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EDITORIAL BOARD

EDITORIAL

This is the sixteenth volume of the **Scottish Journal of Criminal Justice Studies**. I am very honoured to take over Editorship of the **Journal** from Jason Ditton who has so ably edited the publication for so many years. In putting together this edition, my first as Editor, I have relied utterly on Jason's know-how and good-natured support, for which I extend my thanks. Jason will remain as a member of the Editorial Board.

In addition to the Chairman's Report for the year, this edition contains the text of the First SASO Memorial Lecture, entitled *European Penal Policy and National Penal Practices - Lessons for Scotland?* and given by Professor van zyl Smit at the 2009 Annual Conference, in memory of Lord Philip Caplan QC (1929-2008), SASO Honorary President and Life Patron. Also in this edition is the SASO 40th Anniversary prize winning student essay by Fiona Jamieson, a postgraduate student at Edinburgh University, entitled *Crime and Punishment in late 20th Century Scotland: Judicial Sensibilities* which I am sure many of you will find both interesting and instructive. There are also two other original articles. The first, by Dr Alistair Forsyth, Furzhana Kahn and Bill McKinlay reports on the findings of recent research undertaken with young men in HMP YOI Polmont into the perennially topical issue of 'booze and blades.' The second article, by Professor Mike Nellis, takes a more historical perspective, providing a fascinating account of the role of creative arts in the early days of the Barlinnie Special Unit.

In future volumes of the **Journal**, SASO hopes to continue to publish as articles those papers presented at Branch Meetings or Day Conferences that Branch Secretaries consider to be worth offering to a wider audience. Branch Secretaries are invited to send suitable articles (in Word or in .rtf format) by attaching them to an email to the Editor Original articles will also be considered for publication. I would particularly like to encourage contributions from practitioners, and those with substantial practice experience, which inform the realities of work in criminal justice. There is no copy deadline, but all articles must be with the Editor by the end of each May if they are to be considered for inclusion in that year's **Journal**. All original articles will be reviewed by two members of the **Editorial Board**.

Michele Burman

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European Penal Policy and National Penal Practices - Lessons for Scotland?[1]

By Professor Dirk van Zyl Smit, University of Nottingham

It is a great honour to be invited to give the *First SASO Memorial Lecture* in memory of Lord Philip Caplan QC (1929-2008), SASO Honorary President and Life Patron. I hope that the arguments that I will put forward will be in the tradition of the deep commitment to fundamental rights that characterised Lord Caplan's approach to his role as judge and to his leadership of this Society.

What I propose to do in this lecture is to outline briefly the emergence of a specifically European penal policy with strong underpinnings in human rights law – a policy that has been articulated by various organs of the Council of Europe that is of the large grouping of states in Eastern and Western Europe, except Belarus, but including Russia. Some key aspects of this policy, I will suggest, are being challenged by a different but potentially more powerful European practice at the level of the 27 states of the European Union, which increasingly are cooperating in criminal justice matters.

The question that I wish to pose is, how should the United Kingdom in general, and Scotland in particular, respond to these twin streams of development in European penal policy? It is given particular salience by recent developments, for the coming into force of the Treaty of Lisbon on 1 December 2009, which allows the United Kingdom to opt out of Justice and Home Affairs law, will change the room for manoeuvre degree that the United Kingdom authorities have in regard to some of these issues, at the European Union level at least.

Primary European penal policy has largely been developed by three key organs of the Council of Europe[2]: (1) the recommendations of the

1 This is revised version of *the First SASO Memorial Lecture*, in memory of Lord Philip Caplan QC (1929-2008), SASO Honorary President and Life Patron, at the 40th Anniversary SASO Conference, Peebles 14 November 2009. The text has been expanded and edited slightly, but the lecture form has been maintained.

2 These developments are explained more fully, with further references, in D van Zyl Smit and S Snacken, *Principles of European Prison Law and Policy: Penology and Human Rights* (Oxford: Oxford University Press) Ch 1.

Committee of Ministers of the Council of Europe, (2) in the case of prisons, the CPT, that is, to give it its full title, the Committee for the Prevention of Torture, set up to implement the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and (3) the European Court of Human Rights.

The early running was made by the Committee of Ministers of the Council of Europe, which from the early1960s onwards, adopted a series of penological recommendations. Most of these dealt with prison matters, the first being a Resolution on electoral, civil and social rights of prisoners adopted in 1962. It was followed by many detailed resolutions and recommendations, including the comprehensive European Standard Minimum Rules for the Treatment of Prisoners of 1973, subsequently reformulated as the Europeans Prison Rules in 1987. Recommendations on other areas followed too. Prominent amongst these were the excellent but much overlooked recommendation concerning Consistency in Sentencing, and the European Rules on Community Sanctions and Measures.

Until the end of the 1980s, however, this form of European penal policy making could be brushed aside, as the formulation of ideals with no binding legal or practical implications. That changed with the emergence of the CPT in 1989 with its treaty based obligation to prevent torture and inhuman or degrading treatment in places of detention. As many of you will know, the CPT visits places of detention of all kinds in European countries and produces reports on them. This is highly valuable in itself, as its reports, which are eventually published, are a source of information and suggestions for improvement, both to the countries concerned and to others who may read them. However, the CPT has gone further. In each of its annual reports it produces some substantive general comments on desirable practices in detention facilities, as well as descriptions of what it regards as totally unacceptable, that is, as inhuman or degrading. The CPT has not considered itself bound by the precise interpretations of these terms given by the European Court of Human Rights, and this has allowed it to develop its own standards. The word ‘develop’ is key. The findings of the CPT are based on practical observation and are also evolutionary, thus allowing for the gradual improvement of standards in places of imprisonment and growing insight into the best practice for achieving them. The substantive comments in the CPT’s Annual General Reports have been extracted by the CPT and published separately as *The CPT Standards*. Although this way of working means that the standards are not organised as a code and that they are therefore harder to apply systematically, they are a vital guide for anyone,

not only in Europe but throughout the world, who wants an insight into current best practice. *The CPT Standards* have certainly been of great value to reformers and require the close consideration of national policy makers.

The third factor has been the jurisprudence of the European Court of Human Rights. The European Court, together initially with the European Commission on Human Rights, is undoubtedly the world's premier tribunal giving binding interpretations of international human rights standards. Large numbers of detainees and prisoners of all kinds have long turned to it for assistance. Initially, however, its reactions to these requests were mixed. Access to lawyers and fair disciplinary procedures were areas in which the Court was prepared to recognise Convention rights. The impact of these decisions was felt in the United Kingdom in particular where it was a driving force for prison law reform from the mid 1970s onwards. As late as 2000, however, Steven Livingstone, a late and much lamented colleague from Northern Ireland, could still conclude, in his overview of prisoners' rights in the context of the European Convention on Human Rights, that procedural compliance with Convention standards had been more important to the Court than how prisoners were in fact treated. In his view, in areas such as the prison the Court in Strasbourg had done little more than legitimise the practice in most States conditions.

This has changed dramatically in recent years: In the evocatively named case of *Kalashnikov v. Russia* (ECHR (2003)) the Court recognised that overcrowding alone could create prison conditions that constituted inhuman and degrading treatment that contravened Article 3 of the European Convention on Human Rights.[3] Other Convention rights have also been applied in prison matters by the Court. The protection of family life in Article 8 of the Convention was used by the European Court of Human Rights in *Messina v. Italy* (ECHR (2000)) to find that a regime that greatly restricted visits and any meaningful contact during them could violate the Convention unless there were clear justifications for such restricts. In all, the Court is now squarely involved in deciding on substantive prisoners' rights. In its decisions it increasingly refers to both the existing European Prison Rules and the findings of the CPT. Like the CPT, its interpretations are being underpinned by what human rights lawyers call "evolving standards of decency".

3 Other conditions of imprisonment have also been found to contravene the provisions of the Convention: it is now recognised, for example, since the case of *Van der Ven v. The Netherlands* (ECHR (2003)), that the frequency and method of body searching can also amount to a violation of Article 3.

All Europeans are bound to take note of these evolving standards, in particular again the authors of penological recommendations and rules, and this is indeed what has happened. Since 2003 the Committee of Ministers has produced a major series of new recommendations which explicitly incorporate and in some instances develop further both the jurisprudence of the ECtHR and the standards and national reports of the CPT. The most important of these is undoubtedly the recommendation on the 2006 European Prison Rules which sets out afresh, with an explicitly human rights focus, the fundamental norms that should govern imprisonment in Europe. This Recommendation is bolstered by others: the 2003 recommendations on conditional release and on the management of life sentence and long term prisoners, the 2006 recommendation on the use of remand in custody and the 2008 recommendation on European Rules for juvenile offenders subject to sanctions or measures are further examples. There is, I understand, a further draft recommendation on new European Rules on Probation awaiting the signature of the Committee of Ministers.

What has also altered dramatically in recent years is the status of the Council of Europe recommendations and the reports of the CPT. Their status as soft law that can be ignored with impunity is changing, as the pronouncements of various organs of the Council of Europe tend increasingly to reinforce each other. The CPT reports derive considerable weight from the fact that they are made in terms of European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, to which all European States, West and East (except for Belarus) have acceded and which they are bound to uphold; but the Reports are increasingly also being recognized by the European Court of Human Rights as essential sources for determining whether the requirements of the European Convention on Human Rights as applied to prisons are being met. The extent of the recognition is highlighted by the fact that in exactly 200 cases, since the beginning of 2006 the ECtHR referred to the reports of the CPT.[4]

Similarly, the ECtHR increasingly is quoting and relying on the recommendations of the Council of Europe on prison matters. Thus, for example, the decision of the Grand Chamber of the ECtHR in *Ramirez Sanchez v France* handed down on 4 July 2006, less than six months after the new European Prison Rules were adopted, quoted no fewer than 44 individual provisions of the these Rules. Detailed attention has also been paid to the EPR in other recent major prison law decisions of the Grand

4 These figures are based on a search of the HUDOC website of the ECtHR.11 November 2009.

Chamber of the Court. Since 2006 the EPR have been cited with approval by the European Court of Human Rights in 29 different cases.[5]

Other recommendations of the Council of Europe have been treated equally fully. In *Léger v France* (2006) for example, the Court not only refers extensively to the 2006 European Prison Rules but also to two other major recent recommendations adopted in 2003, namely those on Conditional Release (Parole) and on the Management by Prison Administrations of Life Sentence and other Long-term Prisoners. It relied on the European Prison Rules and these recommendations for recognizing as legitimate a policy of progressive social reintegration of persons sentenced to imprisonment.

To summarise thus far: it is clear that the organs of the Council of Europe collectively have developed a coherent human rights based approach imprisonment. The overall effect of this process of mutual reinforcement is that the whole has become more than the sum of its parts. The legal status of recommendations may not have changed formally but their extensive application by the CPT, by the European Court of Human Rights and by some national courts has greatly increased the impact that they will have on the rapidly growing European case law as well as on the specific policies on imprisonment put forward by the CPT.

What do we know about the attitudes in the United Kingdom to these developments? I recently attempted an analysis of the response, in England and Wales, to three key recent decisions of the Grand Chamber of the ECtHR relating to prisoners' rights.[6] The three cases, *Hirst v United Kingdom* (2005), *Dickson v United Kingdom*(2007), and *Kafkaris v Cyprus* (2008) deal respectively with prisoners' right to vote, the right of prisoners and their spouses to have children and the right of those sentenced to life imprisonment to have some prospect of release.

What my analysis showed was that in all three cases the Grand Chamber of the European Court of Human Rights made major advances in recognising the rights of prisoners. In doing so the Grand Chamber often relied on the reports of the CPT and the Recommendations of the Committee of Ministers. Most importantly perhaps, it used them to develop general principles that should be applied to specific decisions made in the prison context. This

5 Ibid.

6 D van Zyl Smit and S Snacken "Shaping penal policy from above? The role of the Grand Chamber of the European Court of Human Rights" In A. Crawford (ed) *International and Comparative Criminal Justice and Urban Governance*. Cambridge: Cambridge University Press 2010 forthcoming). Fuller references to the section that follows can be found there.

approach is perhaps most clearly seen in the *Dickson* case where the Court identified the key objective of the implementation of the sentence of imprisonment as "re-socialisation through personal responsibility". The Grand Chamber described it as having developed "recently and more positively" out of an earlier, more restrictive notion of rehabilitation, as a result of the evolution of what it calls the "Council of Europe's legal instruments". With apparent approval it quoted, in considerable detail as the instruments that underpinned this development, the provisions of the 2006 European Rules and the other two 2003 recommendations, which in different words support this objective. Thus it noted that the new 2006 European Prison Rules provide in Rule 6:

> 'All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.'

And in Rule 102:

> '102.1 In addition to the rules that apply to all prisoners, the regime for sentenced prisoners shall be designed to enable them to lead a responsible and crime-free life.
>
> 102.2 Imprisonment is by the deprivation of liberty a punishment in itself and therefore the regime for sentenced prisoners shall not aggravate the suffering inherent in imprisonment.'

In respect of Rule 102 the Grand Chamber even quoted extensively and with approval from the official commentary to the European Prison Rules:

> '[Rule 102] states the objectives of the regime for prisoners in simple, positive terms. The emphasis is on measures and programmes for sentenced prisoners that will encourage and develop individual responsibility rather than focussing narrowly on the prevention of recidivism.

The principle of resocialization/ reintegration that the Court identified was applied to the somewhat unusual facts of the *Dickson* case. In brief, they involved an application by a prisoner serving a life sentence and his wife that the prison authorities should allow the prisoner to send his sperm out of prison to his wife so that she could be artificially inseminated. Unsupervised 'conjugal visits' are not allowed in the United Kingdom and the applicants had no other way of founding a family. The right to found a family is

recognised by Articles 8 and 12 of the European Convention on Human Rights. The case was made more pressing by the fact that the wife most probably would not have been able to have had children by the time the husband qualified for release. The English Prison Rules allowed for artificial insemination, but only in exceptional circumstances, and in this instance the authorities had refused to give permission for it. The Government of the United Kingdom had argued that loss of the right to procreate could be seen as an inevitable consequence of imprisonment and therefore claimed a virtually unfettered discretion to decide whether or not to grant permission. It relied on the leading English case on the subject, *Mellor*, in which loss of the right to procreate was regarded as an inevitable part of imprisonment that was designed to punish and deter.[7] In *Mellor* the English court had no objection to a policy that would allow the transmission of sperm only in 'exceptional circumstances'.

In contrast, the Grand Chamber in *Dickson* embarked on an analysis of the underlying approach to the implementation of imprisonment in European law. As in *Hirst,* the prisoners' vote case, it dismissed the argument that this was an area in which, because there was no consensus, states should be allowed a wide (structural) margin of appreciation, which would enable them not to allow artificial insemination at all, or if they did, to regulate it as they saw fit. However, the Grand Chamber went further. It emphasised the legal significance of the purpose of resocialization that it had identified in the basic European legal instruments. It then set about applying it to the substantive administrative decision by the United Kingdom authorities not to allow the artificial insemination requested by the Dicksons. The Grand Chamber combined the earlier jurisprudence on the rights of prisoners with the requirement that the authorities take into account the positive purpose of imprisonment that it had identified. In a key passage it set out the difference between its approach and that of the United Kingdom Government:

> 'The Government also appeared to maintain that the restriction [on artificial insemination], of itself, contributed to the overall punitive objective of imprisonment. However, and while accepting that punishment remains one of the aims of imprisonment, the Court would also underline the evolution in European penal policy towards the increasing relative importance of the rehabilitative aim of imprisonment, particularly towards the end of a long prison sentence.' (para. 75)

7 *R (Mellor) v Secretary of State for the Home Department* [2001] 3 WLR 533.

This difference of emphasis was crucial to the final outcome. The conclusion of the Grand Chamber was that the English Prison Rules, which allowed artificial insemination to be facilitated only in 'exceptional circumstances', did not allow adequate emphasis to be placed on the Convention-based right of individuals to found a family and thus to take their place as responsible members of the community. The structural balance was wrong because those administering the prison service had lost sight of the true purpose of the implementation of the prison sentence. This meant also that the Grand Chamber could dismiss the claim of the United Kingdom authorities that an unacceptable positive obligation to do something, that is, to convey sperm out of prison, was being placed on them, as a diversion from the primary issue of whether a fair balance was being struck.

Not all judgments of the European Court of Human Rights are as tightly argued as this one. In both the *Hirst* case, which recognises prisoners right to vote, and in *Kafkaris,* which says that life sentences from which in law and in fact the prisoner has no prospect of release would in infringe the European Convention on Human Rights, some unfortunate concession are made in the course of the majority judgments. In my analysis I show that these shortcomings have been used by both the courts and the government in the United Kingdom.

Of the three major cases that I have considered the decision in *Hirst* presents the largest challenge in terms of implementation. The majority judgment could be read as suggesting that the margin of appreciation that is allowed governments is dependent on their legislative processes rather than on an objective judgment by the Court on whether the restriction is reasonable in terms of the standards of the European Convention on Human Rights.[8] A better reading would be that the Grand Chamber expects the legislature of the United Kingdom to reconsider the ban on prisoners' right to vote in the light of 'modern penal policy and current human rights standards' as articulated in the European legal instruments and subsequently followed in *Dickson*.

Unfortunately the reaction of the Government of the United Kingdom has been to institute an extremely tardy consultation process. In the first round of its consultation the Government proceeded from the clear assumption that, since it continued to support the loss of the right to vote for sentenced prisoners as a form of additional punishment, it would wish to retain it to

8 See in this regard the concurring opinion of Judge Caflisch at O-I 2.

the extent that European law would allow it to do so.[9] In March 2008 the Government was called upon to explain to the Council of Ministers of the Council of Europe why it had not yet amended the law governing prisoners' right to vote. The Government affirmed that it still intended to do so but pointed immediately to the room for maneuver that the *Hirst* judgment had allowed it. It noted that:

> 'As the Grand Chamber emphasised at paragraph 82 of its judgment, the margin of appreciation afforded to member states in this regard, while not all-embracing, remains wide. The Government carefully notes too the observation at paragraph 82 of the judgment that in the Court's view there has not been a "substantive debate by members of the legislature on the continued justification in light of modern day penal policy and of current human rights standards for maintaining such a general restriction on the right of prisoners to vote".'[10]

The Government used these passages in the judgment to explain that it had combined its review of prisoners' right to vote with a much wider inquiry into citizenship in the United Kingdom, which could not be fitted into its original timetable for reforming the law relating to prisoners' voting rights. Finally, and after considerable pressure,[11] including a threat from prisoners to approach the courts,[12] in April 2009 the Government did issue a second consultation paper on prisoners' right to vote (Ministry of Justice 2009), quite independently of its wider inquiry into citizenship.[13] In practical terms this may be a further delaying tactic because it is unlikely that legislation enabling prisoners to vote will be passed before the next general election.

The most recent consultation paper is interesting nevertheless, for it recognises that the Government of the United Kingdom will have to concede the right of at least some prisoners to vote. However, the proposals on what should be included are very limited. It excludes the possibility of allowing

9 Department of Constitutional Affairs Voting rights of convicted prisoners detained within the United Kingdom - the UK Government's response to the Grand Chamber of the European Court of Human Rights judgment in the case of Hirst v. the United Kingdom [CP 29/06] 14 December 2006.

10 *Hirst v United Kingdom* (No 2): Note to Committee of Ministers for the Government of the United Kingdom: Written Ministerial Declaration of 2 February 2006.

11 'Prisoner rights group lodges formal complaint over voting ban' *The Guardian* 30 March 2009.

12 'Prisoners to be able to vote at next election' *Daily Telegraph* 29 March 2009.

13 Ministry of Justice (2009) *Voting rights of convicted prisoners detained within the United Kingdom*, Second stage consultation, Paper CP6/09, London: Ministry of Justice. The consultation period came to an end in 29 September 2009, but there has been no indication as yet when the government will act on it.

all prisoners to vote (which the majority of all respondents to the first consultation favoured) and also, with minor exceptions, the possibility of making the decision on withdrawing the right to vote primarily a judicial one to be taken at the stage of the imposition of sentence. Instead, respondents are invited to comment on whether sentenced prisoners serving sentences of less that one, two or four years should be allowed to vote.[14] For all options the Government reserved the right to exclude offenders convicted of certain classes of offences.

Even these very limited proposals met with considerable protest in the media. 'Rapists, paedophiles and burglars get the vote as Government prepares to lift prisoners' election ban' was the headline in the *Daily Mail*,[15] while the *Daily Express* commented in an editorial that 'our country is being imprisoned by Europe'.[16] Media support for the Government's specific proposals was largely absent,[17] with supporters of prisoners' right to vote continuing to argue that as a matter of principle all prisoners should have the right to vote.[18] Nevertheless, it is clear that the Government is trying to find a compromise between a principled recognition of prisoners' right to vote and the opposition to it expressed by the tabloids.

At this stage it is impossible to know for certain what the outcome of the consultation process will be, but the likelihood is that the Government will adopt one of the more restricted versions of its proposals, allowing only prisoners serving less than one or two years to vote. If that happens, the stage will be set for a further case before the ECtHR. The Government of the United Kingdom is likely to argue that it has met the requirement of a legislative debate on the issue. Whether it will be able to justify its substantive decision is doubtful. It should be noted that in the *Sauvé* case,[19] on which the ECtHR in *Hirst* relied heavily, the Supreme Court of Canada set aside as an unconstitutional limit on the franchise a blanket ban on voting by sentenced prisoners serving more than two years. Its decision was based

14 There is also a complicated fourth option that would restrict the right to vote to prisoners serving more than two years, but allow those serving between two and four years to have their right to vote restored.

15 J. Slack, 'Rapists, paedophiles and burglars get the vote as Government prepares to lift prisoners' election ban', *Daily Mail* 9 April 2009.

16 'Prisoners should not be given the vote by Europe' *Daily Express* 9 April 2009.

17 See, however M**.** White, 'Should prisoners get the vote?' *Guardian Blog* 9 April 2009.

18 Prison Reform Trust **'**PRT responds to Publication of Government's Second Consultation on Prisoners' Votes', 8 April 2009. Available at: http://www.prisonreformtrust.org.uk/standard.asp?id=1736 **.** Justice **'**Voting Rights of Convicted Prisoners Detained within the United Kingdom' JUSTICE Response to Consultation CP6/09 September 2009.

19 *Sauvé v. Canada (Chief Electoral Officer)* 2002 SCC 68.

on the notion that such a ban was arbitrary and did not serve a legitimate purpose. In the view of the Canadian Court additionally punishing some prisoners because of their status was unacceptable and withdrawing the right to vote was not a rational means for resocialising them. If the ECtHR follows this line of reasoning, the proposed reforms will not meet European standards concerning the issue of prisoners' right to vote.

The *Kafkaris* case is somewhat different to that of *Hirst*, because it did not originate in the United Kingdom but in Cyprus. Nevertheless, English prisoners have sought to rely on it in attempts to overturn whole life sentences, that is, life sentences for which no minimum period or tariff is set. In this instance it has been the courts rather than executive that has sought to interpret the Strasbourg jurisprudence as narrowly as possible. Most prominent of these has been the case of David Bieber, who was sentenced to life imprisonment without a minimum period for the brutal killing of a policeman.[20] On appeal, his counsel argued vigorously that, in the light of the decision in *Kafkaris,* his whole life sentence should be overturned. In the end it was overturned by the Court of Appeal and replaced with life imprisonment with a minimum period of 37 years. Nevertheless, the Lord Chief Justice, Lord Phillips, who gave the judgment of the Court of Appeal, went out of his way to analyse the European jurisprudence and the *Kafkaris* case in particular. He sought to demonstrate that a close reading of the judgment of the majority in that case indicated it did **not** prevent a court from imposing an 'irreducible sentence'; it meant only that unjustifiably long detention of a lifer could possibly infringe Article 3.

In my view this distinction is without merit. If the sentence is 'irreducible' as a matter of law when it is imposed, then it cannot logically be reduced at a future date without an amendment to the law. At the time of imposition there is therefore no prospect of *de jure* or *de facto* release and the sentence can be held to create a situation in which the requirements of the ECHR cannot be met. The logic must be that the imposition of a whole life sentence only meets the minimal criteria set by *Kafkaris* if it is clear as a matter of law and practice that it is reducible in the future. Lord Philips makes allowance for this conclusion, remarking that 'there seems to be a tide in Europe that is setting against the imposition of very long terms of imprisonment that are irreducible' (para. 46). Nevertheless, he chooses to ignore it and holds

20 *R v Bieber* [2008] ECWA Crim 1601. See also the decision of the House of Lords in the case of *Wellington,* in which the applicant made an unsuccessful attempt was made to rely on *Kafkaris* in order to prevent extradition to the United States of America, where he faced a whole life sentence with very limited, if any, prospect of release (*R (on the application of Wellington) v Secretary of State for the Home Department* [2008] UKHL 72).

that the unfettered and very rarely used discretion that a Minister of State retains to 'release a life prisoner on licence if he is satisfied that exceptional circumstances exist which justify the prisoner's release on compassionate grounds'[21] is sufficient to meet the requirements of *Kafkaris*.

Two things are striking about this analysis. The first is that it was unnecessary to undertake it. Bieber's case was decided on other grounds and it is therefore simply a diversion, an *obiter dictum* in lawyers' terms. Secondly, the explanation, that reliance was not being placed on European human rights law, did not mollify critics of the decision in the slightest. A large number of newspapers, not only tabloids but also the provincial press, condemned the judgment because of the recognition it gave to the human rights of the offender and linked this 'softness' to the European Convention on Human Rights.[22] The negative reporting of the case was further fuelled by a notably intemperate statement by the Chairman of the Police Federation who commented that the 'decision to surrender to the appeal of the cold-blooded murderer' left the 'judiciary with blood on its hands';[23] this not withstanding the fact that Bieber will serve at least 37 years and not even be considered for release before he turns 80. The same statement condemned the fact that the appeal was initially lodged on the grounds that the offender's human rights had been contravened by the whole life sentence as 'ludicrous'. An earlier statement[24] by the mother of the deceased policeman, that offenders should not be allowed to invoke the Human Rights Act in such cases, was widely reported again.

The overall effect of *Bieber's* case and others like it has been to discredit the impact of the ECHR in the area of whole life sentences without even applying it. If the jurisprudence of the Grand Chamber develops to outlaw whole life sentences more clearly and to require a proper procedure for the consideration of the release of all lifers, it would mean that, if a case such as that of Myra Hindley were to reach the ECtHR in the future, her whole life sentence would be struck down and procedures for considering the release of such prisoners would have to be developed. Stoked by the tabloids, that would be even more controversial, and the reluctance of the English courts to adopt more progressive interpretations of the ECHR, when they had the

21 S 30 of the Crimes (Sentences) Act 1997.

22 See, for example, 'Police killer Bieber gets term cut' *The Mirror,* 4 August 2008, p. 21; 'Judges who prove the law is an ass' *Liverpool Daily Echo,* 7 August 2008, p. 10; 'Travesty of Justice' *The Mirror,* 4 August 2008, p. 8.

23 'Police rage as judges cut life jail term for PC's killer' *Daily Mail* (London), 4 August 2008, p. 8.

24 'Mother of murdered police officer Ian Broadhurst in plea for justice' *Daily Telegraph* 19 May 2008.

opportunity to do so, would simply increase the concern that human rights were being imposed directly from 'Europe'.

Thus far I have been dealing with criticisms of penal policies derived from human rights approaches developed in the Council of Europe, but what of the day to day penal practice and it relationship to European institutions? In this regard I am reminded of the words the Scots-South African poet Roy Campbell addressed to his critics: "They use the snaffle and the curb all right but where's the bloody horse." [25]

If the human rights instruments of the Council of Europe provide the snaffle and the curb in this instance, the bloody horse I would suggest is stabled in the European Union, which has become increasingly active in adopting "Framework directives" that will impact directly on domestic penal practices. This has been particularly noticeable in the last couple of years. In what has been called in a rather splendid mixed metaphor, "the third wave of third pillar law",[26] the ideal of mutual recognition in criminal justice matters, embodied in the area of freedom, security and justice and exemplified by the European Arrest Warrant, has been extended by further binding framework directives on the mutual recognition of probation decisions and the transfer of sentenced prisoners between European Union countries. These Framework directives, enthusiastically endorsed by the government of the United Kingdom, will come into force in 2011.

Why do they matter so much? First, because they are a further indication that the European Union will increasingly become involved in practical criminal justice matters. Secondly, because they are driven in part at least by concerns other than human rights. This is best illustrated by the framework directive on the transfer of sentenced prisoners.[27] International transfer of sentenced prisoners has up to now largely been undertaken as a humanitarian procedure to allow prisoners to serve their sentences in the own countries and thus to improve the chance that they will be 'rehabilitated'. A convention sponsored by the Council of Europe, to which the United Kingdom is a party, has for many years provided such a framework. The new EU framework directive

25 Roy Campbell 'On Some South African Novelists' in S Finn and R Gray (eds) *Broken Strings: the Politics of Poetry in South Africa (*Cape Town: Maskew Miller/Longman, 1992) p.19.

26 Valsamis Mitsilegas 'The third wave of third pillar law. Which direction for EU criminal justice? (2009) 34 *European Law Review* 523.

27 For a fuller discussion with additional references, see J Spencer and D van Zyl Smit, "The European dimension to the release of sentenced prisoners" in N Padfield, D van Zyl Smit and F Dünkel (eds)). *Release from Prison: European policy and practice* (Uffculme: Willan, 2009 forthcoming).

also refers to its 'social rehabilitation' objective. However, what is different about it is that prisoners can be transferred against their will. I suspect it is this aspect that enthuses the United Kingdom government, which, like the official opposition party, is not normally an enthusiastic supporter of ever closer European integration. It sees the prospect of the many foreigners in its prisons being sent 'home' and it getting far fewer of its own nationals in return. This is not necessarily a bad thing, but one may have expected slightly more concern about the human rights aspect of what may be done.

Attitudes in at least some influential parts of the Scottish establishment may be different. In this regard I take comfort from two decisions of the Scots courts. In *Smith v Scott* the Registration Appeal Court, in a joint decision of Lords Abernethy, Nimmo Smith and Emslie, firmly condemned the delay in implementing the decision of the European Court of Human Rights in *Hirst* and issued an order that the current law excluding sentenced prisoners from voting was incompatible with the Human Rights Act.[28] Famously, in *Napier v Scottish Ministers*[29] Lord Bonomy held that practice of slopping out was incompatible with Articles 3 and 8 of the ECHR, that is, that it was degrading and denied the prisoner the most basic form of privacy, and awarded compensation to the prisoner concerned. What is impressive about the *Napier* judgment is not only the outcome but the style of reasoning. As in the best judgments of the European Court of Human Rights, in assessing what could be regarded as degrading it relied on the findings the CPT and the European Prison Rules as well as on precedents from the Europe Court of Human Rights. There is something to build on here in developing a Scots jurisprudence of prisoners' rights that recognises the best of European policies in this respect.

I also take comfort from the fact that the appropriately named Convention Rights (Compliance) (Scotland) Act 2001 amended the law in Scotland to ensure that a minimum period would be set in all cases in which a life sentence is imposed. This went a long way to avoiding the problems of whole life sentences that were addressed by the European Court of Humana Rights in *Kafkaris*. [30]

28 *Smith v. Scott* [2007] CSIH 9 XA33/04 §§ 50-58.

29 *Napier v. Scottish Ministers* [2004] SLT 555.

30 However, the legislation does explicitly allow the imposition of a minimum period that is likely to exceed the remainder of the prisoner's natural life, thus making it possible that a whole life sentence may be imposed indirectly by removing a realistic prospect of release during the prisoner's life time.

I am not suggesting that Scots are of one mind on these issues. It would be fair to mention that here too the popular press has been less than enthusiastic about these two judgments. To pick one example amongst many: in November last year the Daily Record ran an Exclusive: with the headline "Jailbird uses slopping out compensation to set up heroin business".[31] Not much sympathy here for a man who had been treated degradingly by the state. However, my, admittedly subjective, impression is that the Scottish prison authorities are significantly more sympathetic to European penal policy than their English counterparts. Their enthusiastic participation in meetings of European Directors of Prisons Services, the most recent of which was held in Edinburgh in September this year, is noteworthy. It is also shows foresight: for it is clear that European 'soft law' of today may well become binding tomorrow, with unfortunate financial and other consequences for those who fail to spot the trend.

My advice would be to continue this participation at both the Council of Europe and European Union levels, and to seek to apply the human rights standards developed by the former to the interventions of the latter. More progressive EU member states are already beginning to look, for example, at whether substantive prison standards developed by the Council of Europe can be applied at the European Union level to ensure that, where prisoners are transferred, they will go to prisons which meet such standards. In this light one should view with some concern the way in which the United Kingdom government has approached the Treaty of Lisbon, and the pronouncements of the official opposition with even more concern. The United Kingdom government has negotiated certain key opt outs. It has opted out of the justice and home affairs part of the Treaty, which, as I understand it, means they are bound by existing framework decisions but may not be by future improvements to them. More worryingly, they have opted out of allowing the European Court of Justice, which eventually will have jurisdiction over justice and home affairs questions, to apply the Charter of Fundamental Rights to matters involving the United Kingdom in this area. What this will mean in practice is not yet clear, but there is at least a danger that we will end up with the worst of both worlds; being bound by those parts of the new arrangement that restrict fundamental human rights in the penological sphere but lacking the ability to challenge them.

31 James Moncur 'Jailbird uses slopping out compensation to set up heroin business' *Daly Record* 12 November 2008.

Of course, it need not be like that. I am much encouraged by the many members of this audience, both practitioners and fellow academics, who engage actively in these European penological debates from an enlightened Scottish perspective. I hope you will continue to do so in the humanitarian tradition of penal policy that this Association has done so much to promote.

Crime and Punishment in late 20th Century Scotland: Judicial Sensibilities

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Introduction

This paper is concerned with judicial narratives of a personal kind; the 'stories, words and talk' (Cohen, 1983) of conversation with judges about crime, punishment and the experience of judging. Judicial narratives of other kinds abound, particularly the cultural and societal sort - our repertoire of stories about judges - but the life world of the judge has drawn remarkably little attention from public and academic commentators alike.

The canons of judicial independence and impartiality inhibit judges from engaging in much public discussion, judicial authority in the UK deriving in large part from public perceptions of 'political neutrality, experience and wisdom' (Hutton, 2006: 65). Moreover, some aspects of the criminal justice process conspire to limit the range of judicial discourse available for evaluation; little media engagement, and the formalities of a trial process which tend to produce penal discourse of a 'routinised and jaded quality'(Girling, *et al*., 2004). Under these conditions, it is unsurprising that researchers tend to limit their focus to that which is more tangible in penological terms (Garland, 1990: 256).

The steep rise in the prison population of the last two decades has arguably given renewed impetus to the need to explore judicial sensibilities; yet the response to this grave penal crisis has been the generation of a body of research which has exhaustively explored *public* attitudes to crime and punishment but largely omitted to examine the central role of human agency in the form of judges. A narrowed frame of reference is the result. What do we know about the personal demands and challenges of the business of judging? And is the judicial habitus[1] quite as unthinking and unreflective as commonly presumed? The limited view we have of the judicial world may serve to reassure that this fundamental task continues to be quietly

1 The term habitus refers to a set of acquired attitudes, dispositions or outlook.

accomplished on our behalf; but significantly, with our own sensibilities about the nature of punishment today still intact.

*I gratefully acknowledge the participation of all retired sheriffs in this research project of 2008. I would also like to thank Professor Richard Sparks and Dr Anna Souhami for their advice and support in the course of this project.

Narrative research and the judiciary

This paper draws on a narrative research project carried out in 2008 which explored judicial sensibilities through a series of individual conversations with retired Scottish Sheriffs.[2] I provide here an overview of some reflections on aspects of judicial lives and careers: early influences, demands and challenges, and on the development of the criminal justice system in late twentieth century Scotland.

Narratives can be regarded as the product of interviews broadly conceived as discourse between speakers, where what is being elicited is 'first-person accounts by respondents of their experience' (Riessman, 1993: 1).The value of these accounts is the focus on 'human subjectivity and creativity, on the way in which individuals respond to constraints and experiences'(Plummer, 2001: 3). When employed in these contexts, narrative accounts can provide some sense of what Riessman calls 'culture speaking through an individual's story' (1993: 4) and allow the often neglected social and historical context to be explored (Riessman, 2004).

Criminal Justice in Scotland: The Long View

Reflections on the development of the criminal justice system from the vantage point of retirement produced no Whiggish accounts of steady progress towards enlightenment. Rather, informed by some historical perspective, the picture which emerged was of halting and uneven evolution.

For these sheriffs, all practitioners of criminal law in Scotland before the abolition of the death penalty in 1965, capital punishment represented the

2 The judicial post of Sheriff is held by 140 practicing solicitors and advocates. When dealing with summary criminal business, Sheriffs sit alone and have within their disposal sentencing powers of up to 12 months imprisonment and fines of up to £10, 000. They may additionally impose compensation in respect of alarm and distress, injury and financial loss. When hearing solemn (indictment) cases, the Sheriff sits with a jury and can impose a custodial sentence of up to five years.

very nadir of the criminal justice system. Several described having become preoccupied with reading and worrying about notorious miscarriages of justice of that era. For one, whose forebear had defended an individual wrongly convicted and sentenced to death, the effect was profound. He recalled being told of the effect of the case on the trial judge who, having sentenced the man to death, returned home, retreated to his study, and did not emerge for two weeks. This insight made the business of defending others accused of murder 'all the more anxious' when he came to the task himself. He became, he thought, an 'over-keen defender', and as a judge, a 'weak' sentencer and more aware than some of the importance of 'reasonable doubt'.

Female judges

From this low watermark, where law was played out upon 'a field of pain and death' (Cover, 1975), the appointment of female judges was a welcome development.[3] In the account of one of the early female sheriffs, the real challenge came not from external pressures but from a feeling of conspicuousness and an internalized lack of confidence:

> My male colleagues were fine. I suppose we [the women judges] felt it, that if you made a mistake, or were worried, that it would be noted more than if the same thing had been done by a man.

What is the relevance of gender to judging? This growing area of research reflects the wider debate in feminism as to whether women speak with a distinct voice in this or any other sphere.[4] The idea that women judges could – or should - administer justice differently from men raises a number of empirical and normative questions such as how 'difference' is defined or measured, whether there is a unique feminist (or feminine) perspective shared by all women judges (Martin, 1993) or whether this is 'gender essentialism' at work (Farber and Sherry, 1993). Certainly, in the view of another sheriff, the relevance of gender was limited:

> It probably depends on the *personality* of the female. I think that's more important because you get all sorts of people with different experiences. You have to be impartial as with everyone else. I

3 Of the 140 current Shrieval appointments, 26 (19%) are female. There are 34 High Court judges, of whom (12%) are female. Women presently constitute 36% of the legal profession in Scotland.

4 See Farber and Sherry 1993; Berne 1999; Rackley 2006.

> don't think it's really a matter of men or women, it's just individual personalities.

This insistence on individualism, on a view of woman as 'a category of person whose difference from men is best confronted by minimising that difference' (Evans, 1998: 133) is out of step with much contemporary feminist thought. It is, however, congruent with the individualism of formal legal reasoning and canons of equality and fairness before the law. As it stands, the weight of evidence appears *not* to support either the idea that women speak with a distinct voice generally in the moral sphere or that the decision-making of women judges differs significantly from men (Davis. *et al*., 1993; Farber and Sherry, 1993). The appointment of female judges may therefore simply affirm basic principles of equity and legitimacy, without which the judiciary may lose public confidence (Malleson, 2003).

And for one sheriff, the most dramatic change in the criminal justice system over the course of her career was not only the appointment of female judges ('I've stopped counting now') but the appearance of women in every area of criminal justice work to the point where it seemed almost unremarkable.

Juvenile Justice

As one of the first appointments of the new Children's Hearings System in 1970, one of the sheriffs had a lengthy career as Reporter to the Children's Panel before serving as a Sheriff. His experience of the juvenile courts in Edinburgh in the 1960s left him in no doubt of the need for a new system of juvenile justice. He recalled the operation of the juvenile courts during the vacation court in the summer months:

> The kids arrived in droves and their mothers came. They were all lined up on a seat and all their mates came as well and games of football took place in the foyer. And then they would be dragged in one by one or sometimes you'd get five of them altogether, and they'd be sitting there, some of them only eight years old.

The new Children's Hearings System was, for him, not just a more humane way of dealing with children; it involved parents and required them to be accountable for their children:

> This [achievement] was summed up for me by one of the few fathers who ever used to go to the old juvenile court. He came to me one

> night after one of the new Children's Hearings and said 'I dinnae haud wi' these hearings of yours, Mr X, I preferred the Court'. I said to him 'Well, what was good about the Court, for goodness sake?' 'Ach' he said, with this kind of nostalgic look, 'You mind what it was like. You went in, you gave your spiel and you got done. I cannae stand all they f…..g' questions I keep being asked in here'. I took that to be the greatest accolade that the Hearing System could have; that even at his own advanced stage of criminality, he was finding it uncomfortable to be challenged about parental responsibilities.

For this sheriff, there was particular pathos in later encountering in the courts some of those he had known in his earlier career as children in need of care and protection.

Independence, legitimacy and public opinion

The politicisation of criminal justice which had occurred in the course of these judicial careers generated some trenchant responses, reflecting the tensions between the due process model of justice with its emphasis on the rights of the accused and the new penal politics which sought to elevate the place of the victim and invoke public opinion in support of punitive measures. One expressed his unease about the volatility of the system:

> I think there's too much knee-jerk reaction. There's so many pressure groups and so many individual crusades, which cause changes in the law, when they're very often not necessary and sometimes they're counterproductive: ASBOs for example. There's this idea that democracy means everybody getting what they want but it isn't really that. Democracy is having the right to dismiss your government if you don't like what they've done and I think they should be left to get on with it much more than they are and not pay so much attention to pressure groups.

The question of public opinion and its influence on sentencing brought into sharp focus the interplay of theory – judicial independence - and practice. For one, public opinion was 'too nebulous' a concept to be of any value and there was the difficulty of distinguishing the concerns of the general public from those of the press. There was much criticism of the role of the press and politicians in ratcheting up public opinion on matters of criminal justice in the interests of short term populism. One commented: 'That's what politicians do, that's how they work, they impute feelings or beliefs to

the public in support of something *they* want to do'. The dilemma for the judiciary was encapsulated by the same sheriff when he recalled the advice of a colleague: 'You can't pay too much attention to public opinion; but you can't move too far away from it'. Here was a sense that, insofar as the law requires the broad consensus of the populace, these judges saw themselves as acting *in* the public interest but not according to the *dictates* of public opinion.

The widespread belief that the rise in the prison population is caused by a more punitive climate of opinion necessarily entails the corollary (since the public do not themselves sentence) that the judiciary has adopted these new mores. To the extent that judges must embody and reflect at least some of society's values, is this simply democracy at work? Or is it an example of the rhetoric of criminal justice being 'routinely subverted in practice by its practitioners' (McBarnet, 1981: 167), judicial independence providing little resilience to populist forces?

One sheriff had 'no doubt at all' that judges sometimes responded to expressions of public disquiet and did not consider this to be antithetical to judicial independence: for him, this was a question of legitimacy. By contrast, several were insistent that neither public opinion nor politicians influenced their sentencing, one dismissing political talk as 'nonsense' and 'persiflage' which had 'no bearing at all' on his sentencing. Another rejected the 'democracy at work' thesis:

> If you believe in democracy, you should be doing what the people want, but should you in a court? You should as a politician but I am sternly of the view that you shouldn't be doing that in a court. You've got to stand by your own judgement and try and do the best thing that's available, whatever that is.

It is not possible to submit these claims of immunity (to political pressure) to empirical test, and the often oblique relationship between what people say about criminal justice, and what they do, is well made by Cohen (1983, 1985) and others. Moreover, the malleability of the concept of judicial independence may well allow the law to contain some of its internal contradictions – the gap between theory and practice – without making its actors 'prisoners of their own rhetoric' (McBarnet, 1981). However, the professional imperative of independence appeared here to be very purposively adopted as part of judicial identity, and its operation as an important source of resilience should not be discounted.

Sentencing: challenges and demands

Criminology has done much to inform, and thereby render more realistic, our expectations of penal policy and practice. Few would quarrel now with the conclusion of Garland and others that 'no method of punishment has ever achieved high rates of reform or of crime control – and no method ever will' (1990: 288). But where does this somewhat bleak summation leave the 'professional punishers' (Garland, *ibid.*) whose routine undertaking it was to administer punishment on the state's behalf?

When asked about the personal challenges of being a judge, each sheriff readily identified sentencing as the most difficult area of work. And if confirmation was needed of Hutton's observation that sentencing is an intuitive practice, usually justified *ex post facto* (2006), and that most judges employ an 'interpretive schema' and an ordered method (Hogarth, 1971; Tata, 2007), much was to be found in the accounts given here.

One sheriff, for example, declared that not only did he have 'no philosophy [of sentencing] at all' but that it was 'delusional' to think any judge did. Another, by contrast, was very focused on the offender who 'has almost always had some deprivation, something that's happened to them in the past, such as abuse, or they got in with the wrong people or they're on drugs […….] there's a myriad of things, and you can see how that's happened'. His understanding of the propensity to commit crime was influenced by a sense of Merton's anomie, and his sentencing was heavily reliant on intuition.

Yet another asserted strongly that he *did* impose sentences with principles in mind, and drew a distinction between serious cases, where he sentenced 'for the crime' (to protect the public or as an exemplary sentence) and the majority of cases where he sentenced 'for the criminal', allowing him more scope for 'creativity'. His primary sentencing purpose was to rehabilitate the offender.

The eclectic nature of these accounts defies easy categorisation, displaying the 'loose amalgam' qualities of professional penal culture described by Garland (1990: 210). Elements of both individualist and structuralist accounts of criminal behaviour were evident, despite their seeming incompatibility, as was a fluid use of both 'distancing' and 'affiliating' concepts (Girling, *et al.*, 2004:72) even though it might be assumed that the quintessential element of a judge's role in sentencing required more of the former than the latter.

The reluctant signifiers

As Garland (1990 :275) observes, the diversity of penal discourse - its 'utilization of different idioms, and its tendency to project contradictory and ambivalent messages' - appeals to a wide range of penal audiences in a pluralist society. But on the face of it, this is difficult to reconcile with a reading of sentencing as a 'signifying practice of some importance' (*ibid*. 256), communicating and generating penal sensibilities. From the maelstrom of penal values expressed above, is there a discrete set of sensibilities beyond the most general?

For the most part, these sheriffs were reluctant signifiers. One exception believed there to be a greater onus on judges today, if judgements are to be accepted by the public, to give 'some sort of rationale or explanation for a sentence'. He thought the role of the press in allowing justice to be seen to be done was vital, and purposively used them to 'get a message' across, particularly regarding racial offences, domestic violence or child pornography. Another expressed a strong antipathy:

> 'I accepted there had to be an explanation but tried to keep this short and clear as possible. I hated the pontificating, the moral bit. It just seemed almost hysterical. I never said very much because the guy's just wanting to hear what it is [the sentence]. He's not wanting to hear a whole lot of rigmarole.

Yet another presented his disinclination to extemporise as a matter of personal preference:

> I'm not that way inclined myself and I'm not very good at speaking *extempore*. I liked to have it all written down.

However, disparaging remarks about an English judge who 'just couldn't keep his mouth shut' and about a colleague who always added 'that extra bit of silliness' when sentencing, suggested a deeper aversion to the communication of penal messages. Or perhaps it reflected a shared ambivalence, in a more pluralist society, about *which* of those diverse message to express?

The sentence of imprisonment

That sentencing is experienced as a solitary burden became evident

from these conversations, and it is a dimension of judicial work which sociological accounts of sentencing as a social practice (Hutton, 2006)[5] or as a collaborative process (Tata, 2007), arguably fail to capture. All sheriffs strove to convey the isolation of the task even when working in larger courts where there were colleagues to consult about a difficult decision.

The decision to impose a custodial sentence was made in the sure knowledge of its 'peculiarly unsettling and dismaying aspect' (Garland, 1990: 1) and all those interviewed spoke of their awareness of the profound effect that imprisonment had not only on the lives of the offenders but on their families. For one, sending an offender to prison for the first time was:

> ….the hardest decision you had to make in the Sheriff Court. You were so aware of the consequences, the hurt you're imposing, especially if everything was going to be lost. And if you were in any doubt, you wouldn't send them to prison.

In their study of Scottish judges' decisions to imprison in borderline cases, Tombs and Jagger (2006) identified 'role distancing' as one of a number of 'strategies' employed by sentencers to normalize and justify their decisions. Drawing on Cohen's (2001) use of cultural vocabularies of denial (such as those used by perpetrators of political atrocities), they argue that these strategies are employed in a way which allows them to 'deny final responsibility for their own decisions' (2006: 809).[6] In this way, those elements of judges' sentencing discourses which emphasise the 'other' nature of offenders, and which rationalise as 'professionally meritorious' the need to keep some psychological distance from the offender, serve to facilitate this denial of responsibility for decisions accepted as damaging.

However, exploring this issue from an ontological perspective suggests a different interpretation (for these sheriffs at least), one which indicates not so much the use of distancing strategies to *deny* responsibility, but to help them cope with their *assumption* of it. One recalled the difficulty of the task:

5 The rush to describe sentencing as a *social* process or practice seems sometimes to be employing 'social' as antonym of 'legal', rather than, as these bodies of work in fact do, illuminating the important social meanings and effects of this legal process.

6 The scope of this paper does not permit a detailed examination of all these categories, but it is relevant to consider whether, by encompassing the range of commonly expressed sentencing rationales within Cohen's typology of 'states of denial' is to forget Cohen's own earlier caution that although ideas often serve purposes other than those stated, they must still be seen as 'lived through solutions to certain moral demands' (1983:109). Or as Garland (1990:247) puts it: 'We ought never to dismiss evidence of sensibilities as 'mere ideology'.

> I had to steel myself. I remember having to say to myself, 'don't chicken out now [own name], you've decided it had to be done'. And I was determined not to do what a sheriff before whom I used to appear did, who never looked at the accused when sentencing to custody. But I had to steel myself to do it.

Another spoke of sentencing in serious cases where it was evident from the outset that it was 'just a question of how long':

> I found it difficult imposing a custodial sentence, and perhaps that's a sign of weakness in a way, for a Sheriff to say that. But I just found it difficult, so I was always glad if I could find an alternative.

There was further discussion about ways of managing that tension, such as going off the bench 'just to get away from all the faces looking at me, just to have a minute or two in chambers'. One sheriff recounted the recent case of a High Court judge who, in a distressing case, announced he was unable to sentence that day and would be adjourning overnight in order to think about it more dispassionately. Evincing sympathy for this position, the sheriff recalled a trial in which a man had been convicted of historic sexual abuse:

> It was one of these very fraught trials and the jury was upset, you know, you could feel the tension, and of course, they convicted him. The witnesses were just so credible, they couldn't possibly not believe them. So, there was no question. I remember I imposed a custodial sentence and this elderly man went shuffling away downstairs [to the cells]. [……] I think it was the atmosphere of the whole thing…..it was just awful. [……..] I went off the bench and burst into tears. [……] But I would never have shown any of that in court. The thing to do is just to compose yourself and be professional.

The Sheriff went on to recount a visit to HMP Barlinnie:

> We were standing in a group, looking up, and on the balcony there was a kind of wee pathetic crocodile of men just shuffling around. We were told they were sex offenders being kept apart from other prisoners. This was their exercise, on one of the balconies, and I recognised this young man I had recently convicted. And I thought, well, that's what I've done. That really brought it home, actually seeing him there. But anyway, you've got to know that's going to happen.

According to the 'denial of responsibility' typology, the rationale for the sentence – 'there was no question' – with its implied lack of an alternative, is an exemplar of the thesis. However, the sheriff's account of seeing the man in prison stands in strong contradiction; the apparently unambiguous 'that's what I've done' suggests not denial but admission of responsibility. It was also congruent with other ways in which these sheriffs expressed themselves - the 'affiliating' talk and the acute sense of personal individual responsibility – which appears here to have served the function of enabling rather than constraining.

Conclusion

An understanding of the rhetorical function of socio-legal discourse underpins much scholarship in the criminal justice field, and what judges have to say is therefore easily corralled into a hegemonic box, along with the judicial habitus which can be seen, in functional terms, as an essentially conservative and constraining force. However, if we are to take seriously the implications of the insight that a judicial sentence communicates ideas about 'authority, personhood and community' and which, by its routine invocation, is constitutive of those forms of social and cultural relations (Garland, 1990: 265) then we should be attentive to what sentencers themselves say about these values and to their experience as actors in the penal field.

By neglecting these sensibilities, could judges and their audiences be complicit in the way in which punishment is today presented to 'minimize and make more tolerable the conflict between our civilized sensibilities and the brutal routines of punishment' (Garland, 1990: 243)? This study suggests we would all be the wiser for greater transparency as to the dismaying effects of punishment on those who punish. In this respect, even in retirement, judges are key actors, not impartial spectators.

References

Berne, S. (1999), '*To Speak as a Judge: Difference, Voice and Power'*, Aldershot: Ashgate

Cohen, S. (1983), 'Social Control Talk', in *Power to Punish*, Garland, D and P.Young (eds) Aldershot: Gower

Cohen, S. (1985), *Visions of Social Control*. Cambridge: Polity

Cohen, S. (2001), *States of Denial: Knowing about Atrocities and Suffering* Cambridge: Polity Press

Cover, R. (1975), *Justice Accused: Antislavery and the Judicial Process* New Haven, Conn: Yale University Press

Davies, S. Haire S., Songer.D (1993) 'Voting Behaviour and Gender in the US Court of Appeals', Judicature; 77;3;129

Evans, M. (1998), 'Simone de Beauvoir' in R. Stones (ed) *Key Sociological Thinkers*, Basingstoke: Palgrave
Farber, D.A and S. Sherry (1993), 'Telling Stories out of School: An Essay on Legal Narratives', *Stanford Law Review*, 45; 4; 807-855
Garland, D. (1990), *Punishment and Modern Society,* Oxford: Oxford University Press
Girling, E, M. Smith and R. Sparks, (2004), 'The Trial and Its Alternatives as Speech Situations' in Duff, A., Farmer, L, Marshall, S and Tadros, V (eds) (2004) *The Trial on Trial*, Vol 1, Oxford: Hart
Hogarth, J. (1971) *Sentencing as a Human Process*. Toronto: University of Toronto Press
Hutton, N. (2006), 'Sentencing as a Social Practice', in S.Armstrong and McAra, L, (eds), *Perspectives on Punishment,* Oxford: Oxford University Press
McBarnet, D. (1981),'*Conviction'*, London: MacMillan
Malleson, K. (2003) 'Old Wounds?' *Michigan Law Review*; 87; 8;2099-2127
Mishler, E.G. (1999) *Storylines* Cambridge, Mass: Harvard University Press
Plummer, K. (2001), *Documents of Life 2*, *An Invitation to a Critical Humanism* London: Sage
Rackley, E. (2006) 'Judicial Diversity, the woman judge and fairytale endings', *Legal Studies*; 27; 1; 74-94
Riessman, C.K. (1993) *Narrative Analysis*. London: Sage
Tata, C. (2007) *'Sentencing as Craftwork and the Binary Epistemologies of the Discretionary Decision Process'*, Social and Legal Studies; 16;425
Tombs, J. and Jagger, E., (2006) 'Denying Responsibilty', *British Journal of Criminology; 46; 803-821*.

Is there a 'booze 'n blades culture' in Scotland? Evidence from Young Offenders

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Introduction

In recent years youth knife-crime, and related 'gang' membership, has become an issue of increased policy relevance across the UK (Eades *et al*., 2007; Lemos & Crane, 2004; Maxwell *et al*., 2007; Squires, 2009). In Scotland these issues are more long-standing than elsewhere in Britain, with such concerns dating back for at least a century (Davies, 1998 & 2007; *Daily Record,* 1972; Forbes & Meehan, 1982; Fraser A, 2005; ISTD, 1968; Jeffery, 2002; McArthur & Kingsley-Long, 1957; Patrick, 1973, *Scotsman*, 1916, 1928, 1936 & 1950; Stillitoe, 1955). Although these issues had been receiving less media attention in recent decades (arguably having being replaced by concerns over illicit drug use), since the turn of the millennium what has been dubbed Scotland's "booze n' blades' culture" has once again become headline news (Christian, 2005; Curtis & McLeod, 2003; *Daily Record,* 2007; Fraser D, 2005; Leyland, 2006; Lynch & Black, 2008;

MacAskill, 2009; McKay, 2004; MacLeod, 2005; Nicholson, 2007). For example, Scotland (especially Glasgow city) has variously been described as the 'knife-crime capital of the UK', the 'murder capital of Western Europe' and the 'most violent country in the Developed World' (Canadian Broadcast News, 2006; Fracassini, 2005; Kelbie, 2003; Kesteren et al, 2000; Martin, 2004; Paisley 2005; Tweedie, 2005; Welsh, 2005), labels largely resulting from the resilience of this pattern of alcohol, gangs and knives.

Despite being such a long-standing issue in Scotland and one now equally high profile elsewhere in the UK, there remains a dearth of research into why young adult males become involved in alcohol-related knife-crime. This paper will assess the extent of alcohol-related weapons use in Scotland's Young Offender population and examine how these issues are linked in this high risk group.

Methods

The research for this paper was carried-out as part of an ongoing study into the role of alcohol in young men's offending. It was conducted inside Scotland's only male Young Offenders Institution (YOI), which takes into custody all those aged between 16 and 21 years from across the whole country. At the time of the research the YOI's population varied between 600 and 700 prisoners.

Self-completion survey

The initial phase of the research was a self-complete survey conducted in 2007. This comprised a short questionnaire on various aspects of Young Offenders' drinking behaviours and built upon similar surveys using the same methodology conducted in 1979 and 1996. The 2007 questionnaire differed from the previous survey in that it contained some additional items on weapon use and gang membership while in the community. Specifically the following questions:

- Have you ever carried a weapon? [Yes/No]
- Which weapons have you carried? [open-ended]
- Have you ever used a weapon? [Yes/No]
- Which weapons have you used? [open-ended]

- Have you ever used a weapon to injure somebody? [Yes/No]

- If 'yes', were you under the influence of alcohol and/or other drugs of any kind when you used the weapon? [Yes/No]

- Which ones? [open-ended]

- Have you ever been in a gang? [Yes/No]

The survey recruited Young Offenders during their induction into the YOI. This involved a prison officer giving out the questionnaire to potential respondents at this time and then collecting it when completed. Thus recruitment was by convenience sampling (in a quasi-random fashion) depending on who (i.e. which offender) was being inducted into the institution at the time of the study (Spring-Summer 2007). Recruitment continued until the numbers involved in the previous sample (conducted in 1996, $n = 154$) had been reached (i.e. exceeded) when the recruiting officer was instructed to stop. The number of rejected / non-filled-in questionnaires given out in was seven, leaving a total of 172 for analysis. Thus the sample represents between one quarter and one third of Scotland's total male Young Offender population at the time.

Questionnaires were anonymous and participants were informed that they did not need to answer any question which they did not wish to. This self-completion questionnaire method has a number of disadvantages, including the inability of the researcher to prompt and probe for more detailed answers and the potential for incomplete data or poor quality responses. As might be expected the survey suffered from some missed answers or vague responses to open-ended questions. Few questions were answered by every respondent, though it should be stressed that much of this 'missing data' was generated either because the question concerned was not relevant (e.g. some offenders did not drink alcohol) or because respondents did not know the answer (e.g. they could not remember). Thus the base for the percentages reported in this paper is seldom the full 172 Young Offenders who responded to the survey.

Despite this limitation, the findings of the survey appeared particularly concerning and in need of a more detailed investigation. In order to confirm (triangulate) the patterns indicated by these self-complete questionnaires and to provide more detailed explanation, qualitative interviews were carried-out with a further 30 Young Offenders in 2008.

Face-to-face interviews

To be compatible with the quantitative survey, interview participants were also recruited by convenience sampling within the YOI during induction. This time the prison staff who were on duty in the induction hall invited the Young Offenders present to participate in the research and introduced them to the university interviewer.

All interviews were conducted in private, within an interview room, which while out of hearing range of prison staff had a glass frontage, and the interviewer was given a security alarm. As well as being provided with a consent form and an information sheet, potential interviewees were verbally assured of the study's voluntary nature plus the rules of confidentiality by the interviewer, and that they were free to terminate the interview at any time. No Young Offender refused to take part or withdraw, although one appeared agitated and keen to return to his friends and so he was not interviewed.

The interviews asked the 30 Young Offenders who participated in this phase of the research about their patterns of substance use and offending behaviours while they were in the community. All interviews were taped and later transcribed by the interviewer. These interviews gave Young Offenders the opportunity to describe in their own words their experiences. To this end illustrative quotes are provided here (with pseudonyms, ages and current offences). Combining these two methods provided insight into the role that alcohol can play in facilitating the use of bladed weapons to injure someone.

Results

Survey Findings

The survey participants had a mean age of 18.5 years (base =171). Most (90.6%, base = 171) stated that they had drank alcohol while in the community. There were also high levels of reported cigarette smoking (77.4%, base = 146) and illegal drug use, particularly cannabis (85.4%, base = 157).

When their current offences were examined (i.e. the reason respondents were inside the YOI at the time of the survey), just over half (53.4%, base = 163) reported that they were currently in custody for a serious violent crime (i.e. 'Group 1 Crime') such as homicide, armed robbery or serious assault (e.g. 'occasioning permanent impairment', 'disfigurement' or 'danger to life'). Indeed, when other forms of violence are considered (i.e. non-serious

assaults or weapon possession) nearly three-quarters (73.0%) of the sample were currently imprisoned for a violent act. Only one in ten (11.0%) were in custody for a crime of dishonesty (i.e. 'Group 3' Crimes). This pattern of offences was the reverse to that found in the previous survey, conducted in 1996, when only one in ten (10.0%, base = 130) were in custody for a serious violent crime, but a third (33.8%) were in custody for dishonesty. Whether these figures are reflective of wider patterns of offending in the community, or not, cannot be known from this research. However it does indicate that the current sample comprised a high proportion of violent individuals.

Respondents were asked whether they believed alcohol, and/or illegal drugs, was to "blame" for their current offence. In the 2007 survey, a majority of drinkers blamed alcohol (56.8%, base = 140). In contrast under one third of drug users blamed any illegal drug (30.1%, base = 153) either alone or, as was more often the case, in combination with alcohol. A majority of drug users, who also drank, blamed alcohol for their current offence 56.7%, base = 120). The most often blamed drug was diazepam (n = 24 respondents, compared with only 10 who blamed heroin). Again the current cohort differed from the previous 1996 sample, in which drinkers and drug users were equally likely to blame their offence on their substance use (40.0% and 40.1%, bases 140 and 142, respectively). Whether these attributions represent post hoc excuses (i.e. 'deviance disavowal') or highlight genuine beliefs about how these offenders felt they were affected by their substance use cannot be fully gauged in this survey, however what this does demonstrate is the salience of alcohol issues in the current sample.

A majority of respondents indicated that they had carried a weapon while in the community (63.8%, base = 152). A similar majority indicated that had used a weapon (62.7%, base = 153). However, despite these similar percentages, carriers were not a subset of users. As might be expected most users were also carriers (79.2%, chi-square = 31.032, p = 0.000), but there were also 18 supposed never-carriers who stated that they had used a weapon. Thus other types of involvement with weapons are implied, requiring a more qualitative investigation, such as weapon 'owning' (i.e. keeping a designated weapon at home, but not carrying it) and weapon 'improvisation' for immediate use.

Interestingly, the proportion of respondents who stated that they had been in a gang while in the community (65.7%, base = 137) was very similar to those reporting involvement with weapons. Indeed a strong statistical relationship was found between carrying a weapon and gang membership

with 77.3% of those answering both questions having engaged in both behaviours (chi-square = 16.274, p = 0.000). Although there was also a significant relationship between gang membership and weapon use, both behaviours engaged in by 70.8% respondents, this finding was less robust (chi-square = 5.667, p = 0.017), perhaps indicating that weapon carrying is more of a feature of gangs than actual weapon use. Again the nature of 'gang' cannot be gauged here, but these figures do imply a link between group disorder and involvement with weapons.

As is summarised by Table 1, respondents indicated that they had used a wide variety of weapons, not just "knives" but other bladed and non-bladed items. As might be expected the verbatim response "knife" was the most popular answer, much more so than say "gun", involvement with which was rare even amongst this extreme population. The variety of weapons listed in Table 1, in part, explains why 'users' are not necessarily a subset of 'carriers'. For example, a vehicle is not likely to be carried (though the respondent concerned reported that he was also carrying, an iron-bar in his 4x4 vehicle/SUV should his victim, a police officer, have got back to his feet). Some items are clearly designated weapons (e.g. swords or coshes), some may be improvised (e.g. domestic knives or tools), while others were seldom carried but often used (e.g. bottles and bricks) suggesting these objects were predominantly situational in usage.

Table 1: Weapons reported as carried or used

Sharp Instrument	**carry**	**use**	**Other weapon**	**carry**	**use**
"Knife"	53	43	"Gun"	3	4
"Sword"	8	8	Other firearm	5	2
"Machete"	6	5	Vehicle	0	1
"Lock-back" knife	14	9	Pole / Post	5	3
Domestic knife	2	2	Cosh / Baton	8	9
Specialised knife	1	3	"Bat"	11	15
Stanley® Blade	0	1	"Baseball bat"	7	10
Meat cleaver	1	1	Other sports item	6	8
"Blade"	3	2	Domestic tools	8	8
Axe / Hatchet	3	2	"Brick"	1	8
Bottle	2	21	Other designated	6	3
Other sharp	5	1	Other improvised	6	9

The proportion reporting having used a weapon to injure someone was very similar to that reporting any use (62.8%, base = 148), implying that respondents did not interpret the question on use as pertaining to merely carrying or threatening (e.g. in a robbery). When asked whether they had been under the influence of alcohol or illegal drugs (or both) when they had used a weapon to injure someone, the most often specified substance was alcohol (80.5%, base = 77). The most often specified illegal drug was diazepam (23.4%). This is in accordance with their attributions of blame for their current offence. Again, some respondents reported being under the influence of more than one substance, and even among illegal drug users, who had used a weapon to injure someone, alcohol was the most often cited (78.3%, base = 69). These figures do not inform why alcohol, as opposed to say illegal drugs, should be so strongly associated with this form of serious violence, nor how weapons are related to gang membership. However the subsequent interviews involving another 30 Young Offenders allowed these issues to be investigated in detail.

Interviews

The 30 Young Offenders interviewed were very similar to those who participated in the survey, for example 18 (60.0%) were in custody for a 'Group 1 Crime'. Indeed even those who were currently in custody for non-violent offences were able to describe their involvement in both prior incidents of alcohol-related weapon use (often several such events) and in gang-related group disorder. The inadequacy of merely inquiring about knife 'carrying' in surveys or interventions etc. was further borne out by these interviewees' accounts, in which knives were seen as ubiquitous, and other (designated) bladed weapons could be owned but not carried, as is illustrated by the following quotes.

> *"No I never got tooled up [carried a weapon]. I've used it, but I didn't carry stuff like. I've used knives and quite a lot of stuff. You get knives from anywhere. If you're in a house and people want to fight you, you just grab something"* ('Eddie', 18 year-old, motorcycle theft)

> *"I had a machete in the house and I took it out the house. I bought it off someone and walked round the house with it and put it in my room. I never took it out the house when I was sober though."* ('Stevie', 19-year old, assault & robbery)

> "Why did you want to buy that?" (Interviewer)

"I don't know. It looked smart. Everyone has got knives." ('Stevie')

As implied in the second quote above, some interviewees reported that they only carried knives when they were intoxicated.

"I'd get drunk and go back home and get a knife, but I wouldn't do it if I was sober know what I mean, you don't need one, but when you're drunk and then you think you'll go up and get one. It's stupid isn't it?" ('Hugh', 19 year-old, serious assault)

"I got caught with a Kitchen Devil® [domestic knife] in town and I got done [convicted] for serious assaults. I was drunk and I thought I could walk out with a knife and not get caught. I don't know why, I can't remember how I got it. I can't remember how I got it or nothing. I just woke up in hospital and they said you were in here with a knife…" ('Gordon', 18 year-old, serious assault)

Similarly those who did carry, whether routinely or otherwise, reported only using a knife while intoxicated. In accordance with the survey results, interviewees made a direct attribution of blame between their intoxication and having used a knife.

"No it [the stabbing] wouldn't have happened, definitely would not have happened. My brother would not have punched him, I would have stopped my brother from hitting the guy, and starting it. I knew the guy, I liked him and he liked me as well but I was full of it [drunk] and then I lost it man, it was right over the top man." ('Dougie', 17 year-old, 2 serious assaults)

"As for the offence, I cannae [cannot] remember, I was that pissed [drunk]… I remember attacking him, but I don't remember if I had a knife in my hand or not, but I must have had a knife in my hand if he's ended up with two stab marks and I always had a knife at one point, especially if leaving my area, I would always have one on me because everybody else carried one, and I thought if I'm going to get attacked, and somebody's got a knife, then I'm no going to stand there with nothing." ('Roy', 19 year-old, attempt murder)

A variation on this theme was that some interviewees, who had used a knife, had been supplied it, during a fight, by others who were carrying. Similarly some interviewees reported fetching or carrying knives for others

to use. Again intoxication was seen as a factor in these decision-making processes.

> *"…one of my pals was fighting this boy, but my pal had him down on the ground and he shouted. He knew I had the knives* [five Stanley® carpet-cutters] *on me and he shouted 'give me it'…"* ('Paul' 20 year-old, possession of knives)

> *"…we started drinking and I took 10 Valium* [diazepam tablets] *and I was walking down and this* [the victim] *started, I must have run away to my house and got three knives and gave one to all ma pals* [friends] *and I had one… I just thought I'll go and get knives and I went and got them and then this* [the victim] *just happened to start on one of ma pals* [friends] *so I stabbed him"* ('Michael', 17 year old, serious assault)

As well as weapon involvement more generally, gang membership was a factor which encouraged this culture of knife 'carrier-providers' and 'receiver-users', and which provided a source of deserving victims (as indicated by the dehumanising language used to denote their victims in gang fight stabbings).

> *"Stabbed a [victim] man… I didn't have a knife man, it was someone else's and I took it off him. I asked him for it cos' we were all gang fighting."* ('Elliot', 17 year-old, attempt murder)

> *"I never had a knife on me, it was with a screwdriver. I got handed it. Ma pals gave us it, my troops* [gang]. *They would have done it but I shouted 'give me it', 'throw us it'…"* (Dougie', 17 year-old, 2 serious assaults)

Alcohol-related violence was also linked to gang membership more generally, and interviewees spoke of drinking as either a precursor to or as embolding preparation for gang fighting with weapons.

> *"Not when you're sober, only when you're drunk. When you're drunk you want to go down to their* [rival gang's] *area and fight, you get a fight going, folk get hurt… we were at a party, a birthday party and they came and ran up to the door with choppers* [bladed weapons] '*cos the party was in their scheme* [area], *but hundreds* [lots] *of people got stabbed that night but, five or six got stabbed.* ('William', 19 year-old, serious assault)

"And then eh we'd go to [name of next area] *and there would be hundreds* [lots] *of boys there and we'd end up fighting. Don't know why we went, it was drink eh? When we were drinking we'd just go 'we'll just go up for a fight'… You don't really care when your full of drink do you?... Yes you don't care. You care when you get caught and get stabbed and all the rest of it yes, but you just think 'that'll never happen to me', you think all that don't you?"* ('Gordon', 18 year-old, serious assault)

As well as perpetrating knife-crime, interviewees also spoke of times when they had been the victims of this form of violence, particularly during gang fighting. However, as is illustrated by the following accounts (both made by interviewees who had recently been stabbed and hospitalised) this consequence of involvement with knives was not always seen as a deterrent to such behaviours.

"I got caught [during a gang fight] *and hit with a 'tenner shot'* [large blade*], hit with a machete, and stabbed with a bottle in the head two or three times. It left a scar there, there and one in the back* [points to head]. *I got a fractured skull as well… I went back out* [gang fighting] *as soon as I got my stitches out… 'Cos it's boring sitting in the house, it's something to do. It's like an adrenalin rush when you're running about with all your pals and all that, that's what it was yeah."* ('Gordon', 18 year-old, serious assault)

"*It's exciting. Maybe other people don't think so, but its better when people are looking for you. They are looking for you and they are going to seriously going to try and kill you then obviously that's when their weapons will come out. They will have knives and stuff and that's when you start doing stuff. Stuff happens eh. I do find it exciting."* ('Eddie', 18 year-old, motorcycle theft)

Finally alcohol was also found to be related to knife-crime through the use of bladed weapons in muggings or robberies perpetrated either to obtain funds to continue drinking or to obtain other resources, once intoxicated.

"Ma pal [my friend] *had hit him with a bat and I had stabbed him. And the police came about three days later or something and I got lifted* [arrested] *and that was all for drink. I just went for him 'cos we wanted money for drink. I stabbed him three times, it wasn't serious stabbing it was like wee pricks and then I stabbed him in the arse once and ma pal hit him with a bat across the head."* ('Benny', 18-year-old, serious assault)

"They lifted [arrested] *me for having the axe in a shop. I was trying to get fags* [cigarettes] *out of the shop. I cannae* [cannot] *remember doing it, the only time I knew what I'd done was when I seen the CCTV when I was up in court. I had the axe* [shows how he waved it around] *and went like that in the shop… If I hadn't had a drink I wouldn't have gone out with an axe… I would have gone for fags anyway but I wouldn't have taken an axe."* (Stevie', 19-year old, assault & robbery)

Discussion

This research was conducted within Scotland's male Young Offenders Institution, and therefore the findings reported here are only representative of young adult males in custody for the most serious violent offences. In the general population knives may not be the most commonly used weapon. However, these participants represent the group who do use knives to injure, and at whom interventions against knife-crime should be targeted.

Knife-crime interventions in Scotland have included high-profile police stop-search campaigns, often in conjunction with knife amnesties, (e.g. Strathclyde Police's Operations 'Blade' 1993, 'Spotlight', 1999 and 'Magnet', 2003), which have little long-term effect on numbers of stabbings (Bleetman *et al*., 1997) and which may further antagonise or alienate at-risk youths (Eades *et al*., 2007). The licensing of non-domestic knives has also been proposed (Scottish Executive, 2005). No one in this research reported buying a knife from a shop, then using it. Instead the ubiquitous nature of knives was apparent. That many knife users had never carried, and that even those who do carry may not have been carrying when they had used, indicates that stop-search policing will only have a limited impact on such violence. Such searches may even be counterproductive, encouraging a culture of 'carrier-providers' for those willing to be 'receiver-users', thus increasing the total numbers of those involved in knife-crime.

The evidence here also indicates that the problem is not restricted to knives and that the same individuals use a variety of other (often bladed) weapons. It is suggested that the prohibition of designated weapons such as swords (MacDonnell, 2004; Scottish Executive, 2005) may have limited impact because domestic substitutes, such as kitchen-knives or axes, are so readily available for use, both as situational improvised weapons and for purposive carrying in order to commit violent crime (e.g. robbery). Thus the manufacturing of safer kitchenware would seem likely to have some impact (Hern *et al*., 2005), albeit limited to some situational violence. Finally, there

may also be a danger that a focus on knives may encourage the use of other weapons (e.g. bottles or guns).

On the basis of these findings, an alternative (or at least complementary) strategy for tackling knife-crime would be interventions aimed at reducing youth gang activity (Smith & Bradshaw, 2005) and in particular alcohol harm-reduction. Alcohol consumption was found to be strongly related to this kind of violence throughout this research (much more so than illegal drugs). Heavy episodic drinking among this population appeared to have interfered with their decision making processes during potentially violent encounters, resulting in weapon use, which is more likely to incur a custodial sentence than a fist-fight, and hence respondents blaming alcohol for their imprisonment. This was further evidenced by interviewees who had used a knife but were unable to remember how they obtained this weapon, let alone why they used it. While intoxicated such offenders may also have been more likely to 'get caught', before, during or after a violent incident, and both by the police or rival gangs. This research also supports evidence from Scottish Accident and Emergency rooms which indicate that alcohol consumption by victims, as well as by perpetrators, is a factor in the severity of the knife injuries (Webb *et al*., 2009).

Conclusion

Although the two are clearly linked, the evidence presented here suggests that it is simplistic to think only of a 'booze and blades culture' among violent offenders in Scotland. Such violence was not restricted to bladed weapons, and even terms such as 'knife-carrying' and 'using' do not fully describe the patterns of weapon involvement found here. The ubiquitous nature of knives (and other bladed implements) suggests that more imaginative and broader policy interventions are needed, either in conjunction with or instead of stop-search and licensing / restricted prohibitions. In particular it is concluded that interventions to address alcohol intoxication and gang culture among young adult males are likely to have a positive impact on knife-crime and similar offences. On the basis of these findings, alcohol intoxication can turn potential weapon owners into actual weapon carriers, and turn weapon carriers into injurious users.

References

Bleetman, A., Perry, C. H., Crawford, R., and Swann, I. J. (1997). Effect of Strathclyde Police initiative "Operation Blade" on accident and emergency attendances due to assault. *Journal of Accident and Emergency Medicine*, 14: 3, 153 - 156.

Canadian Broadcast News (2006) *The Feral Boys Of Glasgow*. October 1st.

Christian, N. (2005) Scotland tops UN danger list with 'booze and blades' culture. *Scotland on Sunday*, September 18th.

Curtis, T. & McLeod, M. (2003) Exposed: true scale of knife epidemic. *Scotland on Sunday*, December 7th.

Davies, A. (1998) Street gangs, crime and policing in Glasgow during the 1930s: the case of the Beehive Boys. *Journal of Social History*, 23:3, 251 - 267.

Davies, A, (2007) Glasgow's 'Reign of Terror': Street Gangs, Racketeering and Intimidation in the 1920s and 1930s. *Contemporary British History*, 21: 4, 405 - 427.

Daily Record (1972) The Bloody Toys of Our Children: This is one Glasgow police station's collection of weapons taken from teenagers last year. January, 14th.

Daily Record (2007) Living on a Knife Edge: A special report on the shocking reality and bloody toll of Scotland's blade culture. May 22nd - 24th.

Eades, C., Grimshaw, R., Silvestri, A. & Solomon, E. (2007) '*Knife crime': A review of evidence and policy*. London: Centre for Crime and Justice Studies.

Forbes, G. & Meehan, P. (1982) *Such Bad Company: The Story of Glasgow Criminality*. Edinburgh: P. Harris Publications.

Fracassini, C. (2005) Scotland tops world league for violent crime. *The Times*, September 18th.

Fraser, A. (2005) *Come On, Die Young: An Analysis of the Glasgow Gangs*. MSc in Criminology and Criminal Justice 2004/2005 – Trinity Term. Oxford: University of Oxford.

Fraser, D. (2005) New laws to tackle 'booze and blades'. *The Herald*, October 4th.

Hern, E., Glazebrook, W. & Beckett, M. (2005) Reducing Knife Crime: We need to ban the sale of long pointed kitchen knives. *British Medical Journal*, 330: 1221 - 1222.

ISTD (1968) *A Study of Serious Assault in the city of Glasgow.* Report by the Working Party on Violence – Number 2. Glasgow: Institute for the Study of Delinquency.

Jeffrey, (2002) *Gangland Glasgow: True crime from the streets*. Edinburgh: Black & White Publishing.

Kelbie, P. (2003) Glasgow is Britain's murder capital as knife crime spirals. *Independent*, November 29th.

Kesteren, J.N.van, Mayhew, P. & Nieuwbeerta, P. (2000) *Criminal Victimisation in Seventeen Industrialised Countries: Key-findings from the 2000 international Crime Victims Survey*. Onderzoek en beleid, 187. The Hague, Ministry of Justice: WODC.

Lemos & Crane (2004) Fear & Fashion: *The Use of Knives and other Weapons by Young People,* York Publishing Services Ltd.

Leyland, A. H. (2006) Homicides involving knives and other sharp objects in Scotland, 1981–2003 *Journal of Public Health*, 28: 2, 145 – 147.

Lynch, M. & Black, M. (2008) A tale of two cities: a review of homicide in Melbourne and Glasgow in 2005. Medicine, Science, and the Law, 48: 1, 24 - 30.

McArthur, A. & Kingsley-Long, H. (1957) *No mean City: The classic novel of the Glasgow slum underworld*. London: Corgi.

MacAskill, M. (2009) Glasgow's on a knife edge with teen gangsters. *Sunday Herald*, October 4th.

MacDonnell, H. (2004) Executive steps up battle to beat blades. *Scotsman*, June 29th.

McKay, N. (2004) Mean Streets Revisited. *Sunday Herald*. October 24th.

MacLeod, A. (2005) 'Booze and blades' push murder rate to new high. *The Times*, December 12th.

Martin, L. (2004) Murder capital paints itself the wrong shade of black: Despite attempts at rebranding the real Glasgow is still a violent city. *The Observer*, April 11th.

Maxwell, R., Trotter, C., Verne, J., Brown, P. & Gunell, D (2007) Trends in admissions to hospital involving an assault using a knife or other sharp instrument, England, 1997 – 2005. *Journal of Public Health*, doi:10.1093/pubmed/fdm018

Nicholson, S. (2007) 'Blades and booze' fuel rise in killings. *Daily Mail*, December 19th.

Paisley, J. (2005) Scotland: No Mean Country? *The Guardian,* October 23rd.

Patrick, J. (1973) *A Glasgow Gang Observed*. London: Eyre-Methuen.

Scotsman (1916) Rowdyism in Glasgow: Extraordinary evidence in Sheriff Court. November 8th.

Scotsman (1928) Fatal Gang Fight. Six youths charged: Glasgow High Court. June 29th.

Scotsman (1936) Young Gangsters. Revelations at Glasgow Trial: Membership for boys of 14. April 15th.

Scotsman (1950) "City of Street Gangs". Glasgow Given Bad Name Abroad: New industry deterred. October 7th.

Scottish Executive. *Tackling Knife Crime: A Consultation*. Edinburgh: Scottish Executive, 2005.

Smith, D. J. & Bradshaw, P. (2005) *Gang Membership and Teenage Offending*. Number 8, The Edinburgh Study of Youth Transitions and Crime. Edinburgh: University of Edinburgh.

Squires, P. (2009) The knife crime `epidemic' and British politics. *British Politics*, 4: 1, 127 - 157.

Stillitoe, P. (1955) *Cloak Without Dagger*. London: Cassell.

Tweedie, K (2005) Scotland tops list of world's most violent countries. *The Times*, September 19th.

Webb, E. Wyatt, J.P. Henry, J. & Busuttil, A. (1999). A comparison of fatal with non-fatal knife injuries in Edinburgh, *Forensic Science International*, 99, 179 - 187.

Welsh, I. (2005) Scotland's Murderous Heart. *The Guardian*, October, 20th.

Creative Arts and the Cultural Politics of Penal Reform: the early years of the Barlinnie Special Unit, 1973-1981

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Introduction

The Special Unit which was operational in Glasgow's Barlinnie prison between 1973 and 1996 was and remains a significant milestone in Scottish penal policy, which has been ambivalently remembered. To some it was a legendary institution, which, through the use of creative arts enabled the rehabilitation of some of Scotland's most violent prisoners, particularly Jimmy Boyle, but which, after his departure in 1980, became a mere shadow of its former self, and a lost opportunity to reform the wider penal system. To others it's early years represented a moment when penal authority was inadvertently ceded to critical and manipulative prisoners – Boyle especially - and their unduly liberal champions in the social work and arts communities, which was fortunately retrieved, never allowed to happen again and considered best forgotten. In between, some late-in-the-day comment and research quietly accepted that the Unit had brought about a useful reduction in the erstwhile violent behaviour of its inmates, but mostly without capturing what was truly "special" about it (Whatmore 1987, 1990; Stephen 1988; Cooke 1997). Thus to many, perhaps most, contemporary practitioners in the Scottish penal system the Special Unit has faded from memory, and may never even have been known to them. This paper is simultaneously an exposition and celebration of the Special Unit's extraordinary early achievements, a conscious act of remembrance and a demand that it be given a due, informed and prominent place in the Scottish penal heritage.

If the Special Unit's story is known at all, it is more through the testimony of prisoners who experienced it (Boyle 1977; 1985; Collins 1997; 2000) than through any official (or professional) account. Important and influential as the prisoner testimonies have been, they do not entirely explain how the creative arts came to underpin and sustain the Unit in its controversial early period. Their take on the penal and political context in which this occurred, while never less than astute, is necessarily subjective. A more rounded, but still essentially corroborative, view is better achieved by the book which a

Glasgow art gallery director and an art therapist (Carrell and Laing 1982) edited to celebrate the first eight years of the Unit's "evolution though its art". It contained thoughtful comment from a wide range of people involved, including prisoners – although the Scottish Office shortsightedly forbade contributions from some serving prison staff – as well as vividly depicting some of the art work produced there. The book is as unique as the Unit itself, a landmark in Scottish 'penological' writing which ought to have been – and, alongside the offender accounts, ought still to be - required reading for all subsequent generations of prison staff and criminal justice social workers.

This paper draws extensively on that book, focusing on the same formative period in the Unit's history, and seeks to show (again) how creative arts briefly but spectacularly became integral to the concept of offender rehabilitation and, by dint of that, to the always "cultural" politics of penal reform in Scotland – a politics inseparable from the fixed and shifting senses of what a country thinks it is, what its people are like and what they aspire to be.

Creating the Barlinnie Special Unit

In Scotland, in the aftermath of the abolition of capital punishment in the 1960s, "special units" developed to deal with particularly intractable prisoners, mostly long-sentence lifers perceived as having little or nothing to lose by violence towards staff – but in two very different ways (Coyle 1987). The Scottish Home and Health Department (1971) Working Party report - *Treatment of Certain Male Long term Prisoners and Potentially Violent Prisoners* - emerged from official anxieties about escalating violence between staff and a handful of very particular prisoners who had demonstrably not been rendered manageable by the available repressive sanctions – beatings by squads of baton-armed prison officers, and/or solitary incarceration, often naked, for protracted periods in the prison-within-a-prison of "the cages" – the first form of "special unit" - in HMP Porterfield, Inverness. The Working Party proposed a new kind of unit. Influenced particularly by Maxwell Jones' and Dennie Briggs' conception of a therapeutic community (Jones 1968; Whitley, Briggs and Turner 1972) it was intended for up to ten prisoners, to have an explicitly psychiatric orientation, to make use of group counseling and drug therapy and to create a therapist/patient relationship between staff and prisoners[1]. Such was the crisis of violence in Scottish prisons, it had the full personal backing of the then (Conservative) Undersecretary of State for Scotland, Alick Buchanan-Smith, and the Controller of Scottish Prisons, Alex Stephen, both of whom were keen to import any lessons from the Unit into the wider prison system.

Peter Whatmore was appointed Consultant Psychiatrist to the Unit, visiting on a thrice weekly basis. Links were established at the outset with the Douglas Inch Centre for Forensic Psychiatry and Ian Stephen, its Principal Clinical Psychologist developed a lasting association with the Unit. Prison staff were volunteers, specially trained over 11 weeks in therapeutic techniques, although individual temperament remained important. Prisoner numbers were to be too small to make reliance on traditional prison work, other than routine cleaning duties, viable (although unpaid "work therapy" was integral to Maxwell Jones' conception of a therapeutic community), and from the start there was some uncertainty among all those in charge as to what the daily routine might consist of. Jones had experimented successfully with psychodrama, but not the creative arts as such, and "in the initial planning of the Special Unit, the arts had not been considered, at least not more than as a leisure pursuit for the occasional interested prisoner" ....The arts do not have a high priority in the thinking of penologists" (Laing 1982:56/57)[2].

The Special Unit opened in February 1973 in D wing of HMP Barlinnie, a Victorian institution which otherwise mostly housed 1000 adult remand and short sentence prisoners. Architecturally, the Unit was unprepossessing, consisting of a foyer, two hallways, ten cells (some on an upper cat-walk), a kitchen, the governor's office, an officer's meeting room, a surgery, the community meeting room and several rooms which were subsequently to be identified by the arts that took place in them - the wood workshop, the painting studio and the sculpture studio, the latter having originally been designated the solitary confinement cell for recalcitrant prisoners, but never used. There was also a courtyard, where the sculpting of larger pieces was eventually to take place, a small garden and a greenhouse.

Three of the first five[3] prisoners, Edinburgh-born Ben Conroy, Glaswegians Larry Winters and Jimmy Boyle – the latter two serving life for manslaughter and murder respectively - came from prisons in the far north of Scotland (Porterfield and Peterhead), where they had frequently been involved in violent confrontations with staff, accruing additional custodial sentences as a result, and experiencing long spells of solitary confinement in "the cages". Boyle's and Winter's trial for their participation in a particularly savage fight with officers in Porterfield in December 1972 was in fact still pending at the time of their transfer; the excessive courtroom security when it occurred reflected a police view that they were far too dangerous for, and undeserving of, the liberal regime of the new Unit. They each got six years. Boyle, aged 29 when he entered the Unit, already had a press profile as one Scotland's most fearsome, violent criminals, and had indeed done much to justify it,

but against the odds he was to become the Unit's most spectacular – and challenging - success.

The Special Unit in Practice

The Unit inevitably began in an atmosphere of mistrust and suspicion: despite commitment to trying something new, prison staff and prisoners carried into the situation labels and expectations with which they were associated in the mainstream prison system. Some prison officers were also nurses, and the prisoners, to whom the informal, relaxed regime was undeniably disorienting, worried that they would be subdued by drugs and/or that the Unit was merely a step towards incarceration in the state mental hospital at Carstairs (where some of the Unit staff had indeed trained). One particular prison officer - Ken Murray, a member of the Executive Committee of the Scottish Prison Officers Association (SPOA), who had been on the Working Party that proposed the Special Unit - took the lead in challenging the prisoners' (and his colleagues') perceptions. One particular prisoner – Jimmy Boyle, as it happened - responded in kind to the trust Murray showed, and to the hopes he had for the Unit. Kay Carmichael (1982a), a University of Glasgow social work lecturer who observed the Unit's development, said of them that they

> built a bridge of their friendship and trust in each other, which made possible communication between the staff group and the prisoners' group. These two men became the significant figures in the drama that was to follow. …… The others, the Governor, the psychiatrist, the range of specialists and friends who worked in and around the Unit, interesting and helpful though they were, never functioned as more than bit players. The action was between prisoners and staff, and that, without intermediaries, was and is the way it has to be (Carmichael 1982: 22).

Boyle (1985:11) himself agreed that prisoners and staff "talking together" was "the single most important factor of the Unit", and while never subscribing to a fully psychiatric view of how the Unit functioned, regarded Peter Whatmore as a positive influence and formed a good relationship with him. In view of the significance that creative arts were subsequently to have there (which prison staff rarely initiated or participated in, other than helping to organize activities and events) this may seem to underplay the role of those who fostered the prisoners' artistic endeavours, but it is a useful reminder that the Unit was first and foremost a therapeutic community, however tentatively and ambivalently.

Mutual hostilities between once antagonistic groups diminished - though there were awkward flashpoints along the way - and the milieu created by the changed relationships between prison staff and prisoners was critical in enabling individual prisoners to change. The regular community meetings, in which staff and prisoners learned painfully to communicate honestly with each, to see through each other's eyes, to express vulnerability, to confront unacceptable behavior and resolve conflicts, to ponder past allegiances and to form new interpersonal alliances were the basis of all the other changes that occurred in the Unit: the transformation in "daily living", and the emergence of an environment which "encourage[d] flexibility, spontaneity, confidence and tolerance" were the seedbed of its creativity (Carmichael 1982: 23). Carmichael further suggests that the community meetings and general ethos were perhaps "even more liberating for staff than prisoners", and some of them, Ken Murray and Malky McKenzie in particular, learned to "ask questions of their administrative masters and senior management", no easy thing in a bureaucracy in which "promotion prospects are dependent on conformity" (*idem*).

The Unit was intentionally hospitable to visitors, beginning with extended visits from families and friends, mostly on weekends, later during the week, without the barrier of the glass screen which had divided them in mainstream prison settings. This practice was abused: drink and drugs were smuggled in (as they were in some degree in most prisons), but when the press picked this up, it was sensationalised and exploited by the Unit's critics, creating problems for the prison authorities in publicly legitimating the Unit's work (Dowle 1982). Alex Stephen himself visited the Unit regularly, however, the first time there had been such direct contact or such open discussion about the ills of the prison system between a senior civil servant and serving prisoners, and, crucially, he supported what the Unit became, more troublesome as that was from what the original Working Party had envisaged.

As arts activities became important – the way this occurred is explained below - artists of various kinds also became regular visitors, and above and beyond their "professional" contribution, they provided, as Dr. Sarah Trevelyan, a young psychiatrist who joined the Unit in 1978 noted, a useful means of dispelling the secrecy which had traditionally surrounded prisons, and hidden their abuses (Boyle S 1982). A significant number of visitors formed "a close relationship with the Unit or with individual residents" (Paterson 1982 52). They never acted in concert, or held a single view of the Unit, but individually they exemplified instances of achievement with which inmates were unfamiliar, providing "a reflective surface upon which

[they] might view themselves" and develop "aspects of [their] identity free from histories of offending in society and independent of allegiance to an offending culture" (idem).

Therapeutic communities in penal settings – anomalous at the best of times - are exceptionally vulnerable to changes in their wider political environment (Jones 1968). Everyone in the Special Unit was aware that the Scottish Office, ever mindful of "public and political opinion...might at any time, and without disclosure of reasons, act to modify [the Unit's] freedom and direction" (Paterson 1982:52). Thus, when Alex Stephen was transferred to another post the two men who replaced him did not have the same sense of "ownership" of the Unit. When Ken Murray (who had become the most influential official in the Unit, far more so than the governor) was expelled from the Executive Committee of the SPOA for challenging criticisms of the Unit by its general secretary, the Unit lost a strong voice in a body still much in need of reform – and in 1979, after a series of clashes with senior management, Murray himself was transferred out of the Unit to HMP Low Moss, and a "proper" official hierarchy imposed. Under such circumstances, it is not surprising that "the residents feared for the survival of the Unit" (Paterson 1982:54) and were wary of what they were being expected to invest in.

A consultant clinical psychologist in the Unit, Maxwell Paterson (1982:55), was nonetheless adamant that most prisoners did want what the Unit offered. Acknowledging that in the community meetings and group therapy sessions the prisoners *did* "identify their own sense of inadequacy and need" and *did not* "present their histories with pride", he also understood why, in such a politically volatile situation, the task of personal transition was made doubly difficult. The prisoners were already "dealing with paradox", he wrote, each individual seeking "to reconcile a former identity, which is not to be denied, with an emergent identity - the same, yet another", without being beset by uncertainty about the Unit's future.

Not all prisoners benefited equally or in the same way: "observation would suggest", wrote Paterson (1982:52), "that for some the experience has remained a game while for others there has been a movement from a peripheral, questioning response to a centre of commitment and personal representation of the ethos". After eleven months, uncomfortable with the psychological pressures in the Unit, Ben Conroy (1982) transferred back to an ordinary prison at his own request. Duncan Bathgate, a relative newcomer, was transferred out after only four months for attacking another prisoner in

March 1976 – one of only two serious assaults in the Unit's entire, twenty three year history (Cooke 1997). Larry Winters was a deeply intelligent man, sporadically creative, but too lost to prescription drugs (for depression) to benefit fully from the Unit's approach. Tragically and traumatically for all, he died alone in his cell of a (probably accidental) barbiturate overdose in September 1977, the drugs having been smuggled in by another prisoner. Both these incidents intensified press criticism of the Unit's lax regime - particularly, but not only in *The Daily Record* - but the definitive and lasting controversy about the Unit was less do with specific organisational failings, and more to do with incontrovertible evidence of its success in transforming a man of violence into someone quite different (Dowle 1982).

The opening of Jimmy Boyle's play *The Hard Man,* co-written with Tom McGrath (McGrath and Boyle 1977) at the Traverse Theatre in Edinburgh, and the publication of his autobiography *A Sense of Freedom* (Boyle 1977) by Canongate raised media debate to a new level. The book was a lucid account of the ways in which the enduring poverty of post-war Glasgow's slums bred a culture of extreme violence that was deeply appealing to young men for whom status and glamour were otherwise hard to come by. Far from challenging this violence when it had the opportunity to, Boyle showed from experience, imprisonment compounded and reinforced it – part of the problem of violence in Scotland, not – unless it took the form of the Special Unit, in which the book concluded - the solution. Offenders had written books before (Broadhead 2006; Nellis 2010), but (in Scotland) none quite so violent or notorious as Boyle had been, or now as eloquent. Implied within its eloquence was a larger, unspoken question, how had modern Scotland's welfare state, the egalitarian and educational traditions of which it was supposedly so proud, failed a man of such evident intelligence and talent, offered him so few prospects that he sank so early into crime and so effortlessly into savagery - at least until now? And - more awkwardly still, a question Boyle explicitly posed - how many more men (and boys) like him were still being failed? Although the book's exposure of prison brutality was relatively new, overall, the novelty was less in the message than the messenger, around whom opinion polarized. The Shadow Secretary of State for Scotland, Teddy Taylor, for example, demanded to know why Boyle had been "allowed" to criticise the prison system. Even the fact that royalties from the book were used to set up the Gateway Exchange in Edinburgh to support ex-prisoners and young drug users was insufficient to placate his detractors.

There were other prisoners in the Unit whose artwork was rightly to be

celebrated by Carrell and Laing (1982) - Bob Brodie, Tom Galloway and Hugh Collins (the latter joined the Unit in early 1978, and published his own autobiography two decades later (Collins 1997)) - but none had Boyle's energy, charisma, artistic versatility or his growing public profile as a critic of the penal system, and after *A Sense of Freedom* appeared – it was also filmed by Channel 4 in 1981 - it was inevitably around him that the purpose and legitimacy of the Unit would be most intensely debated.

The Birth of Art in the Unit

The single most important person in the establishment of creative arts in the Special Unit was Joyce Laing, a fine arts graduate who had subsequently trained as an art therapist, set up Scotland's first art therapy department at the Ross Clinic in Aberdeen, and worked extensively in general and psychiatric hospitals, and in prison, with both young people and adults. The first governor invited her into the Unit a few months after it opened to provide weekly arts activities for the first five prisoners. Laing had no illusions about his modest intentions: "Any activity which was considered time-consuming would have been a welcome resource during the early months of what was still a very uncertain experiment", she wrote: "That on this occasion it was art was probably incidental" (Laing 1982:57). For all that the men were polite and welcoming, she was immediately conscious of their suspicion of her as an artist and a woman, well aware of how unpromising an environment - artistically speaking - the Unit and its inmates were, but inwardly confident that in time the men's manifestly "pent-up emotions ... would bubble to the surface and, if not negated by other factors, would result in some form of art" (idem. 58). Her initial efforts, over a period of weeks, to encourage the men to take up painting, drawing and sculpting were to no avail. The arts materials she left for them each week went untouched, frustrating her, so on one occasion she simply sat on the floor and modelled a head out of clay. One prisoner joined her, getting the feel of the clay, but not making anything. This was, however, the moment of breakthrough:

> On the following visit a few pieces of sculpture, mostly heads, had been made. Among them was once piece which completely captured my attention. It was the small model of a roughly fashioned figure crouched behind a few rods of wire which surrounded the figure. It was titled *Solitary*, one of the first sculptures by Jimmy Boyle. This, I believe was the birth of the arts in the Special Unit. Jimmy Boyle had not only made the small sculpture, he was filled with enthusiasm over

> the possibilities the clay offered. Two parallel emotions were engulfing him; he was bursting with enthusiasm for ideas he wanted to try with this material which was new to him and he was also experiencing a new concept of the self: the former hard man spending his time working on art (Laing 1982: 58)

Several prisoners then took up clay modeling. Boyle showed particular talent and enthusiasm for it, quickly moved to carving stone and working metal, was taken up by some of the artists whom Laing introduced to the Unit, and reaped personal rewards. One such visitor, Richard Demarco, an eminent Scottish arts impresario and Edinburgh gallery owner, arranged an exhibition of the Unit's work (mostly Boyle's) at the Edinburgh Festival in August 1974. Boyle was officially allowed out of the Unit, under escort, to see it. He had his first commission - stone heads of the *Men of Jarrow* for the Bede Gallery in the north of England - by 1975. In 1976 he had a one man show in Edinburgh, and also at Glasgow' leading modern arts venue, the Third Eye Centre on Sauciehall Street (with whose director, playwright Tom McGrath, he then came to write an autobiographical play (McGrath and Boyle 1977). Along side all this he was keeping a diary of events in the Special Unit, studying sociology and psychology, and writing an autobiography. He encouraged others to participate - Larry Winters, well read because of long years already spent in prison, wrote and read poetry and prose, which eventually achieved recognition in its own right, albeit posthumously (Winters 1979). "The advent of poetry reading and the pieces of sculpture appearing in the various rooms", wrote Joyce Laing (1982: 59), "gave a college-like atmosphere to the Unit".

Artistic attention quickly turned to the drabness of the Unit environment itself - iron bars and blank walls - and the idea of painting a large mural on the long wall opposite the cells emerged in a community meeting. A Glasgow street scene became the theme: "the result was not great artistic achievement yet it captured the magic of childhood memories" (*idem*: 59). Creative cell decoration ran parallel to this, augmented by donations of curtains and ornaments by friends and relatives - creating necessary private spaces where prisoners could gain respite from the pressures of communal living, and rest, work or study as the mood took them.

In addition, a Unit magazine containing writing, poetry and drawings by both prisoners and visitors also developed, intended for distribution among the Unit's supporters and in other prisons. The production of *The* Key in 1974/75 - the symbolism of the name they chose for it was not lost on the prisoners

- actively involved both staff and inmates. It did circulate widely among the Unit's supporters, but the Prisons Department forbade its distribution to other prisons. *The Key* ran to only three editions, the last in November 1975.

The many eminent "arts" visitors to the Unit were central to the consolidation of its creative ethos and its reputation as a Scottish penal innovation. Impressed from the start, convinced that even deeper immersion in creative arts would further aid the men's rehabilitation and hopeful that the public value of art itself would be enhanced in this way, they spread word about the Unit in circles where prison was not much mentioned. Some of the visitors were international: a second mural, *Wall of Neglect*, was done with the assistance of Beth Shadur, a Chicago muralist, depicting capitalist exploitation in the Third World (Carrell and Laing 1982:40). Simply because most of the prisoners could not leave the Unit to visit theatres and galleries, music, dance and drama were imported into it, a conscious effort to sustain and enlarge the prisoners' artistic horizons (Laing 1982:60). A proposal for an arts festival in the Unit emerged out of this, which, after some delays caused by ongoing uncertainty about the Unit's future, took place between 12th -14th September 1979. Among the events were poetry readings by Edwin Morgan, music by Alan Cameron (and by psychologist Ian Stephen), and performances by the Glasgow Citizens and the Easterhouse Theatre Companies (Laing 1982: 61). The festival was opened by the then Secretary of the Scottish Home and Health Department, whose "opening remarks sealed official approval of the festivities and brought people of varied backgrounds closer together [and] also strengthened belief in this 'special' penal unit" (Laing 1982:61). Other arts events subsequently took place in the Unit, while in 1980 the Third Eye Centre curated a comprehensive exhibition of *The Special Unit, Barlinnie Prison: its evolution though its art*, accompanied by a book of the same name edited by Christopher Carrell (Tom McGrath's successor) and Joyce Laing.

This "evolution" was unique. At no other point in Scottish (or British) penal history had a penal institution become so identified with the arts, or the rehabilitation of prisoners so tied to creative expression. Furthermore, the visible support and encouragement of significant individuals in the Scottish arts community gave the somewhat nebulous penal ideal of rehabilitation a tangibility which it often lacked, even among people who subscribed to the principle. And although "arts" had not been part of the plan, this unexpected development gave those penal officials who did want to maintain the Unit some ammunition to do so. As the Unit's clinical psychologist put it: "The early introduction of art materials and the un-enforced development of the Unit as a studio for the encouragement of the arts had the greater significance

for the successful passage of the Unit through its early crises. It [gave] the Unit a purposeful and distinctive identity" (Paterson 1982:54).

Important as "the arts" were to what the Barlinnie Special Unit became, it is important to recognize that it *did* in fact function as a therapeutic community, even if not quite as Maxwell Jones envisaged them. Had it not been for its distinctive "ambience" - the quality of daily living, increased ties to family and friends, openness to other visitors, educational opportunities (Stephen 1982), and above all the community meetings from which a common ethos emerged that (more or less) bound everyone's behaviour - the creative arts may never have flourished there. Joyce Laing fully understood the importance of the Unit's loose and flexible, relatively unmanaged structure in this respect:

> That the Unit was allowed to evolve without the limitations of time-tables, conventional routines or even all the usual prison rulings, undoubtedly saved its existence. Had the arts been programmed in as an educational pursuit not one of the inmates in th[o]se early days, would have agreed to embark on such a course. Any attempt to set up a teaching situation would have been viewed with the distaste that all the inmates had come to associate with their previous school experiences. The fragile embryo of creativity had to be left to grow at its own pace. It should not be overlooked that the Prisons Department did not insist, at this early and vital stage in the Special Unit's life, on pre-designed curricula or planned requisitions for equipment or art materials. This relaxed approach on how the inmates used their time was an important one, for it protected the precarious first steps of creativity. (Laing 1982: 57/58)

Creativity and Rehabilitation

In post-war Britain (and in the USA), parallel to the growth of the therapeutic community movement, there had been much intelligent (mostly psychotherapeutic) reflection on the relationship between creativity, aggression and personal development (Schneider 1950; Westman 1961; Koestler 1964; Storr 1972; Liebmann 2000). As both artist and psychotherapist, steeped in such thinking, Joyce Laing was open to the possibility that, with some individuals, creative activity in a place like the Special Unit could sometimes go beyond mere therapy, vital as that was to personal healing and wellbeing, to genuine artistic expression which communicated meaningful concepts

and feelings to others. The one could segue into the other. Laing could also skillfully nurture creative stirrings in people, even those professing no talent for artistic expression, in a way that other workers in the Unit could not, and she was, furthermore, a respected member of a Scottish creative arts community whose support for what was to happen in the Unit – outwith traditional penal reform networks - might not otherwise have been tapped. "There are three ways the arts can be used in any institutional setting", she wrote,

> firstly as a pleasurable time filling occupation, secondly as en educational pursuit both in practical and theoretical terms, and thirdly as a living expression of thought, emotion and portrayal of images from the subconscious. The first two ways provide obvious benefits. Yet the arts will not engender change or growth for the individual, without the third way, which is the spontaneous expression of the inner psyche (Laing 1982: 57).

The therapeutic and artistic aspects of the work produced in the Unit – and the often fine line between them – were regularly validated by the many artists and critics who visited the Unit, and commended at the fourteen external exhibitions of the Unit's work in the 1973-81 period, (which included one at the Venice Biennale (Carrell and Laing 1982: 127). Cordelia Oliver, another fine arts graduate, a director of Glasgow's Third Eye Centre and *The Guardian's* (and former *Herald's*) art critic in Scotland, commented astutely on the prisoner's work, seeing the prisoner's art primarily as expressions of recent or ongoing penal experiences, of solitary confinement and sexual frustration, but with potential beyond that. Thus, she described Bob Brodie's small clay models as needing "little explanation simply because they are immediately accessible, eloquent of whatever situation Brodie is trying to express", and Tom Galloway's primitive figures simply as "a *cri de coeur*, an attempt to maintain sanity in an alien environment", (Oliver 1982a 91; 1982b:103). Somewhat simplistically, she perceived the prisoners past proclivity to violence in terms of thwarted creativity; while this seriously underplayed the historical, structural and cultural factors underpinning violent criminality in Scotland it led her to the view that, pragmatically, there was "excellent sense in the theory [of diverting] the energy behind the overpowering need for violent behaviour into legitimate creative activity, using paint or clay or hammer and chisel on stone (Oliver 1982c:61).

Writing of Hugh Collins, Oliver noted the "inexpertness" of his early

paintings and drawings, even his poetry, and suggested that they "amount[ed] to little more than a safety valve for himself" which helped him deal with violent and suicidal feelings within himself, and to understand the damage and humiliation that imprisonment had inflicted on him (Oliver 1982d:81). A "turning point" occurred in 1977/78, when, in his own words: "I was beginning to look at my own isolation, and realised that prison staff were just as isolated and damaged as I was by the system". Oliver felt that this incipient empathy, kindled before Collins entered the Unit, was quickened by immersion in drawing, painting and sculpture, and of his sculpture she said presciently that it was "in a class by itself so far as the Special Unit is concerned" (idem).

The Fate of the Unit

As if events in the Special Unit had not been extraordinary enough, a relationship developed between Jimmy Boyle and Sarah Trevelyan while she was working in the Unit, and they married in January 1980. In March Boyle reluctantly transferred out of the Special Unit to HMP Saughton as part of a planned release process. He, and the many people convinced of his complete rehabilitation would have preferred his release direct from the Unit'[4]. He finally left prison on life licence in November 1982, having served his full 15 year tariff (the additional custodial sentences being deemed concurrent). The Special Unit continued in existence for a further sixteen years, and, initially, still did useful work, but with a lower public profile. This paper is not concerned with the processes which led eventually to its closure in 1996 (Cooke 1997; Jeffrey 2009), but notes that, in any case, after Murray and Boyle (and indeed most of the original staff group), had left a certain dynamism was lost (Collins 1992). Apart from Collins' sculpting, the Unit's later artwork was more akin to that of a traditional prison education department, and it functioned more like the modest therapeutic community that it had been envisaged as. Walter Davidson, who continued for a while as senior officer in the Unit, wrote of this without apparent regret:

> … the Unit of today and the Unit of six or seven years ago is a day and night situation. There aren't the same emotional involvements, people by and large have become more professional in their jobs and you have a nucleus of staff and inmates who have been there for sufficient time to settle down (Davidson 1982:48)

While Murray's - and especially Boyle's - departure eased the Unit's

relationship with the Prison Department, opinion has inevitably varied as to whether the ending of their joint charismatic leadership was a good or bad thing for the remaining and subsequent residents. Maxwell Jones (1968) had always counselled against charismatic leadership in therapeutic communities, and took steps to avoid his own leadership becoming so, to preserve a democratic ethos. That was not in fact what was restored (or created) by Boyle's and Murray's departure (and arguably never fully can be in a prison). Hugh Collins (1999), befriended and mentored by Boyle, (although always touchy about being seen as too like him), struck a more despondent note than Davidson:

> After Jimmy Boyle's transfer the place deteriorated. People think I should keep things going but they just don't realize how much of a vacuum he has left. Jimmy had Ken, Malky and the staff to support his efforts. That's all changed now. No one is interested (Collins 1997:148).

Outside the Unit, earlier policy ambitions were reigned in too. The Working Party which had first recommended it had anticipated that if it was "successful it may indicate the way in which the penal system should be developed in future" (Scottish Home and Health Department 1971). Largely because of the controversy the Unit aroused and the departures of its early champions, Buchanan-Smith and Stephens, not to mention Murray and Whatmore (who retired in 1980), this aspiration had been vanquished by the end of the decade. This is not to say that, by then, there were not other, separate, modernising forces at work in the Scottish Prison Service – there were (a rising, younger generation of reform-minded managers), and these helped to keep the Unit alive despite the controversy - but one senior Prison Service official (unnamed) who expressed doubts about the Unit in late 1979 did so with ill-disguised derision:

> We do not really see the need for them. .... Just because certain prisoners have gone to the Special Unit and *appear to have* responded to that sort of regime does not mean that there are many more prisoners in the system who would benefit from that sort of regime (quoted in McClintock 1982:10: emphasis added).

The studied scepticism of this remark is disconcerting. The Unit had not been independently evaluated, but it was hard to argue from the evidence available that it had not fulfilled its purpose of reducing violence. Of the nineteen

prisoners (including twelve lifers) who had passed through it by 1981, eight remained there, five had been released, one was on a release programme, one (Winters) had died and four, including Jimmy Boyle, had returned to normal prisons (Scottish Information Office, quoted in Carrell and Laing 1982: 7). Perception of what the Unit had achieved, however, was invariably refracted through perceptions of Boyle. Mirroring Scottish opinion more generally, some penal administrators did not begrudge him his success, but others – like the unnamed official above - did, seeing him less as someone who had been reformed by the system, and more as someone who had beaten the system.

The Significance of Jimmy Boyle

The man that Jimmy Boyle became in the 1970s was indubitably a product of the Special Unit environment, but it is just as true to say that the Special Unit environment was, in its early years, a product of him. The Unit gave him an opportunity for personal fulfillment that he would never otherwise have had – which he seized with both hands - and gave him a platform from which he was able to challenge the more iniquitous aspects of the penal system. Always a natural leader, nothing in his background had prepared him – or the prison authorities, or indeed anyone else - for the particular transformation that occurred in him in the Special Unit. Born in 1944 into the poverty of the Gorbals, and inexorably drawn into thieving and gang culture, he was from the age of twelve onwards an inmate of various penal institutions – remand homes, approved schools and borstal (where he and Ben Conroy first became friends). As a young adult he became a vicious enforcer for protection rackets, served several prison sentences, and was prosecuted in two abortive murder trials (whose witnesses were terrorized into silence), before finally being sentenced in 1967 to life imprisonment, with a 15 year minimum tariff, for the murder of another criminal called Babs Rooney, for not paying his "protection". While never denying his past involvement in atrocious violence (although *A Sense of Freedom* may not have catalogued everything he did, or indeed, all the institutional abuse that was done to him, particularly as a teenager - shame perhaps being the reason in both cases), he did deny this murder, and has always done so[5]. In prison, Boyle never accepted the authority of prison staff, never saw them as fully human (anymore than they saw him), and fought them to a standstill at every opportunity, solo or in association with likeminded men from similarly harsh backgrounds. His fury knew no limits.

Throughout the twentieth century, the most disadvantaged areas of Scottish cities had generated gang cultures and violent criminals, a phenomenon

which had been an established object of journalistic and literary interest from the 1930s (McArthur and Long 1935: Burrowes 1998; Burgess 1998). Until Boyle, history had been destiny for hardmen[6] from the Gorbals; prevailing Scottish, and especially Glaswegian, narratives allowed no positive outcomes for "villains" like him – they were either executed; or became elderly "crime boss" figures, evil to the end; died young by violence amidst their own kind; became burnt-out non-entities in early middle age or ended drunk in the gutter. They were not thought to have the "potential" to be otherwise. Even before he left prison, with his sculpting and writing, and his marriage to Sarah Trevelyan, Boyle had conspicuously broken the mould, in full view of a mesmerized Scottish media. Liberal, educated middle class Scotland mostly encouraged and appreciated him for having had the courage to change, for exposing the shameful brutality of "the cages", for his manifest articulateness and intelligence, and, indeed, for his charm; almost from the start of his time in the Special Unit he was never without allies or champions, and the Scottish arts community were at the heart of that.

There is no doubt that Boyle felt himself becoming an artist, and that he was taken seriously as one by other artists and critics. His early stone and metal sculptures were vivid and accessible expressions of thoughts and feelings that preoccupied him as a prisoner – about anger, survival, justice – and there is simply no denying the insight and eloquence, as early as 1974, with which he wrote about discovering beauty and the pleasure of creation, the realisation of how much of his life he had wasted, the joy that had been missing from it and the wrongs he had blindly done, as well as the burgeoning sense of concern to prevent the next generation of young men like himself from making the same mistakes (Boyle 1982). Art was not all he experienced in the Unit – education in social sciences was also vital to his self-understanding - but in his particular case creating it and learning about it was part of what "improved" him. That a man from Boyle's background should ever have encountered (at Richard Demarco's gallery on one of his day releases) the German sculptor and performance artist Joseph Beuys (Boyle 1977: 257) – at the time "the most influential figure in the European art world" (Hughes 1980:402) - was emblematic of the changed milieu in which he moved[7]. *Guardian* art critic Caroline Tisdall (1974:6) was sufficiently impressed with Boyle's insight into Beuys' work (and with Boyle's own work) that she dedicated her book on Beuys to him.

Nonetheless, what Boyle accomplished in the Special Unit also provoked anger and resentment, and the media debates about him brought – if not into the open, then closer to the surface - liminal assumptions about class, power,

violence and masculinity in Scottish life – and, by dint of that, exposed some deep-rooted constraints on progressive penal reform. Opposition came from several quarters. Some was orchestrated by the Glasgow police and elements in the SPOA, for whom Boyle's past crimes were simply too grave to justify the liberties he had been accorded. For Conservative MP Teddy Taylor, and the newspapers who supported his party, hostility to Boyle ran deeper than an engrained ideological preference for punishment over rehabilitation; the Special Unit violated their very conception of what a prison should be, and as a result prisoners, Boyle especially, seemed no longer to know their place. In this instance, the tabloid Labour press concurred: commenting on a sculpture in which Boyle invited society to think more imaginatively about crime and punishment, *The Daily Record* wrote contemptuously "Now why should a prisoner be addressing his mind to such problems?" (quoted in Dowle 1982:114).

Historian Sydney Checkland (1981:132) observed that "the powerful moralism in Glasgow working class life" meant that "working class opinion certainly contains a strong element that finds it hard to forgive [Boyle] his violence on the ground that he was a victim of a vicious society, for they know the terror of such men". True and important as this was, it neglected the equally powerful moralism embedded in Ken Murray's socialist sensibility, as authentically working class as the traditions articulated by the *Daily Record*, but more informed and hopeful. Ken Murray was himself a very exceptional man, certainly a very exceptional prison officer, and had he not had the personal faith to believe that Boyle was still not beyond the reach of ordinary human decency and the courage to trust him, both their histories in the Unit may have been very different. It is to Boyle's great credit that he always acknowledged that; he knew a good man when he saw one[8].

While accepting that Boyle's transformation did pose some difficult, but not insurmountable, questions about the tension between justice and rehabilitation, and some dilemmas even for well-meaning penal administrators, one must still conclude that even if he had been the Special Unit's only success it would still have been worth it. Over and above his personal achievement, he publicly shattered an enduring and pernicious cultural stereotype, that of the intractable and insensitive hard man, and (exactly as the Unit itself had intended to do) he made the case for civility and intelligence in penal treatment more effectively than any academic research could have done: he became the living proof of its worth. As it was, the Unit helped others too, who also benefited from Boyle's example and leadership even as his reputation continually eclipsed them. While he undoubtedly had a network of supporters, and was not to

be without influence in the future, it was clear even before he left prison in 1982 that some segments of Scottish society would never acknowledge the manifest changes in his behaviour, or recognize his talent, or, worse, would cynically treat both as mere camouflage for latent malevolence. In Glasgow, Boyle and the Special Unit could have become powerful icons in a city so keen to transcend its crime-ridden past and its violent image, but media-stirred reminders of what he had once been constantly obscured perceptions of who he had now become (Spring 1990). Notwithstanding his denial of the murder of which he was convicted, it was never the case that Boyle refused to admit remorse or regret for his past violence (Boyle 1977:251): what his critics wanted, however – more, it seemed, than signs of repentance[9] - was a broken, penitential posture so abject that he would forever be shunned as someone indelibly stained by his violent acts, rather than respected, listened to and learned from as someone who had transcended and repudiated them.

Conclusion: The Special Unit and the Penal Heritage

Compared to those aspects of a county's past around which a recognizable "heritage" can be built, (art and culture, military achievement etc) there are several reasons why the penal past rarely figures prominently in contemporary social memory[10]. At root, the less that registers in popular and professional memory about penal measures that have failed in the past, or at least not achieved much, the easier it is to continue doing the same old thing, to bestow an aura of innovativeness on them and perennially reintroduce them in new guises. Paradoxically, measures which have simultaneously been both successful *and unduly challenging* to established or emerging forms of penal practice, or to have exposed the contradictions, limits and inevitable mediocrity of penal systems, are also less likely to be officially commemorated. Such has been the fate – formally and officially - of the Barlinnie Special Unit overall, and especially of its early years. It is true that the Unit survived for sixteen years more despite the political embarrassment its early years caused the penal authorities (albeit in more muted form) - "famous [among academics and penal reformers] but marginalized" in all other respects (King 1994:50) and eventually dwindling into insignificance. It is also true that Boyle's high profile as a penal commentator in the 1980s, and *A Sense of Freedom's* over two decade print-run, ensured that the Unit's memory was kept alive – ambivalently - for longer than might otherwise have been the case.

A certain generation in Scotland, interested in arts and penal reform, have indeed remembered it well, grasped it for the success that it undoubtedly

was, taken it to heart. However, it has never become totemic in the way, say, that its near-contemporary innovation, the Children's Hearing System, did; it never came to signify the kind of penal enlightenment in which national pride could and should be invested. In truth, because of the embarrassment it had caused, discussion about it was dampened down - evidenced by the constraints on speaking about it imposed on Ken Murray and the Scottish Office's unwillingness to co-operate fully with Carrell and Laing's art book – and the lessons that might have been drawn from it, while never wholly disregarded, were never fully learned or owned either. Reflection on the value of creative arts in offender rehabilitation, and on the nature of desistance processes, did take place, but not in a sustained or deep enough way to last, despite the best efforts of supportive liberal journalists. The implications of *A Sense of Freedom* for the reform of the Scottish school system – as great if not greater than its implications for the adult penal system – and the challenge it posed to complacency about the culture of violence in the west of Scotland were noted but not pursued. The subsequent, laudatory insider accounts of the Special Unit's work (Whatmore 1987, 1990; Stephen 1988; Cooke 1989a, 1989b; 1997; Coyle 1989), did belatedly give it penological legitimacy, but none captured the tension or exuberance of life in the Unit as well as the contributors to Carrell and Laing's book, coy as it sometimes was about key moments. There is a need for a proper, rounded history of the Unit.

By 1982 the specific premises on which the Special Unit's practice was founded were becoming dissonant with emerging trends in penal organization, and would probably have required special efforts to preserve them anyway, or more dubiously, needed re-articulation to survive intact within new policy frameworks. Very little of what the Unit stood for – the therapeutic community ideal (and the models of personal change implicit in it), reliance on experientially-informed faith in people rather than a "scientific" evidence-base, the stimulation of creativity, openness to haphazard and unpredictable external influences, the encouragement of argumentativeness - sat comfortably with the nascent managerialism of the 1980s (Adler and Longhurst 1994).

Integrating the Special Unit into the Scottish penal heritage – getting it commemorated as the milestone that it was - is not primarily a question of asking its key players to recall or reaffirm their achievements. Many are old, several have died[11]. Joyce Laing, who serendipitously helped the arts to flourish in the Unit, runs a gallery devoted to "outsider art" in Pittenweem, Fife (Cox 2006). Richard Demarco still promotes the arts in Edinburgh. Boyle, in his sixties now, still sculpting, lives abroad and, having, though choice and

circumstance lived in the public eye as a "reformed ex-con" for far longer than most prison authors choose or get to, is entitled to all the anonymity he wants. Hugh Collins (2000), also still sculpting, wrote a partially revisionist account of the Unit, which, while possibly helpful at the time to his continuing quest for an authentic post-prison identity, denigrated its achievements and key people within it. There are people enough in Scotland still prone to doing this without the Unit's beneficiaries joining in.

The task of remembrance and commemoration is for a new generation, who are mindful that a country's penal achievements and failures reflect deeper cultural sensibilities, and invite judgment upon it (Scottish Government 2008). Past penal successes, vividly drawn, can ground and shape future possibilities in a field where optimism is always constrained and precarious, and the threat of repression is constant. They can signal to the present how near or far we might be from realising new aspirations, and can condition our sense of whether or not they are feasible, and of what it might take to make them so. The price of forgetting, or misremembering, is a desultory continuity, diminished hope, or wrongheaded change, or all three. The praise rightly bestowed on Ken Murray in his obituaries in October 2007 – which openly acknowledged his part in creating the Special Unit (Steven 2007; Wilson 2007) - *tentatively* suggest that sufficient time may now have elapsed for the Unit (even its earliest years) to be officially commemorated in the way it deserves. Its image, of course, will forever be tied to what Jimmy Boyle achieved there. No history could pretend otherwise. While some may still find it hard to accept that Boyle's personal example in the Unit and subsequent influence on public debate on crime and punishment were wholly to the good - that it speaks well, not badly, of Scotland that civilising influences were successfully brought to bear on violent men – there is no virtue in withholding recognition from the very people who had the imagination to see that this was needed, the talent to make it happen and the wit to stick with it when it took an unexpected turn. A truth which can only be told in obituaries is a truth of which people are still afraid.

Endnotes

1. The practical development of therapeutic communities, usually in hospital settings, developed in England after WW2, largely though the efforts of two men, Tom Main and Maxwell Jones (1907-1990). Although HMP Grendon Underwood functioned as a therapeutic community, there had been many more attempts to apply the concept in the US prison system: Dennie Briggs (b1927), an American psychologist had been particularly associated with

those in the California prison system. Briggs worked with Jones in Britain between 1968-1974, briefly in the Dingleton psychiatric hospital, Melrose, in Scotland, later in the Henderson Hospital in England, as well as being a consultant for NACRO in this period.

2. The idea that relatively uneducated and notoriously violent men might grasp and benefit from complex art did not arise with the Barlinnie Special Unit. The impact of the San Francisco Actor's Workshop performance of Samuel Beckett's *Waiting for Godot* before an audience of 1400 convicts in San Quentin penitentiary on 19th November 1957, had already passed into legend, in arts circles if not among penal reformers (Esslin 1961). Rick Cluchey, a prisoner at the time of the 1957 performance, went on, after release, to become a major interpreter and friend of Beckett, and a drama-activist in US prisons. A one-off (failed) armed robber, who was never a violent man in any meaningful sense, Cluchey brought his theatre group to Scotland in the 1970's at the behest of Richard Demarco, and visited the Barlinnie Special Unit. More significantly, overall, French thief-turned-novelist/poet/dramatist Jean Genet (1910-1986) was receiving immense intellectual attention in the 1960s, powered by Jean-Paul Sarte's enthusiasm for his writing (Sartre 1952; Esslin 1961; Sontag 1966). Among literary intellectuals, if not penal reformers, comment on Genet provided something of a template for understanding affinities between criminals and artists, although there are few signs that such writing had much specific influence in Scotland.

3. The other two prisoners, both murderers, had not been involved in gangland criminality in the way that Boyle, Winters and Conroy had, and were seemingly more in need of psychiatric support. This lent credence to the idea that circulated among prisoners when they first heard of the Unit, that residents would be treated as if they were mentally disturbed, hence the nickname "Nutcracker Suite" that got bestowed on it.

4. The Special Unit had been intended to make difficult prisoners manageable enough to be transferred back to mainstream prisons, and it had never been envisaged that prisoners would be released direct from the Unit, or indeed, that they would stay there as long as Boyle did. The argument that sending people back to mainstream prisons risked them unlearning precisely what the Unit had taught them was a valid one – Paterson (1982) suggested that the original assumption should be revisited – and in Boyle's case it did look as though gratuitous punishment was being imposed on him, if only to assuage hostile public opinion. Boyle sought unsuccessfully to invoke human rights legislation to prevent his transfer to Saughton, but in the event he was an

exemplary prisoner, helpful to other younger prisoners, which consolidated his supporters faith in him, and confounded his detractors.

5. Because Boyle never appealed the conviction, this will never *formally* be resolved to anyone's satisfaction. He has always said it was a friend of his who killed Rooney, on whom he refused to "grass" (Campbell 1999). Glasgow journalist George Forbes (2004), who accepts that Boyle was subject to extreme brutality in prison, and, for all its omissions, regards *A Sense of Freedom* as a "remarkable achievement", still insists that the evidence incriminates Boyle. Given the kind of man he has openly admitted to being in the 1960s, and the associates he had, it is not implausible that Boyle could have killed someone. It is equally not implausible that the police hated him so much that they fitted him up, or that the courts were too trusting of police evidence. Whether he killed Rooney or not, Boyle did appalling things as a young man - the veiled self-portrait in *The Hard Man* (Boyle and McGrath 1977) makes this searingly clear. In the course of the inward changes that are unavoidably entailed by the kind of transformation he put himself through, it is hard to believe that he has not had demons to deal with, which he was never under any obligation to share publicly, although some might conceivably be inferred from his surreal, allegorical novel *Hero of the Underworld* (Boyle 1999), a story conceived in part while he was still in the Special Unit.

6 There is room for argument about what the term "hard man" meant in Glasgow, and whether the term was rightly applied to Boyle. Spring (1990:76) says it meant "a tough guy, or at least someone who can't be taken advantage of" and while, at least since the Scottish crime novels of the 1930's, a gangster had been one embodiment of it, the term did not have any necessary associations with criminality. The association with fighting (fists more than knives), a taciturn masculine presence and a cold self-possession, were ever present, but "hard men" could be good men who fought for decent principles. Policemen could be hardmen. On the streets, Boyle's violence was as often crazed as it was self-possessed; in the Unit he discovered that some of his best qualities – creativity, intelligence, articulateness – were quite different from the "hard" virtues to which he might once have aspired.

7. Joseph Beuys (1921-1986) was an exponent of German neo-Expressionism, so influential according to Robert Hughes (1980:402), that he "was to no small degree responsible for the eighties upsurge of European confidence in its own art against New York's". He believed that everyone had creative potential, and while not being conventionally left-wing, his view of art's

politically transformative potential – "Art", he declared, "should be a real means, in daily life, to go in and transform the power fields of society' (Hughes 1980: 402-3) - lent itself to at least some of the art produced in the Special Unit, and certainly Boyle's, at that time.

8. When Ken Murray retired from the Prison Service in 1987 he became chair of the social work committee of the then Strathclyde Regional Council, and, in that role, a significant champion of work with people with alcohol and drug dependencies, the homeless, and ex-prisoners. He died in October 2007, aged 76. His death made headlines in national newspapers, and in the obituaries he could not have been praised more highly for his work in the Special Unit (Steven 2007; Wilson 2007). The Lord Provost of Glasgow (a former social work colleague), a former prisons inspector, and the SPOA all noted his unshakeable integrity. Most pointedly, the Scottish Prison Service, which did not treat him well in 1979 or the years thereafter, conceded that he was a "widely respected individual whose ideas were probably ahead of their time" and that "contemporary ways of working with prisoners today are due in no small measure to people like Ken" (*The Herald* 5th October 2007). Compared to many of his peers in the SPOA Murray was indeed ahead of his time but, as Jeffrey (2009:126) shows, some of the "liberal thinking" that the Special Unit embodied – treat people decently and they are more likely to act decently - had been prefigured by a Barlinnie Governor in the 1930s, who was then thwarted by his superiors. For Murray, the liberal/socialist practices he introduced in the Unit, far from being incomprehensively novel, were decades overdue.

9. In Scotland in the 1970s, Boyle's transformation was so unique and surprising that many people struggled to find words to comprehend it, falling back on clichés, or remaining baffled. Bit by bit, never explicitly, Boyle's story was quietly absorbed into diffuse, distinctively Scottish, egalitarian mythologies – a belated "lad o'pairts", the poor kid with talent who should not be held back, and who comes good in the end - and "democratic intellectualism", which, in one version at least, acknowledges that voices from the margins of the polity should be attended to, however discomforting. Within such frameworks, probably subconsciously, Boyle slowly came to be seen as a more intelligible and acceptable figure – opinionated and controversial, perhaps unduly flamboyant, but not someone whose transformation was inherently implausible, or duplicitous, or Un-Scottish. His detractors always had Jekyll and Hyde/Deacon Brodie-style "duality" to fall back on - the idea that an ostensibly respectable life in Edinburgh could still hide links with the criminal underworld - but as it became ever more

clear that Boyle had severed links with crime those who clung to this view came to seem shamelessly vindictive. (Not that the tabloids who did this cared, or were any less destructive).

At the time of Boyle's transformation, the ostensibly religious terms "redemption" and "repentance" would probably not have been acceptable to any party in the argument, but since then the terms have, to a degree, been infused with secular meanings, and criminologists (at least) are less wary of them. Repentance means reorientation, and renunciation of past ways of acting and thinking, living differently – and better, not necessarily disowning the past (whose consequences can't be undone), but ceasing to let it shape one's present and future behaviour. In this sense, Boyle's actions in the Special Unit and afterwards illustrate repentance rather well, and spoke far louder than mere words of contrition.

10. I mean by "penal heritage" all the ways we have of remembering the penal past, from prison museums and official histories, to journalistic reminiscence, historical true crime, obituaries, and everyday folk memory. All signs of the Unit's former presence in D wing have been obliterated in HMP Barlinnie itself. A small section of the Glasgow People's Palace museum is devoted to crime and punishment, and within that – around a display of an edition of *The Key* – the Special Unit is lightly commemorated. Journalist Robert Jeffrey (2002; 2009) has celebrated the Unit's achievements under the sombre rubric "so successful they shut it down", but there is an uglier side to some of contemporary Glasgow's other true crime and local history writing in this respect, which shamelessly vilifies Boyle the young thug from forty years ago, without ever mentioning what it was that truly made him memorable and distinctive in later life - the Special Unit and his rehabilitation within it.

11. Two of the people associated with the early years of the Barlinnie Special Unit, and mentioned here, died during the six weeks I was writing this paper – Cordelia Oliver (1923-2009) and Kay Carmichael (1925-2009). I would like to dedicate this paper to Kay Carmichael – my own act of remembrance, to a fellow social work academic. I learned a long time ago that she had been associated with the Unit, and because of the deep impression that *A Sense of Freedom* made on me as a novice social worker with young offenders, in south London in the 1970s, I developed a lasting curiosity about the circumstances in which the book came into being, and about the people who made the Special Unit what it was. I hope this paper has done justice to them all, although there is more of it yet to be done.

References

Adler M and Longhurst B (1994) Discourse, Power and Justice: towards a new sociology of imprisonment. London: Routledge

Boyle J (1977) A Sense of Freedom : London Pan.

Boyle J (1982) Thoughts: 1974 – reprinted from the catalogue to Jimmy Boyle's exhibition at Third Eye Centre, 1976. in Carrell C and Laing J (eds) The Special Unit: its evolution through art. Glasgow: Third Eye Centre

Boyle J (1984) The Pain of Imprisonment. London: Pan

Boyle (1999) Hero of the Underworld. London: Serpent's Tale

Boyle S (1982) The Special Unit and the Outside World. in Carrell C and Laing J (eds) The Special Unit: its evolution through art. Glasgow: Third Eye Centre

Broadhead J (2006) Unlocking The Prison Muse: the inspirations and effects of prisoner's writing in Britain. Cambridge: Cambridge Academic.

Burgess M (1998) Imagine a City: Glasgow in Fiction. Glendaruel: Scotland: Argyll

Burrowes J (1998) No Mean City, in Burrowes J. Great Glasgow Stories. Edinburgh: Mainstream Publishing

Campbell D (1999) Hand Over Fist: an interview with Jimmy Boyle. *The Guardian Weekend* 23rd January 1999)

Carmichael K (1982a) Daily Living. in Carrell C and Laing J (eds) The Special Unit: its evolution through art. Glasgow: Third Eye Centre

Carmichael K (1982b) Postscript to Daily Living. in Carrell C and Laing J (eds) The Special Unit: its evolution through art. Glasgow: Third Eye Centre

Carrell C and Laing J (eds) The Special Unit: its evolution through art. Glasgow: Third Eye Centre

Checkland S G (1981) The Upas Tree: Glasgow 1875-1975 .. and after 1975-80.Glasgow: University of Glasgow Press

Collins H (1997) Autobiography of a Murderer. London: MacMillan

Collins H (2000) Walking Away: Edinburgh: Canongate

Cooke D (1989a) Containing Violent Prisoners: an analysis of the Barlinnie Special Unit. British Journal of Criminology 29(2) 129-43

Cooke D (1989b) The Barlinnie Special Unit. in Scottish Prison Service. Current Issues in Scottish Prisons: systems of accountability and regimes for difficult prisoners. Occasional Paper No 2. Edinburgh: HMSO

Cooke D (1997) The Barlinnie Special Unit: the rise and fall of a therapeutic experiment. in Cullen E, Jones L and Woodward R (eds) Therapeutic Communities for Offenders, Chichester: Wiley

Cox R (2006) Creativity Is All In The Mind. *The Scotsman* 6th May 2006

Coyle A (1987) The Scottish Experience with Small Units. in Bottoms A E and Light R (eds) Problems of Long Term Imprisonment. Aldershot: Gower

Coyle (1989) Incidents in The Scottish Prison Service: incident and response. in Scottish Prison Service. Current Issues in Scottish Prisons: systems of accountability and regimes for difficult prisoners. Occasional Paper No 2. Edinburgh: HMSO

Dowle M (1982) A Bold Reform or a Cracking Good Yarn: the Press and the Special Unit. in Carrell C and Laing J (eds) The Special Unit: its evolution through art. Glasgow: Third Eye Centre

Esslin M (1961) Theatre of the Absurd. New York: Anchor Books

Forbes G (2004) Such Bad Company: true tales of Glasgow's underworld. Glasgow: LangSyne Publishing

Hughes R (1991) The Shock of the New: art and the century of change. London: Thames and Hudson

Jeffrey R (2002) Glasgow's Hard Men. Edinburgh: Black and White Publishing

Jeffrey R (2009) The Barlinnie Story. Edinburgh: Black and White Publishing

Jones M (1968) Social Psychiatry in Practice: the idea of a therapeutic community. Harmondsworth: Penguin.

King R D (1994) Order, Disorder and Regimes in The Prison Services of Scotland, and England and Wales. in Player E and Jenkins M (eds) Prisons After Woolf: reform through riot. London: Routledge

Koestler A (1964) The Act of Creation. London: Hutchinson

Liebmann, M. (2000) The Arts Therapies. in Behavioural Distress: Concepts and Strategies Gates B, Gearand J and Wray J (eds) London & Edinburgh: Bailliere Tindall/ Royal College of Nursing)

McArthur A and Long H K (1935). No Mean City. Neville Spearman

McClintock F (1982) The Penological Significance of the Special Unit , in Carrell C and Laing J (eds) The Special Unit: its evolution through art. Glasgow: Third Eye Centre

McGrath T and Boyle J (1977) The Hard Man. Edinburgh: Canongate

Nellis M (2010) Prose and Cons: British Prisoner Autobiography 1950-2009. In Cheliotis L (ed) The Arts of Imprisonment.; control, resistance and empowerment. Chichester: Wiley

Oliver C (1982a) Tom Galloway. in Carrell C and Laing J (eds) The Special Unit: its evolution through art. Glasgow: Third Eye Centre

Oliver C (1982b) Bob Brodie. in Carrell C and Laing J (eds) The Special Unit: its evolution through art. Glasgow: Third Eye Centre

Oliver C (1982c) Art at the Specal Unit in Carrell C and Laing J (eds) The Special Unit: its evolution through art. Glasgow: Third Eye Centre

Oliver C (1982d) Hugh Collins in Carrell C and Laing J (eds) The Special Unit: its evolution through art. Glasgow: Third Eye Centre

Paterson M H (1982) The Special Unit: an experience of learning. in Carrell C and Laing J (eds) The Special Unit: its evolution through art. Glasgow: Third Eye Centre

Sartre J-P (1952) Saint Genet. Paris: Gallimard

Scottish Government (2008) Scotland's Choice: Report of the Scottish Prison Commission. Edinburgh: Scottish Government

Scottish Home and Health Department (1971). Treatment of Certain Long-term Prisoners and Potentially Violent Prisoners. report of a working party. Edinburgh: Scottish Home and Health Department

Schneider D (1950) The Psychoanalyst and the Artist. New York: Mentor Books

Sontag S (1966) Sartre's Saint Genet. in Against Interpretation. New York: Farrar, Strauss and Giroux

Spring I (1990) Phantom Village: the myth of the new Glasgow. Edinburgh: Polygon.

Stephen I (1982) The Role of Education in the Special Unit. in Carrel C and Laming J (eds) The Special Unit: its evolution through art. Glasgow: Third Eye Centre

Stephen I (1987) The Brainier Special Unit: a penal experiment . in Bucket S, McNeill J and Yellowlees (eds) Imprisonment Today: current issues in the prison debate.

Steven A (2007) Obituary for Ken Murray. The Scotsman 15th October 2007

Storrs A (1972) The Dynamics of Creation. London: Secker and Warburg.

Tisdall C (1974) Joseph Beuys – Coyote. London: Thames and Hudson

Westman H (1961) The Springs of Creativity. London: Rutledge and Kegan Paul

Whatmore P (1987) The Barlinnie Special Unit: an insider's view. In Bottoms A E and Light R (eds) Problems of Long Term Imprisonment. Aldershot: Gower

Whatmore P(1990) The Special Unit at Barlinnie Prison, Glasgow. In Bowden P and Bluglass R (eds). Principles and Practice of Forensic Psychiatry. Edinburgh: Churchhill Livingstone

Whitley S, Briggs D and Turner M (1972) Dealing with Deviants. London: Hogarth Press

Wilson B (2007) Obituary for Ken Murray. The Guardian 11th October 2007

Winters L (1979) The Silent Scream. Edinburgh: EUSPB

SASO – Objects, Membership, Office Bearers, Branch Secretaries and Chairman's Report

Objects

The formal objects of the SASO are: "to initiate, encourage and promote as an independent Scottish body, study and research by all means into the causes, prevention and treatment of delinquency and crime, and to co-ordinate and consolidate existing work of that and the like nature, and to give publicity to such work, and to secure co-operation between bodies, association or persons engaged in any research or work or activity having objects similar or akin to those of the Association".

The Association is managed by a Council. There are branches in Aberdeen, Dumfries, Dundee, Edinburgh, Fife, Perth, Glasgow, Lanarkshire, and in Orkney & Shetland. Each branch carries out its own programme of meetings and local conferences. The Association organises a residential conference each year on the third weekend in November. It is Scotland's main criminal justice conference and attracts distinguished speakers from both within and outwith Scotland.

The basic aim of the Association, both nationally and locally, is to create a common meeting ground for the many professional groups and individuals interested in the field of crime and criminology. The membership is drawn from the Judiciary, the Legal Profession, the Police, the Prison Service, Social Work Services, Administrators, Academics, Teachers, Reporters to Children's Panels, Children's Panel Members, Doctors, Clergy, Psychologists, Prison Visiting Committees, Community Justice Authorities, Central and Local Government. It provides an opportunity for an exchange of views by its members, enabling them to explain their own problems and to appreciate the problems of others engaged in related fields. SASO has no agenda other than to make possible and encourage purposeful dialogue within the Scottish criminal justice system in ways which will contribute to its improvement.

Through study groups and conferences, communication between the professional groups is encouraged and individual members gain the opportunity to meet experts in different fields of study, and to discuss with

them matters of mutual interest. In the working parties it is possible for the members to contribute their own specialist knowledge or experience. Among the most valuable results of membership are the opportunity to meet and know others with whom it may be necessary to make contact during the course of one's professional life, and the consequent building of trust and confidence between members.

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Chairman's Report, 2008-09
Given to the AGM of the Association at Peebles in November 2009

Introduction
This is my third report to SASO. I am pleased to report that it has been another very successful year. The work of the Council seems to be primarily that of organising the National Annual Conference, ensuring healthy finances and supporting where necessary the work of the Branches. No sooner is one conference over than we are already heavily engaged in planning and organising the next. However, Council meeting at Conference last year decided on two new innovations – more about that later.

Through our Branch activities and national conference we bring together many of those involved in the justice system within Scotland. Our membership continues to remain strong, at just under the 400 mark, and as we know, many more individuals attend our meetings and conferences which are also open to non-members. Our Administrator, Irene Cameron, is working through the membership list, updating details and attempting to modernise the membership subscription system.

National Conference

The theme of the 2008 Conference was "*Towards a Scottish Penal Policy Consensus*" and this turned out to be a very successful and enjoyable event. Again, my thanks go to Niall Campbell, Sally Kuenssberg, Eilidh Murray, Alasdair McVitie, Dan Gunn and others whose organizational skills and attention to detail proved so effective. Conference began with our dinner on the Friday night, and a warm and themed talk from our after dinner guest speaker Professor Mike Nellis. David Strang, Chief Constable of Lothian and Borders Police, chaired the main conference on Saturday and Sunday. Three keynote addresses were given during the first morning. The first was by Kenny MacAskill MSP, Cabinet Secretary for Justice who presented on Government policy and his hopes for the Scottish Criminal Justice System. The second was delivered by Rt Hon Henry McLeish, PC, former First Minister and Chairman of the Scottish Prison Commission. He talked about the Commission's Report and what choices faced Scotland. The final morning session was led by Dr Nancy Loucks, an Independent Criminologist and Chief Executive of Families Outside who presented on "*What does research tell us?"*

In the afternoon a very successful interactive workshop was held on the issue of "*How much can prison actually do?*" Dan Gunn, Governor of HMP Glenochil led the workshop, with help from members of SPS. Using cases studies, delegates were asked whether the resources within prisons were appropriate for the problems presented by the cases.

The final session on Saturday was a Panel Discussion "Community Justice Authorities: A difference in the making? (Can CJAs change anything?)". This was chaired by Professor Sandy Cameron, Chair of the Parole Board for Scotland, and member of the National Advisory Body (Chair of CJA scrutiny sub-committee). Panel members were Dr Nick Bland, Scottish Government Justice Analyst, Chris Hawkes, Chief Officer, Lothian and Borders CJA, and Cllr. Peter McNamara, Convener, South West Scotland – CJA. After initial presentations there followed a lively discussion with the delegates. David Strang then closed conference for Saturday.

The final morning, Sunday, saw a Panel Presentation and final keynote address. The Panel examined '*Community Options'*. There were four presentations, Laurie Russell from the Wise Group on *Routes out of Prison*; Marnie Hodge from the 218 Centre; Keith Hastie on SACRO's *Community Links Centre*; and Sandy Riddell, Chair of ADSW Criminal Justice Standing Committee on *The Role of Criminal Justice Social Work*. The final session

was a keynote address by Professor David Wilson on *Scotland the Brave? – Reflections on the Prisons Commissions of Scotland and England and Wales*. In conclusion, David Strang then briefly summarised conference.

Branches

The national conference is our single largest event, but throughout the year our local Branches provide a wide variety of lectures, debates and day conferences. These events provide an important local meeting place for those involved in the criminal justice system.

Glasgow's Branch continued to do exceptionally well, starting the year with an excellent debate on the *The Scottish Law Commission's Recommendations in Relation to Underage Consensual Sex*, then holding a series of four lecture evenings and concluding with an excellent one day conference on '*Women and Children in the Criminal Justice System*' in May. All these events are well attended and well organized and Sheriff Rita Rae, Jackie Robeson and their team are to be congratulated.

The Edinburgh Branch under Sheriff David Mackie has also met on a number of occasions, with well attended meetings.

The Fife Branch has continued to be very active with the support of Sheriff Peter Braid.

In the south, the Dumfries and Galloway Branch also continued with an excellent programme of meetings. Bill Milven and Amanda Armstrong run the Branch and arranged interesting meetings during the year. A further programme is planned.

The Lanarkshire Branch with new Chair Sheriff Shiona Waldron, Deputy Chair Bill McKinlay and Jim O'Neill is also active.

In Perth, under the new leadership of Chief Superintendent Matt Hamilton, the branch continues to do well. The Branch held a number of meetings last season and continues to attract audiences with a varied diet of lectures. Details of forthcoming talks are on the website.

Dundee Branch is now operational and supported by Chairman Sheriff Alistair Duff, Chief Constable John Vine and Jane Martin. An excellent series of meetings concluded with a talk by Kenny MacAskill MSP, Cabinet Secretary for Justice.

Niall Campbell is working with members in Aberdeen to re-vitalise the Branch there.

All Branches are to be praised for the excellent work they undertake locally in providing events and a venue for those working in the criminal justice system to meet. I apologize for not listing all events.

Council

Since the last AGM Council met at Conference in November 2008, and on four occasions (December in Edinburgh, January at SCRA in Glasgow, May at University of Strathclyde and October in Glasgow) to undertake the work of SASO and to plan for the November 2009 Conference. I am grateful for the support I have received from council and its office bearers. Irene Cameron, our administrator now attends council meetings. Our regular attendees are Niall Campbell, Dan Gunn, Eilidh Murray, Alasdair McVitie, Margaret Small, Elizabeth Carmichael, Fergus McNeill and Cyrus Tata. The work of Conference organisation is now undertaken by most members. After a long association with us Sally Kuenssberg indicated at the last AGM that she wished to step down from Council. Sally has our gratitude for her tremendous work and contribution as 'Conference Organiser' over many years.

Finance

Our finances continue to be very healthy, and last year we were fortunate in 'washing our face' from the conference. The conference is our principal source of income and we need to ensure that we cover the running costs of the organization. We were also fortunate to receive a small grant from the Scottish Government Justice Directorate to enable us to help reduce costs for those wishing to attend conference who come from the voluntary sector or are involved with the CJS or SASO in a voluntary capacity (and not in full time employment). We are pleased that a similar arrangement, to subsidise some places, will be available to us for 2009. As ever, our Treasurer, Alasdair McVitie, manages our financial affairs and reports to Council on our accounts. I am very grateful to him for his prudent financial management.

Journal

Volume 15 of The Scottish Journal of Criminal Justice Studies was published by SASO in July 2009. It continues to be an excellent publication now under the editorship of Professor Michele Burman . The Journal is gaining in reputation and has an Editorial Board of Scottish academics to support

its work and maintain standards. My thanks to the Editorial Board as well for their excellent work. The current volume contains SASO's conference papers, some SASO material and an appreciation to the memory of The Hon Lord Philip Caplan, QC. Our thanks go to Jason Ditton and his team. According to Evelyn Schaffer's account of SASO, Jason took over the task of editing the Journal in 1990 – so this is his 20th year. Jason has decided to retire. We thank him for a tremendous job – but he leaves us with a vacuum to fill, and for anyone willing – a hard act to follow!

Website

The website of SASO is an important window through which others can find out about the organisation, its aims and the activities of Branches. This was developed in 1996-7 by Mary Munro, and she has continued to support our work by keeping it up to date and referencing in links through her own CJScotland web site. We continue to sponsor their 'events' page and we have our logo and hyper-link placed on this page. SASO welcomes ideas for the web site, and Branch Secretaries and Chairs can submit direct to Mary Munro and Irene Cameron items for inclusion. We are examining how this might be done directly by the Branches.

We were saddened to learn of the death in August of Gordon Nicholson CBE, QC. Someone who had been our Chairman 1974-79 (when ISTD then SASD), Honorary Vice-President 1982-88 and Honorary President 1988-2002. Gordon was Sheriff Principal and temporary judge and had a distinguished legal career spanning 48 years, joining the Faculty of Advocates in 1961. He was an Advocate Depute, Sheriff at Dumfries and at Edinburgh, and Sheriff Principal of Lothian and Borders. He was a Commissioner of the Scottish Law Commission, and of the Northern Lighthouse; Honorary President of Victim Support Scotland; Vice President of the Sheriffs Association and he authored "*The Law and Practice of Sentencing in Scotland*", and co-authored "*Sheriff Court Practice*". However, he will probably be best remembered for his work as Chairman of the Committee (2001-03) which bears his name: The Nicholson Committee; Review of Liquor Licensing in Scotland. We were fortunate that Gordon spoke to this Conference in 2007 on that subject. Gordon was well loved in SASO. He will be missed greatly and our sympathies and fond regards go to Hazel, his wife, and to his family.

We also lost other friends, Lord Iain MacPhail, judge, and Alastair MacDonald, former prison governor. Both were active supporters of SASO and will be sadly missed.

At the last Conference, Council agreed to hold an annual memorial lecture to honour members of the Scottish Criminal Justice community that Council thinks appropriate. The first of these will be to the memory of Lord Philip Caplan QC, a long time supporter of SASO. Lady Caplan was pleased to agree to this suggestion and the memorial lecture is scheduled to be given to the Conference on 14 November 2009.

Secondly, Council agreed to sponsor a prize for a student essay on criminal justice matters. As a charity, we promote study, encourage students to attend our events and we are working more closely with other organisations such as the Scottish Centre for Crime and Justice Research. In fact, their three co-directors are acting as judges. The prize also includes attendance at Conference and publication of the winning essay in the SASO journal. The first award will be made at the Friday evening Conference Dinner.

Finally, I wanted to remind members of the objectives of our organisation:

- To encourage and promote **study and research** into the causes, prevention, effects and treatment of, and respond to delinquency and crime.
- To promote **co-operation** between bodies, or persons engaged in any research or work or activity having objects similar to those of the Association.
- To **create a common meeting ground** for all professional, statutory [and YOI] groups and individuals involved in crime and Criminal Justice.

Alec Spencer
11 November 2009