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Creating Spaces for Change: towards more humane, participatory and effective responses to offending behaviour

Main objectives and context

In 2008 the Scottish Prisons Commission prompted Scotland to choose between two futures for its criminal justice system. The choice presented was between more of the same: more prisons, continued overcrowding, crisis management, public distrust, low professional morale, weakened communities and recurring cycles of crime and re-offending. The alternative was characterised by model prisons housing only the most dangerous, a resourced and respected community justice system, and communities that possess hope and capacity arising from investment in relevant services. In 2014, the Scottish Government launched proposals for the reform and redesign of community justice, with an explicit emphasis on better outcomes, community collaboration and strategic leadership. The evidence is clear and political and professional rhetoric professes to recognise this - prison does not work. This project sought to pick up on this developing consensus that change is needed. It also, however, took as a starting point that, despite this political rhetoric, progress has been slow; new and progressive ambitions for justice continue to be pursued using old methods, revealing a continued reliance on structures, legislation and policy, performance management and revised funding streams as the principal means of effecting change. The bottom line was that imprisonment rates at the start of the project remained at an all-time high and community sentences were rising, not so much as an alternative to imprisonment but alongside it, suggesting ever-greater recourse in Scottish society to criminal justice sanctions. Our starting point, then, in this project was to seek to look behind the rhetoric to consider what might be the philosophical and socio-cultural constraints and enablers to reform, including, for example, Scotland's historically complex relationship to punishment and welfare in delivering justice. A further factor that was instrumental in informing our project was the resurgence in Scottish civil society in the run-up and aftermath of the 2014 Independence Referendum. An example of the role that civil society might be able to play in policy-making was provided by the lobbying of the group Women for Independence against proposals for a new women's prison.

Specific objectives:

- To seek to understand why, in spite of research evidence of what does and doesn't work in reducing re-offending, and against policy direction, Scotland continues to place undue reliance on punitive and ineffective criminal justice responses.
- To explore and identify the barriers to the advancement of a more humane, participatory and effective justice practice, including the role of particular ideologies and rhetoric and of professional and activist interests.



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- To envision, using research evidence, what a humane, participatory and effective criminal justice system might look like.
- To harness the knowledge and mobilise the energies of professional communities and civic society to make and sustain the case for a new criminal justice paradigm.
- To institute a broad and diverse programme of events and knowledge exchange activities that extends beyond the seminar series to mobilise and sustain pathways for change

An account of the insights resulting from the programme

As with any knowledge exchange project, it is difficult to trace pathways from activity to outcomes. The timing of the project overlapped with a number of other criminal justice initiatives. A clear action point from our first event was to call for a presumption against sentences of a less than a year. The Scottish Government has gone on to consult around this. The impetus did not necessarily come from our project but we may have helped contribute towards and fed into a wider mood for change. Similarly, there has been a small drop in prison numbers over the course of the project, again, likely, reflecting different layers of activity.

We have encountered a real frustration in moving from a consensus for change to action to bring it about. In this respect, we might reflect that, while we sought to attract a diverse audience to our seminars, it was, nevertheless, an audience that wanted change. We didn't really manage to engage with some of the groups, such as victim advocates, who are powerful voices in this debate. We might also identify some countervailing forces. For instance, there is a fear in the judiciary with regard to the public reaction to sentences that might be represented as being too lenient. And, given the prominence currently accorded to sexual crimes and domestic violence, we will be limited in reducing imprisonment unless we can tackle such thorny issues in more measured ways that do not revert to default positions of imprisonment. A similar sense of perspective is required at every level of the system, from politicians thinking twice about legislating to criminalise yet more behaviours, police officers feeling able to seek low-level resolution to disputes and prosecutors presuming against prosecution in many cases.

As the intention of the project was to shift the public mood (or at least to provoke discussion around criminal justice issues) we did not use social media as well as we might have. In keeping with the spirit of the project, we set out to use a filmmaker who had experience in the criminal justice system to film and provide publicity material and to manage our social media presence. Unfortunately, he was not best equipped to do this at the point it was required. We did try other sources but never really got this up and running to best effect.

Main outcomes and (expected) impact

We held three very successful events (each attracting 50-60 people), the first focussing on the philosophical and psychological blocks to change, which Richard Holloway argued are a legacy of our Presbyterian religious heritage. Richard Holloway's contribution to this event attracted coverage in *The Herald* and was augmented by an Agenda piece in the same newspaper from Kenny MacAskill (see below for links). Richard's paper is available on the SUII webpage. This event also featured input from Maggie Mellon from *Women for Independence* around the possibilities of enlisting civil society groups to create change. It also



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involved a powerful input from *Vox Liminus* around songs written by prisoners and their families and supporters. The involvement of *Vox Liminus* throughout the project sought to harness the power of cultural rather than structural means of seeking to effect change.

The second event sought to capitalise on the appointment of a new Lord President, Lord Carloway, through inviting him to present his vision for Scottish justice, an offer he accepted (his paper is available on the SUII website). A telling message from his presentation was the extent to which sex crime (including historical) was dominating the work of the High Court. The event also included a presentation from Professor Mike Nellis, on the concept of 'othering' and from Pete White from *Positive Prison? Positive Futures*. This event sought to broaden the audience through inviting those who signed up to bring someone else with them, who might not otherwise attend such an event. So, we welcomed those who had experience of the criminal justice system but also interested friends and neighbours.

The third event sought to shift the focus of the project towards considering what kind of values might underpin a humane and compassionate criminal justice system. We used storytellers to recount case material from Professor Lesley McAra's research and then broke into small groups to explore what might inform Scottish society in best responding to Doreen's situation. Oliver Escobar maintained a theme of engagement, through introducing ideas of deliberative dialogue with the intention that participants might continue conversations among a wider/more diverse audience.

In addition to the events members of the project team made contact with the Lord president's office and through them the Scottish Sentencing Council. Pete White and Mark Smith subsequently took part in to a consultative process over the development of sentencing guidelines.

As noted above, The Scottish Government is consulting over a presumption against sentences of less than a year. It has also sought to shift terminology around offending and offenders, which was a point made strongly by Pete White in one of our seminars. Again, it is difficult to attribute cause and effect but the project has certainly fed into and supported parallel directions of travel.

Mark Smith and Trish McCulloch were invited to a major Scottish Prison Service conference on the future of criminal justice, where Mark Smith presented on the SUII project.

Mark Smith presented a paper on the project at the International Federation of Social Workers Conference, Seoul, Korea, June, 2016

Trish McCulloch and Mark Smith published a piece on the project in *Scottish Justice Matters*

http://scottishjusticematters.com/wp-content/uploads/Pages-from-SJM_4-2_Mobilising-Values.pdf

Mark Smith and Trish McCulloch also submitted a chapter for a book on Scotland's future Scotland 2021.



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A number of other activities were considered, including an animation setting out some key findings that project members would then respond to in a special issue of *Scottish Criminal Justice Matters*. This didn't happen due to competing demands on time.

Trish McCulloch and Mark Smith intend to write an article for a special issue of *Probation Matters* on innovative approaches in criminal justice.

Other team members and contributors to events (McNeill, Urie (Vox Liminus) and Escobar) have been successful in an ESRC bid to use creative arts (music) to consider offender re-integration.

Key recommendations for end user / policy communities

The principle finding, perhaps, is that criminal justice policy, despite apparent political will, is incredibly resistant to change. While we did attempt to broaden the base of discussion we perhaps did not engage/convince key players in the judiciary and prosecution service.

There are also categories of criminal activity, such as sexual crimes or domestic violence that can seem to sit outwith the progressive consensus for change. These crimes are, in many respects, maintaining levels of imprisonment at their current levels. There needs to be more discussion around this.

The basic premise of attempting to shift the ground of debate on criminal justice policy does need to move beyond policy initiatives to further explore values.

Planned follow up activities

Trish McCulloch and Mark Smith intend to continue work and writing in this area. Trish McCulloch is involved in several government initiatives around criminal justice social work and community justice and will draw on findings from the project to inform this involvement.