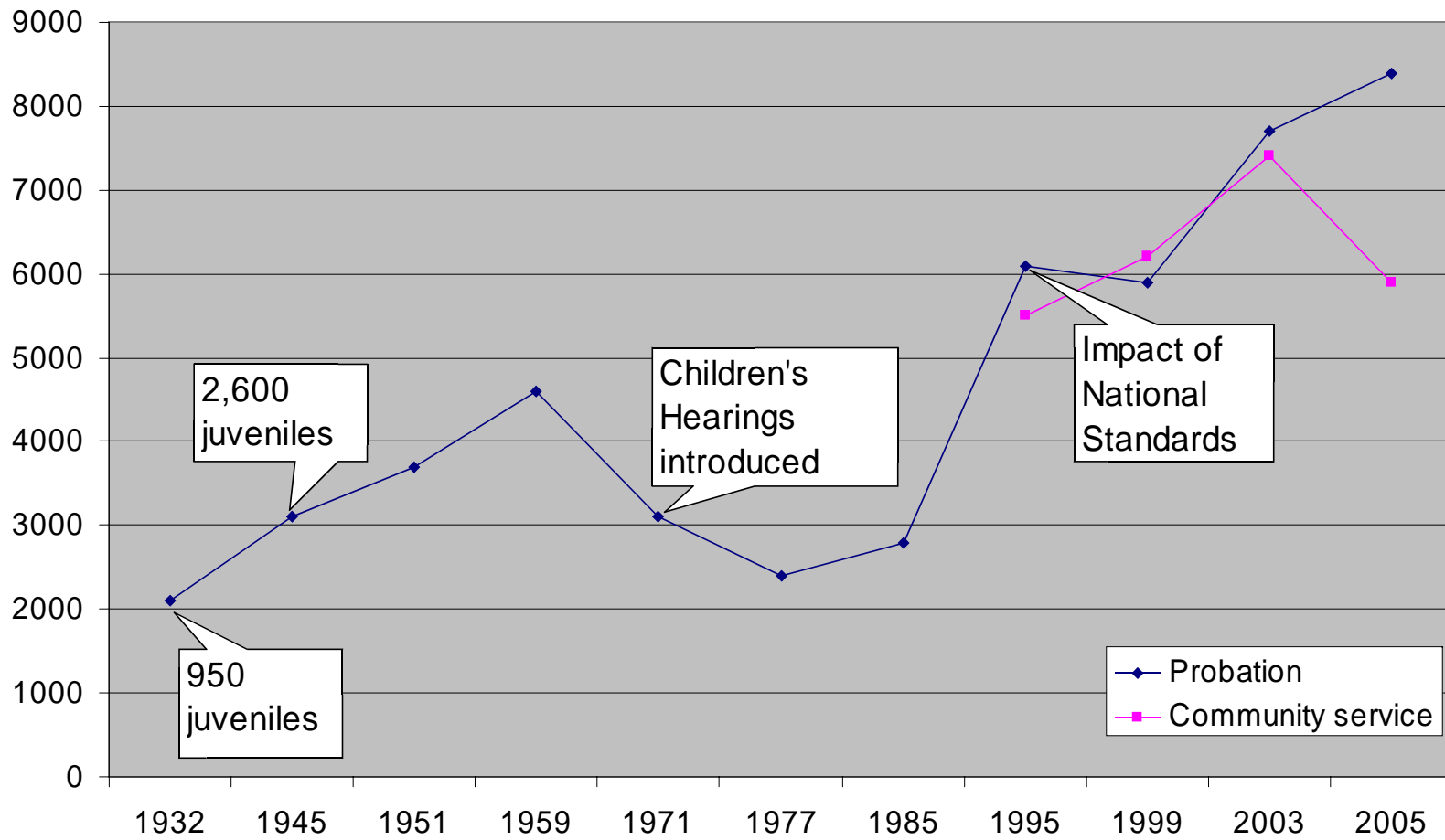




# Sentencing Reform

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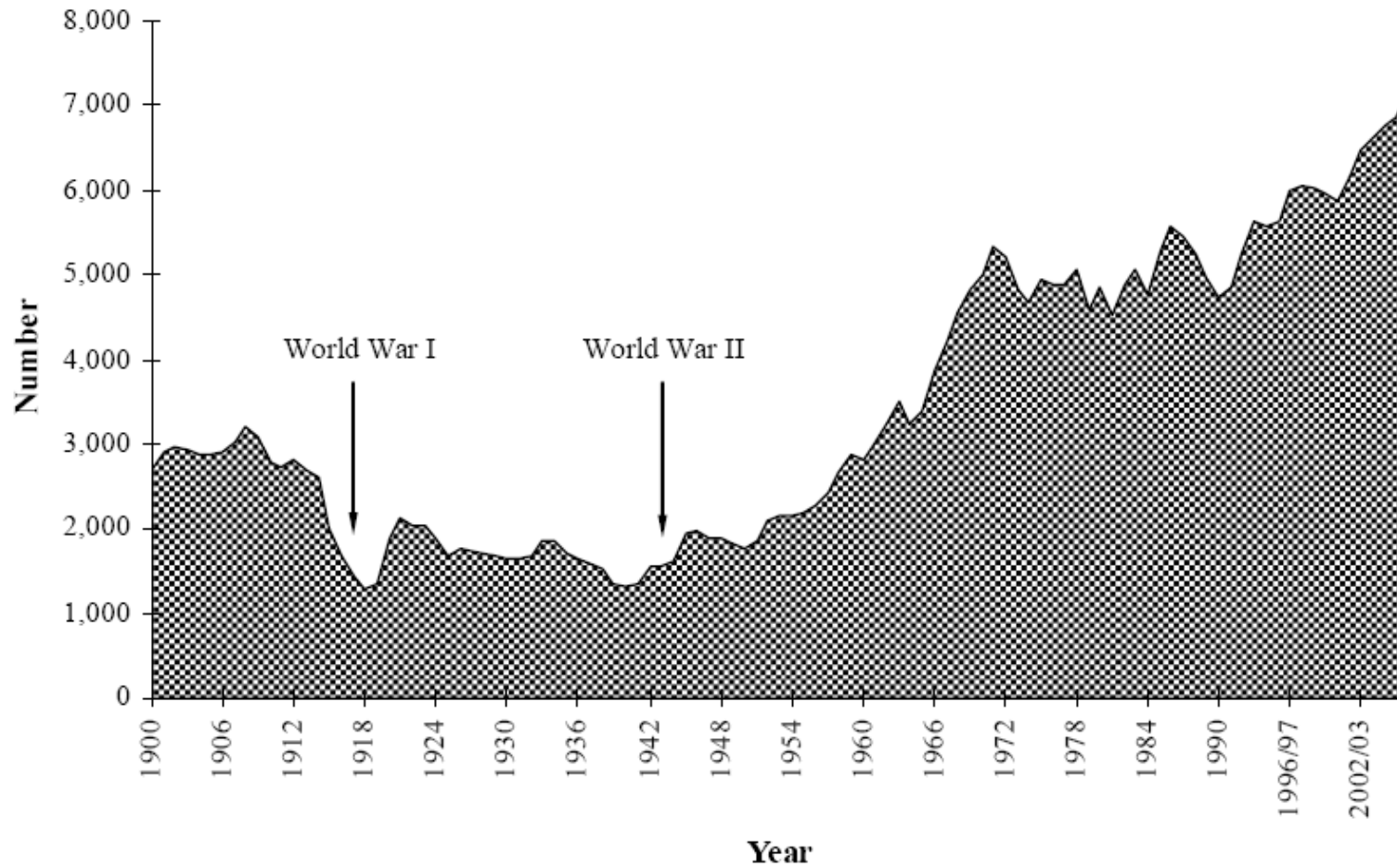
# A salutary lesson





# Salutary because...

Chart 1 Average daily prison population, 20<sup>th</sup> – 21<sup>st</sup> Century, financial year data from 1996/97



# Alternatives To Custody?

1995-2005 All sentences

Use of community sentences increased from 7.5% to 12.6%

Use of custody increased from 10.5% to 12.3%

Financial penalties dropped from 71% to 63.4%

- Thinking that the issue was the credibility of the alternatives, we reformed the alternatives without reforming sentencing

# Balance

Individual case

Consistency

Purposes of Sentencing: Retribution, Rehabilitation, Denunciation,  
Reparation

Proportionality

Parsimony

Costs, Effectiveness, Value for Money

Legislature, Government, Judiciary

# Problems with Current Sentencing Structure

Lack of  
legislative input  
judicial guidance  
consistency  
transparency  
predictability  
consideration of issues of cost effectiveness

# Options for Structured Sentencing

Legislation

Appeal Court Guidelines

Judicial Information Systems

Guidelines issued by an independent body

# Are guidelines a threat to judicial independence?

Parliament sets the legal framework

Judges pass sentence in individual cases

Executive is responsible for running the prisons and the criminal justice budget

Sentencing is and needs to be a collaborative job for the three branches of government.



# Why does Scotland need an Independent Sentencing Council ?

Councils/Commissions provide an opportunity for judges to engage in developing sentencing policy

Can provide legislators with some shelter from law and order politics

Legislation cannot provide the necessary level of detail and subtlety.

Can inform and educate the public

# Remit and Composition of a Sentencing Council

- Should be composed of judges and other non-judicial members
- Should develop a comprehensive set of guidelines
- Should have a public information and engagement role.
- Should have a skilled convenor

# Sentencing Guidelines

Provide a structure for the exercise of judicial discretion.

Indicate ranges of punishment for particular offences

Guidelines on how criminal record should be taken into account

Rules governing departures from the guidelines

# Reducing the Prison Population

Guidelines need to shift the custody threshold

Enable more accurate prediction and control of the prison population and community justice resources

# What style of guidelines?

## Narrative

Sentencing Guidelines Council  
(England and Wales)  
New Zealand Sentencing Commission

## Numerical

21 US states  
Mandatory/Advisory  
Grids/ Worksheets  
Variation in the range of penalty within  
grid boxes  
Monitoring Compliance  
Departures  
Rights of Appeal

# Conclusions

To achieve the aims of the Prison Commission's Report, Scotland needs:

An independent sentencing Council

A comprehensive set of guidelines