

**THE FUTURE OF IMPRISONMENT IN SCOTLAND:
A GREAT LEAP FORWARD?**

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Introduction

In the previous edition of the *Yearbook* we reviewed two discussion papers issued by the Scottish Prison Service (SPS).⁽¹⁾ Although we were quite favourably disposed towards the first of these papers, *Custody and Care (C & C)*⁽²⁾ which was issued in March 1988 and set out a framework for the future management of long-term prisoners in Scotland, we were sharply critical of the second, *Assessment and Control (A & C)*⁽³⁾ which was issued in October 1988 and set out the approach of the SPS towards the particular problems of violent and disruptive prisoners. We were concerned at the support which *A & C* gave to individual pathology as an explanation for the spate of serious disturbances which took place in Scottish prisons between 1986 and 1988 and alarmed by the proposed expansion of special units and facilities for potential troublemakers which was proposed as a preventative measure. We argued that, since it is impossible to predict with any accuracy which prisoners will be disruptive or create control problems, such a strategy would not only be ineffective but could only be achieved at the cost of substantial injustice to individual prisoners. Thus, we concluded, rather pessimistically, that the tight assessment and close surveillance of long-term prisoners in mainstream establishments, which would be entailed by the expansion of special units and facilities for the minority of prisoners whom they would accommodate, would largely determine the character of the whole SPS and that the restrictive proposals in *A & C* would largely undermine many of the more progressive proposals in *C & C*. For example, sentence planning would be tainted by its use in the assessment of control risk and the movement towards normalisation hampered by the need for greater surveillance.

The Government invited comments on *C & C* and *A & C*, the latter by 30 November 1988, and promised to take account of the comments received in developing its strategy which was to be announced 'early in 1989'. These plans were eventually revealed, some 15 months later than promised, in March 1990 in a new, and very professionally produced policy document entitled *Opportunity and Responsibility (O & R)*⁽⁴⁾ which is available free of charge from the SPS. *O & R* is a remarkable document, not only for the candour with which the SPS acknowledges the inadequacy of *A & C* and takes on board the criticisms which this provoked, but also for questioning many of the taken-for-granted assumptions and practices about prisons in Scotland and developing a positive and coherent philosophy of imprisonment. Although it is important

not to confuse rhetoric with reality, *O & R* may well turn out to be a landmark in the development of penal policy in Scotland.

In this short note, we first provide a brief summary of the main features of *O & R*, drawing attention to the radical nature of the approach it adopts and the proposals it puts forward and to the differences between it and *A & C*. Having done so, we then subject the policy document to critical but, we hope, constructive scrutiny.

Summary of Approach and Proposals

O & R is divided into two parts. In the first (Chapters 2-4), the context for a review of policy is outlined, pressures for change are identified and recent developments in the prison system are described. In the second (Chapters 5-9), a framework for developing the long-term prisoner system is outlined. We shall briefly consider each part in turn.

It is significant that Part 1 begins with a review of penal philosophy and the aims of imprisonment. This is a welcome step as it recognises that agreement on aims and objectives is a prerequisite for developing a coherent strategy and a set of policies which will give effect to it. It accepts that the SPS found itself in a philosophical vacuum when confidence in the 'treatment model' declined but the 'justice model' failed to engender much enthusiasm. Rejecting the view of the May Committee⁽⁵⁾, which concluded in 1979 that 'no available philosophy provided an adequate basis for a new statement of the purpose of imprisonment', Chapter 2 outlines a new philosophy based on the twin assumptions that prisoners should be treated as responsible persons and that the prison system should aim to offer prisoners a full range of opportunities for personal development and the resolution of personal problems. The next chapter (Chapter 3) reviews the background against which the SPS was operating in the period up to 1988. Noting that many of those who commented on *A & C* felt that its analysis of the violent incidents which occurred in the period 1986-88 concentrated excessively on individual pathology, *O & R* identifies a number of external and internal factors, including overcrowding, 'Grant Design',⁽⁶⁾ the differential liberalisation of regimes, drugs and deterrent sentencing, changes in parole policy and the role of Peterhead Prison in the system,⁽⁷⁾ which contributed to the problems experienced in the mid-1980s. The approach adopted in *O & R* entails the almost total rejection of that adopted in *A & C* and no punches are pulled in admitting the extent to which the SPS unsettled its own house by some of its own policies and by the ideological difficulties which it encountered at that time. Chapter 4 examines some of the key developments since 1988, drawing attention to the 10% reduction in the prison population, the fall in the number of prisoners held under Rule 36,⁽⁸⁾ the reduced dependence on Peterhead for holding prisoners presenting what *O & R* refers to as 'management problems', and improvements in staff training.

Part 2 is more programmatic. Reacting to the views expressed by many of those who responded to *A & C* that it placed too much emphasis on the identification, segregation and containment of potentially disruptive prisoners, Chapter 5 makes it clear that the main solution for prisoners with difficulties lies in better quality mainstream establishments rather than in purpose-built control units. It reiterates the view, outlined above, that:

"we should regard the offender as a person who is responsible, despite the fact that he or she may have acted irresponsibly many times over in the past, and that we should try to relate to the prisoner in ways which would encourage him or her to accept responsibility for their actions by providing him or her with opportunities for responsible choice, personal development and self-improvement"(p.30)

Central to this approach are proposals for sentence planning which will allow the prisoner to participate at each stage in planning his or her sentence and the need to structure opportunities in a sensible and appropriate manner. Although this entails the retention of a system of progression, *O & R* suggests that it will be helpful to distinguish three aspects of regimes, namely the minimum elements a prisoner should receive by right ('the threshold quality of life'), 'appropriate opportunities' and 'privileges' with what were previously regarded as privileges being progressively incorporated into the basic threshold quality of life in prison.

Chapter 6 then spells out its own conception of normalisation, which is seen to entail the provision of 'regimes which allow prisoners the opportunity to live as normal lives as possible and as may be consistent with the requirements of security and order' (p.37) and points to the need to review practices in three areas, namely 'access to families', 'quality of life' and 'preparation for release'. Here *O & R* is at its most liberal, advocating increased home leave for most prisoners, promising to set up a Working Party to examine the possibility of providing 'family visits' for those prisoners who would not be eligible for home leave, and setting as policy objectives the provision to every prisoner of a room of his own and the abolition of 'slopping out'.

Chapter 7 makes it clear that security categorisation (introduced after the Mountbatten Report in 1966)⁽⁹⁾ should only refer to security concerns and not to the prisoner's response to staff or to the stages he has reached in his or her sentence. In a particularly significant analysis of the need to achieve a balance between security, order and regime, it points out that 'an oversecure establishment will have pressure exerted on its control and regime elements' (p.43) and suggests that more long-term prisoners should be placed in lower security categories from the beginning of their sentence.⁽¹⁰⁾ The effect of this would be to alter the balance between the numbers of prisoners in Security Categories A to D. Moreover, by allocating prisoners to an appropriate hall rather than an appropriate establishment, the number of available options

would be greatly increased.

The role of small regimes within the mainstream is considered in Chapter 8 and that of small units in Chapter 9. Chapter 8 proposes the eventual subdivision of existing accommodation into discrete small regimes and categorically rejects the extremely contentious proposals put forward in *A & C* to build a 60-place maximum security complex at Shotts Prison. In place of *A & C*'s expansionist aim of providing sufficient maximum security accommodation to accommodate all potentially violent and disruptive prisoners, *O & R* proposes as a 'rule of thumb' that roughly 1% of inmates, i.e. about 50 at any one time, should be accommodated in small units, whose 'value ... lies as much in the ability to pioneer innovative approaches, the lessons of which can be applied to the mainstream generally, as in the capacity to provide for a limited number of prisoners who are having difficulty settling into their sentence' (P.60).⁽¹¹⁾ With the commitment to establish another small unit for up to twelve difficult prisoners in Edinburgh, the proposals in *O & R* represent a reduction of about 50 maximum security places over the number proposed in *A & C*. One consequence of this is that Peterhead is to be retained 'in the medium term'; i.e. for the foreseeable future.

Critical Assessment

In spite of its many positive features, there are a number of problems with *O & R*. We have argued elsewhere that the SPS is a site of power struggles which are expressed in and effected by different forms of discourse.⁽¹²⁾ In the course of this analysis, we identified three discourses of substantive justice (concerned with the **ends** of imprisonment), viz rehabilitation, normalisation and control, and three discourses of administrative justice (concerned with the **means** of imprisonment) viz bureaucracy, professionalism and legality. It is clear that *O & R* represents, on the one hand, a confluence of normalisation and control discourses and, on the other, a fusion of bureaucratic and professional discourses. The latter should come as no surprise since the policy document was supposedly drafted by a civil servant and a prison governor. However, its failure to accommodate legal discourse is a matter of some considerable concern. It constitutes the basis of our first set of criticisms. Our second set of criticisms follow from the concept of normalisation which is utilised in *O & R*. The SPS' prior commitment to normalisation seems to us to be at odds with the thrust of some of the key proposals in the latest policy document. Finally, we identify a third set of criticisms which relate to omissions from and internal inconsistencies in *O & R*.

Although *C & C* outlined proposals for consolidating the Prisons (Scotland) Act 1952 and subsequent amending legislation and for revising and updating the Prison (Scotland) Rules which likewise date from 1952 and the Standing Orders derived from them, *O & R* makes no reference to this and it is very much to be hoped that this does not represent a retreat from the earlier commitment. It is to be hoped, not only that the earlier commitment still

stands but also that prisoners will have access to Standing Orders and other Government Circulars. Of equal concern is the fact that *O & R* makes few reference to prisoners' rights or the means by which they can be enforced. In accordance with prevailing government rhetoric, *O & R* emphasises prisoners' responsibilities, their need to make choices and to face the consequences of their decisions. This runs the risk that, in the absence of any reference to prisoners' rights, prisoners may find themselves in a very vulnerable position if and when they act 'irresponsibly' and take decisions that land them in trouble. In such circumstances, prisoners may still be moved, against their will, to a small unit or, **in extremis**, placed on Rule 36, or deprived of visits or of opportunities and other privileges without having any really effective means of redress. We are, in effect, invited to place our trust in the SPS to get things right by making the appropriate response to the prisoners' behaviour.

Although *O & R* does promise a review of procedures for dealing with requests and grievances and this is certainly to be welcomed, its discussion of accountability is very disappointing.⁽¹³⁾ The view conveyed that 'once all the developments proposed in *O & R* are introduced, prisoners will have no need to complain' is utopian in the extreme and it is to be hoped that the SPS will place as much emphasis on strengthening accountability as on developing new approaches to the management of long-term prisoners. In this connection it would have been reassuring if, in addition to examining the recommendations of the Home Office Working Party on Grievance Procedures,⁽¹⁴⁾ the SPS had set up its own Working Party.

The definition of normalisation which is adopted in *O & R* (cited above) and its relationship to the provision of opportunities, also raises a number of problems. If the yardstick for living as normal a life as is consistent with the requirements of security and order is the kind of life the offender could lead outside prison, where few opportunities for personal development and self-improvement, education, training or employment may be available and where, in any case, little pressure may be exerted on the offender to take advantage of them, then this may not be consistent with the provision of opportunities and the encouragement which prisoners will need if they are to take up opportunities.

Although the view of the May Committee that 'the notion of "treatment" or a "coerced cure" is a contradiction in terms and that a much more achievable goal is "facilitative change" '(p.17), one positive feature of rehabilitation was its ability to command resources and the pressure it could bring to bear on prisoners. Whether *O & R* will be equally successful must remain to be seen. However, the absence of any reference to the need for effective external monitoring leaves the SPS at the mercy of the government of the day which may or may not supply the resources required to bring about improvements in prisoners' quality of life and in the opportunities necessary for personal development and self-improvement. It is thus of some concern that *O & R* makes no reference to the case for adopting a set of minimum

standards or to strengthening the role of the Prisons Inspectorate so as to ensure that these standards are attained.

Sadly, *O & R* provides very little detail about the kinds of opportunities that should be available for long-term prisoners and, in particular, for those with serious personal and personality problems. Likewise, it provides no indication of the roles which education, social work, psychology and psychiatry are expected to play. Moreover, its characterisation of the relationship between prison officers and prisoners as one of mutual interdependence and of the role of the prison officer as a facilitator, i.e. as a kind of 'social worker in the halls', is quite unsatisfactory, since it ignores the presence of power which lies at the heart of the relationship between prison officers and prisoners. More generally, power characterises the relationship between prisoners and all those in authority over them and it is precisely for this reason that prisoners need protection and that the neglect of prisoners' rights is of such significance.

In addition to the two sets of problems outlined above, there is a number of omissions and inconsistencies in *O & R*. The paucity of references to developments in other prison systems from which the SPS might learn and to innovations which it might wish to emulate is also disappointing. Apart from the reference to the Home Office Working Party on Grievance Procedures (see above), the only other comparative references are to the more generous provisions for home leaves and for family visits which are provided in many other countries.

The decision to retain the existing high-security prison at Peterhead will disappoint many people who would have liked to see it replaced either on the same site or, preferably, elsewhere. However, what particularly concerns us is the failure of *O & R* to address this question, although the various options were all set out in *A & C*.

Our final criticism refers to security categorisations, particularly insofar as they affect Shotts, the newest and largest establishment for long-term prisoners in Scotland. Although we welcome the fact that prisoners who do not constitute a security risk will no longer be held in high-security conditions, it would appear to be rather unsatisfactory for the large majority of Category B and Category C prisoners who are to be held in Shotts that security will have to be tightened for the very small numbers of Category A prisoners who are to be moved there from Peterhead, not least because *O & R* makes no reference to the possibility of reducing security levels in other establishments.

Conclusion

In spite of our criticisms, *O & R* deserves a warm welcome. It has many positive features and represents a major retreat from the worst excesses of control discourse which blighted the previous discussion paper *A & C*.

Moreover, many of the defects we have identified in *O & R* are remediable. If the SPS continues to be as receptive to criticism as it has recently shown itself to be and responds to the shortcomings in its otherwise admirable policy document in a constructive manner, it could well find itself providing a model for other prison systems in the United Kingdom and elsewhere.

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References

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2. Scottish Prison Service, *Custody and Care : Policy and Plans for the Scottish Prison Service*, Edinburgh, March 1988.
3. Scottish Prison Service, *Assessment and Control : the Management of Violent and Disruptive Prisoners*, Edinburgh, October 1988.
4. Scottish Prison Service, *Opportunity and Responsibility : Developing New Approaches to the Management of the Long-Term Prison System in Scotland*, Edinburgh, May 1990.
5. Home Office, *Report of the Committee of Inquiry into the United Kingdom Prison Services* (the May Report), Cmnd.7673, London: HMSO, 1979.
6. 'Grand Design' was the rather grandiose name given to an essentially administrative measure designed to make better use of the prison estate by utilising spare capacity in young offenders institutions (YOIs) for the relief of overcrowding in establishments holding adult long-term prisoners (LTPs). A total of 320 places were transferred from the YOI to the adult LTP system when Glenochil and Noranside YOIs became adult prisons and Dumfries and Greenock Prisons became YOIs in 1987.
7. For many years, the majority of convicted prisoners requiring maximum security conditions and other long-term prisoners who were classified as 'untrainable' were held in Peterhead. However, Peterhead was also used as a dumping ground for inadequate and disturbed prisoners. This gave visits an explosive mixture and Peterhead was the scene of some of the most violent prison disturbances. Critics of Peterhead attacked its failure to develop purposive regimes, the fact that it was considered 'the end of the road', the brutality of its staff and its isolation from the main centres of population.
8. Rule 36 of the Prison (Scotland) Rules 1952 states that 'if it is desirable for the maintenance of good order and discipline, or in the interests of a prisoner, that he should not be employed in association with others' arrangements may be made 'for him to work in a cell and not in association'. However, in practice, Rule 36 is used to remove prisoners from all association. Following the series of violent disturbances which took place in Scottish prisons between 1986 and 1988, large numbers of prisoners in Peterhead were held on Rule 36 for long periods of time.
9. Home Office, *Report of the Inquiry into Prison Escapes and Security* (the Mountbatten Report), Cmnd. 3175, London: HMSO, 1966.
10. All prisoners are assigned to one of four security categories, known as Categories A (maximum security) to D (minimum security). The prisoners' security category

determines the amount of freedom they are allowed within the prison as well as the prison to which they will be sent. Thus, for example, only Category D prisoners will be sent to an Open Prison. Irrespective of their security risk, it has been the practice of the SPS to place virtually all long-term prisoners in Category B at the start of their sentences and for them to spend most of their time in prison under Category B conditions. The three open establishments (Penninghame and Noranside Prisons and Castle Huntley YOI) can together accommodate only 344 detainees, i.e. between 6 and 7% of the total population.

11. It should be noted that small units will provide accommodation over and above the specialist regimes for difficult prisoners and prisoners with special problems, e.g. sex offenders, which already exist in Peterhead and other mainstream establishments.
12. See Michael Adler and Brian Longhurst "Power, Discourse and Justice : Prisons in Scotland Today", paper presented at Annual Conference of Research Committee on Sociology of Law of the International Sociological Association, University of Bologna, June 1988 and "Towards a New Sociology of Imprisonment : Prison Discourse Today", paper presented at British Criminology Conference, Bristol Polytechnic, July 1989. This approach will be developed further in our forthcoming book entitled *Power, Discourse and Justice : Towards a New Sociology of Imprisonment*, London: Routledge.
13. For a fuller discussion of accountability, see Michael Adler and Brian Longhurst "Accountability in Scottish Prisons", lecture to Howard League for Penal Reform (Scotland) Edinburgh, December 1989.
14. Home Office, *An Improved System of Grievance Procedures for Prisoners' Complaints : Report of a Working Group*, London, June 1989.