

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6.   Sim, J. (2009) *Punishment and Prisons* London: Sage; Scott, D. (2016) *Emancipatory Politics and Praxis* London: EG Press.
7.   Melossi, D. (2011) "Neo-liberalism's elective affinities: penality, political economy and international relations" pp 45–64 in Melossi, D., Sozzo, M. and Sparks, R. (eds) (2011) *Travels of the Criminal Question* Oxford: Hart Publishing.
8.   Tonry, M. (2007) "Determinants of penal policies" pp 1–48 in Tonry, M. (ed) (2007) *Crime, Punishment and Politics in Comparative Perspective* London: The University of Chicago Press.
9.   Scott (2013 see n.2.
10.   Bonger, W. A. (1905/1916) *Criminality and Economic Conditions* New York: Little, Brown, and Company.
11.   This title is the original French title. The book was published in English in 1916 under the title *Criminality and Economic Conditions*.
12.   Hall, S., Critcher, C., Jefferson, T., Clark, J. & Roberts, B. (1978) *Policing The Crisis* London: Macmillan.
13.   Hudson, B.A. (1993) *Penal Policy & Social Justice* London: Macmillan.
14.   Christie, N. (2000) Crime Control as Industry London: Routledge; Scott, D. (2009) "Punishment" in Hucklesby, A. and Wahidin, A. (eds) Criminal Justice Oxford: Oxford University Press.
15.   Mathiesen, T. (1990) Prison on Trial London: Sage; Christie (2000) see n.14.

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confinement project. There needs to be moves towards the stigmatising of high prison rates and expanding prison populations and every effort made to limit the reach of the punitive rationale. One pragmatic way forward that could help facilitate penal de-escalation is for politicians, their spin doctors and the mainstream media to place much greater emphasis on informing the general public about the *social harms* created by economic and social inequalities. Political strength could then be demonstrated by challenging the dreadful injustices of poverty on both a national and global level rather than blaming and then punishing the poor.

2. Escape from the punitive trap

The analysis above has indicated how central political culture and the media are in the rise of global hyper-incarceration.[16] We urgently need to find ways in which politicians can escape a punitive trap of their own making. To do so it is essential that in Neo-Liberal/Liberal Market Economies politicians and the media downplay 'crime' and place high profile single issue 'crimes' into appropriate context. This indicates the necessity of a de-politicisation of 'crime' and, especially in majoritarian democracies, a move towards a 'crime' and punishment *armistice* between the main political parties. Although the obligation for initiating this will inevitably fall upon the party in power, moral and political pressure, through concerted lobbying, needs to be directed to all mainstream political parties. Politicians need to recognise that *it is possible* to orchestrate a de-escalation of penalisation if they have the appropriate *political will*. Governments need to be asked to reflect seriously about the mantra *the less punishment, the better*. The general public's view is polycentric and contradictory and the more information people are given about an individual case the greater their understanding and leniency. A well funded public media campaign on the facts about 'crime' and punishment would help in such endeavours. Alongside this, however, the power of the national media itself also needs to be weakened. In the first instance this requires steps towards a de-monopolisation of the ownership of the media; the de-nationalisation of media so that journalists make local issues and serving local audiences their main priority; and that investigative and serious journalism in the public interest are the rationale behind news selection rather than the drive for profits through newsworthiness criteria.[17]

3. Generate knowledge from below and fostering moral responsibility

Much greater emphasis must also be placed on fostering informed public opinion beyond the restrictive remit of mainstream media. Superficial consumption of penal knowledge results in a failure to understand the painful realities of imprisonment and undermines democratic engagement with, and critically scrutiny of, pain delivery.[18] Providing a platform for the voices of prisoners to be heard, whether through public presentations, video or audio recordings, or written testimonies may be one way to achieve this. Showcasing prisoner art and poetry may also provide a more sophisticated insight into prison life, as may independent prison documentaries.[19] This 'knowledge from below' may initiate new in-depth understandings, meanings and empathy alongside providing concrete links between theory and practice. It is also more likely than the pre-packaged news of the national media to produce what Stanley Cohen[20] calls *acknowledgement*. Acknowledgement occurs when someone has knowledge of human suffering; recognises the full reality of the pain and harm this information imparts; and identifies the personal implications of possessing such knowledge, leading ultimately to some form of action that attempts to mitigate or end the injuries inflicted upon their fellow humans. In short it means knowing the truth about the devastation created by advanced capitalism and penal incarceration and doing something about them through interventions rooted in the principles of human rights and social justice.

> ... the power of the national media itself also needs to be weakened. In the first instance this requires steps towards a de-monopolisation of the ownership of the media ...

16. Green, D. (2008) When Children Kill Children Oxford: Clarendon Press.
17. Cohen, S. (2001) States of Denial Cambridge: Polity Press; Green (2008) see n.16.
18. Brown, M. (2013) "Penal spectatorship and the culture of punishment" in Scott, D. (ed) (2013) Why Prison? Cambridge: Cambridge University Press.
19. See for example independent documentaries like Punishment: A Failed Social Experiment (Directed by Dale Hallatt. Released in January 2012).
20. Cohen (2001) see n.17, p.290–296.

4. Creation of an alternative public space

To effectively turn the tide on penal excess and growing social polarisation requires morally responsible discussion of human needs and rationale responses to problematic human conduct. It also requires adherence to the principles of democratic accountability. De-democratisation facilitates distance between the perceived law-abiding 'us' and the perceived lawless 'them'.[21] The breakdown in democratic participation in penal politics has eroded social bonds and made the punishment of 'enemies within' appear more palatable.[22] Increased social distance has also made it easier to withdraw welfare support and allow the development of the privatisation of [social] security. Genuine democracy requires unhindered participation, processes of shared decision making and validity for the voices to all concerned in the creation of social norm. To facilitate such a vision of democracy Thomas Mathiesen[23] has talked about the creation of an 'alternative public space' where 'argumentation and principled thinking represents the dominant values'. This alternative public space would require significant time and investment so that it could compete with the mainstream media and allow genuine democratic debate on the key issues of the day, but if successful would be a significant step forward in providing a genuinely legitimate form of governance.

5. Humanising aliens and monsters

Relatively equal societies do not need symbolic punitive acts to shore up fragile social solidarities as they are likely to have a greater sense of a shared moral responsibility for social problems.[24] In such circumstances we do not need to search for suitable enemies but rather to search for *suitable friends*. Greater economic equality on a global scale reduces global migration and increases levels of social justice in countries with weak economies and a low GDP. Rather than conceive the 'non-national stranger' as a potential threat, competitor in the labour market or service user for relatively scarce welfare services, the encounter with the stranger could be considered an opportunity to learn new insights, share experiences and develop new understandings. This *humanising of aliens* requires us to acknowledge that the arrival of 'strangers' may sometimes benefit all and that 'others', 'enemies' and 'aliens' have the ability to feel pain and suffering in prison and elsewhere. This would also include highlighting the discrepancies between the criminalisation and punishment of 'crimes' of the powerful and the powerless; the problem of conflating 'good' and 'evil' with good and bad people through the construction of a negative, dehumanised one dimensional caricature of the offender situated solely in the nature of her/his 'crime'; and ultimately point to the universality of criminal activity and in the end the similarities between those inside and outside the prison walls. In short we must stress we are all united by a common or shared humanity and must learn to live with the inherent ambivalence of human society. *Humanisation* requires a reassertion of non-punitive values that emphasises the best of humanity — fraternity, friendship, solidarity, trust, love, compassion, hospitality, kindness and forgiveness — and recognition of a fellow human beings innate dignity, whatever their biographies or backgrounds.[25]

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6. Radical reduction of economic and social inequalities

The ideological myth of the *natural order* that economic regulation is beyond the legitimate scope of government needs to be exposed and undermined.[26] Legitimacy can, and should, be derived from interventions which aim to provide a more equitable distribution of the social product and where humans, whatever their backgrounds, are treated fairly and given the opportunity to flourish. Social policy interventions need to strive towards 'abolition democracy' which demands that our present social

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21.   Christie, N. (1981) Limits to pain Oxford: Martin Robertson; Christie (2000) see n.14.
22.   Barker, V. (2013) "Prison and the public sphere: Toward a democratic theory of penal order" in Scott, D. (ed) (2013) Why Prison? Cambridge: Cambridge University Press.
23.   Mathiesen, T. (2001) "Television, public space and prison population" pp 28–34 in Garland, D. (ed) (2001) Mass Imprisonment London: Sage, p.33.
24.   Christie (1981) see n.21; Christie (2000) see n.14.
25.   Cohen (2001) see n.17; Christie (2000) see n.14; Scott (2013) see n.1.
26.   Beckett, K. & Herbert, S. (2010) Banished Oxford: Oxford University Press.

order is radically transformed in accordance with the principles of social justice.[27] Beckett and Herbert[28] have championed a 'harm reduction model' that places social harms at the centre of analysis and recognises that whilst it may be impossible to totally eradicate certain problems, appropriate help and support can transform lived experiences. In this model focus is placed on job creation, full medical care and appropriate forms of welfare. There could also be a concerted attempt to challenge inequalities in public services. This would include the further enhancement of existing commitments to provide free transport, healthcare and education. More could also be done to improve housing and accommodation, including the introduction of rent guarantees. These interventions could dramatically reduce the harm, suffering and dehumanisation associated with wealth and income disparities whilst at the same time contradict to the logic of capitalist accumulation. For Beckett and Herbert[29] there requires recognition that,

> [e]xtreme inequality adversely impacts us all, that poverty stems from structural dynamics that extend well beyond the lone denizen of the street, that security means something more than protection for middle-class whites from the discomforts or urban life, that justice includes the proposition that everyone enjoy a minimal quality of life, and that tolerance of diversity is integral to democracy.

A number of other social policy interventions could also instantaneously reduce economic inequalities. A very small percentage of the people who live in England and Wales (and indeed most countries in the World) own the vast majority of material wealth. Challenging the legitimacy of such wealth inequalities through progressive taxation would entail significant increases in the tax rate for the richest 100,000 people in England and Wales but would dramatically reduce inequalities and provide funding for essential public services. Another straightforward historically immanent policy that could greatly diminish wealth disparities would be to introduce higher inheritance taxes, or, more radically, follow the suggestion of Emile Durkheim and abolish inheritance altogether. There could be the introduction of a maximum wage to ensure that the accumulation of wealth in future generations is more tightly restrained and creating clear boundaries between the top and bottom of the pay structure. The most desirable policies, however, are those that can *abolish* poverty, such as a universal basic income.[30] A universal basic income would both end poverty and provide a direct challenge to the very logic of capitalist accumulation. Whilst its introduction would likely be strongly objected by capitalists, if successfully implemented its implications would be immense. People could choose to work, or not, and whilst the balance of power would still favour the capitalist, labourers would have considerably more choice than at present.

> A universal basic income would both end poverty and provide a direct challenge to the very logic of capitalist accumulation.

7. Radical reduction of prison populations

Critical criminologists have long held that we must work both *with* and *against* the capitalist state to challenge and exploit its contradictory nature in the interests of human freedom.[31] One feasible strategy that engages with the capitalist state is the 'attrition model'.[32] Directed at the mechanics of the criminal process, this model can be utilised *right now*.[33]

It entails the following:

i) Permanent international moratorium on prison building. International, national and local campaigns, political lobbying and legal cases which challenge the moral, economic and political viability of building more prisons.

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27. Davis, A. (2005) Abolition Democracy New York: Seven Stories Press, p.72; Davies, J. (2011) Challenging Governance Theory: From Networks to Hegemony Bristol: Policy Press.
28. Beckett, K. & Herbert, S. (2010) Banished Oxford: Oxford University Press.
29. Ibid p.158.
30. Scott (2013) see n.2.
31. Sim, J., Scraton, P. & Gordon, P. (1987) "Crime, the state and critical analysis" pp 1-70 in Scraton, P. (ed) (1987) Law, Order & The Authoritarian State Milton Keynes: OUP; Sim (2009) see n.6.
32. Knopp, F.H. (1976) Instead of Prison California: Critical Resistance; Oparah, J. (2013) "Why No Prisons?" in Scott, D. (ed) (2013) Why Prison? Cambridge: Cambridge University Press; Scott (2016) see n.6.
33. In California where the prison population is currently falling by around 2,000 every month. From July 2011 to July 2012 the California prison rate declined by 16.5 per cent. See McBride, K. (2013) "Why Prison?" in Scott, D. (ed) (2013) Why Prison? Cambridge: Cambridge University Press.

ii) Negative reforms. Enhancing existing practices that protect the shared humanity of those subjected to penalisation through greater legal safeguards and legal rights; strict adherence to due process; and challenging authoritarian occupational cultures.

iii) Decriminalisation, diversion, and minimal legal intervention. Keeping people out of prison through interventions like raising the minimum age of criminal responsibility; police warnings; diverting certain vulnerable people from criminal proceedings; and removing legal prohibitions on certain 'victimless crimes'.

iv) Decarceration. Deploying pragmatic ways of getting those currently incarcerated out of prison as quickly as possible, such as early release; probation; shorter sentences; home monitoring; amnesties; part time incarceration; and the introduction of waiting lists.

8. Promotion of radical alternatives

Without rational alternatives the penal apparatus of the capitalist state may still appear permanent and inevitable.[34] The word 'alternative' should be used cautiously here to mean practices which are not derived from criminal processes, but with recognition that in everyday life people use many strategies to handle conflicts. People generally try to deal with problems as pragmatically and effectively as possible, and only on relatively rare occasions do they turn to the police and the criminal process. Alternatives are then those interventions which contrast with the practices of state punishment and question the logic of penalisation. To prevent 'net widening'[35] such interventions must avoid co-option by the capitalist state, which today includes devolved and decentralised agencies and networks.[36] Alternatives must therefore always be *in place of* rather than merely *additions to* existing criminal processes and there are a number of non-punitive interventions which could be advocated.

> Alternative means of handling of conflicts have also been suggested that engage more constructively with the community rather than the capitalist state.

i) Turn the system on the head. The current focus of the penal system is on punishing the offender whereas the victim is largely ignored. One radical alternative would be to turn the system on its head — rather than inflict pain and suffering the aim of interventions would be to provide assistance, help and support for the person who has been harmed.[37] This would ultimately mean providing massive investment in support for victims and redirecting criminal justice system budgets to public social services to help rebuild lives for all. Such 'justice reinvestment' could be used to support women's refuges; shelters for homeless people, drug takers and other troubled people; or drying out centres.

ii) Reject the penal law. Abolitionist initiatives have often focussed on the civil law and the concept of tort where *compensation* rather than penalty is the objective of proceedings.[38] Alternative means of handling of conflicts have also been suggested that engage more constructively with the community rather than the capitalist state. Through peace circles, peer juries, and motivational interviewing, for example, community members can become involved in delivering safety and building new social bonds.[39] New relationships can be developed that build solidarity and trust rather than deploying the penal law which undermines it.

iii) Provide help and support. The shift away from punishment can be augmented by a drive towards help and support for all people in society. For children and young adults in trouble greater leisure facilities could be made available, such as youth clubs; adventure playgrounds; and educational programmes in music and art. Adult lawbreakers could be helped with community based employment and job skills training.

iv) Intentional and therapeutic communities. The vast majority of people who break the criminal law are not dangerous and should not be considered as such. There are some people who may, however, benefit from a change of context and environment.

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34. de Haan, W. (1990) The Politics Of Redress London: Unwin Hyman.
35. Cohen, S. (1985) Visions of Social Control Cambridge: Polity.
36. Davies (2011) see n.27.
37. Mathiesen, T. and Hjemdal, O.K. (2016) "A new look at victim and offender – an abolitionist approach" Justice, Power and Resistance, Foundation Volume, September 2016.
38. Scott (2013) see n.2.
39. Oparah (2013) see n.32.

One idea would be to develop 'intentional communities' where wrongdoers — and perhaps their families if they so wished — could be relocated to small villages in sparsely populated areas, such as in the northern parts of Scotland. Here they could learn new skills, develop more pro-social attitudes and look to rebuild their lives. Such an intentional community for law breakers could also become a form of 'sanctuary' where serious offenders could be placed in quarantine to allow for time to cool off; establish grounds for negotiations; and attempt to deliver what might be considered as acceptable solutions. Additionally the idea of developing an 'intentional' or new community could also be available for less serious harms. As a place where people live and share problems together, it could become an option for people with family difficulties. Residential family projects, where each family has a 'family worker' could follow a similar model. Some people embroiled within the penal law would undoubtedly benefit from therapeutic interventions and those people who have mental health problem, substance usage problems or require other forms of medical interventions could be offered effective voluntary non-custodial treatments and options to participate in alternative 'non-penal' therapeutic communities.[40]

9. Building grass roots activism and abolitionist praxis

The mobilisation of grass roots activists and abolitionist social movements is necessary for any sustained radical transformation of current penal and social realities. In England and Wales the radical penal lobby over the last forty years has included a diverse range of organisations including, *Radical Alternatives to Prison, Women in Prison, INQUEST* and *No Prison Manchester*. The publications and radical lobbying of *INQUEST* on deaths in custody and the campaigns by members of *Women in Prison* on the experiences of incarcerated women and girls in the United Kingdom have delivered clear and principled critiques of penal incarceration and helped facilitate progressive humanitarian change. Such important interventions noted, however, in recent times the connections between abolitionist thought and political practice have been weak in England and Wales. *Radical Alternatives to Prison* [RAP], which operated from

1970 until the mid-1980s, was unique in that it aimed to challenge both economic inequalities and penal colonisation. Its key aim was to present a 'fundamental critique of the existing economic and political order and the manner in which we chose to define and correct deviant behaviour'.[41] RAP both visualised and supported radical alternatives to handling social and individual problems, especially in its early days, and advocated concrete 'negative reforms' of penal incarceration grounded on the principles of human rights, especially in its later days. Contra its critics,[42] the research, campaigns and activism of RAP members provided an essential challenge to the capitalist states exclusive role in defining 'penal truth' and a vehicle for collective mobilisation. Although in the last three decades abolitionist social movements in England and Wales have faltered,[43] lessons can be learnt from the past and contemporary abolitionist social movements like *Critical Resistance* in the USA.[44] *Critical Resistance* grounds its opposition to penal incarceration in coalition politics promoting anti-violence, anti-imperialism, anti-capitalism, and black and women's liberation. Their activism and community interventions offer testimony of how global hyper-incarceration is *not justified in their name*. Abolitionist social movements can help foster a *politics of inclusion* based on shared humanity and highlight the abnormality of prison and the dehumanising context of poverty and social inequalities. Most significantly of all, abolitionist praxis is essential in the creation of an *alternative power base* that can be utilised to challenge the role, function and legitimacy of the penal apparatus of the capitalist state and the unequal society it upholds.

An 'abolitionist real utopia'[45] requires immediate direct policy interventions alongside the fostering of community based social movements that can join forces in struggles for freedom and recognition of human dignity for all. Anti-prison activists and theorists must continue to aspire to live in, and fight for, a *world without prisons* alongside advocating non-punitive interventions rooted in immanent possibilities that can start to roll back the penal colonisation of the life world. In the long term, of course, the best way to protect and guarantee the safety and security of citizens is to ensure that there is a socially just, democratic and accountable distribution of the social product. Though this seems some way off, the time to act is *now*.

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40. Scott (2016) see n.6.
41. Ryan, M. (1978) The Acceptable Pressure Group Aldershot: Ashgate, p.2.
42. See Copson (2016) see n.4.
43. On the 13th September 2012, however, a new 'Coalition Against Penal Excess' was formed in London, England that developed in an abolitionist direction. It is now called the "Reclaim Justice Network".
44. Oparah (2013) see n.32.
45. Scott (2013) see n.2.

Reviews

Book Review
Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy
By Heather Ann Thompson
Publisher: Pantheon Books (2016)
ISBN: 9780375423222 (hardback)
Price: £25.99 (hardback)

According to Franz Fanon, 'we revolt simply because, for many reasons, we can no longer breathe'.[1] Fanon's insight is directly relevant to the barbaric events which unfolded at Attica prison in New York State in September 1971 when prisoners revolted against the suffocating conditions of their confinement. For three days they controlled the institution from D Yard before the state unleashed hell and launched a ferocious assault to retake the prison. The attack left 43 prisoners and hostages dead and 128 wounded, many seriously. Heather Anne Thompson's monumental, haunting and deeply moving study, based on 10 years of meticulous research, provides a compelling analysis of the roots of the revolt, the brutal, remorseless revenge enacted by the state, the deceit and lies peddled to cover up how the prisoners and hostages died and the iron resolve of survivors and the families of the dead prisoners and hostages to achieve truth, justice and accountability. It is a story of institutionalized violence and torture, deeply embedded racism and state collusion, conspiracy and cover-up which has taken 45 years to finally bring into the light.

Why did the revolt happen? Its roots lay in the challenges posed by the civil rights movement and the increasing influence of the Black Panther Party, many of whose members were confined in Attica and who refused to accept the degrading treatment, casual sadism and systemic racism dispensed on a daily basis. Conditions were appalling. Prisoners were given one bar of soap each month and one roll of toilet paper which meant that they had to 'limit themselves to 'one sheet per day'. Expenditure on food amounted to 'a mere 63 cents per prisoner per day…' (p. 8).

The book is based on a range of unpublished sources and documents which were stored, often dismissively, in boxes and store-rooms around the USA. Among the items Thompson discovered were the still-bloodied clothes of L.D. Bartley whose rousing and defiant oratory poignantly articulated the perspective of the prisoners:

> We are men. We are not beasts and we do not intend to be beaten or driven as such. The entire prison populace, that means each and every one of us here, has set forth to change forever the ruthless brutalization and disregard for the lives of the prisoners here and throughout the United States. What has happened here is but the sound before the fury of those who are oppressed (p. 78).

His defiance cost him his life when he was killed after the prison had been retaken. His, and the other deaths, were a direct result of the devastating and illegal firepower mobilized by the state. The assault on D yard was led by troopers who were 'armed with .270 caliber rifles, which utilized unjacketed bullets, a kind of ammunition that causes such enormous damage to human flesh that it was banned by the Geneva Conventions' (p. 157). Between 2,349 and 3,132 lethal (shotgun) pellets were fired. There were also 8 rounds fired 'from a .357 caliber, twenty-seven rounds from a .38 caliber, and sixty-eight rounds from a .270 caliber….these counts did not even include the bullets from correction officers and other members of law enforcement not fully accounted for' (p. 526).

The relentless brutality of the state's assault was not the result of deranged individuals engaging in renegade behavior — the politically reductive and theoretically naïve 'bad apple' theory of state deviance propagated by an endless procession of politicians, media personnel and academics, linked together by a positivist, umbilical cord which defines state actions as inherently benevolent which are occasionally tainted by the activities of a pathological few. Rather, terror, torture and brutality were systemic to the state's brutal response. This was based on a process of conspiratorial, racist collusion which was integral to the actions of those who were on the ground on the day relentlessly abusing and killing prisoners and hostages and which moved remorselessly up through the ranks of the police, and state troopers, into the offices of the prosecuting authorities and finally to the highest reaches of the US government itself whose views were mobilized to legitimate the brutal actions of those on the ground. As Nelson Rockefeller, the

1. Franz Fanon cited in Kyerewaa, K. (2016) 'Black Lives Matter UK' in Red Pepper, Issue 210 October/November 2016 p. 8.

state governor, mendaciously told a grateful President Nixon in the aftermath of the state's assault, 'the whole thing was led by the blacks' and that state troopers had been deployed 'only when they [the prisoners] were in the process of murdering the guards' (p. 200).

As ever, when the state kills, its agents are immediately deployed to spread lies, and engage in deceit, exaggeration and distortion, a toxic mix designed to both mystify what happened and to mobilise a narrative for media and popular consumption that the violence of its servants was, given the dangers they were facing especially from black prisoners, legitimate. Yet, as the book makes abundantly clear, even at the height of the carnage in D Yard, it was not the prisoners — pejoratively labelled as liars, psychopaths and animals — who were murdering the hostages. Rather, prisoners attempted to safeguard them while putting their own lives in grave danger. However, even this selfless act of bravery and humanity was buried under the weight of the perfidious deceit of the state's spokespersons who unashamedly peddled the lie that the hostages had had their throats cut or had been castrated by the very prisoners who had attempted to protect them.

The pitiless response to the prisoners, and the unshackled violence they experienced, was based on the scornful, mortifying and degrading vilification of their helpless bodies, dead and alive. According to one eyewitness, Tommy Hicks, a prisoner who was still alive after the prison was retaken, was '"hit with a barrage of gunfire" after which he saw troopers walk over to Hicks's body take "the butt end of the gun, pound the flesh in the ground, kick it, pound it, shoot it again"'. Survivors were made to crawl naked through a mud-filled yard towards state servants where they were savagely beaten. This brutality

extended even to the most severely wounded who were given no sedatives and who were 'expected to suffer through the pain'. In contrast, state troopers, whose injuries included a 'fractured finger, bruised knee [and] a fractured toe', were prioritized (pps. 206–7). The role of medical staff before and after the revolt, and their abject capitulation to the state's dehumanizing goals, is made abundantly clear in the book. They were active agents in the brutalization of the prisoners.

Thompson beautifully crafts the forgotten and moving story of the survivors into a devastating indictment of the naked exercise of power from state servants who acted with total impunity before, during and after the revolt towards them. The chilling calculation around life and death extended to its own surviving, employees who were only paid for eight hours for each day they were held hostage as the rest of the time 'they were technically off the clock' (p. 538). The campaigns by the survivors and families, spread over nearly half a century, demanded a reckoning with state servants, whose every action, despite the occasional, honorable, individual exception, was built on denying truth, subverting justice, intimidating those who disagreed with the dominant narrative, burying and destroying evidence, destabilizing different campaigns and attempting to ensure that those responsible for the carnage would escape justice. This was done through 'refusing to hand over materials expeditiously — even when required by law to do so…..' (pps. 315–316) and ensuring that funding was minimal for lawyers who were acting for the families.

The book concludes by focusing on the legacy of the revolt. The liberal, humanizing reforms proposed by the state quickly dissipated under the collective, regressive weight of resurgent law

and order campaigns, the ongoing war on drugs, the hostility towards prisoners and the drive towards mass incarceration through a racist process of criminalization which targeted the powerless while leaving the powerful, as ever, free to engage in rampant acts of criminality. Mass incarceration legitimates institutionalized racism and institutionalized racism legitimates mass incarceration while the police and the courts provide the glue that holds the whole, racist edifice together. And yet collective webs of resistance still persist. The strikes which took place in late 2016 across 22 prisons — the biggest in US prison history — against slave labour conditions, links directly back to Attica. So too does the principled activities of Black Lives Matter contesting the ongoing, systemic racism, and state-induced death, disproportionately experienced by African Americans.

Nearly half a century on, the aching desolation generated by the barbarity perpetrated by the state at Attica still lingers in all of its melancholic toxicity. At the same time, the righteous anger and the relentless desire to ensure that Attica is not forgotten, is an eloquent testimony to the human spirit's enduring sense that injustice needs to be confronted, wrongs righted and responsibility attributed. Voltaire's famous quote — 'to the living we owe respect but to the dead we owe only the truth' — provides a fitting tribute to all of those who have struggled over the last 50 years to right Attica's wrongs. It is also a fitting testimony to this magnificent book, and to Heather Thompson's rigorous scholarship and extraordinary commitment which runs like a clear stream from the book's first through to its last sentence.

Joe Sim is Professor of Criminology, Liverpool John Moores University.

Book Review

The management of change in criminal justice: Who knows best?
Edited by Martin Wasik and Sotirios Santatzoglou
Publisher: Palgrave Macmillan (2015)
ISBN: 978-1-137-46248-0 (hardback)
Price: £65.00 (hardback)

Justice and penal reform: Re-shaping the penal landscape
Edited by Stephen Farrall, Barry Goldson, Ian Loader and Anita Dockley
Publisher: Routledge (2016)
ISBN: 978-1-138-19106-8 (hardback) 978-1-138-19107-5 (paperback)
Price: £90.00 (hardback) £29.99 (paperback)

Recent years have seen rapid shifts in penal policy and practice. In broad policy terms, the seemingly inexorable rise of prison populations and increasing punitiveness have abated and there has been the articulation by senior politicians including Kenneth Clarke and Michael Gove of the need for lower use of imprisonment and a focus on more rehabilitative approaches. Inside prisons, organisational changes including changes to regimes, staffing levels and pay structures have left many prison managers feeling that change management has become their central role.[1] These two books, in their own ways, attempt to both reflect and inform these trends.

Martin Wasik, a distinguished professor and judge, and Sotirios Santatzoglou, a teaching fellow at Keele University, offer an edited collection that is concerned with 'the ways in which criminal justice policy emerges, takes shape and is implemented through the activities of practitioners on the ground' (p.vii). One of the defining features of contemporary organisations are the ways in which they attempt to assert greater control over workers, both through ever more elaborate architectures of surveillance such as targets, audits, information technology and prescriptive policies, but also the ways in which they attempt to use human resource strategies in order to access the subjectivity and identity of employees so as to nurture conformity and self-regulation.[2] Of course, total control is impossible, even in the most extreme circumstances and therefore the aspirations of contemporary organisations are always destined to be incomplete and inchoate. These centralising ambitions are always moderated by their interaction with both local cultures and individual agency, that resist, adapt and appropriate attempts at control. It is this complex dynamic that Wasik and Santatzoglou are attempting to access.

The chapters in the book are wide ranging, contributors include policy makers, practitioners, researchers and campaigners, covering areas including courts, probation, policing, policy development and youth justice. The chapters are grounded in detailed descriptions and analysis of specific developments in policy and practice. Each is an informed and lively illustration of the tensions that shape criminal justice: individual discretion and central prescription; national standardisation and local variation, and; punitiveness and humanitarianism.

In *Justice and penal reform*, the aim of the editors is to intellectually enrich the drive for progressive change: 'creating social and penal institutions that can contribute to the realization of safer and more cohesive societies' (p.1). The book is edited by an impressive quartet, including three internationally respected criminology professors, Stephen Farrall from University of Sheffield, Barry Goldson from University of Liverpool, and Ian Loader from University of Oxford. The fourth editor, Anita Dockley is Research Director at the Howard League for Penal Reform, an organisation that has collaborated in the publication of this book.

The editors argue that the financial crisis of 2008 and subsequent recession have offered an opportunity for a new kind of dialogue about criminal justice. This is partly a result of necessity, as mass imprisonment is no longer affordable, but also the popular resonance of punitiveness has waned as crime rates have reduced and other policy matters have become more pressing. The response of this book is to invite rigorous intellectual engagement with some fundamental questions about imprisonment, its form, role and function, and its relationship with wider society. The contributors read like a who's who of international theoretical criminology. Their discussions raise questions about the notions of character that shape our ideal of citizens, as well as the nature of trust and legitimacy in contemporary public services. Most significantly, the contributors locate imprisonment, not in isolation, but in the context of a wider social system. What forms of order and structures of power are prisons reflecting and reinforcing? What forms of social justice are prisons contributing towards or eroding? The argument for penal reform has always been part of a much wider social discourse regarding the kind of world we are living in or creating.

1. Bennett, J. (2015) *The working lives of prison managers: Global change, local culture and individual agency in the late modern prison* Basingstoke: Palgrave Macmillan.
2. Parker, M. (2002) *Against Management: Organization in the age of managerialism*, Cambridge: Polity Press.

There is more at stake in criminology than crime and criminal justice alone.[3]

These books take different approaches to exploring the issue of change in the criminal justice system. Wasik and Santatzoglou focus on practice, using detailed case studies in order to reveal common threads and theoretical dimensions. Theirs is an approach that reflects the state of things. In contrast, Farrall, Goldson, Loader and Dockley start from a theoretical perspective, attempting to enrich and enliven the intellectual, policy and public debate. They are attempting to guide and inform alternative futures. Together, these books offer a fascinating contrast in approaches, but both ask awkward and difficult questions, agitating in the reader a discomfort in the status quo and a desire for a different kind of change.

Dr Jamie Bennett *is Governor of HMP Grendon and Springhill*

Book Review
Imprisonment Worldwide: the current situation and an alternative future
by Andrew Coyle, Helen Fair, Jessica Jacobson and Roy Walmsley.
Publisher: Policy Press (2016)
ISBN: 978-1-4473-3175-9 (paperback)
Price: £7.99 (from publisher)

The book has three sections: 1) Trends in imprisonment and numbers worldwide; 2) Ethical considerations for imprisonment and how this impacts on those in custody; and, 3) Alternative approaches and proposals including justice re-investment approaches. Throughout the book, information is collated and summarised in a series of infographics making it easy to read

and assimilate the potentially complex variations and differences. For example graphs of changing rates of imprisonment between five European countries over the last 35 years — show remarkable differences: Finland has steadily fallen over the entire period whilst England and Wales has steadily increased (see p.53).

The book is a major contribution to the knowledge of those currently debating prisons and the use of imprisonment, whether from an academic, policy, practitioner, campaigner or lay perspective, making it also a valuable teaching resource for courses in criminology and related subjects. The final chapter reminds us that (potential) solutions are unlikely to be 'simple' (p. 131) nor found exclusively within the criminal justice system, and perhaps more importantly prisons are unlikely to (the authors use the word 'never') be a place of reform. I enjoyed reading the book through and then coming back to look for more details, trying to understand what the many differences were worldwide and why these occurred. Of course no publication can completely explain the reasons 'why', but this one nevertheless provides a significant body of evidence to help us on this journey.

Steve Hall *is a former prison governor currently living in New Zealand.*

Remote control: Television in prison
By Victoria Knight
Publisher: Palgrave Macmillan (2016)
ISBN: 978-1-137-44390-8 (hardback)
Price: £68.00 (hardback)

Television is such a central feature of everyday life that it is no

longer considered a luxury but instead is an unexceptional, even essential, part of our domestic worlds. Over the last 20 years, this has also become true of prison life. The systematic introduction of television in prisons started in 1998. It was initially a reward for 'enhanced' prisoners who demonstrated a high level of compliance with prison regimes, but since then it has become part of the 'standard' privileges, only to be removed from those who demonstrate poor behaviour. In this book, Dr. Victoria Knight, a senior research fellow at De Montfort University Leicester, examines the ways in which television is viewed by prisoners, how this shapes their social world and their inner emotional experiences.

The book draws upon research conducted in an adult male category B prison, including structured diaries of television viewing along with interviews with prisoners and staff. As well as becoming normalised, television has, in fact, become a dominating aspect of the experience of imprisonment. The diaries collected in this study show that prisoners will spend over sixty hours a week watching programmes, more than double the national average.

One of the primary policy justifications for the introduction of television was the way that it reinforced the incentives and earned privileges scheme (IEP), which offered graduated privileges reflecting compliance, good behaviour and positive work towards release. This approach aimed to extend the use of soft power over prisoners. This book reveals that in unforeseen ways the effects have been more extensive.

The social effects have included a retreat from public spaces into the private space of the prison cell, a pattern that has also been discussed in the community outside. Within shared cells, interpersonal dynamics have altered as these relationships require careful negotiations around

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3.   Loader, I. and Sparks, R. (2010) *Public criminology?* London: Routledge.

potential areas of conflict or harmony, including television viewing. With those outside of the prison, including family and friends, programmes can become shared interests and act as a proxy for being together. In these ways, television becomes integral to social relations inside and outside of prisons.

This research is also concerned with the ways that television intersects with the emotional life prisoners. As with other viewers, they experience joy, happiness, sadness and anger while watching. In prison, Dr. Knight argues that it can also be a 'package of care' helping men to cope with the pains of imprisonment. Some, however, become concerned about their dependence upon television and how it will affect them in the longer term, particularly after release. Resistance and the assertion of independence comes in different forms, so that some refuse to have a television at all, while others manage the quantity they watch or the type of programmes they consume.

In the final chapter, Dr. Knight speculates regarding the development of in-cell technology including communications and information technology. Such developments may offer opportunities for more flexible family contact including video conferencing, and may also include educational content so that time in cell can be used constructively. The risk, of course, is that technology comes to replace or reduce real interactions and prison activities. This dystopian vision is of a financially-motivated impoverishment of the social life of prisoners. Such polar perspectives reveal that technology does not in itself determine such outcomes, instead it is the social context in which it is used that shapes this.

Dr. Knight's research is an important contribution to the understanding of the social world of the prison. Television has become a greater, even dominating, aspect of this and so deserves the close

attention it is given in this book. It is a work full of new insights into the uses and effects of television in prisons and adds significantly to current understanding of the issue, in particular by exploring the emotional and social context.

Dr Jamie Bennett *is Governor of HMP Grendon and Springhill.*

Theatre Review
Through the Gap
York Theatre Royal

In the days when HMP Askham Grange was regarded as significant enough to have a governor in its own right, one of its incumbents was Sue McCormick. Contrary to what one hears in the media, Sue was genuinely the youngest governor both at the time and since, having been appointed at 29. It was with her support and encouragement that Clean Break Theatre Company was formed, in 1979, by two former Askham prisoners, Jenny Hicks and Jackie Holborough. Almost 40 years on, Clean Break continues its ground breaking work in women's prisons and elsewhere.

I became aware of Clean Break's ongoing involvement with Askham Grange some two years ago when attending a presentation by York St John University's Prison Partnership Project on narrative, women and prisons. Regular drama workshops and choral activities were being held in collaboration with the University, Clean Break and the prison's Education Department. Now, third year undergraduates and Askham Grange prisoners have co-created a sensitively crafted yet hard hitting short play, *Through the Gap*, under guidance from the University.

A sparse set. Five chairs against a black background. Five sets of neatly folded clothes as five women enter to a plaintive chant of those

who have been 'so high and so low', one senses in more ways than one. The women don the identical grey shifts which, though female prisoners have worn civilian clothes for decades, serve to represent the depersonalisation inherent upon entry into the penal system. This is reinforced by a skilfully mimed portrayal of the reception process including searching and a frequent repetition of their prison numbers.

During an early sequence, the cast simulate running quickly towards the audience with a cacophony of voices explaining why. All are running from something yet all have distinctive back stories. One, whose addicted mother and absent father mean that prison is the only secure and caring environment she knows. Another who 'didn't go out that morning to kill somebody' but whose careless driving did. Others who are mortified at leaving their children behind. The beauty of a mother's love, once deprived of expressing it, is tenderly expressed.

A recurring image develops when large pillow cases of white feathers are scattered upon the stage which first come to symbolise the white powder for which many of the women crave and for which they must somehow find the money. Later the feathers are bundled together into make-believe substitutes for the babies they have left at home. But there is further symbolism to come.

Case histories are touched upon as are the fears and uncertainties of daily living, relationships and the uncertainties of life on release. Will family and friends see the person as she is and not how the media have painted her? Will the cheerful husband on the telephone be quite so cheerful and accepting on his wife's return home? And what if the husband or partner, house and job have disappeared? What then for the isolated and vulnerable woman whose hopes for the return of her

child may thereby have disappeared too?

The work confirms the eternal penological truths of Gresham Sykes's pains of imprisonment.[1] However the performance is not completely bleak and there are unsentimental but accurate portrayals of the mutual support offered by fellow prisoners in time of crisis. The action stops abruptly. The stories do not have convenient ends for who knows what those ends might be? Who knows?

There followed a lively and informative question and answer session with the cast and, in the audience, the Director of the Prison Partnership Project and senior lecturer in Applied Theatre, Rachel Conlon. The participants held weekly workshops in the prison and whereas many of the characters were based on those at Askham, some had been conflated and others shaped by observation of women's trials over a year in the local Crown Court. The student actors were careful to respect their Askham counterparts' requested confidentiality and this helped shape the final piece.

It was during this discussion that further symbolism became apparent

to me though possibly not to the cast. Juliet Foster, the Theatre Royal's Associate Director, joked about the staff's imminent job of Hoovering up the thick bed of the feathers left behind. How closely that correlated with one of Thomas Mathiesen's functions of the prison: the 'sanitation function' whereby seemingly unproductive elements in society are swept away.[2] Just like the prisoners and the feathers.

Harriet Walter, who has also worked with Clean Break, when speaking of her recent Donmar Warehouse Shakespeare trilogy using all-woman casts and set in the prison environment, talked of 'giving voices to the voiceless'. Such an aspiration informs and is manifestly achieved in this production. The work won the York Theatre Royal annual graduate prize for final year students of Theatre. This offers the winners professional mentoring to develop their work culminating, in in this case, with performances at the prison, within the University, at the Theatre Royal and hopefully beyond.

Were there shortcomings? Well perhaps some. There was no recognition of the infantilizing of prisoners that was so evident in the

women's prisons of my experience, albeit many years ago. The same might be true of the medicalizing of normality. The poignancy of the absent mother's plight and the influence of dysfunctional parenting were well demonstrated but not the presence, within the prison community, of the cruel or abusive mother. Prisoners' responses to her could be equally cruel often resulting from their own covert 'justice' system. And there was scant mention of staff. However these are slight criticisms set against a production of remarkable maturity from such a talented young team. A full house experienced a challenging evening and responded with fulsome enthusiasm.

York St John University continues to work with Clean Break and with Askham Grange and hopes, in due course, to extend their work into a closed prison. Sue McCormick would have been so pleased.[3]

Peter Quinn
Retired Prison Governor
(Governor, HMP Askham Grange 1989–1991).

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1.   Sykes, G.M. (1958) *The Society of Captives*, Princeton N.J., Princeton UP, 65–7.
2.   Mathiesen, T. (1974) *Politics of Abolition*, London, Martin Robertson, 77.
3.   Sue McCormick's obituary (27th October 2010) containing further details of her work with Clean Break is available on the *Guardian* website.

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The *Prison Service Journal* is a peer reviewed journal published by HM Prison Service of England and Wales. Its purpose is to promote discussion on issues related to the work of the Prison Service, the wider criminal justice system and associated fields. It aims to present reliable information and a range of views about these issues.

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