Reconfigurations of penality

The ongoing case of the women's imprisonment and reintegration industries

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Abstract

Illustrating their arguments with empirical examples drawn from two recent research projects—one cross-European, the other Scottish—the authors argue that the new multi-layering of carceral forms in both prison and the community is one major, but under-explored, cause of continuing increases in women's prison populations. Whether it is because sentencers believe the reintegration industry's rhetoric about the effectiveness of in-prison programmes in 'reintegrating' ex-prisoners, or whether, conversely, it is because sentencers are reluctant to award transcarceral and over-demanding community sentences which set women up to fail, the result is the same—more women go to prison.

Key Words

imprisonment • reintegration • sentencing • transcarceralism
• women

Introduction

This article is about the cultural and political economies of the imprisonment and reintegration industries, and the ever-evolving reconfigurations of penality upon which those industries are currently founded. In using the

term 'cultural economy of imprisonment', we are referring to the iconic status historically given to the prison's mythic powers to protect governments and citizens against threats to the body politic as a result of lawbreaking, unemployment, immigration, visible marks of exclusion from citizenship and threatening otherness of any other kind. In using the term 'political economy of imprisonment', we are referring to the transfer of goods and services between the non-penal and penal realms.

The arguments presented here were provoked by the separate involvement of the authors in two entirely different research projects: an EU-funded research programme known as the MIP project 2003—2004 (www.surt.org/mip; SURT, 2005) but which will be referred to hereafter as the EU Women Prisoners' Reintegration Project; and a sentencing project which was funded by the Esmée Fairbairn Charitable Foundation's Re-thinking Crime and Punishment Initiative and conducted from 2003–4.

The MIP project (in which Carlen participated) first analysed nationally, and then compared cross-nationally, the in-prison and post-prison experiences of women prisoners in six jurisdictions—England, France, Germany, Hungary, Italy and Spain.[1] The main object was to assess the levels of 'integration' (or 'reintegration') of women following a period of imprisonment. Analysis of the interviews of the ex-prisoners and prison staff for the 'English' part of the project suggested that, although there has been a great deal of change in the professional discourse of English prison officials over the last 30 years, there has been very little change in either the demographic characteristics of women prisoners or the post-prison experiences of female ex-prisoners. For, whereas English prison staff nowadays engage in a newly revived psychologistic and official rhetoric about the desirability of women learning to accept their place in society via cognitive relocation of the sources of their problems—that is, from their faulty social circumstances to their faulty psyches—women prisoners have the same social histories of poverty, abuse, lone parenthood, homelessness and poor mental health as they had 30 years ago. Once released from prison, moreover, they are as badly off in terms of accommodation, job prospects, etc. as they were in the 1970s. When the findings from all six jurisdictions were compared in the final report (www.surt.org/mip), it was found that women prisoners in the six countries (even in those like France, Germany and England which had the most developed reintegration rhetoric) had similar socio-biographies and that after prison they were at least as excluded from most social goods as they had been prior to their imprisonment (SURT, 2005). And though all had been imprisoned by heavily bureaucratized *modern* criminal justice and penal systems, if, upon their release from prison, they were to be deported to countries totally alien to them, they could also expect not only to suffer from the casual cruelties of the internationalized policing of national interests, but also from much of the same casual brutality which was inflicted on prisoners in earlier centuries by the *pre-modern* punishments of transportation and banishment. Meanwhile, in the sentencing project conducted by Tombs (2004),[2] analysis of the interviews

with judges was suggesting that the new community programmes, aimed at making non-custodial penalties as painful as prison in order to meet perceived judicial demands for tougher community penalties, had also resulted in a transcarceralism which, in itself, was boosting prison numbers, though in diverse and surprising ways. The layering of penal logic upon penal logic in the development of the concept of the 'rigorous community penalty' had once more strengthened the prison's carceral pull, and this time to frame a new justification for sending women to prison: to save them from community punishments perceived to be too tough!

As we discussed our different, but complementary, findings, it seemed to us that one of the major but under-explored causes of the rapid growth in women's prison populations is the exponential growth in the international women-prisoners reintegration industry, and its possible contribution to increased rates of women's imprisonment. Protected by its key ideological support, the myth of in-prison rehabilitation, and showcased via scientist psychological programming, new managerialism and global marketeering, the women-prisoner reintegration industry relies not only upon a revivalism of psychological explanations of crime. It also silently colludes in the contemporary conversion of the traditional crime/imprisonment couplet (the previously persistent myth that female lawbreakers are imprisoned because of the seriousness of their crimes) into an implicit recognition that some women are, and always have been, more likely to be imprisoned for the complexity of the anti-social, gendered and exclusionary nature of their living conditions. None the less, the reintegration industry's claim that its psychological reprogramming regimes are effective in reducing recidivism has had at least two ideological effects. First, it has obscured the fact that therapeutic programming in prison is always buttressed by all the old punitive and security paraphernalia of previous centuries of creative penal governance; and that such an accretion and layering of disciplinary modes and containment strategies effortlessly produce the mixed economy of the therapunitive prison (Carlen, 2002, 2005) in which any isolated therapeutic attempts to reduce the debilitating pains of imprisonment are inevitably undermined by the punishing carceral context. Second, it has convinced sentencers that it is legitimate to send women to prison regardless of the triviality of their crimes because, in prison, they will be brainwashed into coping with their poverty in non-criminal ways. As one British government publication notoriously (but honestly) put it:

> The characteristics of women prisoners suggest that experiences such as poverty, abuse and drug addiction lead some women to *believe* that their options are limited. Many offending behaviour programmes are designed to help offenders see there are always positive choices open to them that do not involve crime. At the same time, across Government, we are tackling the aspects of social exclusion that make some women *believe* their options are limited.
>
> (Home Office, 2000: 7, emphases added)

Arguments

The rest of the article is structured around three main arguments:

- *The first argument is:* that the prison's definitive features mean that, even when it is also attempting to be a mental hospital, a brainwashing centre or a warehouse, beyond everything else it is a prison, whose primary function, to keep people in confinement against their will, necessarily (*not* contingently) perverts any of the other, more therapeutic functions claimed for it. The *essence* of a prison is its carceral logic, which inevitably erodes all in-prison reform attempts, and, via transcarceralism, strangles at birth many non-custodial programmes too.
- *The second argument is:* that a main reason for the rapid increase in the female prison population in many countries has inhered in governmental claims that, far from being *only* a prison, the prison is nowadays much *more* than a prison, a multifunctional tool of social engineering which will not only punish criminals but, through its disciplinary (and sometimes trancarceralist) machinery of psychological programming and managerialist audit, disappear the *causes* of crime, too.
- *And the third argument is:* that because there are logical, sociological, ideological and political and cultural reasons why the concept of social-reintegration via imprisonment and its transcarceral alternatives is impossible, the perennially resurfacing contradictory claims that the prison and its non-custodial alternatives can deliver both punishment and rehabilitation should be contested.

A prison is a prison

Our first and second arguments, that a prison is a prison but that governments tell us otherwise, are made only because, throughout penal history, liberal optimists have argued that prisons are really something else. And of course, prisons *are* multifunctional and certainly have always served to shelter the people that nobody wants and the 'others' of whose difference too many have been taught to be afraid. If indeed prisons were *not* multifunctional, it would not have been so easy for governments to justify the disproportionate locking away of the poor, the sick and the stranger by arguing that, far from having their racialized, class-based and gendered patterns of exclusion reinforced by imprisonment, the incarcerated would receive goods in terms of rehabilitative, psychiatric, medical and educational services.

None the less, and however much governments may wish to tell us otherwise, prison is primarily and essentially organized for punitive exclusion by secure containment for a period of time determined by a court. Whatever other functions prisons may have, the only characteristic that *all* sentenced prisoners have in common is that they have been convicted of a crime for which the sentence of the court was punishment, either by a term

of immediate imprisonment, or by one of those 'alternatives' to custody which are backed-up by the explicit threat of incarceration for non-compliance with sentencing conditions. Like all other 'others', therefore, alternatives to imprisonment are predicated upon the continued existence of the binary partner; in this case, the prison itself.

Yet although prison is the most compelling symbol of the state's power both to punish, and maintain existing patterns of domination and exclusion, it is also a politically dangerous and unstable symbol. First, because it so nearly violates so many human rights and is so painful that democratic governments need continually to re-legitimate its systematic and almost exclusive use against certain classes and categories of lawbreakers for quite minor crimes; second, it is an unstable symbol because the prison business is still (as it was during the early days of psychiatry) an opulent shareholder in, and consumer of, the modernistic fashioning and retailing of new therapies and 'psy' sciences; third, because advocates of penal reform, becoming disillusioned by repeated failures of governments to reduce prison populations, have repeatedly accepted the invitation of prison administrations to help shape new prison regimes ostensibly designed to reduce both the pain and the damaging effects of imprisonment but which in effect often merely help to hide them; and fourth, because many people living in the increasingly ghettoized areas from which prison populations are drawn have so few resources in their communities that they themselves have come to acquiesce in the state's use of imprisonment as a catch-all tool to manage the complex problems of the poor for which no outside agency can give relief. For years this has been known to be the case with imprisonment of the mentally ill, the homeless and drug-users, but, as important new research by Megan Comfort in San Francisco suggests, with the decline of welfare the *relatives* of incarcerated men and women have also come to 'rely on the correctional facility as the most constant and powerful public institution available to them' (2005: 2). Drawing on research conducted over a five-year period, Comfort argues (and illustrates with copious ethnographic analysis) that women in intimate relationships involving domestic violence, poverty and addictions can find that the imprisonment of their men gives them a temporary relief from 'the serious problems jeopardizing . . . safety, health and marriage' (2005: 2). Thus, (and in contradiction of most received wisdom about the effects of imprisonment on intimate relationships), in showing how the mass imprisonment of poverty-stricken males can actually buttress marriages or domestic partnerships by giving women a greater sense of control over both their relationship and their own lives, Comfort's work also demonstrates how, in addition to all its other functions, the prison is nowadays 'a social agency of first resort' for the already socially excluded (Currie, 1998: 34, quoted in Comfort, 2005: 5).

So, in addition to its essential function of keeping people in punitive confinement, the prison has subsidiary contrasting, contradictory, trans-carceral and constantly transforming functions. As a result, the legitimacy

of the power to punish by imprisonment has to be constantly regenerated via rhetorical claims that prison is as productive of some general penal good as it is intentionally painful to individual prisoners. And this may account for the success of the contradictory messages that issue from governments anxious to have their penal cake (in terms of a populist punitiveness) and eat it too (by constantly arguing that prisons are benign institutions for the resettlement of wrongdoers and the re-education of the wrong-headed).

All of which leads us to our third argument—that the contradictory claims that the prison and its trancarceralist non-custodial alternatives can deliver both punishment and rehabilitation should be contested. For it is precisely this therapunitive rhetoric that fuels today's flourishing prison and reintegration business. Its promise that the therapunitive prison will reduce crime mops up millions of dollars at the same time as its failure to deliver on that promise ensures that more and more people are sent to prison. In the UK, increased public expenditure on in-prison 'accredited programmes' and other 'correctional opportunities', which, it was claimed, have rehabilitative and reintegrative potential, has clearly not only failed to reduce re-offending; within two years of release from prison 60 per cent of ex-prisoners in Scotland and 56 per cent in England and Wales re-offend (Scottish Executive, 2004). It has also contributed to staggering increases in the incarceration of women.

From 1992–2002 the women's prison population in England and Wales increased by 173 per cent (Stern, 2006: 11) and in Scotland by 76 per cent (Tombs, 2004). Such massive increases in the penal control of women have not, however, led policy-makers to question, far less abandon, claims that the prison can both punish and rehabilitate at one and the same time. Instead, in Scotland at least, there have been parliamentary inquiries into the 'Effectiveness of Rehabilitation in Prisons' (Justice 1 Committee, 2005) and audits of the propriety and value for money in public expenditure on 'Correctional Opportunities for Prisoners' (Audit Scotland, 2005) that have reinforced the notion that the therapunitive prison is possible. For the conclusion of such inquiries appears to be not that the prison *cannot* rehabilitate and punish at the same time, but rather that it needs to make a better job of combining the two via managerial improvements to 'ensure that correctional opportunities are best targeted towards reducing the risk of individual prisoners re-offending' (Audit Scotland, 2005: 27). This means that the 'Directorate of Rehabilitation and Care' within the Scottish Prison Service can continue to allocate resources across what it calls 'correctional opportunities'—accredited programmes, approved activities, education, employment opportunities, addiction treatments—so that individual prisons can 'maximise opportunities for prisoners to address their offending behaviour and evidence their preparation for release' (Scottish Prison Service, 2002: 5). Similar explicit statements about the prison's aims to reduce re-offending and promote reintegration can be found not only in policy documents (see, for example, Scottish Prison Service, 2000, 2004)

but also in the organizational structure of Scottish Prison Headquarters itself. For example, within the Directorate of Rehabilitation and Care, it is the 'Head of Inclusion' who has responsibility for what is labelled the 'inclusion policy'; a policy introduced in 2002 to 'strategically integrate opportunities' in three areas—social care, addictions and learning skills and employability—all claimed to be central to what the Scottish Prison Service terms 'the process of inclusion'; a process that involves 'assessing and addressing prisoner needs' so that offenders return to society 'better equipped and more able to be part of a community than when they entered prison' (Scottish Prison Service, 2002: 8). The inclusion process is expected to involve assessment of need, action planning to produce a community integration plan, referral to interventions and support agencies, interim review, pre-release planning and, on liberation from prison, information transfer to community partners. All of this, which aims to 'improve transitional arrangements and support for prisoners on release', is to be accomplished by sharing information with 'partners through the Community Integration Planning process and the virtual Inclusion Information Sharing Tag' (whatever that means) (Scottish Prison Service, 2004: 7). Somehow, it seems, rehabilitation and reintegration—now called inclusion—will happen simply by 'partners' sharing information (see Aas, 2005a, 2005b on the new roles of technology in 'information-sharing').

Meanwhile, the prison that is a prison, and that absurdly *excludes* in order to *include*, works very well: first and foremost, by providing iconic harsh punishment in societies currently loud in their demands both for the punishment of lawbreakers and 'protection' from a range of (very ill-defined) deviant 'others'; second, because full prisons and rising imprisonment rates can be presented as a visible index of a government's determination to wage war on wrongdoers; and third, and as argued earlier in the article, because imprisonment continues to be an important mechanism in the management of poverty and marginality (Wacquant, 2001; Becket and Sasson, 2004) as well as a protective mechanism that is relied upon and appreciated by those with desperate relationship problems who can no longer rely upon any form of welfare intervention to ease their troubles (Comfort, 2005).

Yet, if the prison does all this, why does it matter that the flourishing international prison business thrives primarily by claiming that, on top of everything else, prisons can rehabilitate? Because, first: in the case of women, such claims may have led sentencers to believe that the prison can effectively address women's 'needs', and that, therefore, it is legitimate to imprison them, even if their crimes are relatively minor; and second, because the rhetoric of in-prison reintegration results in a transfer of material resources from community to prison, at the same time as trans-carceralism is resulting in a transfer of privations from prison to community. It is certainly arguable that many of the extra resources in prisons, especially anti-addiction programmes, would be more productive if put to *social* use in a non-carceral setting, than they are when put to *anti-social*

use in a carceral setting. However, nowadays, because of a transcarceralism supported by governments nervous of appearing to be soft on crime, even non-custodial programmes are inseminated by a punitiveness which undermines many of the positive elements in community reintegrative programmes and which, as we shall describe in the following, on the one hand deters some sentencers from using non-custodials, and, on the other, results in some non-custodial programme participants failing to complete the programmes and thereby incurring a greater risk of imprisonment if they should offend in the future.

The women's imprisonment and reintegration industries

There is a widespread belief among prison watchers in the countries where the prison and reintegration industries are flourishing that: first, there should be less emphasis on prison-regime reforms and programming; second, that greater importance should be given to getting all abused women into their own safe accommodation; and third, that all women should be given greater support in struggles against addiction and abusive relationships. And anti-prison campaigners have research evidence on their side: studies of desistance from crime suggest that what happens outside prison in terms of housing, jobs and personal relationships is much more strategic in facilitating law-abiding lives than any brainwashing attempts made via prison programming (Maruna, 2000; Farrall, 2002); while, from a different perspective, studies of women's prisons suggest that imprisonment causes more psychological damage than any in-prison therapy can ever cure. None the less, in England, Wales and Scotland at least, instead of the co-ordinated community provision recommended by all previous inquiries and reports, cross-national 'cognitive behavioural' programmes exported from Canada and costing thousands of pounds per prisoner have been adopted, while other, more recreational prison programmes have been abandoned on the grounds that they do not address 'criminogenic need'. By 2004 more than £150 million had been devoted to cognitive skills programmes in England and Wales (Ford, 2004) and in Scotland a substantial part of the £30 million spent on correctional opportunities in the single year from 2003–4 was spent on such programmes (Audit Scotland, 2005). And, despite research demonstrating the ineffectiveness of such programmes in reducing re-offending (see, for example, Home Office, 2003), prisons continue to import new and 'better targeted' ones; for example, Cornton Vale (Scotland's main women's prison) recently introduced yet another cognitive behavioural technique—motivational interviewing—to its repertoire (Cornton Vale Visiting Committee, 2005).

   We cannot ignore the fact that many women in prison report that they find the various variants of cognitive behavioural (and other) programmes useful and, in so far as they help women pass the time more pleasantly or

productively in prison, such programmes may even be beneficial. Women prisoners claim that they take from the programmes what they want and ignore what they disagree with. None the less, anti-prison campaigners have criticized the new wave of in-prison programmes developed to address women's 'needs' from a range of perspectives. Some detractors insist that psychologically based programmes actually cause harm because they suggest to women that they should be able to control their responses to adverse material circumstances over which, in fact, they have no control; and that, therefore, when the women are released, they suffer confusion and guilt when confronted with even worse problems than they had prior to their imprisonment and its reprogramming programmes. Other critics, such as eminent psychologist Craig Haney in the United States, have argued that it is strange that individualistic psychological explanations are being used to inform in-prison programmes just at a time when psychologists of crime themselves are promoting more social, context-based approaches (Haney, 2005). Others again, though writing in defence of cognitive behavioural programmes, have contended that correctional services' wholesale adoption of cognitive behavioural programmes for types of prisoners for whom they never were intended makes a fair assessment of the programmes impossible. Be all of that as it may be, the aggressively marketed claims of cognitive behavioural programmes to reduce recidivism remain unproven. More troublingly, those claims themselves may well account for the disproportionately steep increases in female prison populations: first, because women have always been more vulnerable to pychologistic interventions than men; second, because the causes of their lawbreaking are more likely to be seen as stemming from an economic need which, with the demise of welfarist models of crime, is nowadays likely to be translated into the so-called criminogenic needs which behavioural models of crime have traditionally addressed and which they are now claiming to address again (Hudson, 2002; Kendall, 2002); and third because, even though unproven, those claims still provide a rationale for sending to prison minor female offenders whose psycho-social needs would previously have been seen to merit a non-custodial sentence. Consequently, there is mounting suspicion among prison analysts that women's prison systems are feeding off themselves with the product of reintegration rhetoric, that is, with relatively high numbers of recidivists on the one hand and, on the other, sentencers sending women to prison *because* they nowadays mistakenly think that in-prison programmes and regime reforms can prevent future lawbreaking. This suspicion was, in part, confirmed by Tombs' (2004) sentencing study.

Overall, analysis of the data in the Tombs (2004) study indicated that sentencers' claims that the prison can more effectively address 'needs' are frequently used to legitimate the incarceration of women for relatively minor crimes, while political discourses in relation to retributivism result in women ending up in prison as a consequence of failing to complete too demanding non-custodial programmes or as a consequence of three further

sentencing rationales honed by sentencers in reaction to what is seen to be the dominant punitivism: because non-custodials are too tough it is better for a woman to go to prison than be set up to fail in a too rigorous community-based programme; there are no appropriately tough programmes in the community; sentencers themselves must be seen to be tough or they will lose credibility.

Prison, Scottish judges repeatedly argued, could provide the best context for the treatment of women with addiction problems, especially drug-users, precisely because they would be physically separated and isolated from their lives on the outside.

> You get the pathetic souls—especially the young girls—who are on drugs and why they go to jail is because of their drug addiction and repeat offending. They just can't stop. I mean they get on drugs, then they shoplift—they shoplift, they shoplift . . . Now very occasionally you actually get some of these people who say 'please send me to jail because that is the only way that I can get away from these demon drugs'.
>
> (Judge 21)

> I would say that at least 80 per cent of our cases with women now involve drugs . . . many are drug addicts. Of course they are very often involved in what appear to be minor crimes—shoplifting . . . One of the problems then is, do we try to get them off the drugs, because if we get them off the drugs then hopefully that will stop them offending. But when they want to stop it's often better for them to be inside . . .
>
> (Judge 14)

Typically, however, sentencers also frequently observed that they sent women with addiction problems to prison because there were no suitable resources in the community. Prison was quite simply the only place that law-breaking women could get treatment.

> If you have an addiction, like the woman we were just talking about, you're ill and you have to be treated and the treatment resources aren't available. What I think is that far greater resources should be thrown at these issues to the extent of having residential centres for drug addicts to receive treatment as an alternative to prison. Some of them ask us to go to prison because they know they can get treatment there; they can't get it elsewhere.
>
> (Judge 10)

> In many cases these women have severe drug and alcohol problems. I send them to Cornton Vale . . . They can get help in there to detox . . . and there are, I understand, drugs counselling programmes that are not available to them in the community.
>
> (Judge 4)

In addition to drugs programmes, several sentencers mentioned other types of in-prison programmes that were attractive to them because they had been told that these programmes were aimed at 'tackling offending

behaviour' and 'worked' in terms of reducing re-offending. The fact that women could get access to such programmes in prison influenced their decisions about whether or not to imprison.

> I have got confidence in the fact that these prisoner programmes . . . as I think they are called, are solidly based on research about what works . . . we've been told about that research in a course I was on . . .
>
> (Judge 31)

> If there was a programme in prison that I thought would modify her behaviour so much that she wouldn't do it again then I would send her there.
>
> (Judge 23)

> I think it is preferable to try and deal with the offender in the community, especially with a woman, rather than lock her up in an institution . . . although much is made of programmes which are available in prison . . . We're told these programmes are important in the rehabilitation of the offender . . .
>
> (Judge 4)

Other judges were more sceptical about the claims made for the rehabilitative effects of in-prison programming. They thought that community-based programmes were likely to be more effective. The problem here, however, was that the resources for community facilities were perceived to be inadequate. Not only did they believe that drug and alcohol treatment programmes in the community were under-funded and over-subscribed; so too with other community programmes and disposals.

> There have been several instances where a social enquiry report has said that this individual would be suitable for a certain programme we have here in this area . . . for anger I think . . . but that there aren't any vacancies at the moment . . . If these [community] disposals are not properly supported and resourced then I, as a judge . . . lose confidence in them, and decide that these things are not effective.
>
> (Judge 19)

> That's my main gripe about community-based disposals, that they are not as effective as they should be because they are not properly resourced.
>
> (Judge 27)

Nevertheless, the prison was sometimes considered to be the only appropriate place even when community facilities were available. In some cases this was because the proliferation of different types of community-based sentences made it more difficult for sentencers to assess the conditions that had to be satisfied before specific community orders could be imposed, but more often sentencers said that they did not impose community sentences because they were 'too hard' for offenders to complete and that they were 'not in the business of setting people up to fail'. Time and again sentencers observed that, for a number of reasons, some community

alternatives to imprisonment were simply too difficult for many law-breakers, especially for women and drug-users. Most straightforwardly, they said that community sentences were 'very onerous' and that, because of poor health and/or perceived physical weakness, women lawbreakers would simply be unable to meet the demands of a community sentence.

> In the social enquiry report you are told that she's not able to work because she's not very fit. They tend not to recommend community service in such cases—there seems to be an obstacle to it.
>
> (Judge 19)

> Sometimes, of course, community service isn't feasible because of the offender's poor physical or mental health.
>
> (Judge 3)

Most of the sentencers who said that they frequently did not impose community sentences because they were too hard argued that much of the difficulty lay in the incompatibility between lifestyles and the requirements of community sentences. Their assumptions about what they typified as the chaotic lifestyles, 'lacking discipline', of many women lawbreakers meant that the conditions of community sentences could simply not be met.

> These young girls have never had any sort of discipline of getting up in the morning to go to a job, and that's not their fault of course. But they're not able to get into a routine, of taking some responsibility for getting themselves to appointments.
>
> (Judge 14)

> Many of the ones on drugs just can't do community sentences. Their physical health goes, their moral character goes, they keep offending, they get out on bail, they offend again, they get out on bail, they offend again, they get a deferred sentence, they get probation, they get community service but because of their drugs habit they don't turn up to their probation or they lose their tenancy and move address, or they don't do their community service, they keep offending and eventually you have to say 'well, enough's enough'. Prison is the only place they can be made to do their sentence.
>
> (Judge 21)

In such circumstances some sentencers claimed that it would be inappropriate to impose a community sentence; not only because the woman in question would not be able to meet the requirements but also because they themselves did not believe in 'setting people up to fail'.

> Many of these women have chaotic lives . . . that's one of the results of them being on drugs and therefore I am not in favour of setting them up to fail, whether it is probation or community service. If I don't think they will co-operate with it, I would rather just sentence them [to prison].
>
> (Judge 20)

> Some view the likes of probation and community service as an easy option. It's only when they attempt to do it that they realize that it is perhaps not

such an easy option as they thought. And quite often they end up being breached and then they go to custody. I try not to impose a community order if the offender isn't going to be able to do it. I don't believe in setting them up to fail.

(Judge 15)

I am not in the business of putting people up to fail. If a woman had a history of breaching probation, breaching community service, failure to appear I would probably not impose a DTTO [drug treatment and testing order] . . . A DTTO is very, very restrictive . . . a very demanding disposal and if they show from their record they are not going to co-operate there is no point in putting them on a DTTO . . . The woman I was telling you about . . . I recently refused to put her on a DTTO. Her solicitor went on and on and on about it and I said to him, 'I am not doing this, this woman will not be able to co-operate with a DTTO' and I sentenced her to five months in prison . . .

(Judge 7)

If there were a history of breach of probation, breach of community service, or you have tried alternatives and they have failed, the argument is against the DTTO. A DTTO is a very, very invasive disposal. They are tested eight times a month, urine testing, blood testing, they have got to go to the hospital, to the health centre as well as dealing with the social worker and they've really got to be able to show they can cope with that . . .. But, let's be honest, people who are suitable for DTTOs are people who can't organize their lives anyway.

(Judge 13)

In short, when community disposals were thought to be 'too hard', in the sense that the conditions were perceived as simply too demanding, sentencers, in the words of one of the judges, 'took the easy option' and imposed a prison sentence. The irony here is that at the same time as the development of policies and legislation are providing ever more prison-like substitutes for the prison in the community, 'programmes' in fact aimed at making community penalties so tough that sentencers will impose them instead of the prison, the opposite is happening: sentencers are not using community penalties precisely because they now see them as being *too* tough!

Rhetorical claims about the efficacy of (tougher, more complex and more individually focused) *punishment* in the community reached their zenith in England and Wales in the Criminal Justice and Court Services Act 2000, the Act that renamed several community disposals so as to give emphasis to their putatively punitive and rehabilitative possibilities: the community service order became the community punishment order, the probation order became the community rehabilitation order and the combination order became the community punishment and rehabilitation order.[3] Of course renaming was not enough. The rhetoric also involved making claims

about the effectiveness of these penalties in reducing re-offending; some-
thing that could be gauged much more accurately than in the past because
of the emergence of sophisticated technologies of control and surveillance
that could facilitate enforcement of the ever more restrictive combinations
of conditions attached to community disposals (see Bottoms et al., 2004).
In England and Wales this process has culminated in the replacement of
the various community orders developed and/or renamed throughout the
1990s by the generic community order introduced by the Criminal Justice
Act 2003. The community order allows sentencers to combine, in a single
sentence, any of the following conditions and restrictions—supervision,
compulsory work, activities or prohibited activities, offending behaviour
programmes, treatment for substance misuse or mental illness, residence,
curfews and exclusions, and attendance centres (only for those under
25). In addition, the 2003 Act created three new types of 'short-term'
prison sentences; custody plus, intermittent custody and a new form of
suspended sentence with conditions—all of which permit sentencers to
combine a custodial sentence with specific community-based requirements
that, if not met, will generally result in breach proceedings and the
activation of the term of imprisonment. This is, of course, fully consistent
with the intention, as stated in *Justice for All* (Home Office and Lord
Chancellor's Department, 2002)—the White Paper preceding the 2003
Act—that the new generic community sentence would be 'even tougher'
and 'more demanding'.

Offering sentencers a wider repertoire of requirements that they can
impose in a single community sentence is, however, undoubtedly likely to
increase the number that they do impose (see Hedderman et al., 1999;
Tombs, 2004), thus making the likelihood greater that individuals will fail
to comply with at least some requirements; completion rates for combina-
tion orders, for example, were lower than those for either community
punishment orders or community rehabilitation orders (see Bottoms et al.,
2004: note 28). A complex community order, with an assortment of
requirements and additional penalties certainly provides more opportun-
ities for breach. Indeed, given sentencers' views on the difficulties experi-
enced in meeting the demands of discrete community sentences (such as
reporting for supervision on a probation order) increased breach rates are
a foregone conclusion, especially when community orders might involve—
simultaneously—intensive supervision, home confinement, electronic sur-
veillance, daily reporting, work release and numerous other treatment
services (for example, drugs counselling, anger management and so on).
The cumulative effects of the imposition of community orders, moreover,
are likely to lead not only to 'piling up sanctions' (Blomberg, 2003: 421)
but also to increases in the prison population disproportionate to increases
in the general population, arrests or convictions (as has been shown by
research in various jurisdictions in the United States—see Petersilia and
Turner, 1990; Blomberg et al., 1993; Blomberg and Lucken, 1994; Blom-
berg, 2003). What these studies found is that 'intermediate punish and treat

programs' had the effect of entangling offenders with multiple sanctions, often with overlapping conditions and requirements, thus resulting in 'frequent sentence violations, new jail sentences and resulting increased jail populations' (Blomberg, 2003: 424). There is every reason to believe that community orders will have similar effects.

Research in England and Wales (Hough et al., 2003) and in Scotland (Tombs, 2004) has already suggested that increased enforcement of the conditions of community sentences during the 1990s led to increased levels of breach, thus contributing to the growth in the prison populations over that period; in Scotland those imprisoned for breach of community sentences increased by 126 per cent between 1993 and 2002 (Tombs, 2004). This is why punitive transcarceralism, through the proliferation of ever newer and 'tougher' sentences in the community, has not reduced the use of imprisonment but, instead, has contributed to its growth. A not insignificant part of the prison populations in England and Wales and in Scotland is made up of people breached for community penalties. Moreover, individuals' histories of breaches make sentencers less inclined to use alternatives to imprisonment when sentencing for 'new' offences. A history of breaches for community sentences was a key influencing factor in sentencers' decisions to imprison in cases that lay on the borderline between custodial and non-custodial options (see Hough et al., 2003; Tombs, 2004). Making community sentences even 'tougher' by imposing multiple demands and requirements will inevitably provoke more breaches, which, as long as they are backed by imprisonment, will in turn result in more incarceration, increased demands for more prison space, more prison building and so on. For, even when they did not impose prison at first instance, sentencers in Scotland were adamant about the continuing need to back community sentences with the default sentence of imprisonment. The sentencers could not conceive of a credible criminal justice system unsupported by carceral threat.

> Probation is a very powerful disposal as far as I am concerned because it has the benefit of this—if they step out of line they come back and I start again. So too is community service. I tell them that if they step out of line and they are in very real trouble, I will know about it within 24 hours and they will get the jail.
>
> (Judge 7)

> In this court we tell them when they're going on it [community service], that it's instead of a custodial sentence—it is not instead of a fine—so if they don't do it they will come back here and what will there be? No alternative . . . and then they will go to jail and so it gives the social workers credibility and it gives us credibility.
>
> (Judge 21)

The issue of credibility, together with a desire for 'something to work', not only underpinned sentencers' decisions to imprison but also their decisions about the lengths of prison sentences. Most said that short

sentences 'don't do any good', 'don't rehabilitate' and/or 'don't allow offenders time to go on programmes'. In short, in looking for something to work, they were very open to the rhetorical claims about the rehabilitative and reintegrative potential of in-prison programming and activities.

> And that—12 months in prison—we were told is about the shortest meaningful sentence you can impose in terms of making any impact. If you serve six months then that's about the shortest prison sentence you can have that will have a rehabilitative effect on an offender by way of having time to put them on one of these programmes . . . give them education and perhaps teach them some life skills and work experience.
>
> (Judge 8)

> What militates against short sentences generally is that there's no time for the prison authorities to do any good. There's nothing they can do. If you give a guy three months, he's out in six weeks. What is the point? It costs us so much money, and it does little good. We've been told by senior people in the Scottish Prison Service that they can't organize any courses for people serving short sentences. They can't offer any rehabilitation.
>
> (Judge 17)

In sum, what these views suggest is that the prison reintegration industry has contributed to the increased lengths of sentences imposed in England, Wales and Scotland over the last decade or so (see Hough et al., 2003; Tombs, 2004). In addition, some sentencers pointed out that a specific part of the industry—the 'business' of risk assessment—had, in and of itself, had the effect of making it more likely that a prison sentence would be imposed.

> All that risk assessment stuff reduces the options. We get [social enquiry] reports saying things like 'there is no focus here for probation'. Social workers are not as flexible as they were.
>
> (Judge 8)

Additionally, several sentencers observed that the risk assessment business further reduced their options in so far as it consumed time and resources that might otherwise be devoted to the development of facilities in the community.

Contesting the women's imprisonment and reintegration industries

In the first part of this article we have presented arguments supported by empirical evidence to suggest that the growth in the women's imprisonment and reintegration industries has, rather than reducing recidivism, been centrally implicated in the steady increase in the numbers of women imprisoned. However, in addition to the empirical evidence, there are, as we suggested in our Introduction, sound logical, sociological, ideological

and political reasons why in-prison, and punitive non-custodial, reintegrative programmes have signally failed, and will continue to fail, to reduce recidivism.

1. *Logically*: The reduction of prisoner recidivism cannot be a prime function of imprisonment because the logical requirement that prisons keep prisoners in custody means that security requirements must routinely be given priority over therapeutic needs. It has been well documented that the necessary observance of security requirements is likely to erode and undermine possibilities for the establishment of the conditions conducive to a therapeutic environment. For example, in a recent study of the 'throughcare centre' within Edinburgh prison, which provided a range of rehabilitative activities for prisoners aimed at improving their chances of successful reintegration, it was found that the demands of security meant that counselling and skills sessions were frequently interrupted and/or terminated because prisoners had to be escorted back to their residential halls to be counted. The effect of such security demands caused considerable disruption to therapeutic work and led to frustration on the part of prisoners and the community-based agency workers who came into the prison to work with them (Tombs, 2003).

2. *Sociologically*: The characteristics of women's prison populations make the notion of *re*integration inappropriate. The concept of the *re*integration of women prisoners necessarily implies that prior to their imprisonment incarcerated women were integrated into the community and that post-imprisonment they need assistance merely to regain the place in society which they occupied before. Yet, the research from all the jurisdictions investigated in the EU Women Prisoners' Reintegration Project indicates that a high proportion of women sent to prison had no financial security prior to their imprisonment, had either never worked or had only worked in low-paid jobs with no job security, had no secure accommodation, very little education and had been victims of either physical and/or sexual violence from family members or non-family male predators. Certainly, research from the UK suggests that women prisoners are likely to suffer greater degrees of economic and social deprivation than their male counterparts, that ethnic minority women are likely to be even more economically and socially disadvantaged than other disadvantaged women and that, overall, socially excluded women are likely to be more disadvantaged than socially excluded men. But, even more surprising, and as was shown earlier in this article, sentencing studies in some jurisdictions suggest that women are often quite explicitly sent to prison *because* they are already socially excluded (e.g. homeless, unemployed, drug-users); and that sentencers think that because they are already socially excluded they are more at risk of committing a crime in the future—and they are most probably right about that. What they are wrong about is their assumption that imprisonment can and will, through its rehabilitative regimes and

programmes, reduce the likelihood of already excluded women return-
ing to crime (or drugs) once they are released from prison. Indeed, the
EU Women Prisoners' Reintegration research findings suggest that, far
from rehabilitating socially excluded women, the social options of *all*
women prisoners are most probably narrowed by their time in prison:
employment and education are disrupted; health is impaired; and there
may also be further loss of self-esteem via humiliation by prison staff
and the inevitable stigmatization of a prison sentence. Interestingly
enough, in light of Megan Comfort's research discussed previously, the
only good thing that the women usually say about prison is that there is
an absence of men. In other words, prison provides a protection against
abusive men, and, in so doing, it helps buttress relationships that are
damaging to the women and, in some cases, their children. The EU
Women Prisoners' Reintegration Project concluded that while imprison-
ment excludes even women who were not excluded prior to their
incarceration, it excludes the already socially excluded still further. And
those findings, read in the context of both Comfort's work and earlier
work on women's imprisonment might lead one to add that, in exclud-
ing women socially, imprisonment also makes it even more difficult for
them to leave abusive men (Carlen, 1983: 52–3; Comfort, 2005).

But, from an entirely different point of view: given the adverse
employment and educational backgrounds of women prisoners, the high
proportions of women in prison who are mentally ill, combined with the
relatively short sentence lengths of most female prison populations, it is
difficult to see how prisons alone (or even non-custodial reintegrative
programmes) can be expected ever to provide the majority of prisoners
with effective educational courses, sustainable drugs rehabilitation,
emotional support or marketable skills after release. And even if prisons
were also industrial training schools, or educational institutions or
hospitals, it would still be morally indefensible to send already-excluded
women lawbreakers to prison for longer (or more frequently) in order to
redress economic and social wrongs which should, and can only be,
effectively addressed in the community. Yet maybe the biggest danger of
seeing prison as a tool for managing poverty by getting prisoners to
change their worldview was brought home to one of the authors most
forcefully recently by a minority of UK prison administrators and staff
who, in interview, attributed the high recidivism rates of female prison-
ers to the fact that women's sentences are relatively short. The prison
officers' complaint, 'We just don't have them long enough to do
anything with them' was very chilling; and not least because, as we saw
earlier, similar injunctions from prison service administrators and others
had made some impact on sentencers' decisions about the lengths of
sentences they imposed.

3. *Ideologically and politically*: (and leaving legitimacy issues aside) why
ever should governments want prisons to add reintegration to all their
other functions? For if one also ignores the official ideology that implies

that prisons are primarily for recidivism reduction via rehabilitation, it can be seen that, on the criteria we outlined at the beginning of this article, prisons are already very successful indeed. The continuing significance of Durkheim's (1969 [1895]) insistence on the socially integrative functions of punitive exclusion is perennially underlined by the electoral manifestos of political parties boasting about both the number of prisoners currently in punitive custody and the number of new prisons to be built in the future. Moreover, and, as Comfort's research showed, prisons can be 'integrative' in totally unexpected ways—by, for example, supporting destructive and abusive relationships. However, as we have already suggested, the discourses and strategies within which prison legitimacy is sought are in constant realignment as modes of penal governance shape, and are shaped by, new cultural and historical conditions. We will conclude this article, therefore, with a description of contemporary prison culture in the UK.

Concluding commentary

Prison staffs in the UK are well aware that the major aim of imprisonment is to keep prisoners in secure custody. However, most of them nowadays also operate within a culture of reintegration rhetoric, which might suggest that imprisonment has become less destructive and less painful than in previous eras. No way. In the UK the serious and sincere attempts of prisons personnel to make prisons less destructive have been eroded by the cancer of a disciplinary governance which has functioned to ensure that many of the prison's reintegrative strategies (such as programming, training and responsibilization—Hannah-Moffat, 2001) have functioned merely to keep prisoners in their place. And it is about this disciplinary governance that we wish to say a few more words.[4]

In *Discipline and Punish*, Michel Foucault (1977) argued that modern modes of social regulation function to create a disciplined citizenry which has so internalized the rules of disciplined behaviour that bodily constraints should fall into disuse. If then, still following Foucault, it is accepted that this continuous technology of mass discipline, rather than depending upon physical terror or pain, aims for psychological mastery, it might also have been expected that the latest in-prison programming strategies would be no more (though no less) than a continuation of the disciplinary penality of the modernists, a penality functioning to re-programme the prisoner as a citizen and worker. And, in many ways they are. Yet they are also different. The prison programming which Foucault described was seen to inhere in a seamless web of total social and cultural control within nation states. By contrast, today's prison programmes (especially the psychological ones) are the marketable outpourings from a global commodification of penal products. In Scotland, for example, the cognitive behavioural programmes

introduced throughout the prisons estate during the 1990s drew largely from the highly successful marketing of the 'Reasoning and Rehabilitation' programmes developed in Canada (see Ross et al., 1988).

However, although the promises of the programmers attempt to legitimate imprisonment by claiming that correctly matching in-prison programmes to prisoners' criminogenic needs should reduce recidivism, the essential logic of imprisonment, that prisoners must be *kept in*, means that, when this postmodern ideology of multiple and individualized programming (with its essentially oxymoronic discourse about the saliency of excluding to include) is activated in either contemporary prisons or transcarcerally punitive community settings, it is not implemented in a therapeutic environment, but, instead, alongside all the old modernist disciplinarities of placing, normalizing and timetabling, and against a backcloth of the even older pre-modern controls such as lock-ups, body searches and physical restraints, shaming techniques and, for some, transportation to an alien land (see Carlen, 2005). And all this layering of disciplinary techniques from different penal eras[5] occurs in the confused conditions that result from a politically heightened risk-awareness and a globalized fear of a constantly redefined otherness.

Reconfigurations of penality are ongoing and complex. In this article we have not attempted to describe, explain or compare every facet of the burgeoning and global prison-industrial complex. All that we have been arguing here is that the present conjuncture of concomitant increases in both the women's imprisonment and reintegration industries is a new instance of an old penal history in which proclaimed in-prison regime-reform has gone hand-in-hand with increased carceralism, increased international trade in penal produce and increased sophistication and diversification of penal technique. We already know that alternatives to imprisonment have been regularly and officially transformed into transcarceral programmes designed to bring the pains of imprisonment *out into the community* (Cohen, 1983; Lowman et al., 1987). We also know, conversely, that in other places, e.g. in Portugal currently (da Cunha, 2005), and in Northern Ireland during the 'troubles' (see McEvoy, 2001) there has been the wholesale *importation of communities into the prison*; while the recent work of Megan Comfort (2005) suggests that the use of the prison as a tool of poverty management can also be welcomed as both a relief from domestic oppression and a relationship-support by women intimately involved with abusive or troublesome men. From these and other numerous examples of penal creativity and plasticity, therefore, we know, too, that the 'persistent prison' (McMahon, 1992) is always and already changing its discourses of legitimation and its strategies of governance for keeping the already-excluded in their place. The distinctly new twist to all these many previous reconfigurations of penal discourses is the finding of the Scottish sentencing study (Tombs, 2004) that the move to make community sentences more rigorous so as to increase their popularity with sentencers perceived by governments to be imprisoning women be-

cause they think community sentences are *too soft* has backfired: the evidence suggests that some Scottish judges are now sentencing women to prison because they think that the new style community sentences are *too harsh*! Until, therefore, carceralism is decentred from governmental and popular thinking about how to respond to crime, until, in effect, the punishment/reintegration couplet is abolished and prison populations reduced, it is likely that all attempts both to civilize the punitive response and reduce racialized, class-based and gendered patterns of social exclusion will be thwarted. In analysing this failure of the contemporary imprisonment and reintegration industries to deliver the promised reductions in recidivism we have, here, merely attempted to provide just one slightly different piece of evidence in support of the old abolitionist adage that there is *no way* that primarily *penal* methods can address primarily *social* injustices.

Notes

1. The English team for this project was led jointly by Pat Carlen and Anne Worrall and was based at Keele University.
2. The research involved extended interviews with 40 sentencers throughout Scotland—with 5 Judges of the High Court, 34 Sheriffs and a Stipendiary Magistrate. All Sheriffs—hereafter referred to as judges—were also asked to provide information about how they had made decisions in four cases that they considered lay on the borderline between custodial and non-custodial penalties—two of which went to custody and two of which went to community sentences. The main object was to understand sentencers' logic-in-use when they made decisions to imprison.
3. Scotland, however, did not engage in this renaming, at least in part, because of the different historical traditions between the two jurisdictions. In addition, since the disbanding of the probation service in Scotland subsequent to the passage of the Social Work (Scotland) Act 1968, criminal justice social work has been—and continues to be—a local authority responsibility, though since the early 1990s these services have been funded first by the Scottish Office (see Paterson and Tombs, 1998), and, since the establishment of the Scottish Parliament in 1999, by the Scottish Executive. Throughout, the focus of government policy has been on toughening up community disposals with the aim of reducing re-offending, promoting rehabilitation and thereby reducing the use of imprisonment (see, for example, Scottish Executive, 2004).
4. Most of the following two paragraphs are taken from Carlen (2005).
5. A recent book (Barton, 2005) provides a detailed analysis of how this layering of disciplinary modes from different eras is especially apparent in the history of semi-penal institutions for women such as probation hostels and halfway houses.

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