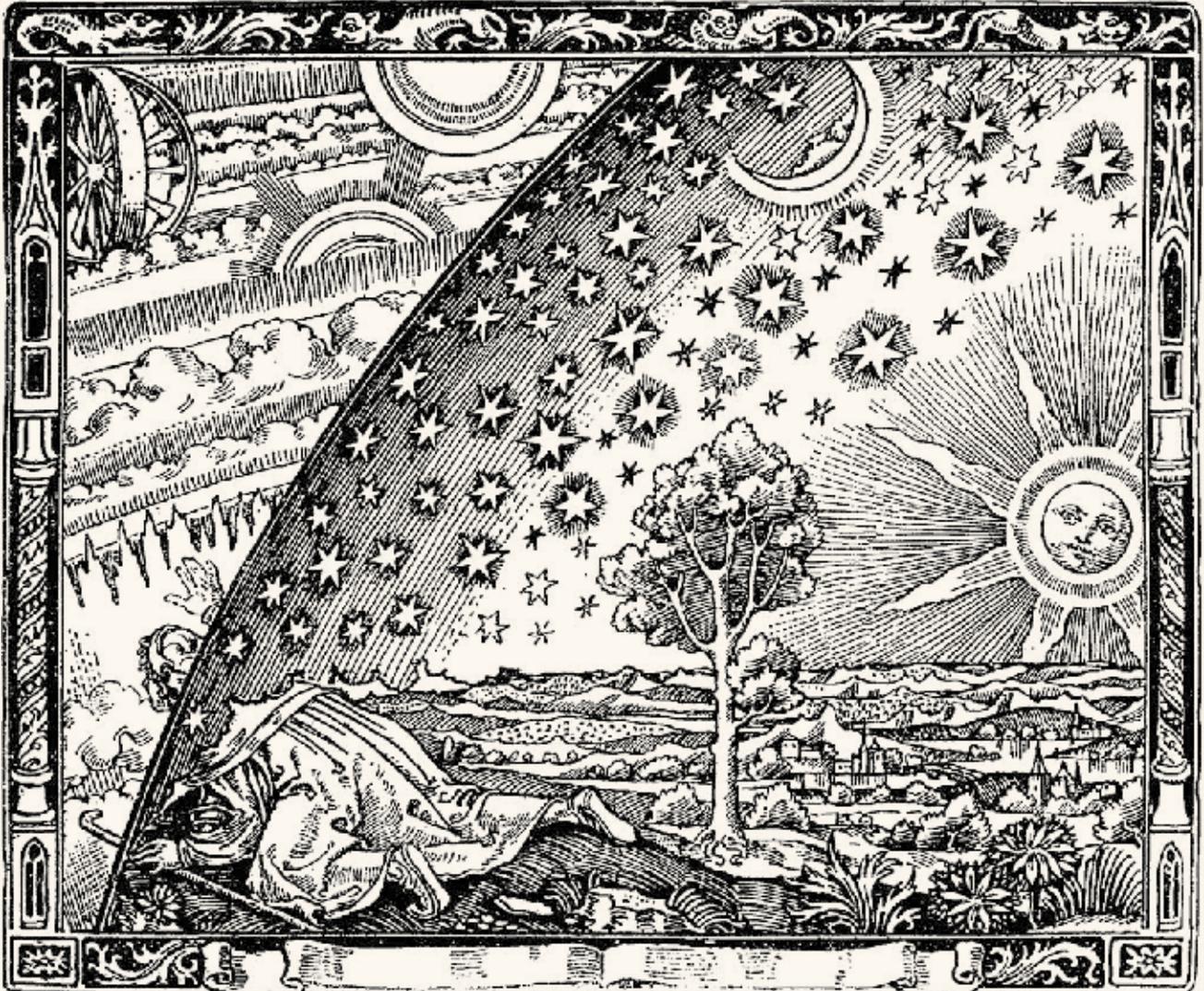


# scottish justice ' matters

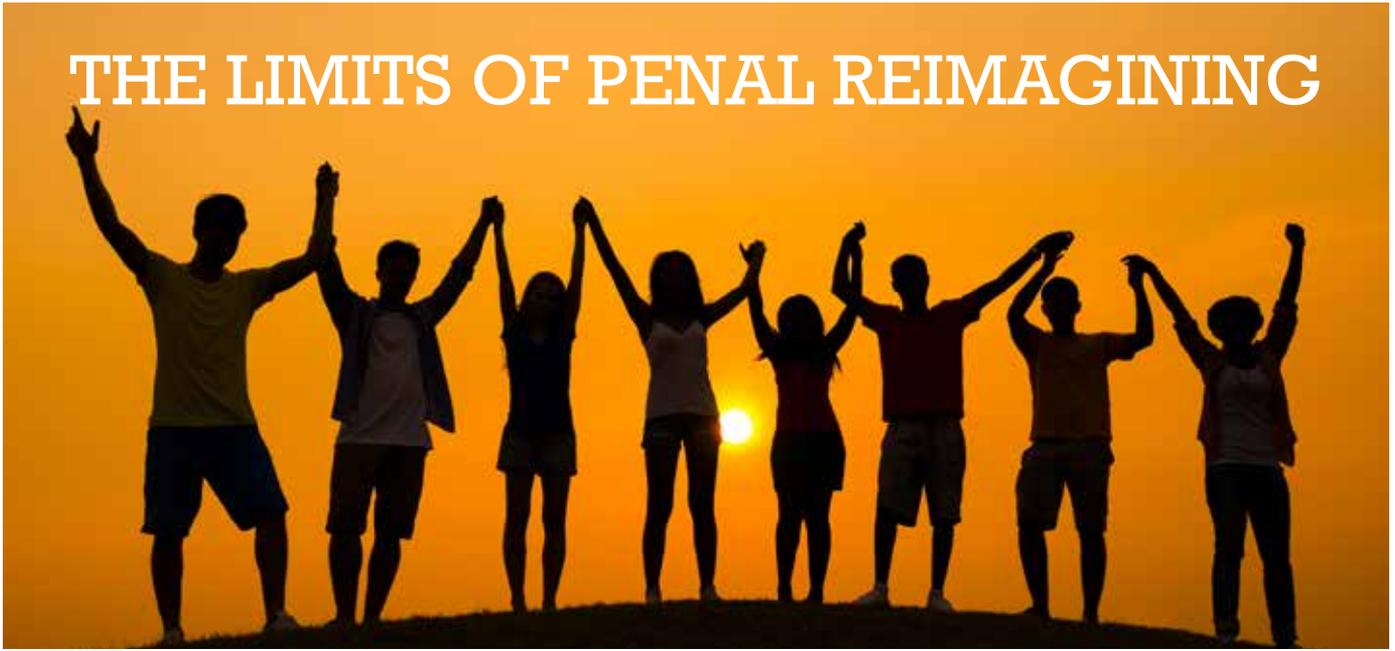
Volume 4 | Number 1 | March 2016

ISSN 2052-7950



# REIMAGINING PUNISHMENT AND JUSTICE

# THE LIMITS OF PENAL REIMAGINING



**Mike Nellis**

**EVEN IF** one sets aside the more renowned landmarks in utopian thought, envisaging (reimagining) a better society than the present one - better government, independent nationhood, increased productivity, less crime, more security, higher standards of living, reduced taxes, peace and harmony etc. - is hardly the newest game in town. It has long been the stock promise of every political party at election time (and sometimes inbetween), of every CEO to his shareholders and nowadays of every Silicon Valley entrepreneur and their home grown emulators who can package their products as 'social innovations' and pitch them as putatively 'disruptive technologies'. Envisioning, predicting, anticipating and dealing with change in this or that sphere of social life is a commonplace and enduring trope of much science fiction, encompassing dystopias as often as utopias, and 'scenario planning' in respect of upcoming military risks was at the very core of the Cold War thinking that, in the USA, mutated into the field of futurology.

Penalty has always figured in these various modalities of reimagining, although often superficially, adrift from any informed understanding of how penal change actually occurs. Utopian projections of orderly societies from Thomas More (1516) onwards have almost been obliged to say something about the eradication of crime and the means by which the troublesome can be checked, problems which 'common sense' tends to present as intractable. In Edward Bellamy's *Looking Backward 2000-1887* penitential imprisonment had been abolished some fifty years before the millennial centenary of America's imagined socialist revolution. William Morris's (1890) counterpoint to Bellamy, set in an imagined 1952 England, seemed to favour widespread use of reparation. For all the familiar histories of dashed hopes, however (and notwithstanding the ease with which some utopias morph into dystopias) Oscar Wilde (1891) was right to say that no map

of the world would be complete without utopia. Attempts to reach it rarely effect something truly transformative, but can galvanise some improvements, which may not otherwise have come into being. Making a radical demand to get a moderate result might seem like insipid politics to some - and it is certainly legitimate to always *hope and try* for more - but quite often in the fractious and frustrating context of democratic politics, that's just how it is, until the next bid for further progress.

**There is a rather a lot of institutional and cultural 'reimagining' going on these days, not least in respect of penal affairs**

There is a rather a lot of institutional and cultural 'reimagining' going on these days, not least in respect of penal affairs. Even David Cameron is getting in on the act, reimagining Britain's relationship with Europe one day and a new Conservative vision of 'penal reform' the next, one which includes "groundbreaking" (and probably large scale) use of satellite tracking, slyly projecting the hope that commercially managed monitoring technology will achieve the reductions in reoffending that the much weakened (privatised) probation service can no longer do. Sociologist Anthony Elliot (2013) attributes much of the contemporary reimagining (or institutional and cultural "*re-invention*" as he prefers to call it) to the creative destruction entailed by each new iteration of neoliberal reforms. When all that is solid regularly melts into air (jobs, relationships, public services, brands), it becomes psychologically necessary to make a virtue of instability, flexibility and adaptability, to constantly embrace the new.

One business processing company's current (by no means original) advertising slogan, pitched at potential customers but expressive of an undeniably existential truth, is "If you don't shape the future someone else will".

In Scotland, much recent penal reimagining can be understood less as an echo of neoliberal rumblings elsewhere in the world, and more as reverberations from the larger constitutional "reimagining" entailed and inspired by an ascendant SNP government and its ideal of independence from the United Kingdom. The Scottish Prison Commission (2008), the McLeish report, was the prime mover here, simply because it grounded its proposals for significantly reducing the prison population over a ten year period in an imagined sense of what Scotland, as a country, was aspiring to be. Immediate practical consequences - the community payback order (a good example of a "moderate result") - were perhaps less important than the new conversation that McLeish's report started, whose momentum is yet to play out. Justice Secretary Michael Matheson would probably not have made his bold decision to halt the building of HMP Inverclyde without the abrasive, radical demand of the Howard League Scotland and Women for Independence for decisive action, but it was the prior authoritative reimagining of the McLeish and Angiolini reports (Commission on Women Prisoners 2012) which made it defensible on the day. At a deeper level, Matheson's argument, whilst publicly stressing its rational, evidence-based aspects, was all of a piece with the SNPs conviction that new horizons are opening-up, that the early days of a better nation are already to hand.

**it is important that CJSW finds the courage to reimagine its better professional self and rise to the challenge of the times**

Nonetheless, reimagination exercises can all too easily confuse or conflate goals and means, get slanted to fit existing power relationships in the penal field, and be distorted by unspoken deference to the authority of sentencers (whose relationship to government is *never* publicly, or perhaps even privately, reimagined). The Scottish Government's attempted "re-configuration" (its own word) of community justice services illustrates the point about goals.

No one can dispute the scale or depth of the administrative changes it proposes but because it says nothing about the cultures and practices that must change if the goal of reducing prisoner numbers is to be achieved, the relationship of means to ends remains vague, and the outcome problematic. The decision to stall Inverclyde has led paradoxically to a situation in which the Scottish Prison Service is taking the lead in the Angiolini-inspired mission to reduce the use of custody

of women, which is not what anyone, least of all Angiolini herself, imagined would or should be the case. To be fair to SPS, it is seriously attempting to "redefine custody" for some women, and some unexpected good may come of that, but its dominance in a debate from which it had been expected to tactfully withdraw speaks volumes about the difficulties of realising alternatives for women in a community justice sector that is too fragmented and under-resourced to envisage itself taking this lead (see also, McConnell and Carnie in the November 2015 issue of the *SJM*).

Criminal Justice Social Work (CJSW) is the weak link in Scotland's penal reimagining. While tremendously well skilled at face-to-face work, it desperately needs to reimagine itself as an organisation, a profession, committed to the reduction of the prison population and to the creative forms of practice, including but not privileging more integrated uses of EM, necessary to achieve it. Its complacency in this respect, over the years, given Scotland's notoriously high rates of imprisonment, is simply astonishing. Social Work Scotland's projection of its plans for 2016-2020 can barely muster one paragraph about its role in relation to the upcoming reconfiguration of community justice, and shows no grasp whatsoever of the measures necessary to challenge the overuse of imprisonment, surely an unquestioned axiom of structural social work and of anti-oppressive practice. The longstanding fragmentation of CJSW across 32 local authorities, its overstretched resources, its lack of a distinct professional identity and a strong professional body, and the relentless genericism of social work training in Scotland may go some way to explaining this sad state of affairs but it is important that CJSW finds the courage to reimagine its better professional self and rise to the challenge of the times. The Justice Secretary can't do it all on his own.

**Mike Nellis is an emeritus professor of criminal justice at the Law School, University of Strathclyde.**

Bellamy E (1888/1960) *Looking Backward 2000-1887*. Harmondsworth: Penguin

Commission on Women Offenders (2012) *Final Report*. Edinburgh: Scottish Government

Elliot A (2013) *Reinvention*. London: Routledge

McConnell C and Carnie J (2015) 'Sent Homeward tae think again: scale and perspective revisited in the reform of women's custody in Scotland' *Scottish Justice Matters* 3:1

More T (1516/1992) *Utopia*. London: Penguin

Morris W (1890/1993) *News From Nowhere*. London: Penguin

Scottish Prisons Commission (2008) *Scotland's Choice: Report of the Scottish Prisons Commission*. Edinburgh: Scottish Government

Wilde O (1891/1973) *The Soul of Man Under Socialism*. Harmondsworth: Penguin