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Prospects for abolition – arguments for an abolitionist 'real utopia

Thank you for inviting me here today. In the next fifty minutes or so I would like to consider the prospects for prison and penal abolitionism. I want to think about this strategically, and discuss some possible interventions that could be made immediately to work towards the goals of this conference. I want to start though by raising some of my main objections to prison – i.e. the prison is a place of violence, pain and death that not only reproduces but also helps to produce social inequalities. I believe that the only morally and politically acceptable approach to imprisonment is to call for its abolition. This is a long term objective and may take time, but there are certainly many things that can be done to bring about a radical reduction in prison populations. At the same time we need to call for radical and egalitarian social reforms – in effect a libertarian socialist and feminist manifesto that can effectively challenge social inequalities and also to unite around an anti-violence agenda. However, my focus today is on the short term immediate strategy of dismantling the penal machine.

We should be clear and honest at the outset. The prison is a place of violence, pain and blame. The very rationale of the prison is deliberate **Pain** infliction, and undoubtedly it achieves this goal. Prisons are places of sequestration which challenge the prisoners' sense of who they are and undermine their sense of self. They are lonely, isolating and brutalising experiences. Prisons are also places of violence. Here I do not just mean that they are locations where physical violence takes place between prisoners and prison officers, but that violence is structured within the very daily regimes themselves through deprivations and denial of human need and dignity. The violence of incarceration is inevitable, as would it seem the ultimate outcome of systemic violence – death.

Death has haunted the prison place throughout its history – we find even talk of the prison as a place of death in the Judeo-Christian Bible. The pain and violence of imprisonment leads to torment, hurt, injury, harm, self-destruction and sometimes the taking of life by others. Prisons are places of **death** – both existential and corporeal. They cannot be otherwise.

But prisons are more than just places of pain. They are also, as Nils Christie argued some years ago, also places of blame. The prison sentence is a moral judgement that leads to the construction and distancing of a perceived morally inferior person. The physical challenges that imprisonment confronts us with are confounded by the negative moral judgements and stigmatisation associated with this distinctly immoral place. The person imprisoned is denounced and censured. The *label of prisoner* and its categorical dehumanising consequences stigmatise, other and divide. The prisoner is always someone who is lesser – it is a category of shame and humiliation – and, irrespective of their offence, the label prisoner carries with it the weight of condemnation.

Irrespective of the levels of security and the physical conditions of a given prison, imprisonment will always have certain objectionable qualities. First of all, prisons will always be an **estrangement from life** – they will always be places that **take things away** from people – they will take a persons' time, relationships, opportunities, and sometimes their life.

Prisons will also always be places of **constraint**: by its definition a prison will place constraints upon freedom, autonomy and choice. A person can never be truly free in prison – everywhere they will be constrained by invisible (and sometimes quite visible) chains that places significant restrictions upon them.

The history of imprisonment also tells us one further key thing which we must never forget – the prison is a place that contains impoverished, marginalised and excluded populations. Historical studies and contemporary sociological research confirm the crude but sadly true hypothesis - we punish the **poor and marginalised**. Prisons are for places who do not meet the requirements of advanced capitalist societies which are also characterised by fault lines around perceived 'race', gender, sexuality age and ability. Prisons reflect and uphold social divisions and **structural inequalities**.

Further, attempts at reforms of the prison have consistently failed to address the basic problems of prisons. We should recognise the **contradictory nature** of penal confinement– *it is the puzzle we can't solve!* When we try to make things better all we find is that 'one evil is replaced by another' (Kropotkin, 1906) – for example, when we try and make prisons places of work rather than idleness, all we get is penal servitude and further exploitation. Prison does not work, and we need our politicians to hear this message.

Finally, we are increasingly finding that the prison solution is politically accepted as a solution to social inequalities. The last four decades have seen an enormous rise in prison populations – and because it has been disproportionately targeted against poor and black or minority or migrant populations this phenomena is referred to as 'hyper-incarceration' (Wacquant, 2010).

When challenging hyper-incarceration abolitionists must advocate strategies and tactics that can be adopted in our historical conjuncture and thus be immediately influential. This should not mean compromising abolitionist values or abandoning utopian visions or radical alternatives, but rather being politically astute and having a clear strategy of engagement. The most important question, I think, for penal abolitionists today is 'what can we do right now to challenge hyper-incarceration and yet at the same time leave open the possibility for radical change?'

I have referred elsewhere to how an abolitionist real utopia (Scott, 2013a, 2013b) would aim to challenge hyper-incarceration whilst at the same time promote radical social and penal transformation. Such an abolitionist real utopia would be grounded within the immanent real world conditions of our historical moment and its strategy for the radical reduction in prison populations would draw upon the 'attrition

model' and its associated stance of the 'selective abolition'. Let us consider this further.

The writings of John Peter Altgeld and William Nagel both espoused embryonic versions of the attrition model, but it is the writings of Faye Honey Knopp and colleagues in their abolitionist handbook *Instead of Prisons*, first published in 1976, that laid down the principles of this approach. In short, the attrition model aims to gradually reduce imprisonment:

'Attrition' which means the rubbing away or wearing down by friction, reflects the *persistent and continuing* strategy necessary to diminish the function and power of prisons in our society. (Knopp, 1976: 62, emphasis in original)

In the last thirty five and more years the attrition model has been promoted by abolitionists such as Thomas Mathiesen, Stanley Cohen, Joe Sim and Julia Oparah and I believe it remains the most plausible abolitionist strategy yet devised. The associated model of selective abolitionism, which has been advocated by abolitionists such as Pat Carlen, Phil Scraton, Barbara Hudson, Barry Goldson and Deb Coles, is rooted in the assumption that certain categories of lawbreakers must not be sent to prison because of (1) the relative harmlessness of the offence, (2) the vulnerabilities of the person who has broken the law, or (3) that imprisonment has unnecessarily harmful consequences that should, if at all possible, be avoided. Such lawbreakers, albeit perhaps on different grounds, should be deliberately excluded from imprisonment. Alongside Helen Codd, I brought a number of these grouping of prisoners together to present a holistic case for selective abolitionism in our book *Controversial Issues in Prisons* (Scott & Codd, 2010). Here it was maintained that selective abolitionism could be immediately adopted by politicians and penal campaigners who wished to lobby the government for major reductions in the prison population.

It was recognised that such an approach must be conscious of the contradictions and the dangers generated by this strategy. Attrition and selective abolitionism are not enough on their own. They must be understood as part of a wider abolitionist critiques of prisons and criminal processes and as the first steps on a path to a socially just society. On this assumption, I believe the seven well debated 'tactics' detailed below may lead us in the right direction and help generate a new abolitionist consensus. Collectively they entail, to use a metaphor from the popular board game *Monopoly*, playing the 'get out of jail' card.

1. Moratorium on all prison building

I would like to suggest that an anti-prison activist's first priority should be to organise international, national and local campaigns challenging the moral, economic and political viability of building more prisons. Indeed, stopping the building of new prisons is essential for the success of penal reduction. Moratoriums

directly challenge the prison building programmes and are a crucial intervention for the following eight reasons:

- i) There is recognition that the level of financial investment in prison building deters politicians from later calling for penal reduction.
- ii) It provides an opportunity to draw attention to the direct costs of penal incarceration and may allow some discussion of its hidden costs - both human and financial.
- iii) It recognises that the inherent harms and pains of penal incarceration cannot be removed by improved physical conditions.
- iv) It can facilitate discussion of how money allocated to prison building could be reinvested in new employment possibilities in the community which do not deliberately inflict pain on other humans.
- v) Political pressure is created to develop alternative policies and indicates to politicians that they can no longer simply expand the penal apparatus to deal with pressing social problems.
- vi) It directly challenges privatization and companies such as Serco and G4S that build prisons, focusing attention on the limitations of private finance initiatives and engendering support by penal practitioners and the liberal penal lobby opposed to privatisation.
- vii) It provides a focussed campaign against new prisons and there is a strong possibility that such an intervention could generate new alliances.
- viii) It is something that can be achieved in our historic conjuncture. In the current economic climate economic expenditure is clearly an area of vulnerability and one that can be exploited.

2. Targeting existing prisons for immediate closure

A moratorium may help to create the political will, to do something about our high prison populations, and this can be enhanced by calls to close existing prisons. Lists of the 'worst prisons' can be drawn up in a number of different ways, but perhaps the greatest immediate influence comes from those prisons highlighted in 'official discourse' such as reports from Her Majesty's Chief Inspectors of Prisons [HMCIP]. On such a basis, the following three prisons could be earmarked for immediate closure:

- i) HMP Wandsworth, has recently been described by the *Guardian* (13, March, 2013) as "Britain's worst jail". A 2011 HMCIP report highlights how the prison was 'demeaning, unsafe and indecent' where some prisoners were kept locked up for 22 hours day whilst others had no access to showers for months on end. An authoritarian officer culture pertained and there were serious concerns about 'unnecessary and disproportionate' prison officer violence. In March 2013 HMP Wandsworth was the fourth most overcrowded jail, exceeding capacity by 448 prisoners (167% over capacity).

- ii) The third most overcrowded prison in England and Wales in March 2013 was HMP Lincoln, which was 170% over capacity. In the December 2011 report the HMCIP found Lincoln prison 'unsafe' with unacceptable levels of bullying, victimisation and assaults. Prisoners lived in 'filthy conditions' and were kept locked up for most of the day. Prison officers appeared morally indifferent to the painful realities of prisoners.
- iii) In a damning HMCIP report from July 2010 HMP Dartmoor was described as having a "pervasive negative culture" grounded in the antiquated principles of less eligibility. Dartmoor prison was unsafe, violent and there was strong evidence of prison officer racism, homophobia and other forms discrimination.

The Prison Service in England and Wales has closed 13 prisons in the last four years, with seven prisons closed in March 2013 - Bullwood Hall; Camp Hill; Canterbury; Gloucester; Kingston; Shepton Mallet; Somerset; and Shrewsbury. Abolitionists need to call for similar clusters of closures without new prisons being opened. In the first instance, the targeting of the 'worst prisons' (with recognition that there may well be much worse jails than Wandsworth) may prove most persuasive to penal authorities and gain support from other constituents in the penal lobby.

3. Virtual end of remands in custody

The prison has been a place of custody holding people awaiting trial for more than 1,000 years (Pugh, 1968). In March 2013 there were 13,000 people in prison on remand. The limitations of pre-trial / preventive detention have been long identified, and have been central to the liberal penal lobby in the UK since at least the publication of *A Taste of Prison* (King and Morgan, 1976) some 37 years ago. Remand prisoners today continue to face significant difficulties, including experiencing more impoverished living conditions than sentenced prisoners (HMCIP, 2012). People on remand have less access to facilities, basic 'entitlements' and preparations for their legal proceedings are likely to be greatly inhibited. Each year 29,400 people remanded in custody are not given a prison sentence (Ibid). It is now widely recognised that remand is not necessary to ensure a person's return to court for trial (Ibid). One way therefore of immediately reducing the prison population is to abolish pre-trial detention for all but the very small number of accused that genuinely present a threat to public safety. Such an initiative could reduce the prison population by around 10,000 in as little as three months.

4. Decriminalisation of 'victimless' / 'harmless' acts

One way to 'reduce the flow' of people into prison is to stop imprisoning individuals that have undertaken 'victimless' or 'harmless' petty offences. I will briefly consider the substance users and drug takers here. Abolitionists have argued that it is important to suspend our judgement on drug taking, arguing that whether we morally approve of them or not, such victimless acts cannot be effectively regulated by the criminal law (Knopp, 1976). There are estimated to be more than 400,000 illegal drug-users in the United Kingdom (Seddon, 2006) and over 250,000 drug

takers have been officially defined as 'problematic drug users' [PDU's]. It is estimated that 75,000 PDU's pass through the prison system annually and that 45,000 PDU's are currently in prison (NOMS, 2005). Prisons are designed to contain, punish and deliver blame through pain rather than facilitate the care or positive transformation of individuals. In Portugal drug taking and the possession of drugs has been decriminalised and drug problems are now considered a public health issue. Money that would have been spent on penal incarceration is spent on health care, which is around 75% cheaper than the previous penal strategy. As a result there has been both a reduction in heroin usage and in drug-related property offences in Portugal. Extensive evidence from the UK suggests that treatments of drug takers are more likely to be successful in the community than through criminal justice interventions (Bennett and Holloway, 2005). This implies that if treatment is a genuine aspiration it would be more sensible to decriminalise drug taking. Adoption of a public health agenda for drug taking would reduce the prison population by tens of thousands in a very short period of time.

5. Raise the age of criminal responsibility

Criminal processes control and regulate the behaviour of children and young adults. Official data indicate that lawbreakers reach peaks in offending rates in the mid teens - although such data can and should be problematised as it is based on officially recorded 'crimes' and negates much adult crime undertaken in private spaces. Penal custody seems grossly inappropriate for children and young adults, for they are unlikely to have the life experience or coping skills required to deal with either punitive environments or the loss of close personal relationships. Most children imprisoned are not persistent offenders - with many having only one or two previous offences - and are most likely to have committed petty property offences. Imprisoned children are characterised by poverty, family instability; emotional, physical and sexual abuse; homelessness, isolation, loneliness, self-harm and disadvantage (Goldson, 2005; Goldson and Coles, 2005). Many children in custody have learning difficulties; been placed on the child protection registry; have self harmed in the past; and have grown up in state care homes. Raising the age of criminal responsibility to initially 14 and the later to 16 would allow for alternative ways of dealing with children in trouble come to prominence. For those people under the age of 18 the courts should be asked to restrict interventions to police warnings, suspended sentences or unconditional discharges and thus de-naturalise the idea that confinement is suitable for any child. Human rights and children's charities would be natural allies and would broaden the basis of an abolitionist consensus.

6. Diversion of vulnerable people from criminal processes

There are a number of people with vulnerabilities imprisoned today that should be diverted from the criminal process, but here I focus exclusively upon people with mental health problems. Mental health problems are often linked with homelessness, poverty and unemployment, and *The Social Exclusion Report* (2002, cited in Scott, 2008: 116) notes that

- 80% of prisoners have mental health problems (66,000 people)
- 20% of male and 15% of female sentenced prisoners have previously been admitted to a mental hospital
- 95% of young prisoners aged 15 to 21 suffer from a mental health problem.

Prolonged passivity leads to isolation and the prison place presents a serious danger to the mental health of those confined. Numerous aspects of the daily prison regime are potentially damaging: crowding; frustrations dealing with the minutiae of everyday life; lack of mental or physical stimulation; the preponderance of negative relationships rooted in fear, anxiety and mistrust; physical, emotional, sexual or financial exploitation; and inadequate care with an over-emphasis on medication.

Political momentum for the diversion of people with mental health problems reached a new crescendo as recently as March 2011, when the then Justice Secretary Ken Clarke called for enhanced diversion schemes. There are currently over 100 adult Criminal Justice Liaison and Diversion schemes (established 1999) in England which assess and advise on mental health needs of offenders, sometimes referring for offenders for treatment rather than punishment. From April 2013, Health and Wellbeing Boards will commission health and social care services, including those with mental health problems. Abolitionists should try and influence the new Health and Wellbeing Boards to enhance provision for diversion. Whilst conscious of the problems of 'net widening' (Cohen, 1985) and recognition that detention in a mental health institution may be just as problematic as being confined in a penal one, highlighting the inappropriateness of punishing people with mental health problems could mean that tens of thousands of people are diverted from prison.

7. Decarceration of vulnerable and harmless people from custody

Finally we turn to the immediate removal of people from prison. As detailed above, there are a number of prisoners with vulnerabilities that have undertaken relatively harmless acts, but I will focus here only on women prisoners. Over a third of all adult women in prison have no previous convictions, and most women sentenced to imprisonment are sentenced for non-violent offences, with the largest group being sentenced for drug offences (Ministry of Justice 2008). The numbers of women prisoners has slightly fallen in recent times and on the 15th March 2013 there were 3,968 women in prison. Women are not imprisoned for the seriousness of the act perpetrated, but rather because of *who* they are: women who do not conform to a particular expectation of womanhood are those most likely to find themselves in prison (Scott and Codd, 2010). Most women offenders are not dangerous and approximately 3,000 of the women in prison could be released in a matter of weeks via early release; probation; home monitoring; and amnesties. Sentencers could also pilot the introduction of waiting lists for women offenders.

Not only, but also...

The above seven tactics must not be deployed in isolation of wider critiques of criminal processes or introduction of social reforms rooted in social justice. Abolitionists must constantly guard against the possibility that the arguments of the

attrition model / selective abolition being co-opted or to justify the responsabilisation of offenders and subsequent negation of their care post-release (Hannah-Moffat, 2001). Abolitionists must also ensure that this strategy is not used to obfuscate the inherent harms and pains of imprisonment. The concern can perhaps be best illustrated through a consideration of 'suicidal ideation'. Prisons are deadly. One prisoner takes their own life every week in prisons in England and Wales and the likelihood of a prisoner taking their own life is between four and eleven times higher than the general population (Scott and Codd, 2010). Coping is a tenuous, relative and fluid concept that ebbs and flows over time. Somewhere between one third and one half of the prison population have suicidal thoughts, and many have recently thought about taking their lives. If such figures are accurate this would involve somewhere in the region of 42,000 people (Ibid). The prison place is a toxic environment and all humans placed in such a degrading and damaging place are vulnerable to its structured harms. Abolitionists must therefore continue to question the core assumptions of the penal rationale and not focus exclusively upon prisoners who can most easily be defined as 'vulnerable', whatever its political utility.

Our escape from hyper-incarceration begins by reversing the tide and making small steps towards penal abolition and the creation of a society rooted in the principles of social justice and acknowledgement of common humanity. Any successful intervention must be abolitionist, for it is only by adopting abolitionist principles and values that we can hope to avoid 'co-option' (Mathiesen, 1974) and 'carceral clawback' (Carlen, 2002). Yet abolitionists cannot achieve this alone. We need a broad based alliance that draws upon penal pressure groups, the liberal penal lobby - penal minimalists, reductionists and moderates - as well as progressive politicians, practitioners and members of the general public. Further, both penal and social transformation can only be achieved through alliances with other radical social movements committed to social justice, anti-violence and human dignity for all. We need a strategy and consensus consistent with abolitionist values and sensibilities if we are to effectively dismantle the penal apparatus of the Capitalist State.

Abolitionists recognise that the law reflects the interests of those who hold power rather than upholding a widely accepted moral code. Most people are regular breakers yet most 'criminal acts' are not penalised. For every 100 serious crimes reported, 25 people are arrested, 12 are convicted and three end up in prison (Knopp, 1976). Those that are imprisoned are disproportionately from working class, poor and impoverished social backgrounds. Abolitionists must keep at the forefront of the debate the problems of economic and social inequalities and strive to develop of alliances with social movements promoting social justice. Undoubtedly we must, somehow, try to create a new 'abolitionist consensus' that can make a difference here and now. Yet at the same time anti-prison activists must also continue to aspire to live in, and fight for, a *world without prisons*.

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