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The criminal justice system in Scotland

Katrina Morrison, Jamie Buchan, and Andrew Wooff

KEY ISSUES

After studying this chapter, you should be able to:

- appreciate the importance of Scotland's history and politics for its approach to criminal justice;
- evaluate the importance of centralisation and localism for parts of the system over the relatively small geographical area of Scotland;
- understand that while there are some unique features of Scottish criminal justice, the system as a whole shares many of the challenges of its neighbouring system in England and Wales;
- identify examples of criminal justice which can be seen as both progressive (welfarist?) and punitive.

Introduction

Though many non-Scots may not be aware of it, Scottish criminal justice is quite distinct from that of the rest of the UK. Though Scotland is part of Britain and British citizens can travel into and out of it without border checks, it is underpinned by its own legal framework, set of institutions, actors, and processes and—some would say—set of values. Did you know, for example, that Scotland has just one territorial police force and that there is a presumption against imposing prison sentences shorter than one year? Or that whereas criminal trials in England and Wales can only reach one of two verdicts—guilty or not guilty—Scotland has a third option? Scotland also has its own

particular crime issues and trends which differ from those in the rest of the UK, including an extremely high rate of drug-related deaths. In this chapter we will discuss the key aspects, institutions, and defining characteristics of the Scottish criminal justice system, considering policing, the prosecution process, the courts system, sentencing, the role of victims and witnesses, community sentences, imprisonment, and juvenile (youth) justice. First, though, we consider the history and context of crime and justice issues in Scotland, as this knowledge is crucial if you want to understand the Scottish criminal justice system as it is today.

Crime and justice in Scotland: History and context

In 1707, the previously-independent country of Scotland was joined with England and Wales to become one State—Great Britain. This meant that Scotland was governed by the British Government, but it had its own well-established laws, legal systems, and legal institutions and many aspects of Scottish criminal justice differed from England and Wales. As such, all laws and policies relating to Scotland were made by a separate part of the British government based in Edinburgh, and this autonomy allowed Scottish laws, institutions, and practices to develop along different paths to those of England and Wales (McAra, 2008; McVie, 2017; Mooney et al., 2015).

However, for many a separate branch of the British government in Scotland was not enough, and there were repeated calls for ‘home rule’ in Scotland. Recognising the strength of these arguments, in 1997 the recently-elected New Labour British Government agreed to hold a referendum for Scottish devolution. ‘Devolution’ refers to the transfer of power, usually away from the ‘centre’ (in this case, the Westminster Government in London). In the public vote on this decision, 74 per cent of Scottish voters agreed that a Scottish Parliament should be created, and 63 per cent that it should have tax-raising powers. The Parliament opened in 1999, and since this time, all laws relating to criminal justice in Scotland (with the exception of legislation relating to drugs and national security) have been made by the Scottish Government (formerly known as the Scottish Executive), which sits in Edinburgh. For the first two terms of the Parliament, from 1999 to 2007, Scottish Labour and the Scottish Liberal Democrats formed a coalition government. Since 2007 the Scottish National Party (SNP) has formed the Scottish Government twice as a minority administration (meaning it relies on the cooperation of other parties in order to pass legislation) and once as a majority administration. The next Scottish election will be held in May 2021.

Devolution brought on a period of very significant reform of Scottish criminal justice, both in terms of domestic legislation and wider institutional reform (see McAra, 2008; McVie, 2017; Mooney et al., 2015). Devolution means there is the potential for further divergence from the British approach (McVie, 2017), though there is some debate about the extent to which this has been realised in practice (see Munro et al., 2010). If we consider the 20 years since devolution, we can see some areas of bold and progressive reform in criminal justice, and other areas in which Scotland has failed to chart a markedly different path to that of England and Wales (Morrison, 2019).

We noted in the introduction that—as you might expect, given that it is a country in its own right—Scotland has its own particular crime and justice issues and trends, many of which differ in scale and nature to those faced in other parts of the UK. Key amongst these is drug use and drug-related deaths (discussed further in ‘Controversy and debate’), but others include:

- a sharp fall in violence in Scotland over recent decades due, primarily, to changing patterns of offending in young men;
- the highest prison population in all of Western Europe, despite repeated political calls for this to be reduced;
- evidence that those caught up in the criminal justice system continue to come from the areas of greatest socio-economic deprivation; and
- the fact that the distribution of crime falls most heavily in the more densely populated, urban areas in the southern part of the country—the large geographical landmass and islands in the north have much lower levels of crime.



CONTROVERSY AND DEBATE

Drug deaths and drug policy in Scotland

Figures released in 2021 showed that in 2019, Scotland had the highest rate of drug deaths ever recorded in its history, and higher than the whole of Europe by some considerable margin. Scotland's drug death rate was 0.18 per 1,000 of the population—around three and a half times that of the rest of the UK. The high number of drug deaths in Scotland is due to there being proportionally more drug users in the country than elsewhere in the United Kingdom, and also, in part, to an ageing generation of addicts who have been taking drugs for many years (National Records for Scotland, 2021). In a sense, this reflects both Scotland's past (the legacy of deindustrialization in the 1980s with its resulting social problems) and its present day (inadequate funding for addiction services). The Scottish Government responded by declaring that the figures represented a 'public health emergency' (Lowther and Brocklehurst, 2020), creating a new ministerial position to deal solely with drugs policy and pledging increased spending on addiction support. Alongside this, the ensuing policy debate has opened the space for more radical responses to drug use than before. However, the issue remains controversial and contested, not least because the main legislation governing drugs across the *whole* of the UK (the 1971 Misuse of Drugs Act) was 'reserved' to the UK Parliament in the process of devolution. This means it is controlled by Westminster, not Holyrood. As such, there is limited scope for more radical measures in Scotland, such as decriminalisation, and in the context of ongoing debate about Scotland's place in the UK, it also fuels debate around the policy powers held by Holyrood and Westminster.

The Scottish Government's emphasis on this being a public health emergency, so requiring a public health,

rather than a criminal justice, approach (Scottish Government, 2019a), is notable. It implies a response to drug use as a *health* problem, rather than a *criminal* problem. This followed the much celebrated 'public health' approach taken by the Scottish Violence Reduction Unit, which the London Mayor Sadiq Khan and others outside Scotland sought to learn from. In 2019 the governing party in Scotland, the SNP, stated their formal support for decriminalising the 'consumption and possession of controlled drugs' so that 'health services are not prevented from giving treatment to those that need it' (BBC, 2019b).

Debate continues between those in Scotland who favour more radical changes to combat the long-standing problem of drug addiction, and the British Home Office, which continues to resist these proposals. Since 2017, Glasgow City Council, with the Scottish Government's backing, has sought Home Office permission to trial a number of 'drug consumption rooms' (DCRs), similar to those that exist throughout mainland Europe. In DCRs, individuals can take their own drugs in a safe environment and under medical supervision. The Scottish Government argue that DCRs reduce the spread of HIV, encourage addicts into treatment, and prevent needles being discarded in public. However, the British Government have recently argued that DCRs would be 'a distraction' in the wider fight against drugs and have so far refused to consider any proposals to amend the Misuse of Drugs Act 1971, or to grant these powers to the Scottish Parliament (BBC, 2020). The debate around the response to drugs in Scotland has therefore become entangled with wider debates about the power of the Scottish Parliament within the United Kingdom, as well as the very local issue of drug abuse within Scotland.

Now that we have covered the key background factors that are important for understanding the Scottish criminal

justice system, we can move on to explore its defining features, beginning with policing.

Policing

Policing in Scotland has long followed its own practices, structures, and governance arrangements; however, the recent reforms of policing in both Scotland and England and Wales have increased and deepened the difference in practices between the nations.

The Scottish approach to policing focuses on harm reduction and wellbeing, which can be challenging against a backdrop of new policing structures, a tough economic environment, and a focus on efficiencies, partnership working, and prevention. The work that police do is broad and

spans more than crime control alone, as reflected by the first policing principle laid out in the Police and Fire Reform (Scotland) Act 2012: that the main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland. Improving community wellbeing is not only a key policing principle but a legal imperative, as it is contained within the legislation underpinning the introduction of Police Scotland, the Police and Fire Reform Act (Scotland) 2012. Scholars have noted that this ambition contrasts quite starkly with the emphasis on crime control in England and Wales (Fyfe, 2014).

Policing pre-2013

Policing in Scotland has long been caught between the influences of contrasting approaches in two different jurisdictions. The Scottish approach has tended to emphasise prevention and partnership, whereas policies in England and Wales have generally promoted centralisation and exclusion. Following devolution in 1999, throughout the New Labour era in Scotland (1999–2007) and for several years afterwards, policing in Scotland broadly developed with prevention and partnership at its core. On the one hand, a focus on partnership and reassurance saw the creation of 1,000 new community police officers and a commitment to ‘reassurance policing’ in 2007. On the other hand, in 2004 the New Labour-led Scottish Executive adopted antisocial policing approaches and introduced more severe methods of crime control, similar to those in England and Wales (Fyfe, 2011). Chief Constables in Scotland’s eight police forces were allowed a degree of autonomy to formulate strategic and operational objectives (Donnelly & Scott, 2010). This led to notable variation in approaches across Scotland, making it difficult to make claims about any ‘one’ Scottish style of policing during that time.

In response to the UK government’s reduction of public sector budgets since 2008, also referred to as ‘austerity’, the Scottish Government concluded that the fragmentation of policing over the relatively small geographic area of Scotland was wasteful and inefficient, with the Cabinet Secretary at the time stating ‘we cannot afford to do things eight times over’ (MacAskill, quoted in Fyfe 2014: 498). This laid the groundwork for the introduction of a single police force in 2013 (Fyfe, 2014).

The creation of Police Scotland

The creation of a single police force, Police Scotland, in 2013 represented a period of radical change for policing in Scotland and cemented its divergence from practices in England and Wales. Policing in Scotland has become

more centralised, with the new police command structures being located in the central belt of Scotland. This move towards centralisation was most keenly felt in the peripheral areas of Scotland, where the initial period of Police Scotland was marked by central top-down control and the erosion of localised approaches (Fyfe, 2015). In contrast, policing in England and Wales has developed in an increasingly localised way with the creation, in 2012, of Police and Crime Commissioners (PCCs). These officials are elected democratically by the public every four years and are responsible for securing efficient and effective policing in a particular area and holding the police to account.

The creation of Police Scotland has strengthened central control of policing in Scotland and has raised important questions in relation to police accountability, especially because Scottish ministers are in charge of appointing members of the governing body, the Scottish Police Authority, rather than this being done through public elections, as with PCCs in England and Wales (see Henry et al., 2016). Many are concerned about the loss of local accountability in the new structures, given that local government no longer have the ability to influence policing—their role is now restricted to ‘scrutiny and engagement’ (Fyfe, 2015). With such variation in Scottish geography, not least in relation to its many rural and more remote areas, local accountability becomes increasingly important (Wooff, 2015).

This erosion of local accountability has coincided with a loss of local flexibility in policing approaches and styles, certainly under the reign of Police Scotland’s first chief constable, Sir Stephen House. He was responsible for introducing a single style of policing across Scotland in 2013, dubbed ‘Strathclydification’ as it was modelled on House’s former force, Strathclyde, rather than merging the approaches of the previous eight forces (Fyfe, 2015). Some notable examples of the new national approach, perceived by many to be more heavy-handed, include:

- the very significant rise in the use of ‘stop and search’ (considered in depth in Chapter) across all regions of Scotland, especially on young people (Murray, 2014; O’Neill & Aston, 2016);
- the routine arming of firearms officers rather than allowing them only to carry firearms in cases where there was a specific firearms threat (Yarwood & Wooff, 2016), a decision which has since been overturned.

Although central control and a more interventionist policing style was not uniformly popular, the creation of Police Scotland did achieve financial savings equating to £72 million in the first year alone (Yarwood & Wooff, 2016). Crucially, until an announcement that was made in February 2017, these financial cuts did not involve

reducing the number of police officers below 17,234—the number of police officers the Scottish National Party inherited plus 1,000 more that they pledged when coming to power in 2007. Maintaining this figure was a high-profile commitment by the SNP government, especially given calls that the number of police should be determined by operational rather than political factors (Thomson et al., 2015). Along with the savings achieved, the other notable effect of centralising services has been significant reductions in the number of civilian policing roles in the force. A set of policing controversies in 2014-15, which were partly blamed on the reduction of police call centre staff expertise (Her Majesty's Inspectorate of the Constabulary Scotland, 2015), led to Stephen House resigning as Chief Constable in 2015.

In contrast to the model of policing under Stephen House, subsequent Chief Constables have sought to engage and develop enhanced local police-community relationships. It is unsurprising therefore that the current Chief Constable, Iain Livingstone, positions 'local

policing' and 'working with communities' as key policing priorities for Police Scotland (Police Scotland A, 2020). At the time of writing, Covid-19 has presented new opportunities and challenges for the organisation. The formulation of the Independent Advisory Group, chaired by John Scott QC, monitors the use of the extensive new powers given to Police Scotland to help enforce government responses to Covid-19 and reported that public confidence in Police Scotland increased by 20 per cent during lockdown (Police Scotland B, 2020). This suggests that, along with the focus on localism, Police Scotland may have managed to readdress some of the concerns raised by the early years of centralisation and 'Strathclydification'. Although fiscal challenges remain, particularly in relation to staffing costs, the 2021-22 police budget projects that Police Scotland will make savings of £2.2 billion by 2026. This is double the initial projected savings in the outline business case for the organisation (Scottish Government, 2021).

Prosecution, courts, and sentencing

In this section, we will outline the key criminal justice features of Scottish prosecution, courts, and sentencing, including recent reforms.

Prosecution

Once the police have decided whether or not there is sufficient evidence to charge a suspect, they have several options:

- use their discretion and take no further action;
- impose a direct measure (an 'on the spot' fine); or
- pass the case on for prosecution.

In Scotland, the prosecution of crime is carried out by the Crown Office and Procurator Fiscal Service (COPFS), which reviews the evidence and decides whether or not to proceed.

Decisions on whether or not to prosecute a case and, if so, where it should be processed, are taken by Procurators Fiscal (PFs). PFs are specially trained solicitors and they make their decisions based primarily on the public interest and the strength of the evidence. Public interest considerations include issues such as the seriousness of the offence, the length of time since the offence took place, the interests of the victims and witnesses, and the age and previous convictions of the accused (COPFS, 2001).

If the PFs decide to prosecute, they may also offer an alternative to prosecution (for example a warning letter or a fiscal fine). Out of 170,575 criminal cases considered in 2018/19, in 17,705 cases (10 per cent) no further action was taken, in 5,816 cases (3 per cent) a warning letter was issued, and in 6,896 cases (4 per cent) a fixed penalty was issued (COPFS, 2019). PFs also decide in which court a case will be prosecuted, which will have a bearing on possible sentence lengths if the suspect is found guilty.

The court system and judgments

Scotland operates a 'three-tier' criminal court system, which can adjudicate in cases referred to them by COPFS. These are:

1. Justice of the Peace (JP) courts, which are judged by a lay panel. They hear less serious cases such as being drunk and disorderly or some traffic offences. JP courts may impose sentences of up to 60 days' imprisonment and fines of up to £2,500.
2. Sheriff courts, where cases are heard by a sheriff (a trial judge who is a specially trained, legally qualified solicitor or advocate—unlike magistrates in England and Wales). These are the busiest courts and they deal with cases including assault, theft, and some drugs-related offences. Sheriff court summary cases

(trials without jury) may impose sentences of up to 12 months' imprisonment, fines of up to £10,000, and all community-based sanctions; sheriff court solemn cases (trials with jury) may impose sentences of up to five years' imprisonment, unlimited fines, and all community sentences.

3. The High Court, in which cases are heard by a judge. The High Court is reserved for the most serious offences and hears all rape and murder cases and also all appeal cases. It can impose unlimited periods of imprisonment, unlimited fines, and all community sentences.

In Scotland, there are 15 members on a jury and a decision requires a majority verdict of eight or more (i.e. a simple majority). Over recent years, the Scottish Government has explored options for reducing the numbers of jurors required for trials to 12 (in line with most English-speaking countries), and for increasing the proportion of jurors who must be in favour of a particular verdict, in order for that verdict to be passed, to unanimous or near-unanimous. In 2013, legislation aimed at increasing the proportion of jurors required for a guilty verdict to two-thirds was withdrawn. Recent Government-commissioned research found that asking juries to reach a unanimous or near unanimous verdict might tip more jurors in favour of acquittal, and the Government have now sought to consult with the legal professional and interested parties on the implications of these findings (Scottish Government, 2019e).

Sentencing guidelines which set out minimum and maximum sentences for some offences are produced by legislation passed by both the Scottish Parliament and the UK Parliament. More general guidelines for sentences are available from 'guideline judgments' (appealed sentences which provide guidance for future similar sentences) and from case law (sentences passed for similar cases). (See Scottish Sentencing Council, n.d., for more information on sentencing in Scotland.)

Whereas in England and Wales there are only two possible verdicts in criminal courts—guilty and not guilty—in Scotland there are three. They are: 'guilty'; 'not guilty'; and 'not proven'. The latter has the same implications as a 'not guilty' verdict in that the accused is acquitted and they do not have a criminal record from this charge. The 'not proven' verdict is unique to Scotland and arose not by design, but as a matter of 'historical accident' during Scottish legal reforms in the 17th and 18th centuries (Chalmers and Leverick, 2017). It is controversial because—critics argue—it causes confusion for the public, victims, and indeed the jury themselves. It may also lead to the accused person being stigmatised even though they have been acquitted, because of the perception that they were guilty but there was just insufficient evidence to

convict. Recent research (Ormiston et al., 2019) indicated that in 'finely balanced' trials, removing the 'not proven' verdict would result in a greater number of 'guilty' verdicts being reached, which is perhaps strange given that the 'not proven' is legally equivalent to a verdict of 'not guilty'. Successive Governments over recent years have consulted on reforming this verdict or removing it entirely. Consider this controversial verdict further in 'What do you think?'

Sentencing

Figures from 2018/19 show that 48 per cent of sentences passed in Scotland resulted in a fine, 19 per cent were community sentences, and 16 per cent resulted in a sentence of imprisonment. The final 18 per cent were given another sentence, usually an 'admonishment'—a verbal warning from the sheriff (Scottish Government, 2020b). Within these headline figures there are a number of points worth highlighting.

First, in 2018/19 the average custodial sentence length for all crimes, excluding life sentences, was almost 11 months (326 days). This follows a steady increase over preceding years, and is now 16 per cent longer than the average length in 2009/10 (ibid). In part, this is due to the increase in the numbers of convictions for sexual crimes, which tend to attract longer sentences, but it also reflects an upwards drift in the sentence length for many other serious crimes too.

Second, Scotland continues to make heavy use of very short custodial sentences, despite ample evidence that community sentences are more effective in terms of rehabilitation (Sapouna et al., 2015). Sentences of three to six months have been the most commonly used custodial sentence since 2011/12, which made them the focus of recent sentencing reform (as we will discuss).

Third, in 2019, early 2020, and at the start of 2021, Scotland had the highest rate of imprisonment in all of Western Europe—higher than England and Wales (McCallum, 2019). The Covid-19 pandemic resulted in a reduction in the prison population, though the extent to which this endures once the crisis is over remains to be seen (McCallum, 2020). Within the overall prison population figures, Scotland also has the highest number of people serving life sentences in all of Europe (van Zyl Smit & Morrison, 2020).

It is worth noting—especially in light of our discussions in Chapter 24 about their use in England and Wales—that Scotland also makes very high use of community sanctions, a justice response that we discuss further in 'Community justice and other non-custodial sentences'.

The willingness to punish is one of the defining features of Scottish criminal justice and has been very

WHAT DO YOU THINK?

Scotland's 'not proven' verdict

In a high-profile case in March 2020 the former First Minister of Scotland, Alex Salmond, was cleared of 13 sexual offence charges made against him. He was found 'not guilty' on all the charges against him except one, where the verdict was 'not proven'.

As we have discussed, the 'not proven' verdict is the subject of some controversy:

- Some say that having two verdicts which acquit (not guilty and not proven) might provide additional protection for the accused (BBC, 2019a).
- Other research (Curley, 2018) suggests that retaining the 'not proven' verdict allows the jury to more effectively communicate their views of guilt and innocence to the judge than a binary 'guilty' or 'not guilty' verdict.
- Some campaigners, including Rape Crisis Scotland, argue that the 'not proven' verdict should be removed because it is more commonly returned by juries in trials for rape and sexual offences (BBC, 2019a).

Now consider your own perceptions and feelings about this matter.

1. What do you think of the arguments set out above?
 - Do you think providing protection for the accused is an important principle of criminal trials?
 - Do you think it is important that the jury can communicate their views in a nuanced way?
 - Why do you think the 'not proven' verdict is more common in trials for rape and sexual offences? Should we be concerned about this in the post-#MeToo era?
2. Would you view someone found 'not proven' as essentially guilty but with insufficient evidence to convict?
3. How would you feel if you were a victim and the accused in your case was found 'not proven'?
4. How would you feel if you were the accused in a case and you were found 'not proven'?
5. If it were up to you, would you keep or remove the 'not proven' verdict in Scotland?

controversial in recent years. The 'problem' of Scotland's very high use of, in particular, imprisonment, has been the focus of political attention and debate since the very start of devolution (McCallum, 2019), but all political administrations have so far been unable or unwilling to initiate radical policy change to reverse the increasing prisoner numbers. (The notable exception here is a reduction in the use of custody for young people, meaning those under the age of 21, as part of the 'Whole System Approach' that we discuss in 'Juvenile justice reforms'.)

Recent sentencing reforms have instead sought to reduce the 'churn' (the numbers entering and leaving prison at any one time), rather than the overall 'stock' (the overall numbers in prison at any one time), of the prison population. This has been enabled by the 'presumption against short sentences' ('PASS') legislation which means that the judiciary should sentence with a 'presumption' against any custodial sentence of 12 months or less. In such cases, the judiciary should impose a community sentence *unless* they consider that 'no other sentence is appropriate' (Scottish Government, 2019c). If they do sentence an offender to prison for less than 12 months, they must state their reasons in open court. The legislation came into effect in July 2019, so at the time of

writing, it is difficult to tell the extent to which it will result in meaningful reductions of these short sentences. However, data released in February 2020 suggested that it had the potential to bring about some change: in October 2019, numbers of community disposals had increased, reaching their highest level since April 2017; the numbers of custodial sentences had been falling since April 2019; and by November and December 2019 the number of custodial sentences given for a period of 12 months or less was at its lowest since April 2017 (Scottish Government, 2020c). Data on sentencing patterns in Scotland is published each spring by the Criminal Proceedings bulletin, so to assess whether PASS has had the intended effect, we recommend looking up the most recent statistical release.

Recently, the Scottish Government reaffirmed its desire to address Scotland's rate of imprisonment, stating that '[w]e are progressing action to tackle Scotland's internationally high rate of imprisonment—the highest in Western Europe' (Government, 2019b). However, the political commitment to reverse Scotland's high rate of imprisonment is not new (Buchan, 2020; McCallum, 2019); what has been missing so far is political and judicial action to bring about change.

Victims, witnesses, and restorative justice

In Scotland, as elsewhere, there has been a growing awareness over the past 30 years of the interests and rights of victims and witnesses in the criminal justice system. Once again, devolution made room for new policies and legislation regarding victims, and consecutive administrations in the Scottish Parliament have passed legislation or other reforms which seek to improve their experiences in the criminal justice system. Notable examples of this include an expanded range of ways in which children and vulnerable adults can give evidence (for example, via a video link or behind a shield), and the national victim statement scheme in 2009, which allows victims in ‘solemn’ cases (the most serious ones) to prepare a written statement expressing their views after the accused has either pled guilty or a guilty charge has been reached by the jury (Munro, 2015). More recently, a ‘victims surcharge’ has been introduced so that those convicted of a crime can contribute towards the costs of supporting victims, as well as provisions to allow victims to make statements about the release of life-sentenced prisoners (see Scottish Government, 2020, for an overview).

The place and role of victims in the criminal justice system has also been framed in a new way with the growth of the restorative justice movement throughout the world. (See Chapter 30 for a full discussion of restorative justice.) In Scotland, the introduction of restorative justice to criminal justice processes has been ad-hoc and patchy. There have been some initiatives, primarily for low-level and juvenile offenders, but these have either been short-lived or regionally limited (Munro, 2015). This may be changing, however; the Scottish Restorative Justice Forum, founded in 2014, seeks to engage all relevant organisations and promote this approach more broadly. More recently, the Scottish Government has issued the first official nationwide guidance on restorative justice, as well as an ‘Action Plan’ (Scottish Government, 2019d) to make it available across the country by 2023. However, it is not at all clear that this ambitious goal can be achieved without firm political and judicial commitment to support it.

Community justice and other non-custodial sentences

Community sanctions are non-custodial punishments which restrict offenders’ liberty with the aim of supervising, rehabilitating and reintegrating them into the community. We discussed them in the context of England and Wales in Chapter 24. Community sanctions are either standalone sentences or conditions imposed on released prisoners. Because offending is a complex problem linked to other difficulties such as mental illness, unemployment, and homelessness, the Scottish approach to community sanctions involves many different agencies, collectively referred to as ‘community justice’.

Community justice

The key community justice agency is Criminal Justice Social Work (CJSW), the Scottish equivalent of probation services (see Chapter 24). Criminal justice social workers are fully-trained social workers—not probation officers—employed by local authorities. CJSW has a legal duty to:

- supervise offenders aged 16 and over on community sentences (usually a Community Payback Order (CPO), discussed below);

- provide reports about individual offenders: to the courts, to assist with sentencing; and to the parole board, to inform decisions about release from prison (McNeill et al., 2009);
- provide social work services in prison, and supervision and support (‘throughcare’) for some offenders released from prison.

The importance of local delivery and social work training contrasts sharply with probation in England and Wales, which has moved away from requiring social work qualifications and was subject to an experiment in part-privatisation under the recently reversed ‘Transforming Rehabilitation’ programme (see Chapter 24). The location of community justice services within social work in Scotland, like youth justice (see ‘Youth justice’), is a legacy of the 1964 Kilbrandon Report, which emphasised the connection between offending and broader social needs and injustices (McNeill, 2005).

However, community justice has not escaped political pressures for reform, particularly as Scotland has pursued it as a way of reducing imprisonment by providing alternative punishments. Scotland has the third highest rate of community sanctions in all of Europe, behind only

Turkey and Belgium (Aebi, et al., 2019), but its increased use of this form of punishment has not had the intended effect. As in England and Wales, the high rate of community penalties has actually occurred *alongside* a rise in imprisonment (McNeill, 2018). Analysis of sentencing has shown that community penalties have tended to replace a *fine*, rather than imprisonment—in effect ‘up-tariffing’ for less serious crimes (ibid) and having the same ‘net-widening’ effect as critics have identified in England and Wales, in that more people are drawn more deeply into the criminal justice system (see Chapter 24).

As with policing in Scotland, the pressure for reform in community justice is related to changing central/local political dynamics, which underpin long-running debate over the organisation of the system (Morrison, 2015). Local delivery is seen as key to the ‘community’ aspect, especially given Scotland’s varied geography, but advocates of a centralised service claim this would improve efficiency and consistency and increase the profile and status of CJSW. Until relatively recently, community justice was governed by a compromise between local and national interests—eight regional Community Justice Authorities (CJAs) (Buchan & Morrison, 2020). However, the 2016 Community Justice (Scotland) Act replaced CJAs with local partnerships and created a new national body, Community Justice Scotland, to provide an overall national strategy and to ‘champion’ community justice so that it can gain a national profile on a par with the Scottish Prison Service (ibid).

Throughout these reforms, the actual supervision of offenders has remained the responsibility of qualified criminal justice social workers (Morrison, 2015) because offending behaviour is considered in the context of wider social needs.

The Community Payback Order

The main community sentence issued in Scotland is the Community Payback Order (CPO): it comprised 93 per cent of community sentences in 2018-19 (Scottish Government, 2020b). CPOs were created in 2011—replacing three pre-existing community sanctions—to be flexible and tailored to the offence, the offender, and their needs, to support their desistance from crime. The term ‘Community Payback’ to refer to unpaid work as punishment is recognised in Scotland much as in England and Wales (see Chapter 25). It commonly forms part of a CPO, but is only *one of a range* of ‘requirements’ which can be imposed by the sentencer, with guidance from the CJSW report. These are:

- alcohol treatment requirement;
- compensation requirement;
- conduct requirement (the offender is required to refrain from certain activities);
- drug treatment requirement;

- mental health requirement;
- programme requirement (attending a course or other series of activities: for example, programmes aimed at addressing violence or sexual abuse);
- residence requirement (the offender must live at a particular location);
- restricted movement requirement (electronic tagging—see ‘Other community sanctions’);
- supervision requirement (the offender must attend meetings with social workers—note that all the above requirements must be imposed *alongside* a supervision requirement);
- unpaid work or other activity. (This is the only requirement that can be imposed without a supervision requirement (except for 16- and 17-year-olds.)

See Scottish Government, 2019a, for more information on these requirements.

The most common CPO requirement is ‘unpaid work or other activity’ (73 per cent of orders), followed by offender supervision (58 per cent of orders) (Scottish Government, 2020a). Other requirements are comparatively rarely used. The dominance of unpaid work reflects broader aspirations about the importance of ‘payback’, drawing on theory and evidence which emphasises the importance of contribution to community wellbeing (‘generativity’) in desisting from crime (McNeill & Maruna, 2007).

If orders are ‘breached’ (i.e. the offender fails to meet the requirements), the offender can be issued with a review or another order, or even imprisoned. Official figures show that in 2018-19, 68 per cent of orders resulted in completion and discharge (Scottish Government, 2020a). The relatively high percentage of orders that do *not* result in completion and discharge highlights another factor linking high rates of community sentences and high rates of imprisonment: a proportion of those issued with a community sentence will breach their order, and some of these will be imprisoned.

Other community sanctions

Although the CPO is by far the most common community sentence issued in Scotland, there are several more types.

As in England and Wales, Drug Testing and Treatment Orders (DTTOs) are available for offenders with substance abuse difficulties in Scotland, but they are issued far less frequently than CPOs. They require consistent drug testing and regular progress meetings with the sentencer.

There is also the Restriction of Liberty Order (RLO), which can be imposed alongside a CPO. This requires the offender to remain in a specific place (usually their home) or avoid a place. Compliance is enforced through

NEW FRONTIERS

Electronic Monitoring in Scotland

Electronic monitoring (EM) has been used in various ways in the criminal justice system in the UK since the mid-1990s and was formally introduced in parts of Scotland in 1998. It has long been argued that there is an opportunity to use EM much more creatively in Scotland than it has been used to date, which could include integrating it more strongly with support in the community, and using it to facilitate phased reintegration after prison—for example through placements in the community or home leave during the sentence (Scottish Government, 2016). These arguments paved the way for the recent Management of Offenders (Scotland) Act 2019, which provides the legislative basis for wider use of EM than in the past, and an overarching framework for future developments. In passing the 2019 legislation, the Scottish Government acknowledged that in order for EM to best support reintegration and help victims feel safer, it has to be used in tandem with other systems of support, for example from a criminal justice social worker (Scottish Government, 2019b).

One of the purposes and goals of technology in criminal justice is to support decarceration and diversion (Morris & Graham, 2019) and we have seen this in the changing use of EM over recent years in Scotland. Home Detention Curfew (HDC) is a scheme where people nearing the end of their sentence can be released early on

a tag, thus supporting reintegration and also reducing the prison population. This was used widely in Scotland until 2018 when, following the case of a violent crime committed by someone released from prison on HDC, a presumption *against* HDC was introduced by the Government. Between October 2018 and January 2020, the numbers of people on HDC declined from 251 to 29 (McCallum, 2019; Scottish Prison Service, 2020), becoming one of the factors which contributed towards Scotland's unenviable badge of having the highest rate of imprisonment in Western Europe (see 'Sentencing'). However, this presumption was reversed in Spring 2020 in the wake of the Covid crisis, when a presumption *in favour* of HDC was reinstated again in order to enable a reduction of people in prison on grounds of public health.

The use of EM in Scotland is clearly an evolving picture, and while there are opportunities for potentially innovative and progressive uses of the technology (for example, expanding the provisions for early and temporary release schemes from prison), at the same time it carries the risk of 'net widening' (for example, through adding EM onto a provision which would not otherwise have had it, which might increase rates of recall to custody). Key to the future of EM in Scotland is the extent to which it can facilitate opportunities for reintegration and can be used in tandem with structured support, rather than a means of control and monitoring compliance alone.

Electronic Monitoring (EM)—a form of surveillance that usually involves attaching an electronic device to the offender in order to monitor their whereabouts. EM in Scotland is delivered, as it is in England and Wales, by the private sector (currently the multinational security company G4S).

Until recently, RLOs were the only way of imposing EM at sentence. However, the 2019 Management of Offenders Act extended EM to CPOs as well as expanding technological options to include GPS tracking and tags that detect alcohol consumption. See 'New Frontiers' for further discussion of EM in Scotland.

Imprisonment

There are 15 prisons in Scotland, 13 of which are publicly operated by the Scottish Prison Service (SPS). The other two are private prisons and were opened in 1999 and 2008, both under a 25-year contract (though the Scottish Government have recently stated that at the end of these contracts it intends to bring both back into

public ownership). They are operated by companies called Serco and Sodexo.

Discussions of prisons in Scotland tend to begin with Scotland's extraordinarily high rate of imprisonment. As we noted in 'Sentencing', prior to the Covid pandemic it was the highest in all of Western Europe. This has placed

considerable demands on the system in recent years. Beyond the challenges of reducing the prison population, imprisonment in Scotland has been shaped by forces which have affected imprisonment across the Western world over recent decades, including overcrowding, public sector austerity, managerialism, and (some) privatisation. (We discussed this widespread trend in Chapter 13.)

Over recent years, there have been some notable attempts to bring about progressive changes in policy and practice of Scottish imprisonment (see McNeill, 2016; Morrison & Sparks, 2016). However, recent scholarship argues that, historically, there has been (and perhaps continues to be) a tendency to portray Scottish imprisonment as progressive when in fact it is far from radical. These critics assert that a genuinely radical and humane approach to imprisonment in Scotland would be to reduce the use of imprisonment, because imprisonment will always be painful, no matter how 'progressive' the regime is (Brangan, 2019).

There are two prominent examples in the history of Scottish imprisonment which could be used to support claims about progressive practices. First, the work of William Brebner, the governor of the Glasgow Bridewell Prison (or 'house of correction') between 1808 and 1845. Brebner pioneered what we can now regard as an early vision of 'throughcare' and purposeful activity (Coyle, 1991). The second example is the celebrated 'Barlinnie special unit' (which we discussed in section 24.6). This 'prison within a prison' operated in HMP Barlinnie in Glasgow (Scotland's largest prison) between 1973 and 1996. The unit provided a way of allowing the most violent and disruptive prisoners to have access to a range of therapeutic and artistic outlets in a place where they could feel they had more control of their regime (Tombs & Piacentini, 2010). However, the special unit was small, accepting no more than 10 prisoners at a time, and it was not replicated elsewhere within the estate or after it closed. It is therefore questionable to what extent this unit was representative of a wider, more 'progressive' prisons policy in Scotland (see also Munro et al., 2010).

Like prisons elsewhere in the UK, Scottish prisons experienced riots and turbulence during the 1980s, although to a far lesser degree than those in England and Wales. The resulting changes at the SPS promoted the concept of the 'responsible prisoner' as well as emphasising the importance of justice, fairness, and proportionality within prisons (Coyle, 1991), a process described by Brangan (2019) as 'modernizing' and 'civilizing' the service. It is also worth noting that the average ratio of prisoners to custody staff within the SPS is generally lower than most other West European countries—in other words, though they are overcrowded, Scottish prisons are better-staffed than elsewhere. At the time of

writing the ratio of prisoners to custody staff in Scotland is 2.6 and the European average is 3.4. In England and Wales, it is 3.9 (Aebi & Tiago, 2020).

In 2013, the SPS published its Organisational Review, 'Unlocking Potential Transforming Lives', which put forward a new vision for imprisonment in Scotland which was significant in its scope and ambition. The Organisational Review argued that the previous priorities of Custody, Order, Care, and Opportunity (listed in order of importance) should be rebalanced so that each of the priorities and tasks was valued equally (SPS, 2013). It also drew on vocabulary and concepts from desistance theory to guide its policies and practices (see McNeill, 2016; Morrison & Sparks, 2016). The Review certainly articulated an image of imprisonment which was more optimistic and aspirational than that which preceded it (Morrison & Sparks, 2016), yet relatively little has been published since to provide a more recent assessment of the system. McNeill welcomed the focus on desistance contained within the Review, whilst noting that the use of the theory was individualised, focusing on the *responsibilities* of the person in custody rather than on broader social factors (McNeill, 2016). Piacentini et al. (2018) suggest that the framing of people in custody as *requiring* transformative support to fulfil their potential disguises the continued emphasis on managing risk, whilst at the same time locating the SPS as central to the provision of rehabilitation.

An official audit of the SPS published in 2019 was sharply critical, concluding that there were 'profound challenges in continuing to run Scotland's overcrowded prison system safely and effectively' (Audit Scotland, 2019). They identified multiple pressures facing the service, including rising prisoner numbers (by this stage far exceeding operating capacity), delays in upgrading the prison estate (parts of it are now very old), growing prisoner violence, and rising rates of staff absence due to ill-health (Audit Scotland, 2019).

A report from the Council of Europe's Anti-Torture Committee was also very critical of imprisonment in Scotland, highlighting violence, the availability of drugs, overcrowding, solitary confinement, and the provision of healthcare (especially mental healthcare for women), though the report did recognise the good relations between staff and people in custody (Council of Europe, 2019). Reports published by Her Majesty's Inspectorate of Prisons for Scotland also highlight the positive relationships between people in custody and prison staff, as well as ongoing efforts to support positive relationships with families—whilst likewise drawing attention to problems with healthcare in prisons, and with access to rehabilitation programmes which negatively impacts prisoners' chances of gaining parole (HMIPS, 2019).

Youth justice

Most criminal punishments are caught between competing aims of punishment, public protection, care, and support for change, but youth justice is oriented most strongly towards rehabilitation. Arguably, this is especially true in Scotland (CYCJ, 2018; McAra & McVie, 2010).

Children's Hearings System

Central to the Scottish youth justice system is the Children's Hearings System (CHS), which is much celebrated for embodying a 'welfarist' approach; indeed, it has been described by Scottish politicians as the 'jewel in the crown' of the criminal justice system (see, for example, BBC, 2009).

The CHS was established in 1971, following the publication of the 1964 Kilbrandon Report on Scottish youth offending and juvenile courts, and it remains largely intact to this day. This report, so called because it emerged from a committee chaired by Lord Kilbrandon, started with a narrow remit but had far-reaching implications for Scotland's approach to young people, including making two arguments that underpin the CHS. First, that there is no essential difference between children who commit offences and children in need of care and protection: both should be treated as 'children in trouble' (Asquith & Docherty, 1999). Second, that a court-based system of justice is inappropriate for children (*ibid*).

Children's hearings are administrative tribunals, not courts of law, and they operate with the best interests of the child at the centre of proceedings. They must treat children who are referred on offending grounds and those referred on care and protection grounds equally, because offending behaviour is regarded as a symptom of wider social problems. Only about 20 per cent of referrals are on offence grounds, and even in these cases, the hearing aims not to punish but to agree a solution that promotes the child's welfare.

Hearings are intended to avoid branding the young person in trouble in a negative way, and they often advocate early intervention. A hearing is attended by a panel of three specially trained volunteers, known as Panel Members, and chaired by a Reporter, who adjudicates. The panel considers all available information from relevant parties (including the child) and can impose a Compulsory Supervision Order (CSO). This may have measures attached to it such as where the child or young person should live, and whom they can see and when. CSOs can also recommend that the child or young person be held in a secure placement, if they are

deemed to be at risk of running away from home and being in danger of hurting themselves or someone else (CHScotland, 2020).

Youth justice reforms

During the first two terms of the Scottish Parliament (1999 to 2007), Scottish youth justice underwent various reforms in line with New Labour's 'antisocial behaviour' agenda. McAra (2004) noted a shift away from the 'needs' of young people and towards their 'deeds' and public protection. The then-Justice Minister reaffirmed this shift by stating that 'punishment was now a key part of the youth justice process' (cited in McAra 2004: 34). Nonetheless, it has been argued that despite this 'moment' in youth justice policy in Scotland, overall it has avoided the more punitive developments and practices of other jurisdictions (CYCJ, 2018).

More recently, a different political context has seen Scotland adopt a programme called the Whole System Approach (WSA), which has had a significant impact on outcomes for young people in—or at risk of becoming involved in—the criminal justice system. The WSA is underpinned by a growing body of evidence showing that if a young person comes into contact with formal criminal justice processes, they are more likely to continue or escalate their criminal behaviour than if they were dealt with by other means (i.e. diverted away from the justice system). Much of this evidence came from the important Edinburgh Study of Youth Transitions and Crime led by Professor Lesley McAra and Professor Susan McVie at the University of Edinburgh—see 'Conversations' for more information about this research and how it has informed policy.

The WSA is centred around the following three policies:

1. *Early and Effective Intervention*, which aims to reduce offence referrals to Children's Hearings (see 'Children's Hearing System').
2. *Diversion from Prosecution*, which aims to keep young people away from criminal justice processes.
3. *Reintegration and Transition*, which means supporting young people in secure care and custody and planning for their reintegration into the community.

(Murray et al., 2015)

Early evaluations of the WSA have been positive, citing fewer young people coming into the system and decreased offending by young people (Murray et al., 2015).

CONVERSATIONS

The Edinburgh Study of Youth Transitions and Crime

with *Lesley McAra* and *Susan McVie*

The involvement of children and young people in offending and anti-social behaviour is one of the most enduring, and problematic, aspects of social life. Even as far back as the days of Aristotle there was concern about the fact that young people engaged in disruptive, disobedient and, sometimes, dangerous behaviour. It is well known that, for most young people, involvement in offending is short-lived and not especially serious. However, for a minority, it can be far more enduring and pose significant harm to society, families, and young people themselves.

Understanding more about the patterns of young people's behaviour, the underlying causes, and the long-term outcomes is at the heart of the Edinburgh Study of Youth Transitions and Crime. In the late 1990s we began the study, with our colleague David J. Smith, with the aim of examining these themes amongst a large cohort of 4,300 young people growing up in the Scottish capital. With backgrounds as government researchers, we were committed to ensuring that the study would not only inform academic theory and scholarship, but that it would influence policy and make a difference to the lives of young people in Scotland and beyond.

The Edinburgh Study is a large and complex longitudinal programme of research on pathways into and out of offending and is the biggest UK-based criminological study of its kind. The cohort includes the vast majority of young people who started secondary education (at around age 12) in the City of Edinburgh in the autumn of 1998. The study involved annual surveys of the cohort members during the school years and periodic follow-ups into adulthood. It also involved analysis of school records and examination results, social work and children's hearings records, police records, and criminal convictions. We also conducted a community survey and a study of the cohort members' parents and carers, and created a large geographic information system to examine our findings spatially.

The study's key findings have included that young people living in low income households and those growing up in deprived communities were most likely to engage in violence, even when they did not have a range of other risk factors. Violence in this context provides a mechanism for developing and demonstrating a sense of identity, offering a means of attaining empowerment

and sustaining status amongst peers. We also found that young people involved in violence and other forms of serious offending were more likely to be charged by the police. However, those from low income households were disproportionately more likely to be charged than those who were not. More deprived offenders were also more likely to be referred to youth justice and placed on statutory supervision.

In turn, police charges and youth justice supervision during the teenage years proved to be strong predictors of later poverty. Moving into early adulthood, the study revealed that young men in their early 20s who had been unemployed for more than a year were more likely to be charged by the police than others. It also revealed that those who were both unemployed for more than a year and known to the police in their teenage years were even more likely to be convicted.

The Edinburgh Study has built an evidence base that advocates a holistic approach to dealing with young people, and adults, who offend. It has been very rewarding to see the impact of this evidence base on youth justice policy and practice—the study has influenced a range of progressive changes in Scotland. These have included helping to shape the Getting It Right for Every Child (GIRFEC) policy framework, which established a child-centred approach to service delivery in Scotland in 2006. The study also informed the development of the Scottish Government's Reducing Reoffending Programme in 2009, which led to an increase in non-custodial sentences and a presumption against short-term prison sentences. It underpinned the national roll-out of a Whole Systems Approach (WSA) to dealing with children and young people, including early and effective intervention and greater diversion from prosecution, in 2011, and it also influenced major legislation to reduce the prosecution of children in Scotland, including the Criminal Justice and Licensing Act 2010 and the Age of Criminal Responsibility (Scotland) Act 2019.

As a result of these policy changes, comparison of annual figures in 2006 with 2019 shows that:

- 23,000 fewer people under 21 were convicted in the Scottish courts.
- 14,000 fewer children were referred on offence grounds to the juvenile justice system.
- 3,000 fewer people under 21 were sent to custody.

Our fervent hope is that these positive trends will continue, and that Scotland continues to base its policy and practice regarding youth justice firmly around the evidence. The findings of the Edinburgh Study clearly show the impact of wider, contextual factors on the offending behaviour of young people, as well as on their outcomes in the criminal justice system, so they make a compelling case for a holistic approach to both youth and adult justice.

We are currently running phase eight of the study, which involves conducting an online survey of all cohort members and in-depth interviews with a sub-sample, who are now age 34. Findings from this phase of the study will start to be available later in 2021: you can keep up with the study's releases by visiting <https://www.edinstudy.law.ed.ac.uk/>.

Professor Lesley McAra, Chair of Penology within the School of Law at the University of Edinburgh, and Professor Susan McVie, Chair of Quantitative Criminology at the University of Edinburgh

The age of criminal responsibility

The 'age of criminal responsibility' refers to the age at which children and young people can be subjected to youth justice processes. Despite Scotland's reputation for welfare-oriented youth justice, its age of criminal responsibility was for a long time among the lowest in Europe, at eight years old. This attracted criticism, including from the UN Committee on the Rights of the Child (CRC) (Scottish Government 2016g), and was seen by some as an example of Scottish penal policies being less 'progressive' than they might seem (Munro et al., 2010).

The 2010 Criminal Justice and Licensing (Scotland) Act made it impossible to *prosecute* a child under the age of 12, but children aged 8 to 12 could still be referred to Children's Hearings (see 'Children's Hearing System') on offence grounds—and gain criminal records. This tension was resolved by the 2019 Age of Criminal Responsibility (Scotland) Act, which raised the age of criminal responsibility to 12, bringing Scotland into line with the 'absolute minimum' provided by the European CRC. No one under the age of 12 can now be referred to a children's hearing on offence grounds.

Children under 16 suspected of committing an offence are almost always referred to the CHS, which decides on the most appropriate action. Legally, 16- and 17-year-olds can be tried in adult courts, although those subject to a Compulsory Supervision Order would usually remain the responsibility of the CHS. The Crown reserves the right to prosecute children (over the age of 12) in adult courts for the most serious crimes such as rape, serious assault, or homicide, but these are very rare.

In light of neurological evidence that 'cerebral maturity' does not develop until mid-adolescence, the Scottish Government is already considering raising the age of criminal responsibility again. This would bring it in line with the higher ages used in most European countries, and UNCRC guidance which advises setting the age at 14. In addition, legislation passed in 2020 means that all childhood convictions will immediately be 'spent' (legally ignored or forgotten), apart from convictions resulting in a sentence of longer than 48 months, and convictions for sexual offences that resulted in a custodial sentence of more than 12 months (Nolan, 2021). The objective of these reforms is that fewer people will be stigmatised as adults for offences they committed in childhood. As in many other areas of Scottish criminal justice, there seems always to be change on the horizon.

Conclusion

Surveying the field of Scottish criminal justice, we can see examples of approaches rooted in welfarism, as well as approaches which are decidedly punitive and appear excessive (by European standards). The devolved Parliament and the Scottish Government are still in their relative infancy, and the political area is evolving rapidly in the wake of both Brexit and the ongoing question—and fierce debate—of Scottish independence. While the scope (and incentive) to shape

policy and practice more radically is enabled by an increasingly assertive and confident political sphere, if change is to be sustained, more progress must be made on bringing the rest of Scottish society along with those who make and implement the policy (Morrison, 2019). As we have seen in this chapter, reforms in each of these areas are in a continuous state of change, so we wait to see how Scottish criminal justice evolves over the years to come.

SUMMARY

After reading this chapter and working your way through its features you should now be able to:

- appreciate the importance of Scotland's history and politics for its approach to criminal justice

Scottish devolution has brought about a wide range of reform to Scottish criminal justice. However, Scotland had its own justice system for nearly 300 years prior to devolution, underpinned by its own legal system and set of legal institutions which enabled it to develop a distinctive approach to some areas of criminal justice. The distinctive approaches to issues such as criminal trials, youth justice and probation, are therefore a product not only of current practices but of longer histories and customs. Nonetheless, devolution has enabled the possibility, if not always the practice, of wider divergence with criminal justice in the rest of the United Kingdom. Although the Scottish Parliament has full autonomy over nearly all areas of criminal justice, recent calls for reforms over drugs legislation (which is 'reserved' to Westminster) has become intertwined with the wider debates about independence.

- evaluate the importance of centralisation and localism for parts of the system over the relatively small geographical area of Scotland

Although it is a relatively small country, one of Scotland's key services, probation, continues to be organised over 32 local authority areas—despite repeated attempts at reform and centralisation. On the other hand, we have seen the creation of a centralised police force, Police Scotland, in 2013, which was motivated by longstanding concerns about efficiency and consistency. In the early years of Police Scotland, critics argued it became too 'top down' and centralised, and in recent years we have seen a return to 'localism' again, in the wider context of a national policing structure.

- understand that while there are some unique features of Scottish criminal justice, the system as a whole shares many of the challenges of its neighbouring system in England and Wales

Scottish criminal justice has many unique practices and institutions ('unique' in comparison with England and Wales), while also sharing many similar features. For example, there is less commitment to private involvement in Scottish criminal justice (in both prisons and probation), there are three verdicts available to Scottish Courts, and prisoners serving sentences of less than 12 months have the right to vote in Scotland. On the other hand, Scotland is arguably as punitive (if not more) as England as measured by *rate* of punishment (though Wales has the highest rate of imprisonment if counted as a separate unit (Jones, 2020)), sharing a very similar history of expansion in both community and custodial penalties.

- identify examples of criminal justice which can be seen as both progressive (welfarist?) and punitive

There has long been a belief in Scotland that its criminal justice system is orientated towards welfarism (the implicit comparison here being with England). Such claims have been based upon probation, which is located within social work rather than criminal justice, and with large parts of youth justice, including diversion, the age of criminal responsibility and the Children's Hearing System, and a 'presumption' against imprisonment for 12 months or less. However, critics of Scottish criminal justice point to its rate of both imprisonment and community sanctions, its problems with over-use of police stop and search during the early years of Police Scotland, and the extremely high rates of death caused by drugs as some examples of Scottish criminal justice being further from its aspirations of 'progressive justice' than some might claim.

REVIEW QUESTIONS

1. Why was Scottish devolution an important moment for criminal justice in Scotland?
2. What are the key ways in which policing in Scotland differs from policing in England and Wales?
3. Is sentencing reform required in Scotland? Why, or why not?
4. Why might it be a good idea to have probation operated by fully qualified social workers?
5. What are some of the challenges which currently face the Scottish Prison Service?
6. How has the Whole System Approach affected juvenile justice in Scotland?

FURTHER READING

Croall, H., Mooney, M., and Munro, M. (eds) (2010) *Criminal Justice in Scotland*. Cullompton: Willan.

Croall, H., Mooney, M., and Munro, M. (eds) (2016) *Crime, Justice and Society in Scotland*. Abingdon: Routledge.

These are two edited book collections which outline many of the key features of Scottish criminal justice, with contributions from key authors in the field. They usefully provide an overview of many aspects of Scottish justice in a single edition.

McNeill, F. (2018). *Pervasive punishment: Making sense of mass supervision*. Emerald Group Publishing.

A theoretically rich, yet readable and accessible, book about community penalties. Although the book is not primarily about Scottish community justice, it does use the Scottish case to illustrate its arguments.

McVie, S. (2017). *Social order: crime and justice in Scotland*. *The New Sociology of Scotland*. SAGE Publications, 293–322.

This book chapter provides an excellent and comprehensive overview of both crime patterns and trends, and criminal justice in Scotland.

Centre for Youth and Criminal Justice (CYCJ). (2018). *A Guide to Youth Justice in Scotland: policy, practice and legislation*. <https://www.cycj.org.uk/resource/youth-justice-in-scotland-guide/>.

This online (but also downloadable) guide provides an essential overview for those interested in youth justice. It also features a brief introductory video on the subject.

Scottish Centre for Crime and Justice Research (SCCJR) blog <https://sccjrblog.wordpress.com/>.

SCCJR is a network of researchers from four Scottish universities, and their blog, 'The Justice Stories', provides interesting overviews of and insights into topical issues.

Scottish Government 'Law and Order' webpages <https://www.gov.scot/law-and-order/>

This section of the Scottish Government's website provides the key policy documents and statistics on the topic of 'law and order'.

Scottish Justice Matters <http://scottishjusticematters.com/>.

Scottish Justice Matters provided an excellent, and accessible, overview of developments and debates in Scottish criminal justice between 2013 and 2017. Their back catalogue can be accessed on this website.

Scottish Parliament Information Centre (SPICe) briefings

<https://digitalpublications.parliament.scot/ResearchBriefings> and SPICe Spotlight blog <https://spice-spotlight.scot/tag/criminal-justice/>.

The Scottish Parliament Information Centre (SPICe) briefings on criminal justice provide useful summaries of some of the key features of the system and an analysis of recent reforms.

REFERENCES

- Aebi, M., Hashimoto, Y. and Tiago, M. (2019) *Probation and Prisons in Europe, 2018: Key Findings of the SPACE reports*. http://wp.unil.ch/space/files/2019/05/Key-Findings_SPACE-II_190520-1.pdf
- Aebi, M. and Tiago, M. (2020) *SPACE I Annual Penal Statistics 2019*. http://wp.unil.ch/space/files/2020/04/200405_FinalReport_SPACE_I_2019.pdf
- Asquith, S., and Docherty, M. (1999) Preventing offending by children and young people in Scotland. *Criminal Justice in Scotland*. Aldershot: Ashgate.
- BBC. (2009) *Children's hearing reform delayed*. BBC. <http://news.bbc.co.uk/1/hi/scotland/8223662.stm>
- BBC. (2019a) *Scrapping 'not proven' could edge jurors to guilty, says study*. BBC. <https://www.bbc.co.uk/news/uk-scotland-49972637>
- BBC. (2019b) *SNP formally backs decriminalisation of drugs*. BBC. <https://www.bbc.co.uk/news/uk-scotland-scotland-politics-50036173>
- BBC. (2020) *Drug consumption rooms are a 'distraction' says UK minister*. BBC. <https://www.bbc.co.uk/news/uk-scotland-51644786>
- Brangan, L. (2019) Civilizing imprisonment: The limits of Scottish penal exceptionalism. *The British Journal of Criminology* 59(4): 780–99. <https://doi.org/10.1093/bjc/azy057>
- Buchan, J. (2020) The struggle is real: Theorising community justice restructuring agonistically. *European Journal of Probation* 2066220320927353.
- Buchan, J. and Morrison, K. (2020) Compromise, partnership, control: Community justice authorities in Scotland. *Criminology & Criminal Justice* 20(2), 226–43.
- Chalmers, J. and Leverick, F. (2017) *Blog: No, 'not proven' did not come first*. Scottish Legal. <https://www.scottishlegal.com/article/blog-no-not-proven-did-not-come-first>
- CHScotland. (2020) *What is a compulsory supervision order?* Children's Hearings Scotland. <http://www.chscotland.gov.uk/the-childrens-hearings-system/information-for-parents-and-carers/#CSO>
- Council of Europe. (2019) *Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*. <https://rm.coe.int/1680982a3e>
- Coyle, A. (1991) *Inside: Rethinking Scotland's prisons*. Scottish Child.
- Crown Office and Procurator Fiscal Service (COPFS). (2001) *Prosecution Code*.
- Crown Office and Procurator Fiscal Service (COPFS). (2019) *COPFS Statistics on Case Processing last 5 years (2014–2019)*. [https://www.copfs.gov.uk/images/Documents/Statistics/COPFSPerformanceApril2018toSeptember2018/Statistics on Case Processing Last 5 Years 2014–19.pdf](https://www.copfs.gov.uk/images/Documents/Statistics/COPFSPerformanceApril2018toSeptember2018/Statistics%20on%20Case%20Processing%20Last%205%20Years%202014-19.pdf)
- Curley, L. (2018) *Scotland's 'not proven' verdict helps juries communicate their belief of guilt when lack of evidence fails to convict*. The Conversation. <https://theconversation.com/scotlands-not-proven-verdict-helps-juries-communicate-their-belief-of-guilt-when-lack-of-evidence-fails-to-convict-108286>
- CYCJ. (2018) *A Guide to Youth Justice in Scotland: policy, practice and legislation*. <https://www.cycj.org.uk/resource/youth-justice-in-scotland-guide/>
- Donnelly, D. and Scott, K. (2010) *Policing Scotland*. Routledge.
- Fyfe, N. R. (2011) Policing, surveillance and security in contemporary Scotland. In *Criminal Justice in Scotland* (pp. 175–94). Willan Cullompton.
- Fyfe, N. R. (2014) A different and divergent trajectory?: Reforming the structure, governance and narrative of policing in Scotland. In *The future of policing* (pp. 493–506). Routledge.
- Fyfe, N. R. (2015) Policing Scotland post reform. *Crime, Justice and Society in Scotland*.
- Government, S. (2019a) *Community Payback Order: Practice Guidance*. <https://www.gov.scot/publications/community-payback-order-practice-guidance/>
- Government, S. (2019b) *Protecting Scotland's Future: the Government's Programme for Scotland 2019–2020*. <https://www.gov.scot/publications/protecting-scotlands-future-governments-programme-scotland-2019-20/pages/8/>
- Henry, A., Malik, A. and Aitchison, A. (2016) Partners in scrutiny: Local police scrutiny arrangements in Scotland Final Project Report. *The Scottish Institute for Policing Research*.
- HM Chief Inspector of Prisons for Scotland. (2019) *HM Chief Inspector of Prisons for Scotland: Annual Report 2018–19*. <https://www.prisoninspectoratescotland.gov.uk/publications/hm-chief-inspector-prisons-scotland-annual-report-2018-19>
- HM Inspectorate of Constabulary Scotland. (2015) *Independent Assurance Review Police Scotland—Call Handling*. Found at: <https://www.hmics.scot/sites/default/files/publications/HMICS20180522PUB.pdf>. Last accessed 17/2/2021
- Jones, R. (2020) Criminology and criminal justice in post-devolution Wales. *European Journal of Criminology* 1477370820916447.
- Lowther, E. and Brocklehurst, S. (2020) *Scotland's drug death crisis in six charts*. BBC. <https://www.bbc.co.uk/news/uk-scotland-48853004>
- McAra, L. (2004) The cultural and institutional dynamics of transformation: youth justice in Scotland, England and Wales. *Cambrian L. Rev* 35: 23.
- McAra, L. (2008) Crime, criminology and criminal justice in Scotland. *European Journal of Criminology*, 5(4), 481–504.

- McAra, L. and McVie, S. (2010) Youth crime and justice: Key messages from the Edinburgh Study of Youth Transitions and Crime. *Criminology & Criminal Justice*, 10(2), 179–209.
- McCallum, F. (2019) *SPICe Spotlight: Twenty Years of Imprisonment*. The Scottish Parliament. <https://spice-spotlight.scot/2019/11/04/twenty-years-of-imprisonment/>
- McCallum, F. (2020) *SPICe briefing: Coronavirus (Covid-19): prisoner numbers*. Scottish Parliament. <https://spice-spotlight.scot/2020/05/11/coronavirus-covid-19-prisoner-numbers/>
- McNeill, F. (2005) Remembering probation in Scotland. *Probation Journal*, 52(1), 23–38.
- McNeill, F. (2016) Desistance and criminal justice in Scotland. *Crime, Justice and Society in Scotland*, 200–16.
- McNeill, F. (2018) *Pervasive punishment: Making sense of mass supervision*. Emerald Group Publishing.
- McNeill, F., Burns, N., Halliday, S., Hutton, N. and Tata, C. (2009) Risk, responsibility and reconfiguration: Penal adaptation and misadaptation. *Punishment & Society* 11(4), 419–42.
- McNeill, F. and Maruna, S. (2007) Giving up and giving back: Desistance, generativity and social work with offenders. *Developments in Social Work with Offenders*, 48: 224–339.
- McVie, S. (2017) Social order: crime and justice in Scotland. *The New Sociology of Scotland*. SAGE Publications, 293–322.
- Mooney, G., Croall, H., Munro, M. and Scott, G. (2015) Scottish criminal justice: Devolution, divergence and distinctiveness. *Criminology & Criminal Justice* 15(2): 205–24. <https://doi.org/10.1177/1748895814543533>
- Morris, J. and Graham, H. (2019) Using technology and digitally enabled approaches to support desistance. In C. Ugwuodike, P., Graham, H., McNeill, F., Taxman, F., & Trotter (Ed.), *The Routledge Companion to Rehabilitative Work in Criminal Justice* (pp. 893–901). Routledge: London.
- Morrison, K. and Sparks, R. (2016) Research, knowledge and criminal justice policy: the Scottish experience. In H. Croall, G. Mooney, & M. Munro (Eds.), *Crime, justice and society in Scotland* (pp. 42–56). Routledge: London.
- Morrison, K. (2015) The management of community justice services in Scotland: Policy-making and the dynamics of central and local control. In *The Management of Change in Criminal Justice* (pp. 152–69). Springer.
- Morrison, K. (2019) *Scottish Penal Reform since Devolution: Reflections and Prospects for Change*. Scottish Centre for Crime and Justice Research (SCCJR). <https://scjrblog.wordpress.com/2019/06/25/scottish-penal-reform-since-devolution-reflections-and-prospects-for-change/>
- Munro, M. (2015) Victims' in Scotland: a review. *Crime, Justice and Society in Scotland*, 151.
- Munro, M., Mooney, G. and Croall, H. (2010) Criminal justice in Scotland: Overview and prospects. *Criminal Justice in Scotland*, 261–78.
- Murray, K. (2014) *Stop and search in Scotland: An evaluation of police practice*. SCCJR Edinburgh.
- Murray, K., McGuinness, P., Burman, M. and McVie, S. (2015) *Evaluation Of The Whole System Approach To Young People Who Offend In Scotland June 2015*.
- National Records for Scotland. (2019) *Drug-related Deaths in Scotland in 2018*. NRS, National Statistics. <https://www.nrscotland.gov.uk/files/statistics/drug-related-deaths/2018/drug-related-deaths-18-pub.pdf>
- Nolan, D. (2021) *Disclosure in Scotland: The journey so far*. Children's and Young People's Centre for Justice (CYCJ). <https://www.cycj.org.uk/disclosure-in-scotland-the-journey-so-far/>
- O'Neill, M. and Aston, E. (2016) Improving the Practice of Stop and Search in Scotland. *Translational Criminology*, 11: 7–9.
- Ormiston, R., Chalmers, J., Leverick, F., Munro, V. and Murray, L. (2019) *Scottish Jury Research: Findings from a Large Scale Mock Jury Study*. <https://www.gov.scot/publications/scottish-jury-research-fingings-large-mock-jury-study-2/>
- Police Scotland. (2020a) *Annual Policing Plan 2020–2021*, Found at <https://www.scotland.police.uk/media/lijn5tz2/annual-policing-plan-2020-21-signoff.pdf>, Last accessed 17/2/2021
- Police Scotland. (2020b) *Public confidence in policing increases 20 percentage points during lockdown*, Found at <https://www.scotland.police.uk/what-s-happening/news/2020/august/public-confidence-in-policing-increases-20-percentage-points-during-lockdown/>, Last accessed 17/2/2021
- Piacentini, L., Weaver, B. and Jardine, C. (2018) *Employment and Employability in Scottish Prisons: A Research Briefing Paper*. https://strathprints.strath.ac.uk/65006/1/Piacentini_etal_2018_Employment_and_Employability_in_Scottish_Prisons.pdf
- Sapouna, D. M., Bisset, C., Conlong, A.-M. and Matthews, B. (2015) *What works to reduce reoffending: A summary of the evidence*. Scottish Government.
- Scottish Government. (2012) *Police Fire Reform Act (Scotland)*, Found at <https://www.legislation.gov.uk/asp/2012/8/part/1/chapter/4/enacted>, Last accessed 17/2/2021
- Scottish Government. (2021) *Justice Sub-Committee on Policing: Police 2021–22 budget*, Found at [https://www.parliament.scot/S5_JusticeSubCommitteeOnPolicing/Inquiries/Police_Scotland_Submission\(1\).pdf](https://www.parliament.scot/S5_JusticeSubCommitteeOnPolicing/Inquiries/Police_Scotland_Submission(1).pdf), Last accessed 17/2/2021
- Scotland, A. (2019) *The 2018/19 audit of the Scottish Prison Service*. <https://www.audit-scotland.gov.uk/report/the-201819-audit-of-the-scottish-prison-service>
- Scottish Government. (2016) *Electronic Monitoring in Scotland Working Group Final Report*. <https://www.gov.scot/publications/electronic-monitoring-scotland-working-group-report/>
- Scottish Government. (2019a) *Drug Deaths Task Force*. Scottish Government Policy. <https://www.gov.scot/groups/drug-deaths-task-force/>

- Scottish Government. (2019b) *Management of Offenders Bill passed*. Scottish Government News. <https://www.gov.scot/news/management-of-offenders-bill-passed/>
- Scottish Government. (2019c) *Presumption against short sentences extended*. Scottish Government News. <https://www.gov.scot/news/presumption-against-short-sentences-extended/>
- Scottish Government. (2019d) *Restorative Justice Action Plan*. <https://www.gov.scot/publications/restorative-justice-action-plan/>
- Scottish Government. (2019e) *Scottish Jury Research*. Scottish Government News. <https://www.gov.scot/news/scottish-jury-research/>
- Scottish Government. (2020a) *Criminal Justice Social Work Statistics in Scotland: 2018–19*. <https://www.gov.scot/publications/criminal-justice-social-work-statistics-scotland-2018-19/>
- Scottish Government. (2020b) *Criminal Proceedings in Scotland 2018–19*. <https://www.gov.scot/publications/criminal-proceedings-scotland-2018-19/>
- Scottish Government. (2020c) *Data on effects of presumption against short sentences*. <https://www.gov.scot/news/data-on-effects-of-presumption-against-short-sentences/>
- Scottish Government. (2020d) *Victims and Witnesses*. Scottish Government Policy. <https://www.gov.scot/policies/victims-and-witnesses/>
- Scottish Prison Service. (2020) *SPS Prison Population*. <https://www.sps.gov.uk/Corporate/Information/SPSPopulation.aspx>
- Scottish Sentencing Council. (n.d.) *About Sentencing*. Scottish Sentencing Council. <https://www.scottishsentencingcouncil.org.uk/about-sentencing/>
- Service, S. P. (2013) *Organisational review: Unlocking potential, transforming lives*. <https://www.sps.gov.uk/Corporate/Publications/Corporate9.aspx>
- Thomson, B., Mawdsley, G. and Payne, A. (2015) *The Thinning Blue Line*. <https://reformscotland.com/wp-content/uploads/2015/06/The-Thinning-Blue-Line-2015.pdf>
- Tombs, J. and Piacentini, L. (2010) Prisons and imprisonment in Scotland. *Criminal Justice in Scotland*, 238–60.
- van Zyl Smit, D. and Morrison, K. (2020) The paradox of Scottish life imprisonment. *European Journal of Crime, Criminal Law and Criminal Justice*, 28(1): 76–102. <https://doi.org/10.1163/15718174-02801004>
- Wooff, A. (2015) Relationships and responses: Policing anti-social behaviour in rural Scotland. *Journal of Rural Studies*, 39: 287–95.
- Yarwood, R. and Wooff, A. (2016) *Policing the Countryside in a Devolving United Kingdom*. Routledge: New York.