**The Drummond Hunter Lecture**

**University of Edinburgh**

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Introduction

Earlier this year the Committee of the Howard League invited me to become the first President of the League. I was delighted to accept what I consider to be a signal honour. This evening is my first outing in that role and I would like to state my public thanks to the Committee for giving me the opportunity to demonstrate my support for the important contribution which the League makes to public debate on penal reform and also on wider issues of criminal justice and social policy in Scotland.

This is the third occasion on which I have had the pleasure of delivering a lecture at the invitation of the Howard League. The first was in March 1991 and my theme on that occasion was “The Responsible Prisoner”, a subject which at that time was one of great importance within the Scottish Prison Service and in wider Scottish criminal justice circles. The meeting was chaired by Drummond Hunter, who at that time, along with his wife Peggy, personified the Howard League in Scotland.

Drummond Hunter OBE was a towering figure, both literally and figuratively, in a number of walks of public life in Edinburgh and at a national level for several decades. I first came across him in the early 1970s when I was a very raw assistant governor in Edinburgh Prison and he was Secretary of the Royal Edinburgh Hospital. He later moved to become the Secretary of the newly established Scottish Health Service Planning Council. Our paths crossed frequently in later years, in the Scottish Institute of Human Relations, Sacro and of course the Howard League. He was a wise, warm and compassionate individual and there was little doubt that his attitude to the patients whom he came across in the Royal Edinburgh and later those whom he touched through his work in penal reform was deeply influenced by his own experience over three years as a prisoner of war of the Japanese.

When Drummond died in April 2002 the Howard League decided to establish an annual lecture in his memory. This was a fitting gesture. In October 2003 I was honoured to be invited to deliver the first in the series. My theme in 2003 was “Keeping Scotland Safe: The contribution of criminal justice”. In the course of my lecture I argued that criminal justice has a narrow role to play in creating and nurturing a safe and just society. Certainly, it has an important role to play but, nonetheless, it is a narrow one. This evening I would like to revisit some of the issues which I addressed ten years ago and to comment on how things have, and in some cases have not, changed.

An overview

One of principal aims of the Howard League is to encourage the development of policies and practices which will help to make Scotland a safer place and thus to improve the lives of its citizens. In general terms Scotland is doing well on a number of these issues. We have consistent evidence that overall crime is decreasing. Last month it was announced that the number of people murdered in Scotland was at its lowest level for almost 40 years and in September published statistics indicated that reconviction rates have fallen to their lowest level for 14 years. In general we are safer in Scotland than we have ever been. However, there is no room for complacency. There remain many localities where people do not feel safe; there are specific crimes which are not reducing; and there are areas of law and justice where improvement is needed. Tonight I wish to comment on some relevant topics.

In September 2012 the Government published its Strategy for Justice. It described the justice system as “the many people and organisations who work to keep our communities safe and to administer justice in its various forms: civil, criminal and administrative”. The Government’s vision is that the **justice system “should contribute positively to a flourishing Scotland, helping to create an inclusive and respectful society in which all people and communities live in safety and security, where individual and collective rights are supported, and where disputes are resolved fairly and swiftly”. These are fine sentiments and ambitions with which none of us would disagree but which require further analysis.**

**The Government has begun its programme with a wide ranging set of structural and procedural changes. The Police and Fire Reform (Scotland) Act 2012 has given us a single police service and a single fire and rescue service. The Judiciary and Courts (Scotland) Act 2008 created the Scottish Courts Service, which is responsible for the administration of the Court of Session and the High Court of Justiciary, as well all Sheriff Courts and Justice of the Peace Courts. We now have a Scottish Tribunal Service, responsible at the moment for the administration of devolved tribunals, with further change envisaged in the Tribunals (Scotland) Bill which is currently before Parliament. Legislation was enacted earlier this year to provide for a Civil Justice Council and in due course there will be a new tier of judges to be known as summary sheriffs.**

Delivering the annual [Sacro](http://www.surfcanyon.com/search?f=slc&q=Sacro&p=wtiieeuj" \t "scSearchLink" \o "Search Link by Surf Canyon) lecture two weeks ago, the Lord Justice Clerk, Lord Carloway, looked forward to the establishment of a Scottish Sentencing Council, which was provided for in legislation over three years ago, and which he would chair in his official capacity. He anticipated that the Council would, in his words, “advance Scotland into a more civilised era where retribution, other than in relation to the most serious of crimes, will have a smaller plate at the sentencing table.” That is a worthy sentiment, although I would enter a cautionary note since that has not been the experience in some other countries which have already gone down the road of establishing a Sentencing Council.

**These are some examples of the structural change which is altering the face of how justice in all its forms is delivered in Scotland. A series of equally radical procedural changes are also in prospect in a number of pieces of draft legislation which are currently before Parliament, including a new Criminal Justice (Scotland) Bill. In the time available to me this evening it will not be possible to discuss all of these topics in detail so I will restrict myself to commenting on some which may be of particular interest.**

The Criminal Justice (Scotland) Bill

If it is enacted in its current form the Criminal Justice (Scotland) Bill will introduce significant changes to the face of the Scottish justice system. According to the Government one of the stated policy objectives of the Bill is “to ensure our justice system is as efficient and effective as possible in meeting the needs of a modern and progressive country and to ensure that Scottish criminal law and practice is compliant with the European Convention on Human Rights and able to withstand challenges on Convention grounds.”

The Bill contains a number of provisions which have been developed from the recommendations of Sheriff Principal Bowen’s Independent Review of Sheriff and Jury Procedure. Among them is a proposal to increase the period during which an accused person can be remanded before being brought to trial from 110 days to 140 days; a proposal which has already been challenged in some quarters.

Notably it includes other provisions which have been developed from the recommendations of Lord Carloway’s Review of Scottish Criminal Law and Practice which was set up in the wake of decision of the UK Supreme Court in the *Cadder* case that a person who has been detained by the police has the right to have access to a solicitor prior to being interviewed, unless in the particular circumstances of the case there are compelling reasons to restrict that right. The provision in the draft legislation which has attracted the most public controversy has been the proposal to remove the requirement for corroboration in evidence, with Lord Carloway describing it as “an archaic rule that has no place in a modern legal system” while Lord Hope has described it as potentially “quite dangerous”. The Bill makes provision to increase the jury majority to two thirds to return a guilty verdict. It also adopts Lord Carloway’s recommendation that the police should have a single power to arrest a person on the ground of “reasonable suspicion” and, crucially, that the current distinction between detention and arrest should be replaced by a single period of custody or detention, once a person has been arrested on suspicion of having committed an offence.

Reading of some of these provisions takes me back to my own experience when I became Governor of Brixton Prison in 1991. At that time the majority of prisoners in Brixton were on remand from the Greater London area and, having come from Scotland, I had to go on a steep learning curve about the provisions of the Police and Criminal Evidence Act 1984 in respect of the limitations on police powers to interview suspects once they had been taken into custody. Many of the provisions of the 1984 Act were, of course, overtaken by the Serious Organised Crime and Police Act 2005 which gave police a general power of arrest for all offences.

As an aside, in the mid 1990s I carried out a great deal of work for the Council of Europe in the countries of Eastern Europe which had previously been part of the Soviet Union. I remember on one occasion have a meeting with the Chief Prosecutor of Belarus. In the course of our discussion I asked him how many prisoners who were in custody on remand were eventually found not guilty. He looked at me in a bemused fashion and clearly had some difficulty in understanding the question. Eventually he sent one of his assistants to check the figures and back came the reply that in the previous year throughout the whole country ten remand prisoners had been found not guilty. I explained that about 25 per cent of the men on remand in Brixton were subsequently acquitted. The Chief Prosecutor threw up his hands in horror and said, “But that must mean that your police are arresting innocent people. We only arrest those who are guilty!” I might add that the same Prosecutor had in his office a large portrait of the founder of the Cheka, the Soviet Secret Police, Felix Dzerzhinsky, whose motto was “Confession is the queen of all evidence”, a modern version of the old Latin tag “confessio est regina probationum”. I do not at all suggest that the Lord Advocate and his fiscals would ever take the view that everyone whom the police arrest is *ipso facto* guilty, nor that an admission of guilt is the queen of all evidence. Nonetheless, some of us will listen with interest to what the Lord President and the Lord Advocate will have to say on Wednesday when they give evidence to the Justice Committee.

So, here we have a number of deep seated changes to the administration of justice and to its procedures which require reasoned public discussion. Some of these are matters are so integral to democracy and to the freedom of the citizen that they are, if I may say so, too important to be left solely to lawyers, judges and politicians. They need to be considered also in a much wider public forum and the Howard League can help to facilitate that discussion.

Police

The structure of the police services in Scotland has changed beyond all recognition in recent years. Some of us in this room can remember when every city, burgh and county in Scotland had its own Chief Constable. In those days the delivery of policing was very much a local matter, locally accountable, with all the advantages and disadvantages that implied. The last major structural change came with the reorganisation of local government in 1975 when all the previous police forces, as they were then known, were amalgamated into eight forces in line with the eight regional authorities. This structure survived the re-organisation of local government in 1996 and changed only this year with the establishment of a single police force for the whole country.

It is too early to pass judgment on the major advantages and disadvantages of the creation of a single police force. The first independent comment was provided last week by Audit Scotland in its report on Police Reform. The report highlighted many of the procedural successes of the change as well as identifying a number of serious areas of concern, not least the absence of a financial strategy showing how it is intended to make the required savings within Police Scotland beyond 2013/14.

One of the key tasks of any police service is to ensure that people are safe and that they feel safe. As far as the public is concerned this safety and freedom from crime is primarily a matter of local concern. As the President of the Association of Scottish Police Superintendents wrote recently, “Scotland is a collection of communities; a simple “one size fits all” approach is unlikely to meet the needs of its diverse communities. Getting the (local) balance right while applying consistent standards across Scotland will always be a challenge.” As those of us who live in Edinburgh are well aware, there have been a number of issues in recent months where this balance has been challenged.

It was reported recently that in the first six months of the new police service the number of recorded road traffic offences in Scotland increased by 21 per cent compared to the same period in the previous year and in Edinburgh there was a fourfold increase in the number of people caught speeding. Note that this does not mean that there was a fourfold increase in the number of drivers who broke the speed limit; it means that there was a fourfold increase in the number of people who were detected while speeding. This is clear example of the dictum that increases or decreases in crime rates often tell us more about levels of police activity than about any change in the rate of crime.

The police also have a role in ensuring that fear of crime is not unnecessarily heightened. As I walked around Edinburgh during the Festival this year I looked at the plethora of posters and publicity flyers for all the shows and events. One poster which seemed to be everywhere caught my eye. In an arresting black, orange and gold it announced “Watch your Stuff”. That’s funny, I thought, I have not seen any reviews of that show; I wonder where it is on. I then realised that it was actually a police advertisement warning us against the dangers of theft and pick pocketing. If anything, the admonition made me feel less safe as I walked along George Street; the more so since the advertisements remained on the lamp posts for weeks after all other Festival posters had been removed.

Prisons

Let me now turn to the use of imprisonment in Scotland. I will begin with a story.

On 19 October 2007 a 19 year old woman called Ashley Smith committed suicide in a federal prison in Canada. Ashley had first been arrested at the age of 15 for throwing crab apples at a mail man. She was sent to an institution for children. She was very disruptive towards staff and regularly injured herself. Staff found her impossible to handle. She was taken to court on several occasions because of her behaviour and received additional custodial sentences. As soon as she turned 18 she was transferred to the custody of the Correctional Service of Canada, the federal prison system which holds adults serving over two years in prison. In the final year of her life Ashley was transferred between various prisons 17 times. She was held in continuous segregation and there she continued to abuse herself and to be difficult towards staff. Several times she tried unsuccessfully to kill herself. Psychologists advised that her suicide attempts were ‘attention seeking behaviour’ and that she should not be ‘rewarded’ for this. On that basis senior prison management ordered staff that if they observed Ashley trying to kill herself they were not to intervene. On 19 October 2007 Ashley Smith strangled herself to death with a strip of cloth while staff watched from outside her cell. An hour elapsed before they realised that she was dead. The tragic death of this young woman and its consequences became a major political and media issue in Canada. Last month I spent two days in a coroner’s court in Toronto, giving evidence at the inquest into the death of Ashley Smith.

Why do I tell you that sad story? Because it is a salutary tale of what happens when a prison service loses its moral compass. The Correctional Service of Canada is frequently held up as a model of what a prison service should be. It aspires, as do a number of other prison services, to be “a world leader in corrections”. It has produced a wide range of so-called offending behaviour and similar programmes which it has sold to other prison services as important tools for the rehabilitation of prisoners. For a decade and more prison persons from these islands have beaten a path to Canada to learn from their system. Yet young Ashley Smith killed herself in the full gaze of staff of the Correctional Service of Canada. What seemed to me even more shocking was that the week before I gave evidence the Commissioner of the Correctional Service gave evidence and claimed that the segregation cell in which this young woman died “can be the only safe place for the mentally ill”. Astonishingly he went on to caution jurors against making any ‘costly recommendations’, saying that ‘there is no free pocket money that we can go to implement these things’. This implied that any identified failures in the Correctional Service could only be resolved by an increase in resources. The Commissioner appeared to be unwilling to accept that the failures might be caused by a lack of moral compass within the organisation.

What is the lesson for Scotland? It is that doing things more efficiently, doing things better is of little moment if what you are doing in the first place is the wrong thing. One ends up only doing the wrong thing better. It remains the wrong thing. The Scottish Prison Service does what it does well; it does what it is asked to do. Yet the question remains, is it being asked to do the right thing? In a few weeks I will travel to Norway, a country with a population of just over five million people and in many respects comparable to Scotland. Yet in one respect it is different. It has less than half the number of its citizens in prison compared to Scotland. Its 3,600 prisoners are held in 42 prisons, compared to the 16 prisons in Scotland. Norway’s prisons are small and locally based with strong community ties. I remember speaking to the Director General of Norwegian prisons a few years ago and she talked of how it was very difficult to rehabilitate those who were in Oslo prison, the largest in the country. It is so big, she said, that it makes rehabilitation very difficult. Would you believe, she said, it has 350 prisoners. She clearly believed that it is unadvisable to have a prison with so many prisoners.

Yet, in Scotland we continue to build large very high security prisons with numbers far in excess of 350: 700 places in Addiewell in 2008, 700 in Low Moss opened in 2012 and a further 500 in Grampian prison which will open in a few months time at a capital cost of £140 million. Apparently we cannot afford to build small local prisons.

And for women, despite all that has been written in the McLeish Report, by Dame Eilish Angiolini and by successive Chief Inspectors of Prisons we continue to think that big is beautiful, with 100 places in Edinburgh, 75 places within the confines of Grampian Prison in Peterhead and a further 300 places planned for Inverclyde Prison. Last week the Government announced that it is to make available £3 million, in the words of the Cabinet Secretary for Justice, to provide a better future for women offenders, their families and communities. That is a small sum in contrast to the £140 million that is being spent to build Grampian Prison and the additional millions which will be spent year on year to operate it. The Scottish Prison Service is undoubtedly doing what the Scottish Government asks of it, and it is doing it well. The issue is whether the Government is asking it to do the right thing.

Let me end my comments on prisons with two recent press reports. The first came last week from Sweden with the news that the government intended to close four prisons and a remand centre due to the sharp fall in the number of prisoners, a reduction from 7,000 prisoners in 2004 to 6,300 at the end of 2012. The population of Sweden is almost double that of Scotland, yet it has almost 2,000 fewer prisoners and it is closing not building prisons.

The second report is from the United States, which has a rate of imprisonment far beyond that of any other country. Even there the Senate Judiciary Committee has reached bipartisan agreement on the need to legislate to reduce the number of people in prison. The Chairman of the Committee announced last week that this had to be done because “Public safety demands it. Fiscal responsibility demands it. Justice demands it.” Perhaps the Chairperson of the Scottish Parliamentary Justice Committee will encourage her Committee to reach a similar cross-party consensus.

Conclusion

Let me end back where I began by referring to the Scottish Government’s vision for justice which places people at its centre. The Government concludes that social and economic factors are at the root of many criminal and civil justice problems. It tells us that the justice system cannot solve these problems in isolation. Instead, it requires all relevant people within the broader public sector to take their share of responsibility and to work together to help prevent crime and social harm. This includes, says the Government, health, education and social services, the police, courts, tribunals and the law itself. It also means services which work with children, young people and parents. The Government insists on the importance of working to reduce poverty and disadvantage which are major contributing factors to many justice issues in Scotland.

One cannot fault the Government for facing these challenges so positively. It is up to each of us to help the Government to realise its own aspirations.

In my Drummond Hunter lecture ten years ago I argued that the criminal justice process has a very narrow role to play in creating and nurturing a safe and just society and that we had allowed it to expand into areas where it had no locus. I suggested that criminal justice systems can be used to underpin and to help to support the values of a society but they cannot be used as a substitute for these values. I suggested that we faced a real danger of allowing that to happen. I ended in 2003 with a quotation from William Omaria, who was Minister of the Interior in Uganda in 1995 when an amazing conference took place in Kampala on the subject of penal reform in Africa. In opening that conference Minister Omaria said,

One day in the distant future, people will probably look back on what happens in most countries today (in terms of criminal justice) and will wonder how we could do that to our fellow human beings in the name of justice.

In 2003 I expressed the hope that in Scotland should be that that day would not be too long in coming. Ten years later that remains my hope.

**Andrew Coyle**