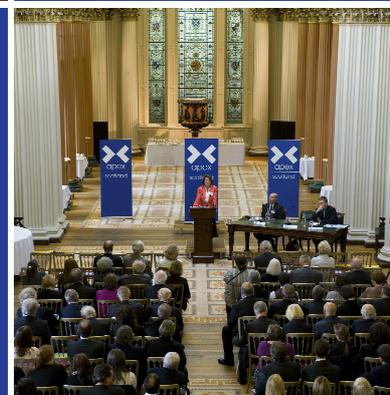




# An Unmet Commitment: Women and the Justice System in Scotland



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## Apex Scotland Annual Lecture

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**7 SEPTEMBER 2010**

**Previous Apex Scotland Annual Lectures  
have been delivered by:**

8 September 2009

Professor Fergus McNeill, Professor of Criminology  
and Social Work, University of Glasgow

9 September 2008

Kenny MacAskill, the Cabinet Secretary for Justice  
and Richard Jeffrey, The Prisons Commission

11 September 2007

Professor Wesley Skogan, Institute for Policy Research  
(IPR), Northwestern University, Illinois

12 September 2006

The Rt Hon Lord Cullen of Whitekirk

13 September 2005

Cathy Jamieson MSP, Justice Minister

15 September 2004

Duncan L Murray WS, President of the Law Society  
of Scotland

16 September 2003

The First Minister, The Rt Hon Jack McConnell MSP

18 May 1998

Henry McLeish MP, Minister for Home Affairs and  
Devolution, Scottish Office

## Foreword

The exceptionally high level of health and social problems experienced by most female offenders means that prison is not an answer but an additional problem. The recent report on female offenders published by the Scottish Parliament's Equal Opportunities Committee and the Chief Inspector of Prisons report on HM Cornton Vale issued earlier this year both acknowledge that mental health issues, abuse, childcare and addiction problems feature much more significantly in the lives of female offenders than their male counterparts and that these factors need to be addressed more effectively than at present if we are to make any inroads into reducing the number of women who end up in prison. Yet the number of women in prison goes steadily upwards: an average of 210 in the year 2000, 417 now. Scotland, with its much-envied social work tradition, has so far failed to find a better way in spite of many political commitments to do so.

In this year's Apex Scotland Annual Lecture, Baroness Stern examined this anomaly and posed a number of questions about equality and justice.

We were delighted that Baroness Stern accepted our invitation to deliver this year's Lecture. Her analysis was thought provoking and timely and generated a great deal of debate at the event.

Particular thanks are due to Mike McCarron, Apex Scotland Chair, for introducing the Lecture and chairing the discussion session. Thanks are also due to the Apex Scotland team at Head Office and to our colleagues at the Signet Library whose organising skills and attention to detail made the event such a success.

I hope you enjoy reading the Lecture.

Alan Staff, Chief Executive

## Introduction

It is a great pleasure to be here. I very much appreciate this invitation to give the Apex Scotland Annual Lecture.

I have known Apex a long time - more than 30 years. It is very important work. Without it how much poorer our society would be. The work Apex does is one of the basic building blocks of an ethical society because it is part of an essential message - a message that says everyone can contribute to society, everyone is worth investing in, everyone is entitled to work if possible.

I have been reading about Apex activities. They are all very worthwhile but some stand out because they show how Apex looks at other human beings. And since this is one of the themes I shall be concentrating on this evening let me say a little about it.

Apex looks at other human beings, not as somehow defective people with cognitive bits missing from their heads, not as people who are the sum total of what they have failed at in life. Apex does not define people by the worst thing they have ever done. Apex does not see people who are defined by a finding of a court that they have broken the law as somehow different people to be dumped into the box called "offender", who are then categorised and people can say "That doesn't come out of my budget, we don't do "offenders".

Apex just sees people who have faced a lot of troubles and need some solidarity to get sorted out and back on track. So I was impressed that Apex was selected by the Department for Work and Pensions to pilot financial capability activities, helping convicted people to deal with money matters in partnership with the Chartered Institute of Bankers. Very useful and practical and realistic, and not offender-specific at all. A lot of people could benefit from financial capability activities (maybe some of those who used to run the Royal Bank of Scotland perhaps)?

I am very impressed with the programme with the British Heart Foundation, training 152

people in resuscitation techniques and all the spin-offs that come from that; spin-offs like the feeling that you yourself are worth something because you can help other people. An Apex client has been chosen to play for Scotland at this year's Homeless World Cup in Rio de Janeiro. Congratulations on that. And finally this little quote from Apex's Annual Report has a lot of resonance:

*"My worker at criminal justice is really pleased with me and everyone says they can see the difference. For the first time in my life I don't want to go back to prison. I've also got my own house now and speak to all my neighbours..."*

*"My worker at criminal justice is really pleased with me"*. What a clear illustration of the importance of relationships in rehabilitation.

*"I speak to all my neighbours"*. What a clear illustration of what social reintegration after prison means.

I am grateful that you have asked me to talk about women and the justice system in Scotland, a subject that needs to be talked about. And not just talked about but acted upon. A fascinating subject overshadowed by a big unanswered question. We'll come to that later.

So let's think for a bit about women and the justice system.

Just three months ago I had occasion to think about it. It was a Saturday morning and I was in the women's prison in Kampala in Uganda. There are about 400 women there. They wear different coloured dresses. Not to show their individuality but to show their legal status. So the women who were there on remand wore little green dresses; the women who had been convicted wore bright yellow dresses with the word convict on the back in big black letters. The women sentenced to death and waiting to know if they would be executed and, if so, when they would be executed, by hanging, wore pink dresses. There were about 12 women in pink dresses. And I must say it is to the great credit of the Government of Uganda that the death penalty is currently suspended because of legal developments.

For my visit to the women's prison they had all gathered in a big room, with quite a few babies – very small babies. A little group of them sang a song of welcome, a song about rehabilitation. I looked at them all sitting on the floor, spread out in front of the table and chairs that were placed there for the visitors. What did I see? I saw the same poor, haggard, thin, battered-looking, beaten-down, unhealthy women you see in prisons all over the world.

What do we all know about those women? I didn't talk to many of them individually but without talking to them and without looking at their files we know a lot about them. We know most of them will have suffered violence in their lives. We know many of them will have been victims of sexual abuse. We know they will nearly all be poor. And we know they will usually have been exploited and used in some way.

We know they may well be addicted to alcohol or drugs, what we can call the painkillers of the poor. We also know without asking them why they are in prison. A very small number are there because they have killed their husbands or partner, often as a response to years of violence from that partner. Sometimes they steal because of poverty and the need to feed their children. Some will be imprisoned in some countries because they have become involved in prostitution, the only option left to them to make some money. Often they carry small amounts of illegal drugs for some bigger drug businessman.

Does that summary also describe most of the women in prison in Cornton Vale and the other prisons where women are held in Scotland? I am sure that broadly it does. It confronts us with the question that cannot be avoided - are all these women really the sort of people who should be being given the severest penalty available to the justice system? The penalty - imprisonment - is what we use to punish those guilty of the most terrible crimes. Is this really justice that we are doing here when we imprison such women?

The story of women in the justice system in the three jurisdictions of the UK is surprisingly

similar. Let's look briefly at what has happened in Scotland.

Between 1995 and 1997 there were a number of suicides in Cornton Vale prison. There was concern. In 1998 there was a report "Women Offenders: A Safer Way". It said:

*"The female population at Cornton Vale should be reduced to 100 or less by the end of the year 2000".*

The number of women in prison in Scotland in 1998 was 199. In October 2001 the BBC reported that "Politicians have pledged to make an "urgent assessment" of conditions at Scotland's only women's prison" after two more prisoners died. By then the number of women in prison in Scotland was 207.

In 2002 another report was published called "A Better Way: The Report of the Ministerial Group on Women's Offending". This group was chaired by MSP Iain Gray. The report would "take forward and implement a package of measures designed to reduce significantly the number of women held in custody in Scotland". By 2002 the number of women in prison in Scotland was 257, an increase of 24 per cent on 2001.

In 2003 the Justice 1 committee reported on alternatives to custody and concluded "there are a substantial number of women in Scotland's prisons who do not necessarily require to be there, as they do not represent a danger to the public. The evidence suggests that these women are sent to prison due to a lack of appropriate programmes and facilities in the community". In 2003 the number of women in prison in Scotland went up again to 282, an increase of 10 per cent on 2002.

In June 2004 the then Justice Secretary, Cathy Jamieson, said in Parliament "The Scottish Executive is committed to reducing the number of women offenders needlessly sent to prison. We are taking forward a number of initiatives...". In 2004 the number of women in prison in Scotland went up again to 314, an increase of 11 per cent on 2003.

In 2005 Cathy Jamieson said in Parliament "I am particularly disappointed that Scotland's female prison population continues to rise year on year... It surely cannot be beyond us, working together, radically to reform how we manage women offenders in Scotland". In 2005 the number of women in prison in Scotland went up again to 332, an increase of 6 per cent on 2004.

In 2006 and early 2007 the Scottish Consortium on Crime and Criminal Justice held two events on women in prison, one in Glasgow and one in Edinburgh. At that time I was the convenor of the Consortium and I must thank Apex for its support for the consortium throughout my time as Convenor, and Bernadette Monaghan and then Brian Fearon and Aidan McCorry for their support as active members.

The Consortium produced an action plan called "Reducing the unnecessary use of imprisonment for women in Scotland" which, to summarise, said three things

- Women are different from men;
- All those dealing with women should know who they are dealing with and what they are doing - that is, they should be specially trained;
- Someone should be in charge of how women are dealt with.

By 2007 the number of women in prison in Scotland was again up to 353.

In 2008 the excellent publication "Chaotic Lives" from Lothian and Borders Community Justice Authority by Monica Barry and Gill McIvor came out, just one of the excellent initiatives of that Community Justice Authority, spearheaded and supported by Chris Hawkes the Chief Officer there. The report said, and I am paraphrasing but you all have a copy as a present from Apex so you can check it, "A lot of people we talked to said we are focussing too much on the action that brought these women into the system, that is the law-breaking, and too little on the crises in women's lives, their health, their volatile relationships". By 2008 the

number of women in prison in Scotland was up again to 371.

In 2009 a lot happened. In March 2009 the then Chief Inspector of Prisons, Dr Andrew McLellan, reported that young women offenders were living in dismal and damaging conditions and were often having to urinate in their cell sinks because of major overcrowding at Cornton Vale.

Also in 2009 Albie Sachs, Judge of the South African Constitutional Court and one of the main authors of the highly regarded South African constitution, came to Scotland at the request of the former and current Children's Commissioners and talked, among other things, about the ground-breaking case of *S v M*. M was a woman with three sons who was sent to prison without thought to the effects on the children. The South African Constitutional Court ruled in that case that "the best interests of a child are paramount in all matters concerning the child on sentencing of primary caregivers of young children". So M, who was convicted of a large fraud, did not go to prison. Her sentence was conditionally suspended instead. The children had to be considered, the Court said.

Also in 2009 the Equal Opportunities Committee of the Scottish Parliament produced its report on "Female offenders in the criminal justice system". The report called for a new approach based on an understanding of inequality and discrimination. By 2009 the number of women in prison had reached 413.

413.

That is an increase since 1998, when this evening's story started, of 108 per cent.

Oh dear. What a lot of words, reports, and the end result a more than doubling of the number of women in prison in Scotland.

In 2010, in January, the Justice Secretary replied to the Equal Opportunities Committee report. Very positive things were said, as positive as the things that were said in 2002, 2003 and 2005 by Scotland's politicians

about reducing the number of women in prison.

Also in 2010 the Scottish Prison Service produced its strategy framework for the management of women in custody which promises that they will:

“adopt a person-centred, individualised, women-centred approach”.

And also in 2010 the first report on Cornton Vale of the new Inspector of Prisons, Brigadier Hugh Munro, came out. He concluded:

“Cornton Vale is in a state of crisis and an ever increasing prisoner population is one of the main causes”.

So we clearly have a problem. The evidence is overwhelming from all over the world that the women who end up in trouble with the law, arrested, charged and convicted are nearly all, apart from a small minority, people who need, not society's prisons and its punishments, but the help and support that society can offer - on grounds of justice. On the grounds of wanting a safer society. On the grounds of meeting the state's positive obligations to victims. On the grounds of better public health. On all those grounds we should be dealing with these women in a different way.

Politically there is considerable support for that route yet, in Scotland, as so many voices were raised to say let's have a better way, let's have a safer way, let's use prison less, the figures went up relentlessly.

In England, some of you may know, in 2007 there was a much-acclaimed report on women in the justice system by Baroness Jean Corston. Then followed a hugely energetic campaign to reduce women's imprisonment. The end result in 2010 is that there has been, since 2007 when that campaign started, a reduction in the number of women in prison in England of just 1.2 per cent.

Oh dear again.

So why are we not succeeding at this? Why? Is it because we do not know what else to

do? It's certainly not that. In Scotland many people know what to do. There is not only the 218 project in Glasgow that was so warmly commended by Baroness Corston in her report, I can also mention the excellent work done by the Willow Project's pilot project in Edinburgh, a joint effort between criminal justice and health to help women in trouble, giving help in the areas where everyone knows help is needed, for example physical, mental and sexual health, literacy, dealing with abuse, raising levels of confidence and self-esteem. And anyone who wants the details of what experience from many countries makes clear should be offered to women in trouble just look at p.15 of the Lothian and Borders Community Justice Authority report “Working with women offenders”. This is a picture with a circle in the middle called ‘woman’ and round it all the things that should happen that might make the woman better, more able to cope, more able to think well of herself, more able to help others; happier, even.

Kirsty Pate of the City of Edinburgh Criminal Justice Social Work Department is the person whose name is below this picture and anyone who wants a more detailed answer to the question “What should we be doing with women?” should ask her. She knows what to do. We know what to do. There is no real political opposition to doing it. Maybe something else is getting in the way. And maybe that something else is what I shall describe with a word that I have made up especially for you all this evening: “OFFENDEROLOGY”.

What is the answer to the question “What is an offender”? The answer is “a person who has been convicted of an offence in a court of law”. The answer is not “a person with a different set of characteristics from the rest of us”. An offender is just a person who has been caught, charged and convicted. Just a person. Maybe a person with a sad and difficult life, maybe with a lot of problems but first and foremost a person – like us.

However, once the person is arrested and the court appearances start we seem to move into a new language. Risk. Needs. Criminogenic. There are forms to fill in.

In England there is a huge form for a probation officer to fill in on a computer and once it is filled in the computer tells the probation officer whether that person is a risk - not to herself or at risk from those around her, but whether she is a risk to others. And it answers with levels: level one, two, three, or four. And once the probation officer knows the level, the probation officer knows whether the person should get, say, half an hour a month supervision, or an hour a week, and whether the person gets this supervision from a qualified or an unqualified probation officer.

That is OFFENDEROLOGY. And it can be very dangerous because it helps the system to close its eyes to what is happening. A couple of weeks ago I was privileged to attend an event at the Venture Trust. The event was to show a film made by six women from the Willow Project who had been given a camera to make a film about themselves and their backgrounds. We saw a picture of a jolly man with a bottle in his hand. "That's my dad" said the commentary. "Pure evil". We saw a picture of a woman in the corner of her room bruised and bleeding. "That's my life" said the commentary. OFFENDEROLOGY won't help a woman to deal with those things. OFFENDEROLOGY can lead to great injustice.

The treatment of women in the justice system is indeed an equality issue but it is also a profound human rights issue. To punish the deprived and the sick rather than to treat them is surely inhuman and degrading treatment. Apex has done its bit in trying to change this situation, not only by choosing this subject for tonight's lecture but also through its work day in and day out. We need only look at the success story we have been told in the papers we have been given, the story of Helen who made a long journey from being chained to a prison escort officer lying in intensive care in a hospital bed to a healthy young woman with qualifications running her own business.

Congratulations to Apex and above all to Helen herself.

There is an injustice at the heart of our justice system. "What can each one of us do to change that?" is the question I hope we shall all take with us out of this room tonight.

Thank you for inviting me and thank you for listening.





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