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EDITORIAL

This is the thirteenth volume of the **Scottish Journal of Criminal Justice Studies.**

In future volumes of the **Journal**, I hope to continue to publish as articles those papers presented at Branch Meetings or Day Conferences that Branch Secretaries think are worth offering to a wider audience. Original articles will also be considered for publication. There is no copy deadline, but they must be with me by the end of each May if they are to be considered for inclusion in that year's **Journal**. Branch Secretaries are invited to send suitable articles to me (in Word – or earlier versions - or in .rtf format) by attaching them to an email to me (jasonditton@lineone.net). All original articles will be reviewed by two members of the **Editorial Board**.

This year all the original articles are written by members of the new Scottish Centre for Crime and Justice Research, apart from the one by Rod Morgan who gave the address at the Centre's launch ceremony. The Centre is a significant step forward for the study of offending in Scotland, and all at SASO wish it every possible success.

Jason Ditton

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The Present state of youth justice in Scotland

by Kathleen Marshall, Scotland's Commissioner for Children and Young People

Introduction

As Commissioner for Children and Young People, my job, established by the Commissioner for Children and Young People (Scotland) Act 2003, is to safeguard and promote their rights. Before addressing my allocated topic of "the present state of youth justice in Scotland", I want to explain a little where I am coming from on this.

First of all, as regards the rights I am to promote and safeguard, they comprise an **objective** agenda – they are already a public policy commitment. However, they involve **responsibilities**, but they are not, at the broadest level, in competition with the rights of adults or communities. There is, in fact, a "**community** of interest." The current review of the children's hearing system in Scotland speaks of "Getting it Right for Every Child." I am firmly convinced that, if we achieve this aim, we will also "get it right" for the communities in which they live.

As regards the subjects of these rights, the normal discourse on this subject tends to use the terms "child" and "youth" more or less indiscriminately. International law includes all those under the age of 18 within its definition of "child", and this conference speaks of "youth" justice, yet it embraces issues relating to children as young as eight.

Given this background and my remit, I intend to do a brief survey of relevant international instruments before looking to see whether and how our Scottish system measures up; and whether and how current trends in thinking are likely to make things better or worse. In doing this, I am going to try to achieve a balance between information, comment and, hopefully, a bit of colour. The title of my contribution, "The Present State of Youth Justice in Scotland" connotes some solid information, and some of that I am going to give. I hope it is neither too dry, nor too superfluous for those of you who have particular areas of expertise that might outweigh my more general approach.

But I also want to give a bit of comment, on the basis that I hope it might lighten things up a bit; and I think both information and comment are probably appropriate, given the early, scene-setting nature of this contribution. And, while the comment might seem critical at some points, and will certainly be inadequate to address the myriad of particular interests represented here today, I hope it will be accepted as an attempt at *constructive* criticism and an aid to stimulating discussions that might broaden out some of the issues that I have only been able to touch on in the time available.

It is in everyone's interests to get this right. It can be an emotive subject, and politicians have to deal daily with the concerns, experiences, emotions and perceptions of their constituents. That is the stuff of life and is all very important. My job involves detaching myself a little from that; hopefully not so much that what I say is out of touch with reality, but enough to help us take a broader look at what we are doing, the principles on which our actions are based, and their potential for achieving our joint and critical aims.

Youth justice in Scotland is centred largely on the children's hearings system, which is unique in the UK, and which is stubbornly clinging to the welfare-based response to offending behaviour, even in the face of waves of punitive philosophy and practice rearing up against it. It does indeed appear to be battling against the tide, as the "global warming" of heated debate and media comment threaten its beaches. When you feel under threat, you tend to react defensively, and I think those of us who are strong advocates of the hearings system have sometimes been guilty of that.

If the forces against you are strong and even seem a little bit devious, you are afraid to give an inch in case the mile is taken. And yet, as with all things, the truth is generally somewhere in between. The system has been around for a long time and society has changed. There may indeed be some things that could benefit from reappraisal, creating some useful additions or supplements. For example, when restorative justice approaches were first mooted many years ago, some of us in the "child welfare" world, including myself, were very wary, fearing that this might be an attempt to sneak in "punishments" by the back door. However, I now count myself amongst those who regard restorative justice approaches as a positive development.

What is important is that any changes are principled and purposeful; and anything discarded or greatly modified is targeted for that treatment because it is intrinsically inadequate for today's world, and not because it has been starved of what it needs to make it work efficiently. I am going to look to

accepted international standards for guiding principles on youth justice, and I will measure our system against them.

UN Convention on the Rights of the Child

The Act establishing my post requires me to safeguard and promote *all* the rights of children and young people under national and international law. However, particular emphasis is placed on the 1989 UN Convention on the Rights of the Child, which was ratified by the UK in 1991. The Convention addresses the whole spectrum of the rights and needs of children and young people up to the age of 18. Thus, like the children's hearing system, it looks at the *whole* child and includes within its ambit concerns about care and protection as well as juvenile offending.

Articles relevant to youth justice include: Article 1, which defines **"child"** to include all those under the age of 18; Article 3, which says the "best **interests** "of the child must be at least a primary consideration in actions concerning children, including courts of law; Article 37, which requires strict control of any deprivation of a child's **liberty**; Article 40, which acknowledges the reality of offending behaviour by children; sets out standards for dealing with this (including the right to privacy), directs States to set up **procedures** for dealing with child offenders that are specifically geared towards them, encourages diversion from the courts so long as human rights and legal safeguards are respected, and gives examples of a variety of welfare and educational **disposals** appropriate to the well-being of children and proportionate to individual circumstances.

Beijing Rules: UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985

The Convention's Preamble refers to other international instruments such as the "Beijing Rules" (the 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice). Rule 5 says that "The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence." Rule 11 requires consideration of diversion from formal trial proceedings (with the juvenile's real consent) and encourages the development of community programmes such as supervision. A number of guidelines and rules were promulgated in 1990, one year after the UN Convention was passed.

Riyadh Guidelines: UN Guidelines for the Prevention of Juvenile Delinquency, 1990

The UN Riyadh Guidelines for the Prevention of Juvenile Delinquency start with a Preamble which recalls that the General Assembly of the UN, which adopted them, was "Mindful of the large number of young persons who may or may not be in conflict with the law but who are abandoned, neglected, abused, exposed to drug abuse, in marginal circumstances, and who are in general at social risk." Thus, the substantial overlap between offending and care and protection is signalled here, as it is in the Kilbrandon Report which led to the establishment of the children's hearing system. And as it has been in the past few days, when publication of the Annual Report of the Scottish Children's Reporters Administration has been accompanied by calls to remember that most young people who come before the hearing on offence grounds have previously been identified as needing care because of abuse or neglect. We are constantly reminded of the enduring validity of the central insight of Kilbrandon that there is a huge overlap between those children who offend and those whose upbringing exposes them to abuse or neglect.

What is more, I think we must ask whether our mode of intervention sometimes fuels this trajectory towards offending. The evaluation of the Fast Track children's hearings pilot noted [p. 21] that some young people qualified for fast track as persistent offenders for offences committed while in residential care that would have been unlikely to have happened or to have attracted the attention of the justice system had they occurred within a domestic context. The fundamental principles set out in these Guidelines cohere with our domestic principles and long experience to argue against laws and practices that criminalize, penalise and stigmatise those children that we have already let down by failing to care for and protect them. That does not mean, of course, that offending behaviour should be condoned or even excused. Nor does it mean there is no personal responsibility, but its genesis should inform our understanding and colour our approach. If we know what has gone wrong, we may be in a better position to put it right.

UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990

The UN Rules for the Protection of Juveniles Deprived of their Liberty says that deprivation of liberty should be a last resort. The juvenile justice system should uphold the rights and safety, and promote the physical and mental well-being, of juveniles under the age of 18. There remains concern in Scotland about the numbers of under-18s in custody, including a few aged

under 16 who are held while in transit or are regarded as too unruly to be anywhere else. The Chief Inspector of Prisons has frequently spoken out on this and I share his concerns. We must remember too the "collateral damage" of imprisonment, in the form of the children of prisoners whose contact with parents is severely restricted. This is an issue my office is currently looking at.

Tokyo Rules: UN Standard Minimum Rules for Non-custodial Measures, 1990

Then there are the Tokyo Rules: the UN Standard Minimum Rules for Non-custodial Measures. Rule 1.2 explains that "the Rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society."

Vienna Guidelines: UN Economic and Social Council Guidelines for Action on Children in the Criminal Justice System, 1997

More recently, we have the Vienna Guidelines: the UN Economic and Social Council Guidelines for Action on Children in the Criminal Justice System, promulgated in 1997. Guideline 10 refers to the interdependence and indivisibility of the rights of the child, as set out in the UN Convention n the Rights of the Child. Guideline 11 exhorts the establishment of a child-oriented juvenile justice system that fully respects their age, stage of development and right to participate meaningfully in, and contribute to society.

Guideline 15 encourages diversion or other alternatives to classical criminal justice systems. This might involve mediation and restorative justice, and should involve the child's family. Guideline 41 states that, "One of the obvious tenets in juvenile delinquency prevention and juvenile justice is that long-term change is brought about not only when symptoms are treated but also when root causes are addressed."

Guideline 42 says that "[t]o prevent further over-reliance on criminal justice measures to deal with children's behaviour, efforts should be made to establish and apply programmes aimed at strengthening social assistance, which would allow for the diversion of children from the justice system, as appropriate, as well as improving the application of non-custodial measures and reintegration programmes."

So we have lots of guidelines, but a common philosophy running through them. How is our system in Scotland seen as measuring up to these standards?

Issues raised by the UN Committee on the Rights of the Child

The Convention on the Rights of the Child is monitored by the United Nations Committee on the Rights of the Child. Its scrutiny of the UK's second report to it, in October 2002, led to the following concluding observations. The Committee expressed concern at the low age of criminal responsibility in Scotland; welcomed the approach to youth offending taken by the children's hearings; welcomed the debate on including 16-18 year-olds within the ambit of the hearings; and expressed concern that children could be tried in adult courts in certain circumstances.

The Committee recommended (amongst other things) that the juvenile justice system should reflect fully the provisions and principles of the Convention, as wells as the other international standards to which I have already referred. In particular, the Committee recommended that: the age of criminal responsibility be raised significantly; no child should be tried as an adult, irrespective of the gravity of his or her offence; the privacy of all children in conflict with the law should be fully protected in line with article 40(2)(b) (vii) of the Convention; and that appropriate resources should be allocated for the children's hearings in Scotland to allow the number of cases dealt with to be substantially increased and to allow young offenders of 16 to 18 years of age to be included in the children's hearings system.

What has happened since then in Scotland?

I want to look at a few general issues: the public debate; new laws – Antisocial Behaviour; the Review of our systems; and lots of plans and strategies. And then I will see how far we have taken the concerns of the UN Committee on the Rights of the Child; the extent to which we have righted what they thought was wrong, and retained and even built upon what they thought was right.

The Public Debate

Youth justice is a hot topic in Scotland, as elsewhere, and has become highly charged in the political arena, fed by persistent and extensive media coverage. We are bombarded with images of youths running riot, breaking car windows and stealing the contents; although I have to say, some of these images are the same ones, repeated again and again, because they are so graphic; the same young people performing the same actions. But it never

fails to make an impact. And when crime or threatening behaviour happens, of course we sympathise with the victims, and it would be arrogant and unfeeling to argue that their painful experience did not count for anything because statistics tell us that youth crime is not actually increasing. Of course, it is always unacceptable and our response to the victims concerned should be appropriate. What we should not do is extrapolate from that to a nationwide panic and react on the basis that youth in general are running out of control.

A 2005 survey of Public Attitudes Towards Young People and Youth Crime in Scotland noted that:

> "Despite evidence to the contrary from police and recorded crime statistics, there was a widespread view that the amount of crime committed by young people is higher than a decade ago."

New Laws: Antisocial Behaviour

The Antisocial Behaviour (Scotland) Act 2004 introduced, amongst other things, ASBOs and dispersal orders. Their effectiveness remains to be proved. ASBOs were described to me just last week by a young person as the "new fashion" in his area. Dispersal orders are, I think, acknowledged as at best a short term solution to antisocial behaviour by groups.

Agencies in Scotland welcomed the softening of the ASB law in Scotland as compared with England and Wales; the rejection of custody for breaches by those under 16, and the links with the children's hearings system. But there remain concerns that the legislation could lead to criminalisation of young people for behaviour that is not in itself criminal. It strikes me as odd that the powers that be are resistant to introduction of a law designed to give children the same rights to protection from criminal assault as adults by banning physical punishment, on the basis that this might criminalise ordinary parents; while at the same time approving a law that might criminalise ordinary children for non-criminal behaviour.

Review of Our Systems

The review of the children's hearing system undertaken in 2004-05 sought to ask fundamental questions about how the system, devised in the 1960s, was operating in the modern world. When the first stage of the review was announced, there was a lot of concern amongst child welfare workers that Scotland might move away from the welfare based approach that had been lauded by the UN Committee and that seemed so consistent with the trends

in international standards. We were assured that the system would not be radically dismantled; that the system would continue to address offending behaviour as an indicator of a need for care as well as control. And indeed, that basic principle has remained, despite being "nibbled" around the edges by suggestions about making some hearings more formal in nature, and allowing the attendance of victims and community representatives.

Now there may well be a case for facilitating more contact between the young offender and the victim or community representatives in a restorative justice context, but I would argue that introducing them to the hearing itself would radically change the dynamics of the event away from a focus on the needs of the child, which must be addressed if the offending behaviour is to stop.

The review, of course, went much wider than this focus on process, looking at issues of assessment and co-ordinated action; trying to reduce bureaucracy to free up workers to work directly with the child; all of which has to be welcomed. Indeed, the whole broad "vision" the Executive has set out for children is very positive. Who could argue with an intention to help them become: confident individuals; effective contributors; successful learners; and responsible citizens?

The Executive has very usefully set out aspirations against which more particular proposals can be measured.

Lots of Plans and Strategies

Since 2002, when the UN Committee commented favourably on Scotland's approach to youth justice (apart from the low age of criminal responsibility), the heated public debate has been accompanied by lots of plans and strategies. The year 2002 itself saw the promulgation by the Executive of a 10 point Action Plan to prevent youth offending and stop it re-occurring. The Foreword to the Plan acknowledged the need to tackle, not just the crime itself, but its underlying causes. The plan had 5 aims:

1. Increase public confidence in the youth justice system;
2. Give victims a greater stake;
3. Ease the transition between youth justice and adult court systems;
4. Provide all young people with the opportunity to fulfil their potential; and
5. Promote early intervention with young children as a preventive measure.

The plan had 10 components, with a particular focus on tackling persistent young offenders and an aim of reducing the number of these by 10% by 2006. The 10 components were:

1. Fast Track Pilot for children's hearings;
2. Youth court pilot for persistent offenders aged 16 and 17 and some 15-year-olds;
3. Antisocial Behaviour measures;
4. Fund the police in the context of the "Safer Scotland" initiative;
5. Community based projects;
6. Nationwide police warning system;
7. Reconfigure secure accommodation;
8. National Standards for Youth Justice;
9. Promote parental responsibility; and
10. Increase speed of referral to courts.

It would be tedious to work through all of these, but a helpful Progress Report dated March 2006 is available on the Scottish Executive website. Briefly, it says:

	Action Point	**Progress**	**Comment**
1	Fast Track Pilot for children's hearings	Pilot completed and fast track resources to be given to all local authorities	Popular and successful in some ways, but some say that is because it is well resourced. Reduced offending, but not as successful as comparison areas. Suggestion that too much focus on quick assessment and procedure at expense of intervention.
2	Youth court pilot for 16-17 yr old persistent offenders (+ some aged 15)	Pilots conducted and one evaluated. Further action under consideration	Ambivalent impact on crime. Too early to say?

3	ASB measures	ASB Act 2004	
4	Fund police re "Safer Scotland"	Various good practice initiatives	
5	Community based projects	Pilot projects underway and good practice disseminated	
6	Nationwide police warning system	Guidance issued June 04; mechanisms in place by April 06	
7	Reconfigure secure accommodation	Some new facilities with more planned	
8	National Standards for Youth Justice	Published Dec 02	
9	Promote parental responsibility	Significant investment through Youth Crime Prevention Fund. Parenting Orders in ASB Act.	
10	Increase speed of referral to court	Criminal Proceedings Bill for summary justice reform	

As with all things, there have been some successes and some failures. The most obvious failure was that, despite all of this, persistent offending did not decrease.

With both the fast track children's hearings and the Youth Courts, success seems to be in terms of satisfaction with the processes rather than impact on offending behaviour. And this was despite the fact that both were supported by additional resources. Which leads naturally to the question – is this the most effective approach?

Youth Justice Improvement Group (2006)
More recent still is the Report of the Youth Justice Improvement Group, and the Executive's response to it, just last month. The Group was set up by Ministers in November 2005, "to develop objectives for and lead on

improvements in youth justice for 2006-08." It is good to see that the Group's report, and the Executive's response, start from a recognition that most young people behave well.

It is also good to see that the focus is not just on tackling young offenders through process, but on supporting good parenting, providing young people with "positive things to do" and promoting early intervention. At the same time, there is the difficult problem of finding some effective way of addressing the behaviour of young people who are: beyond early intervention; for whom parenting is a lost cause; and who seem resistant to the normal run of acceptable "things to do" for young people.

The Executive's response to this most difficult of problems, caused by the "persistent young offenders" is to try to reduce bureaucracy and focus more on active intervention. If they will not engage in services or activities designed to help them to change, they will be *compelled* to change through "transitional court orders." One of the targets identified in the Executive's response is:

> "By July 2007, the Scottish Executive will develop mechanisms to secure engagement from resistant young people who need to change their behaviour, including the option of bringing forward further legislation if necessary." [p.12]

At the same time, both this document and many others are full of the language of plans, strategies, audits…and they seem to be designed to keep us busy, to divert us from the fact that, basically, we don't know what to do with these young people. We talk a lot about "what works", and different people will advocate different things, but for this particular group, unless someone can persuade me to the contrary, it does not seem as if we have yet found anything that really works across the board. And maybe that is an unrealistic objective.

Although, in saying that, I am aware that some feel that when they have found something that does actually appear to be effective, the funding can be pulled if it attracts attention as an apparently "soft" option. For example, while conceding that I know little of the detail, I am aware that the extinction of the Airborne Initiative is still an open wound.

When we are faced with a difficult situation and we get exasperated, we can be tempted just to "lose it" and revert to brute authority. It's human nature.

We have probably all done it at one time or another with our own children; the "do it because I am telling you to do it" approach. And I feel we are doing the same with these persistent young offenders. We are saying, "I'm warning you …", but we are not too confident about what we are warning them of. The temptation is to get more punitive on the basis that this, at least, will work. But where is that all going to end?

I have often been struck by the lessons to be learned from Northern Ireland, where an extremely punitive response was dished out by the paramilitaries to young people disrupting their communities. I am told that the punishment for joy-riding was "knee-capping" (shooting through the knees) but this gave way to a later fashion of shooting through the joined hands (known, I was told, as a "Padre Pio" – a reference to a religious figure who bore the "stigmata"). However, not even this kind of punishment stopped them. I heard that some young people would come out of hospital after one shooting and immediately start joy-riding again, even deliberately provoking the paramilitaries. I know of no research on this (although I often suggest that there should be some), so my evidence is anecdotal, but confirmed by a few sources. And the question this raises for me is – If this doesn't stop them, what will?

There are a few young people who seem to have no fear and on whom our escalation of "civilised" punishments is unlikely to make any impact, when even such barbarous practices as the shootings fail to do so. If we continue with an ever more punitive approach, we risk alienating non-offending young people, as well as those lower level offenders who would respond to less brutal approaches, while still failing to stop those persistent offenders who, for whatever reason, display no fear.

Something that has struck me recently is that many young people *want* to engage in activities that have an element of risk; that is what makes them fun and stimulating. The Fire and Rescue Services have had some success in combating youth violence and aggression against their crews by engaging them in fire-fighting activities; gathering young people and, after a short health and safety session, getting them to put on the "gear" and put out fires in a controlled "practice" environment where risk is managed. What this conveys to me is that many young people want to engage in risky activities. In our defensive and litigious society, we are afraid to provide stimulating, risky, activities for young people in case they get hurt and we, adults, get the blame or get sued. But if we don't provide stimulating activities, that usually involve an element of risk, young people will make up some for themselves; and these might be activities that the rest of us do not like.

Of course, reasonable precautions must be taken to assess risk and mitigate it, and screen out activities where the risk is too high, but I would argue that, at the moment, we are too cautious, too risk averse.

SCCYP Consultation

Last year, my office consulted children and young people across Scotland on what they wanted me to work towards over a two year period. 16,000 votes were received, the top 3 issues being: things to do (26%); bullying (25%); and safer streets (24%).

The emphasis on "things to do" coheres with what a lot of people – including the Scottish Executive – suggest as a response to at least the lower levels of antisocial behaviour. This is an interesting example of how the young people's agenda and that of the broader community can come together.

The Age of Criminal Responsibility

One very particular area where Scotland has fallen foul of international standards is the age of criminal responsibility. As we have seen the low age of 8 in Scotland was the subject of criticism by the UN Committee on the Rights of the Child, who recommended that it be increased. The Scottish response has always been to say, "It's not as bad as it seems. We might be *able* to prosecute children as young as 8 in adult courts, but we don't *actually* do so, because we have the children's hearing system." Statistics are produced to back up the assertion that by far the greatest number of very young offenders are dealt with through the children's hearings. Yet, we still have seemed determined to hang on to the possibility of prosecution of 8-year-olds in a system designed for adults.

In 2001, this approach was the subject of review by the Scottish Law Commission, which published a Discussion Paper on the subject. Its Report, based on those discussions, was published in January 2002, and recommended that the concept be changed from that of an age of criminal responsibility to an age for prosecution. Children under 12 should never be prosecuted, and there should continue to be restrictions on prosecution for those aged 12-16. The proposals were an improvement on the current situation, even if they arguably did not go far enough in the direction favoured by the international community.

The 2002 Scottish Executive Action Plan to Reduce Youth Crime noted [p. 10]:

> "Where a child or young person over the age of 8 commits a serious crime or persists in offending, the Lord Advocate or Procurator Fiscal is still able to prosecute the matter in the criminal court, if it in the public interest to do so, although urgent consideration is being given to the Scottish Law Commission's recommendations for change in this area."

But that consideration seems to have resulted in a negative decision. I asked recently about progress on this matter and just last week received a reply from the Minister, stating:

> "In 2002, the Scottish Law Commission submitted a report which recommended that the age of criminal responsibility should be raised to twelve years old. Ministers decided against implementing this recommendation, having regard to then proposed improvements in the operation of the youth justice system. You will of course be aware of the reforms now being implemented as a result of the work of the youth justice improvement group. I believe that these reforms will ensure that young people get the appropriate treatment when needed. …"

So it seems that there is to be no change there. What we are saying is that, as a nation, we see merit in retaining the possibility – however remote – of an 8-year-old being tried in an adult court for a serious crime. Now, if an 8-year-old kills someone, that has to be a matter of enormous concern, but it seems hardly civilised to envisage that it would ever be appropriate or just to expose a child of such tender years to a full blown prosecution.

Summing Up

So, let me attempt to sum up. Since the UN Committee last considered the UK (and Scotland's) position in 2002, we have had: perception of an increase in youth crime (not matched by evidence); a temptation to erode the good bits of our system, and a failure to address the bad bits. In terms of *principle*, we run the risk of eroding the welfare base of our juvenile justice system by our failure to address the age of criminal responsibility and the status of 16 and 17 year olds. In terms of *effectiveness*, we face the danger of alienating or criminalising low level offenders while failing to make an impact on persistent offenders. We are faced with the danger of escalating punitive approaches that have been shown *not* to work, while holding back from embracing approaches to persistent offending that *might* work, but might not be "politically correct" in both a broad and narrow sense, due to a fear of them being seen to be too "soft" an option.

So we are immersing ourselves in plans and strategies and audits. And, even though we recognise the need to reduce bureaucracy and concentrate more on intervention through personal relationships, we keep on adding to the plans, strategies and audits. While, deep down, we know that, while we need some policies, policies do not make an impact – people do. Perhaps we find it too difficult to grasp that there might just be a win/ win situation here. That, if we take seriously the insight that there is a community of interest between children, and young people – even young offenders – and the society in which they live, we might realise that some of our approaches risk falling into the category of "cutting off your nose to spite your face."

So what is the answer?
Public discourse already distinguishes between the low-level, tiring, annoying, but not really sinister "youth behaviour", and the more hard-line "persistent" offending perpetrated by a few. I think we can tackle the low level issue, much of it focused on "hanging around the street" and petty vandalism, by addressing it though the young people's agendas of more "things to do" and safer streets. Perhaps we should encourage them off the streets, and help them feel safe enough so that they do not feel a need to go around in groups or carry weapons. This might help break the vicious circle.

The more persistent, higher level offending has not responded to what we have tried so far. I don't have the answer. We have to keep searching, and we must not be afraid of looking at options that have been scorned in the past. People often use the term "political correctness" to denigrate something that seems too liberal; but in this context, I think "political correctness" is more associated with being too hard – or seeming to be so. At a very human level, I can empathise with the argument that public confidence in the system is not encouraged by projects that might seem to reward young people for bad behaviour – or at least to be capable of being presented in such a way. But public confidence will surely ultimately be encouraged even more by finding an approach that actually works. And that takes time. It involves the "postponement of gratification" that we like to hold out as a characteristic of responsible, adult behaviour.

Conclusion

Let us not sacrifice our best principles for a "politically correct" approach that does not work. Let us concentrate on resourcing approaches based on our *best* principles, and being bold and brave enough to tackle the hard issues.

What is the state of youth justice in Scotland today? There are some good developments, such as restorative justice models but, more generally, the *"good"* stuff in our system is hanging on in, but perennially under threat, while the *bad* stuff in our system is not being effectively addressed. It is in all of our interests to make sure that it is.

The Present State of Youth Justice in England and Wales

By Rob Allen, Director International Centre for Prison Studies and member of Youth Justice Board 1998-2005

It is something of a paradox that the Cabinet minister currently in charge of the youth justice system in England and Wales is elected to parliament by constituents whose children are not subject to that system- unless of course they commit offences south of the border. It is one of the many peculiarities which characterise a way of responding to youth crime which has been subject to a period of almost continual change since New Labour came to power in 1997.

Although reforming youth justice has been a top priority, a number of recent reports have cast doubt on whether the current system for dealing with young offenders in England and Wales is fit for purpose. In 2005 Council of Europe Human Rights Commissioner Alvaro Gil Robles concluded that juvenile trouble-makers are too rapidly drawn into the criminal justice system and young offenders too readily placed in detention. He argued that greater attention to alternative forms of supervision and targeted early intervention would more effectively straighten the errant, rehabilitate the convicted and consequently reduce youth crime. Earlier in 2006, Lord Carlisle's Inquiry into the treatment of children in penal custody recommended severely restricting physical intervention, stopping the strip searching of children and an end to prison segregation. Most recently, research on the use of ASBOs conducted for the Youth Justice Board found high levels of breach with prohibitions experienced by many young people as unreasonable, and "often met with ridicule or incomprehension."

The aim of this paper is to shed light on some of the peculiarities of the system, first by setting out some of the main characteristics of our approach to young people in conflict with the law in England and Wales; and second to offer a critique of that approach and some suggestions for reform. The paper draws heavily on a recent report "From Punishment to problem solving" which was published in September 2006, not long after I stepped down as a member of the Youth Justice Board (YJB).

It is worth saying at the outset that like criminal justice as a whole, the way society responds to young offenders takes place in an increasingly unremitting glare of media attention. While there is no denying legitimate press and public interest in measures that are taken to tackle delinquency on its behalf, the interplay between the media and politics can and does have a distorting effect on public perceptions and hence on policy making. The Lord Chief Justice referred to this in the annual report of the Sentencing Guidelines Council which he chairs arguing that the inch high headline "Muggers must not be sent to prison says new Lord Chief Justice" in no way reflected the gist of the draft guideline on robbery. This is but one example of the punitive populism which drives the development of policy and practice.

The recent history of youth justice really begins with the Audit Commission report Misspent Youth, published in November 1996, which painted a devastating picture of long delays in processing and failures to take preventive action with children at risk or to respond effectively to persistent offenders. With youth justice reform a high priority for the new government, the Crime and Disorder Act 1998 rapidly created new infrastructure at the centre in the form of the YJB; and locally with multi disciplinary Youth offending teams (YOTs) to meet the new statutory duty of preventing offending. The Government did not take the advice of Chief Inspector of Prisons Sir David Ramsbotham to remove prison service responsibility for those under 18 but instead gave the YJB a role in commissioning and purchasing places in a newly configured secure estate in order to drive up standards of care. The 156 YOTs comprise about 10,000 staff plus an equal number of volunteers, mostly members of youth offer panels. There are 36 closed institutions with about 600 staff while the YJB employs about 210 staff.

Further change arrived in Youth Justice and Evidence Act 1999 which introduced a radical new method for involving members of the public in dealing with those in court for the first time – the referral order and youth offender panels. The Anti Social Behaviour Act 2003 built on earlier provisions for responding to young people whose conduct fell short of criminal offending but causes problems in local communities. A further youth justice bill is expected in 2007.

The reformed youth justice system makes about 185,000 disposals a year, 42% of which are pre court reprimands or final warnings, 54% discharges fines or community orders and 4% custodial orders. Although the age of criminal responsibility is 10, almost three quarters of the young people involved are 15, 16 or 17 years old. The numbers sentenced to custody rose

sharply at the end of the 1990s and have since levelled off. The average custodial population of under 18s is just under 3,000 about 500 more than it was in 1997.

When the Audit Commission looked at the reformed system in 2004 it found many improvements. But there is a growing interest among practitioners and academics in pushing for a more fundamental shift in the way we respond to young people who offend- away from emphasis on cops courts and corrections and towards tackling the roots of delinquency.

Such an approach comprises four key elements –first , greater prevention, with an emphasis on addressing the educational and mental health difficulties underlying much offending behaviour; second placing limitations on the way we criminalise young people and introducing more appropriate forms of prosecution and courts; third, a wider range of community-based and residential placements for the most challenging young people combined with a phasing out of prison custody; and finally new organisational arrangements within government, with the Children's Department in the Department for Education and Skills taking over lead responsibility from the Home Office.

Prevention

With the UK at the bottom of the league table of child well-being in the EU, mainstream services to support children and their families require much greater investment. There is a particular need to tackle exclusion and truancy, which are associated with offending, and to address the growing incidence of mental health problems. On the education side, we need to expand restorative justice programmes in schools and ensure a proper range of provision is available for young people with special educational needs. As for mental health we need a much expanded mental health sector so that needs can be identified early and suitable help provided to young people and their families.

Criminalisation

The age of criminal responsibility in England and Wales is lower than most comparable countries and since 1997 there has been a steady increase in the proportion of young offenders prosecuted rather than diverted from prosecution. Indeed the 22% rise in young people under 18 sentenced by the courts since 1997 is almost twice the increase seen across all age groups in that period.

There is a strong case for raising the age of criminal responsibility to 14 with civil child care proceedings used for children below that age who need compulsory measures of care. Diversion from prosecution should be more positively encouraged, with much more widespread use of initiatives such as restorative conferencing which can bring home to young offenders the consequences of their actions and give victims a say in what happens.

There are strong arguments too for specialist prosecutors to be introduced with the aim of actively diverting children and identifying cases where local authorities should investigate the need for care proceedings. Initial decisions about young people aged 14 to 18 charged with criminal offences should normally be brought before a Young People's Prosecutor (YPP). As well as having regard to the evidence and the public interest, the YPP would be required to consider the interests of the young person and actively look at ways of diverting cases, for example through conditional diversion programmes. The YPP would have the power to make an order requiring a young person to appear before a Youth Offender Panel and undertake any resulting contract for up to a year. The prosecutor would also have the power to require the local authority to investigate the need for civil care proceedings where the young person does not appear to be receiving proper care and supervision.

Where the YPP considers there is no alternative to prosecution for 14 to 18-year-olds, their case should be brought before a specially constituted youth court. Where there is a plea of guilty, the court should consider whether to order a family group conference in every case prior to sentencing. Based on the Northern Ireland model of conferencing, the aim of this would be to encourage the young offender to assume responsibility for their wrongdoing, make an apology to the victim and do what they can to put things right.

Where such a conference is held, the youth court should be required to take into account any agreements made when considering sentence. The court should also have the power to transfer the case to a civil family court for consideration.

All cases involving young defendants who are presently committed to the Crown Court for trial or for sentence should, in future, be put before the youth court consisting, as appropriate, of a High Court Judge, Circuit Judge or Recorder sitting with at least two experienced magistrates. The only possible exception should be those cases in which the young defendant is charged jointly with an adult and it is considered necessary, in the interests of justice, for them to be tried together. The youth court so constituted should

be entitled, save where it considers that public interest demands otherwise, to hear such cases in private, as in the youth court exercising its present jurisdiction.

Serious and persistent offenders

The use of penal custody in England and Wales has remained high in international terms, despite attempts to introduce alternatives at the remand and sentencing stage. Although the Youth Justice Board has aimed to bring coherence to the range of secure establishments, there is still a jumble of responsibilities across government departments. Prison establishments, in particular, are ill-equipped to meet the complex needs of young offenders. There is a need therefore to find urgent ways of reducing the numbers in custody, for example by making local authorities financially responsible wholly or in part.

There are a number of ways in which the sentencing framework could be amended better to meet the particular needs of cases involving young offenders. For example, a juvenile equivalent of the custody minus or other form of suspended sentence should be available in the youth court. A definition of custody as a last resort needs to be worked out by the Sentencing Guidelines Council. It should be based on limiting custodial sentences to offenders convicted of serious violent offences where there is a significant risk of further harm, and to those convicted of serious non-violent offences, who are highly persistent offenders and who have repeatedly shown themselves unable or unwilling to respond to community-based sentences.

More fundamentally still, a new form of residential sentence could be introduced to run alongside and potentially replace the Detention and Training Order. Courts would be able to make a residential training order, a new indeterminate order of up to two years or in the case of grave crimes, five years. A residential training order should only be made in cases where the offence is so serious that the young person should be removed from home and the young person has failed to comply with community-based orders. The residential training order should generally be served in open conditions in an appropriate placement designated by the local authority and accredited by the Department for Education and Skills (DfES).Such establishments might include residential schools, adolescent mental health units, children's homes or foster care placements. In addition, the youth court should be able to rule that a residential training order or part of it should be served in a closed establishment.

The Youth Justice Board needs to be given more of a leadership role in respect of the way secure establishments are provided and run, phasing out prison custody for 15 and 16-year olds and transforming facilities for 17-year-olds. A fundamental review of closed and open residential options available for young offenders should be carried out, with consideration being given to creating a new youth residential service to coordinate them.

Governance

The key principle for responding to children in conflict with the law should be to assist them in growing up into well-adjusted and law-abiding adults. This principle resonates much more strongly with the essential outcomes for children pursued by the Department for Education and Skills – being healthy, staying safe, enjoying and achieving, making a contribution and achieving economic well-being – than it does with the overarching aim of the Home Office, which is public protection. While there is a case for retaining the Youth Justice Board as a specialist body overseeing youth justice arrangements, it should be sponsored by the DfES.

Conclusion

The prospects for youth justice reform are uncertain although with a new Prime Minister due in 2007and a different tone being struck by the Conservative leadership the context is perhaps more promising than for some time.

From punishment to problem solving – A new approach to children in trouble by Rob Allen is published by the Centre for Crime and Justice Studies and available at:
http://www.kcl.ac.uk/depsta/rel/ccjs/2006-punishment-to-problem-solving.pdf

The Scottish Centre for Crime and Justice Research

By Michele Burman, co-Director SCCJR

The Scottish Centre for Crime and Justice Research (SCCJR) was formally launched on 4th June 2007, representing a significant moment in the development of criminological and criminal justice research in Scotland. The launch took place at Glasgow University and was attended by over 120 academics, policy makers, and criminal justice practitioners.

SCCJR is a research consortium forged from a unique partnership between Glasgow, Edinburgh, Stirling and Glasgow Caledonian Universities, in alliance with Aberdeen, Dundee, Strathclyde and St Andrews Universities. SCCJR conducts and disseminates research, and offers training, consultancy and knowledge transfer in relation to crime and criminal justice. It has received core funding of £2.6 million over four years from the Scottish Funding Council and the Scottish Executive Justice Department, with considerable additional investment from all of the partner universities to support staffing and infrastructure.

SCCJR has had a long genesis. Its formal establishment represents the culmination of several years work by a number of people, starting in late 2002 when Professor Sir Anthony Bottoms was commissioned by the Scottish Executive Justice Department, in collaboration with the Scottish Funding Council, to provide an appraisal of the nature, quality and capacity of the criminal justice research capability in Scotland and to consider the case for a university-based Scottish criminal justice research centre. Professor Bottoms review was, happily, in favour of such a centre, and thus began a lengthy and lively proposal process, and a very productive period of discussion and negotiation involving academic criminologists in several Scottish universities, the university senior officers and the potential funders. Professor Hans-Juergen Kerner of Tuebingen University in Germany brought an astute international perspective to the assessment process, and the collaborative proposal submitted by the partner institutions was accepted in 2005. We are therefore most grateful to both Tony Bottoms and to Hans-Juergen Kerner, as well as to the other (unknown) reviewers for their sustained efforts in helping us bring this initiative, finally, to fruition.

As we all know, Scotland is a small country, yet it has distinctive criminal

justice, education and social work systems which result in distinctive rules, practices and procedures. Particular arrangements, alliances and objectives characterise Scottish criminal justice. We have unique systems of prosecution, criminal procedure, sentencing, prison and parole. We still remain committed to an ethos that is expressed in the continuing commitment to social work with offenders and the welfarism of our Children's Hearing System, although there are increasing signs of neo-correctionalist interventions and the introduction of unsustainable short-term policies. Taken together, Scotland's unique institutional arrangements and particular political and legislative structures render it academically and politically interesting.

In Scotland's changing political landscape, high quality research on crime and criminal justice has possibly never been more important. Devolution saw the establishment of a Justice Department, and two Justice Committees. The Scottish Nationalist Party have recently become Scotland's first minority administration, and their manifesto outlines plans for increased community safety, 'tougher' community penalties, and the possibility of a sentencing council for Scotland. In recent years, the restructuring of the funding and delivery of criminal justice has placed increased demands on Scottish policy-makers, highlighting the need for sensible, evidence-informed policies. Post-Devolution, there has been the assimilation of human rights into Scots law, the introduction of efficiency measures in the governance of crime and the delivery of criminal justice, the inception of the new Community Justice Authorities, and a raft of legislative changes. These include the restructuring of youth justice interventions, the introduction of restriction of liberty orders, anti-social behaviour orders, drug treatment and testing orders, sex offender orders and measures to deal with racial harassment. There have been developments such as local authority community safety planning initiatives, specialist courts (drug courts, youth courts and domestic abuse courts), and the introduction of the national Risk Management Authority (among other initiatives aimed at increasing the protection of the public from serious offenders). Crime and community safety concerns have increasingly been integrated within other areas of public policy and intervention. Scotland has invested heavily in area regeneration, and crime prevention and community safety are prioritised, along with housing and jobs, in all new initiatives. At the same time, like many other jurisdictions, we are seeing increasingly heavy expectations placed on finding criminal justice solutions to complex social and economic problems. There is not only a need for a better understanding of the forces that create a safer, more just society. With major changes in our Government, the time is right to take stock and reflect on what criminal justice agencies can realistically achieve in reducing crime and increasing public safety.

In the face of all of these far-reaching developments, the scope of the crime and criminal justice problems and research puzzles thrown up are almost as great in a small jurisdiction like Scotland as they are in a larger one, but until recently, the number of researchers available to research them in Scotland has been far smaller than in a typical larger jurisdiction. Academic researchers of crime and criminal justice were scattered across several universities, often working alone. A strong research community is needed to ensure the provision of a strong research evidence base. SCCJR allows for the first time in Scotland, a 'critical mass' of criminologists working collectively across institutions to widen the research agenda, engage in international research endeavours, and take forward a programme of high quality, relevant research. Any academic research centre has to ensure it engages in wider theoretical debates, as well as international comparative work. As well as addressing Scottish priorities we need to look outwards to appropriate comparative analyses, as is essential for the optimum development of criminal justice research and policy in a small jurisdiction such as ours.

The main aim of SCCJR is to:

- expand the Scottish research infrastructure in crime and criminal justice by integrating existing research capabilities and creating new expertise;
- carry out integrated programmes of research which improve the evidence base of crime reduction and criminal justice policies;
- make informed conceptual, methodological, and analytical contributions to theoretical thinking and policy development, both nationally and internationally.

Exciting opportunities and challenges have been created by the need to develop theoretically informed and methodologically sound research, which will stimulate and inform understandings of crime and its governance in Scotland's multi-level, multi-agency system of government. Within SCCJR, we are trying to create the conditions whereby an informed and sustained debate about crime and criminal justice can take place. SCCJR draws together individual researchers from the participating institutions to provide a point of reference locally and internationally for criminological research and scholarship. We are developing an active multi-disciplinary academic environment for research and postgraduate teaching, with a series of seminars and workshops, and offer a range of opportunities for postgraduate and early career researchers. In the near future, we will also be introducing secondment opportunities and visiting fellowships for national and international visitors

Core funding has allowed Scottish universities to invest in additional researchers, and offer opportunities for new scholars and for postgraduate study. SCCJR has been very fortunate in attracting talented staff with diverse expertise and skills from a range of social science disciplines. Criminology is distinguished by its inter-disciplinarity – and we have a very good example of this here – with researchers drawn from across the social science base. Those working within SCCJR have international reputations in the broad fields of criminology and criminal justice policy research, especially in the areas of crime prevention, community safety, victims, gender and crime, violence, restorative justice, youth justice, surveillance, the governance of crime, sentencing, prisons, the politics of crime control, and the supervision of offenders. We also have strengths in social theory, criminal law and process, and criminological theory, and staff combine commitments to quantitative and qualitative methods in empirical research.

The work of SCCJR is realised through six thematic Networks, each involving researchers from a number of the participating universities. Five of the networks focus on substantive research, whereas the fifth is concerned with expanding capacity in research expertise, an important component of our work. Together, the Networks provide a framework for the core research programme and a structure for developing communities of enquiry involving researchers and other stakeholders. The Network themes have been adopted as broad contexts in which national policy requirements may be addressed, but which also link with wider theoretical, political and methodological concerns, debates and developments in crime and criminal justice research.

The Networks are:

- Structures and Processes in Criminal Justice Systems
- Evaluating Interventions
- Crime and Communities
- Violence, Risk and Public Health
- CJ-Quest (**Qu**estions, **E**vidence, **S**tatistics, and **T**rends)
- Capacity Building

Each Network is engaged in network building; research programme development; dissemination and knowledge transfer; and development of technical and research expertise. The Networks are each headed up by a Network leader and a senior research fellow who together take the lead in planning research and undertaking projects, liaising with Network members, and integrating capacity building within the work of the Network.

Each Research Network is assisted by an Advisory Committee of academics, and criminal justice practitioners from the public and voluntary sectors, as well as those affected by criminal justice policies. SCCJR is building on good professional links with a range of academics internationally, with policy makers working across a range of government departments and with practitioners working in both statutory and voluntary criminal justice agencies in Scotland, and internationally.

Structures & Processes in Criminal Justice Systems

Work within this Network is concerned with both formal and informal justice processes and practices; with modes of governance and regulation of these processes and practices; with their impact on individuals and communities; and with media representations of and public attitudes towards them. Recent and current research projects include a study of risk assessment and management in relation to children and young people (for the Risk Management Authority); a systematic literature review concerning the cultures of criminal justice organisations and their responses to change; development of a code of practice for the provision of therapeutic services for adult witnesses (for the Scottish Executive Justice Department), and; an assessment of the impact of the gender equality duty on criminal justice agencies (for the Equal Opportunities Commission). Work in this Network incorporates a strong comparative element, an example of this being ongoing work in comparative youth justice undertaken with colleagues from over 30 European states and funded by the European Commission.

This Network is also involved in disseminating findings from an ESRC funded study of sentencing and social enquiry (with colleagues from the Centre for Sentencing Research); in an assessment of the impact of the Routes out of Prison Project (with colleagues in the Criminal Justice Social Work Development Centre at Edinburgh University).

Research proposals are being developed for a study of oral histories of probation in Scotland, of compliance with community penalties, on the regulation of prisons and on the operation and impact of the new Community Justice Authorities.

Evaluating Interventions

This Network is concerned with the appraisal and evaluation of new initiatives, changes and reforms introduced in criminal justice policies, practices and procedures with a view to how best policy and practice might be identified

and developed. This kind of research, specifically empirical work that has included the experiences of those drawn into the criminal justice process (the experiences of offenders, victims and witnesses), has developed a high international profile, and research in this Network draws on relevant developments in other jurisdictions.

Those interested in evaluating interventions and innovations in criminal justice, particularly critical analytical research, face increased competition for funding in a vital area of criminal justice research. This Network aims to encourage high quality and mutually beneficial networking amongst those interested in evaluating interventions in criminal justice, by facilitating research-related activities, forging new research partnerships and possibilities for knowledge transfer, and encouraging dissemination of research and practice.

A range of research and related activities are being undertaken in relation to parole, alternatives to imprisonment, problem-solving justice, sentencing, desistance and rehabilitation. A priority research focus is the emergence of the new community justice model in Scotland, and an assessment, within a comparative international framework, of the distinctive ways in which that model seeks to engage with issues of crime control, and the impact of this approach on offending.

Violence, Risk and Public Health

Violence is a deeply emotive topic that excites much political and public attention, in Scotland, as elsewhere. It is a source of media fascination and the subject of fiction. Yet violence is a slippery term, with no standard definition, which can take on several different meanings dependant on the context in which it takes place. Violence, in whatever its variant forms, is widespread. It is experienced in families, in public situations, at work and in people's treatment of themselves. It is both experienced and used by individuals and by organisations. As a complex phenomenon, its understanding requires the examination of both systemic, situational variables and the dynamics of individual behaviour.

Policy interest in violence in Scotland is stimulated by both notorious events and comparative data, and there is a very high demand for research answers to presenting problems. The task of this Network is to meet that demand but in so doing develop the public discourse about violence, and stimulate a more critical interest in the nature of the phenomenon. The Network is particularly interested to collaborate with agencies that work with violent offenders to

undertake research into interventions designed to reduce levels of violent crime. Current research in this Network includes a study of young women's pathways into violent offending (funded by the ESRC); and the development of theoretical frameworks for the analysis of criminal violence

Crime and Communities

This Network is concerned with the complex inter-relationship between crime and offending and the communities within which this takes place. Communities are, in many ways, the central institution for crime prevention. Families, schools, labour markets, retail establishments, and the police must all confront the consequences of community life. Much of the success or failure of these other institutions is affected by the community context in which they operate. Empirical investigation of the relationship between crime and communities focuses largely on the spatial distribution of crime and the role of the community as both victim and perpetrator; the characteristics of communities that may be key explanatory variables in the causes of crime and disorder, and; the role of the community as an agent with responsibility for the management of crime and disorder.

The Network is currently investigating two themes of key international academic and policy interest: community safety and (in)civility. The community safety portfolio is growing rapidly, posing new challenges to those engaged in service delivery. A major research application is currently under preparation for submission for funding to the EU Framework 7 programme.

Anxiety about the nature and scale of incivility in contemporary society appears to dominate political and community agendas. Work in this Network actively seeks to contribute to the theoretical and empirical understanding of incivility and, crucially, to contemplate the meaning and foundations of civility in a range of settings. A key focus is the critical evaluation of the emergence of anti-social behaviour as a growing problem in terms of its scale, impact on, and consequences for residential communities.

CJ- Quest (Criminal Justice Questions, Evidence, Structures, Trends)

This Network aims to improve the quantitative criminological research base in Scotland by expanding expertise and capacity in survey methodology, statistical analysis and complex data modelling. Quantitative criminology is an area in which there is limited expertise, yet high demand for particular forms of quantitative and statistical analysis. A key aim of this Network is to provide technical training in relevant quantitative methodologies, and

encourage the wider utilisation of statistical and modelling techniques in applied research endeavours. Amongst the skills prevalent within SCCJR are survey design (including various methods of sampling and experience of large scale survey development); survey administration and data collection (including hands on experience of conducting surveys as well as fieldwork management); data quality assurance (such as checking, validation and cleaning); data analysis (from simple descriptive and inferential analysis to complex statistical techniques); and publication of data aimed a wide range of audiences (such as public information documents, policy briefings, research reports, peer reviewed journal articles and books and monographs).

One of the key objectives of this Network is to expand the awareness and use of existing Scottish datasets which contain valuable information for studying crime and criminal justice. CJ-Quest hopes to play a role in the design, methodological development and analysis of the Scottish Crime and Victimisation Survey. The Network was recently asked to conduct a review of the questionnaire used for the 2006 Scottish Crime and Victimisation Survey. A simultaneous consultation with policy stakeholders was also undertaken (internally by the Scottish Executive), and it is anticipated that the results of both exercises will be used to inform the development of the new Scottish Crime and Justice Survey 2007, due to launch in the autumn.

We are also keen to advance methodological development in criminological research more generally by exploring different ways of answering particular research questions. Part of our remit is the promotion and facilitation of Scottish datasets as tools for teaching and training purposes, and we are planning a range of training events which will focus on learning analytical techniques.

Capacity Building

Although all Networks incorporate capacity-building through their research and associated activities, this Network is devoted primarily to capacity building in the area of criminal justice research, with a remit for developing and consolidating applied expertise and liaison with stakeholders.

A key initial project of this Network involves the co-ordination of information about postgraduate training, the development of training resources and provisions for postgraduate students in Scotland. This also involves the identification of, and meeting of demand for, conventional academic and professional training in criminology and criminal justice issues in Scotland. SCCJR is also working closely with the Scottish Institute for Policing

Research (SIPR) (see http://www.sipr.ac.uk/) to develop opportunities for cross-fertilisation of both research-related activities, and capacity building.

This Network is developing mechanisms for the introduction of secondment opportunities and visiting fellowships to SCCJR, as well as opportunities for new scholars to engage in the work of SCCJR. A very significant development in this regard has been the recent collaboration of SCCJR with the European Society of Criminology and the Centre for Criminological Research at Sheffield University to support the European Postgraduate and Early Stage Researchers Working Group (http://www.sccjr.ac.uk/project.php?id=8). This Working Group provides the opportunity for members to present their research, and provides information on publishing work, pursuing academic/ research careers, applying for research funding and working collaboratively.

Promoting a 'civic criminology'

Effective knowledge transfer is a key goal of SCCJR, and we are developing a unified strategy across the participating universities for a programme of Network-based activities to ensure that there are opportunities for an effective interface between the research community and practitioners and policy makers.

Encouraging a multi-disciplinary approach to criminal justice research in Scotland is a major objective, and the strategic enhancement of capacity building and information sharing through knowledge transfer is crucial here. Inter-sectoral links are being developed with the criminal justice policy community, most notably the Justice Department, but also with the relevant statutory and voluntary agencies, as well as the private sector who are increasingly involved in the prevention of crime and delivery of criminal justice.

Whilst Professor Paul Wiles of the Home Office argues that criminology in England and Wales has "lost the knack of engaging in public debate," within Scotland we have not yet lost the opportunity to try to foster a more reflexive, civic criminology – explicitly engaging in public dialogues about crime and justice whilst at the same time contributing to critical, theoretical and professional debates in criminology. Within SCCJR, we hope to promote a civic criminology in Scotland by developing research questions in dialogue with affected communities and groups; by using innovative ways to bring criminological research and findings home to the individuals, communities, and institutions that are its focus of study; by engaged scholarship; by better and more effective dissemination of what we already know; by undertaking

innovative and rigorous new research and evaluations; and the promotion of sensible policies. This is ambitious admittedly, but we have the opportunity here.

For more information on the work on SCCJR and all those involved, see http://www.sccjr.ac.uk/.

Critical Friends: The Honest Politician's Need for.....

By Rod Morgan, visiting Professor at the London School of Economics and former chair of the Youth Justice Board

I was honoured by your invitation. And intrigued. Why me? What might I say that might be of any value? Those questions have led me to search within my own career for experiences that might have a bearing on your venture. I assume that you wish me to be frank. I find it difficult to be otherwise and the tasks that I have been engaged in over the past year or so suggest to me that we need more open discussion of important issues.

Let me begin with some observations regarding your stated objectives. During the course of my own career I have had dealings with many university-based research centres. I co-founded one at Bath and Bristol. I have been involved in several collaborative research studies involving two or more universities. During my time in Whitehall during the past six years I have commissioned research conducted by university-based research centres or consortia of researchers based in different universities. And I am currently a trustee of three research centres, and an advisor to another.

Your stated aspirations are in my experience distinctive and in one respect unique. According to your website, four Scottish universities are directly involved and criminologists from a further four Scottish universities are collaborators. Your first aim is to develop the criminological research capacity of Scottish Higher Education Institutions by 'integrating existing capabilities and strengths' and building those capabilities and strengths by providing training and creating opportunities to undertake research. This strikes me as commendably ambitious. I know of no other collaborative criminological research centre in the UK which has set itself such a developmental aim. Moreover, I think both aspirations address a real need. In my judgement there is a distinct absence of both expertise and capacity within the criminology academy in England and Wales which would greatly benefit from an enterprise of the sort on which you are embarking. Let me illustrate the problem.

The Youth Justice Board (YJB), in collaboration with the newly formed Ministry of Justice, has in the last month issued a tender document for a major juvenile cohort study of the impact of sentences, and programmes

and levels of supervision within sentences, on young offenders. The study, planned to extend over several years, will command a budget well in excess of £1 million. The successful research team will have to collect, handle and interpret very large data sets. Yet, despite the fact that we now have approaching 150 universities in the UK most of whom provide undergraduate courses in criminology, and a good many of whom provide postgraduate courses also, despite the fact that we have at least a score of criminology research centres of one sort or another, the number of individuals with the expertise and capacity to undertake such a major project remains desperately small. Those who might consider bidding are currently scurrying to put consortia together according to a short-fuse timetable not of their choosing, scarcely conducive to sensible planning. There is a substantial likelihood that, as a consequence, the contract will be given to a commercial management consultancy, in the same way that other, similar projects have been awarded in recent years. If that happens, it will in my judgement be an opportunity lost. I want to spell out that proposition.

My title this evening – *Critical Friends: The Honest Politician's Need for...* - does of course invoke the title of a seminal book which, in the late 1960s influenced a whole generation of apprentice criminologists – Norval Morris and Gordon Hawkins' *Honest Politician's Guide to Crime Control*. Let me briefly remind you of Morris and Hawkins premise. They were responding to a situation in the USA of tremendous fear of crime combined with criminalisation of more and more behaviours and persons. The response to these concerns was, at one extreme, a view which Morris and Hawkins described as 'ingenious utopiansm' – the proposition that there needed to be multi-million dollar programmes designed to eradicate much social inequity – and at the other extreme 'cynical dystopianism', the view that nothing much could be done to change the parameters giving rise to criminal behaviour not least because in the words of Daniel Moynihan, who should have known better, "Nobody knows a damned thing about crime". Morris and Hawkins argued, on the contrary, that quite a lot was known about crime and that criminologists, if heeded, were capable of setting out an agenda which could avoid the excesses of both the incidence of crime and criminalisation.

Yet 2007 is not 1969, and the UK is not the USA. But I think there is much to be gained, not least for our politicians, in having a vigorously confident and coherent criminological academy which can effectively communicate the core policy messages to which an abundance of evidence, much more evidence than was available when Morris and Hawkins were writing, points. Not least because we also are living at a time when we are criminalising

more and more behaviour and people, when we have a record high custodial population, when the costs of all this are spiralling out of control and when, in my judgement, there is something of a crisis in policy making in Whitehall, if not in Edinburgh.

For more than ten years now I've been writing an essay with David Downes on the Politics of Law and Order for *The Oxford Handbook of Criminology*. Because I anticipate having to update the essay at regular intervals I pay more attention to the twists and turns of Whitehall politicians than is probably healthy. And for the last six years as Chief Inspector of Probation and Chair of the Youth Justice Board for England and Wales I've been rather closer to the Whitehall action. And, somewhat perversely you may think, that experience has made me almost sympathetic to the petard on which our politicians now find themselves hoist and increasingly envious of the distance from Whitehall which policy-makers in Wales and even more so in Scotland enjoy. Frankly, it was not the Home Office which was not 'fit for purpose', when that description was offered by the Home Secretary last year, but the law and order politics of Whitehall.

Our national political parties jockey ever more intensively for the high ground on law and order and public security and frenziedly introduce more and more legislation. Precisely how many bills New Labour has introduced since 1997 depends on what criteria for inclusion one uses, but the number is somewhere between 35 and 59. Further, this frenzy of legislation is accompanied by frequent proposals for structural change, whether it be the amalgamation of police forces, or reorganisation of the prison and probation services, or splitting the Home Office. Unsurprisingly there have been many unintended consequences of these proposals, many unimplemented legislative provisions and major U-turns regarding structural change have become commonplace. And the reason for this chaos? Political pressure that something be seen to be done has resulted in more and more political short-term thinking, the announcement of measures the operational feasibility of which have not been carefully thought through, policymaking on the hoof, often followed by recantation. None of which is destined to encourage either public understanding or confidence, both of which are in my judgement essential but in increasingly short supply. We have a form of criminal justice or penal policy iatrogenesis – that is, the politically informed policy making process is making matters worse not better.

This process involves distinctly unproductive feedback loops with serious consequences for the aims of the Centre we are launching today. For your

stated second and third aims are to develop the capacity of Scottish Higher Education Institutions to carry out high quality research relevant to the needs of the Scottish criminal justice system, build the capacity for crime reduction in Scotland and thereby better establish the international reputation of criminology and criminal justice in Scotland.

I do not know how it is currently in Scotland. But few academic criminologists in England and Wales engage closely in criminal justice policy debates either by discussing matters with civil servants and politicians behind the scenes or by writing newspaper articles or appearing in the media. And, to the extent that they do engage, their observations are overwhelmingly critical.

Our Whitehall politicians are increasingly mistrustful of academic criminologists in particular and of academic research in general. They generally consider them naive, hostile witnesses. 'Ivory Towers' are frequently cited. There are of course a few exceptions to this rule, but they are exceptions and they generally comprise persons, of whom there have been very few, who have crossed the insider/outsider boundary, persons like myself who have for a time become an insider or, more typically, researchers who have left the Home Office Research Unit to become outsiders.

To the extent that research is promoted by Government there is increasingly a preference to engage with what are perceived to be the less critical and more compliant management consultancies. There has also been a retreat into fallacious social science optimism and spurious, allegedly value free methodology. Let me illustrate.

The Home Office's Crime Reduction Programme (1999-2003), the largest criminological research programme ever funded in Britain, placed over-optimistic expectations on the speed and certainty with which new "what works" evidence base could be assembled. For various reasons which I have not time to explore now, the research results were very disappointing. The Home Office response was to try to improve the methodological rigour of the evaluative research commissioned by the Home Office. This involved ensuring (a) that the evaluation designs enabled tight causal attribution to be made (eg, through randomised controlled trials or powerful quasi-experimental designs) and (b) that evaluative reviews restricted themselves to considering only such studies. This inappropriately narrow model of evaluation ignored the cumulative nature of criminological knowledge-building and the way in which middle-level criminological theories are constructed on a foundation of both evaluative and descriptive research. Further, the approach ignored

the degree to which the effectiveness of crime control strategies is dependent on the context in which they are implemented. These contexts tend now to go unexamined and are accepted by default, whilst research commissioned or mounted by the Home Office tends to focus on lower level issues about the tactics needed to implement these policies. In other words, government research tends more and more to be focused on the construction not of strategic but tactical knowledge. It ignores important middle-level issues about the conditions under which people comply with, or ignore, the law. This reductionism has done much to drive a wedge between government research and academic criminology. It has led to a considerable disengagement from policy issues on the part of academics.

This process has been exacerbated by unintended consequences of the 'contract culture' to which policy research is now exposed, coupled with over-anxiety within the Home Office about the publication of any research that has the slightest potential for creating bad news. Researchers contracted to the Home Office are routinely placed under pressure to present results in the most positive way possible. And the Home Office's track record in timely publication of research on criminal policy is very poor indeed.

For all these reasons I think it is important to re-engage academic criminology in criminal policy. This will be a difficult process, requiring considerable 'give and take' on both sides. But I think it will be more easily achieved in Scotland than in England and Wales because I suspect the destructive dynamics which I have set out have gone less far in Scotland than they have in England. And because I know from past forays across the border, everything is so much more intimate in Scotland. Everyone gets to know each other. Or if they don't, there is no excuse. They can.

It is for the same reason that while I was at the YJB I developed a consultative group for youth justice in Wales and got close to Welsh Assembly ministers and their senior advisors. Of course the Welsh Assembly takes the view that it should have constitutional responsibility for both policing and youth justice. I think they will eventually get it. In the meantime my message to them was: 'let us try to do something truly radical in Wales of the sort that would be difficult in England' and I am pleased to report that there are green shoots there.

Can I suggest a process of engagement which may be possible here and which I know from experience can be creatively constructive?

In the 1980s, I was part of a regular, small discussion group comprising both 'insiders' and 'outsiders', that is civil servants engaged in policy formation and academic researchers. The existence of the group, which was established by David Faulkner, then a Deputy Secretary in the Home Office, subsequently became rather widely known because its activities were subsequently written about by Andrew Rutherford. We met about once a month and we took it in turn to do presentations about policy-related issues which we considered important. The group was confidential and mutually educative. We learned to trust each other. The insiders talked about live issues 'in the office', as the saying goes. The outsiders raised matters about which, in their judgement, research had something to say. Mutual respect and confidence was built up. Advance warning was given about matters about to arise.

I doubt, in the current contracting climate, it would be possible to have such a group today and it was said to be unprecedented then. But I think there needs to be much more dialogue about policy-related research issues than in England there typically now is and, given that this Centre has core funding from the Scottish Executive, you would seem to have a great opportunity to discuss related needs and interests. While I was at the YJB I organised regular meetings to which those academics interested in youth justice policy and research were invited so that we could openly discuss collective views about what the research agenda should include and how that research might be funded. I did this because the YJB's capacity to fund research was very limited and I was keen to explore other funding avenues which, between us, we might open up. I also thought dialogue was inherently desirable. There needs to be more discussion of that nature.

I would like to think that we must soon reach a point when senior politicians in Whitehall will realise that it is in their interests to distance themselves from the day to day operational and policy making fray and for us to return to a state in which policy is developed rather more cautiously with the widest possible engagement of both the Academy and senior practitioners. Criminal justice policy-making needs to be less frenetic, better based on both evidence and a collective memory of what has been tried before and succeeded and failed. The Academy needs to be more aware of the constituency and media pressures to which politicians are continuously subject, and politicians need to be reminded that there are no quick fixes or panaceas, and that resort to sound-bite announcements are liable to backfire and bite them in the neck.
I think you stand a better chance of achieving such a restoration here in Scotland than we do in England and I think the SCCJR could make a very significant contribution to that future. I think that more likely here for the

reasons that I have already given: the naturally more intimate and inclusive nature of policy dialogues here.

I know that some members of the Academy in Scotland have referred to the 'detartanisation' of Scottish criminal justice policy, pointing to the adoption of English policy fashions. And I recall that in the past when I have visited Scotland to look at some aspect of Scottish policing or prisons or youth justice policy, I've often been impressed by what I've seen and noted that as was seen off by my Scottish hosts they've often said: "For God's sake don't talk about this down in London." They've not wanted Whitehall to be aware of the degree to which Scotland was pursuing its own, distinctive path, or resisting London fashions.

Today I doubt you need the protection of silence. Scottish devolution should have seen to that. In my experience Scotland has always managed to find its own, sensible way forward and avoid the policy excesses that too often prevail south of the border. I think this Centre could positively assist the preservation of that proud, innovative tradition.

Note

Much of this speech, particularly that part relating to the relationship of the criminological Academy and Government-funded research is based on an essay shortly to be published, namely:

Morgan R. and Hough M (2007) 'The politics of criminological research' in King R.D. and Wincup E. (2nd ed) *Doing Research on Crime and Justice*, Oxford: Oxford University Press.

Morris, N. and Hawkins, G. (1970) *The Honest Politician's Guide to Crime Control* Chicago Ill.. London: University of Chicago Press

Managing Equality in the Criminal Justice Process: preparing forthcoming Gender Equality Duty (April 2007)

By Jenny Johnstone and Vivian Leacock of the Scottish Centre for Crime and Justice Research, University of Glasgow.

Abstract

The Scottish Centre for Crime and Justice Research (SCCJR) was commissioned by the Equal Opportunities Commission (Scotland) to conduct a short study collating and researching data on gender specifically as it applies to victims and offenders (including young offenders) within the criminal justice process. This was designed to inform the generic guidance for Scottish criminal justice agencies in order to ensure compliance with the new Gender Equality Duty (GED) (a statutory Duty stipulated in the Equality Act 2006). Some key issues raised in the study include: how the GED will be implemented in practice and how organisations will develop tools for monitoring the impact of the GED; the role of agency discretion in developing and implementing policies to meet the GED requirements; and the resource implications for agencies in adhering to this new Duty and finally, how the organisations will be regulated and the specific role of the Commission for Equality and Human Rights (CEHR).

Introduction

This article describes a recent study, funded by the Equal Opportunities (Scotland), which collated information on gender specifically as it applies to victims and offenders (including young offenders) in the criminal justice system. This work was designed to inform the generic guidance for Scottish criminal justice agencies in order to ensure compliance with the new Gender Equality Duty (GED) and *Equality Act 2006.* The generic guidance, in turn, is aimed at assisting those responsible for devising policy within the criminal justice system. The GED places a legal obligation on public bodies to show they are actively promoting equality of opportunity between men and women. As such, it has the potential to be a powerful mechanism for changes in culture, policy and practice needed to promote greater gender equality in Scotland. .

A rich body of literature now exists regarding gender, crime and criminal justice. . Developing from the 1970s onwards, this literature has raised several concerns about the treatment of women in the criminal justice process. Whilst advances have been made in some areas of criminal justice in recent years, there is still scope for further improvement. We know, from a range of evidence sources, that women commit far less crime than men, and constitute a relatively small percentage of the criminal cases coming before the courts and this, in turn, renders them less visible in our system of criminal justice.[1]

There are also a range of sources of information, such as official crime figures, victimisation surveys and a wealth of research evidence, which provide considerable detail on the differences (and similarities) between men and women in relation to their known offending behaviour, their experiences of victimisation, their experience of the criminal justice system, and their presence as agents of criminal justice. The GED does not mean that women and men must be always be treated in the same way. It means that mean and women should be treated appropriately, according to need. This might mean different services and policies for women or men only.

It is worth noting at this point that little is known about the experiences of transsexual and transgender people as victims and offenders within the criminal justice process. A move by criminal agencies to a more individualist and responsive approach to victims and offenders may give rise to the need to collect data, monitor and review in order to meet their needs.

The article describes the study, and highlights some of the challenges for criminal justice agencies adhering to the GED. It also raises some questions as to the future management of gender equality in the criminal justice process especially in the context of *The Equality Act (2006)*, equality duties and the creation of the new Commission for Equality and Human Rights (CEHR)

1 Although 52% of the Scottish population is female, only 16 percent of those convicted in 2004/05 were female (see Criminal Proceedings in Scottish Courts, 2004/05 http://www.scotland.gov.uk/Publications/2006/04/25104019/0). Males accounted for 84 per cent of all convictions in 2004/05, and more males than females were convicted in almost all crime and offence categories. The main exception was "other" crimes of indecency, where females accounted for 70 per cent of what are mainly offences related to prostitution. Women sentenced to custody generally receive shorter sentences than men. They are less likely than men to be in prison for violent offences and more likely to be in prison for dishonesty offences (Prison Statistics, 2005-06, (http://www.scotland.gov.uk/Publications/2006/08/18103613/0). In 2005/06 women made up just five percent of the average daily prison population. Yet, statistics highlight an increasing rate of imprisonment for women despite the fact that their offending patterns are less serious. Over a ten year period to 2005/06, the average daily prison population has increased by 14 percent; in the same period, the female prison population increased by 77 per cent, compared to a 12 percent increase for men (Prison Statistics, Scotland 2005-06, http://www.scotland.gov.uk/Publications/2006/08/18103613/0)

which will be tasked with ensuring that public sector organisations review and rethink their strategies on all the six equality strands.

We address, first of all, the legislative and policy context of the GED; second, the evidence base concerning gender and criminal justice, and; third the study findings as they relate to the level of preparation for and management of the duty. Finally, we offer some comments on future directions and the role of the regulatory bodies including the Commission for Equality and Human Rights.

Legislation, policy and practice

The GED came into force in April 2007 and applies to all organisations offering public services, including criminal justice agencies, for example, the courts, prisons and police. The GED is part of a wider recognition of the need to ensure equity in public service delivery – gender being one of a number of strands. The emphasis in the *Equality Act 2006* is on ensuring that bodies which deliver a public service should adhere to the Duties.[2]

The GED is the biggest change in gender equality law in thirty years. It can be viewed as recognition that, despite thirty years of sex equality legislation, too little has been achieved in eradicating sex discrimination and sexual harassment, unequal pay, pregnancy discrimination, occupational segregation and other gender inequalities. In terms of Scottish Criminal Justice, the Gender Equality Duty will require criminal justice agencies to be sensitive to gender differences to meet the different needs of women and men (offenders and victims) and of course, the needs of children.

The Equality Act 2006 also establishes a new single Commission for Equality and Human Rights (CEHR) that will bring together all six

2 See EOC Website: at http://www.eoc.org.uk/default.aspx?page=14865: 'The Equality Act 2006 has three main purposes: to establish the Commission for Equality and Human Rights (CEHR); to make discrimination unlawful on the grounds of religion or belief in the provision of goods, facilities and services, the disposal and management of premises, education, and the exercise of public functions; to create a duty on public authorities to promote equality of opportunity between men and women, and to prohibit sex discrimination in the exercise of public functions. The Gender Equality Duty (GED) was created by the Equality Act 2006. This Act amends the Sex Discrimination Act 1975 to place a statutory duty on public authorities, when carrying out their functions, to have due regard to the need to: eliminate unlawful discrimination and harassment; and promote equality of opportunity between men and women. These are the requirements of the general duty and are the core of the gender duty. Unlawful discrimination means: direct and indirect discrimination against women and men, in employment and education, in goods, facilities and services and in the exercise of public functions; harassment, sexual harassment and discrimination on the grounds of pregnancy and maternity leave; discrimination on the grounds of gender reassignment in employment and vocational training; direct and indirect discrimination in the employment field on the grounds that a person is married or a civil partner; victimisation.'

strands of discrimination – race, age, gender, disability, religion and sexual orientation – into one unified organization. It has been created with the aim of making more coherent the relationships between the different six strands of discrimination. The Commission will, inter alia: promote and encourage good practice and an awareness of rights about equality, diversity and human rights and work to eliminate unlawful discrimination and harassment, in addition to monitoring the effectiveness of the equality and human rights enactments (cf *The Equality Act 2006*, Sections 8 – 31).

The CEHR will operate in Scotland, England and Wales; it will need to work closely with the Scottish Executive and Scottish Parliament, the forthcoming Scottish Commission for Human Rights and other bodies e.g. Local Authorities. There will be one CEHR Commissioner with a specific remit for Scotland and a Scotland Committee, which will oversee the work of the CEHR in Scotland and advise the Commission on the exercise of its functions in Scotland. The Commission will assume responsibility for enforcement once the EOC ceases to exist in October 2007. Powers to enforce the Duty through judical review or compliance notes[3] will be available.

The GED will impact on all public authorities in Scotland, from April 2007, as they will be required to evidence progress towards eliminating sex discrimination, in addition to promoting equality between women and men. This requires public bodies to analyse which of their activities (employment, policy-making, service delivery, regulatory etc) could make a difference to gender equality, and to prioritise action to achieve clear outcomes. The GED will represent a significant shift from the current individual, complaints-driven approach of tackling discrimination once it has happened, to a more positive, proactive approach where the burden rests with the public body to address inequality in the first place.

Historically, equality legislation has been disparate and whilst the legislation is designed to protect those who are discriminated against, it has not always been effective and has not, until recently, recognised issues surrounding transgender and sexual orientation. Some examples of legislative developments include: Race Relations Act and Sex Discrimination Acts passed in 1970s and Age Discrimination and Disability Discrimination passed over 20 years later.[4]

3 Compliance notes underscore what is required by agencies to meet specific elements of the Duty where they are not currently doing so.

4 Relevant legislation includes: The Race Relations Act 1976; The Sex Discrimination Act 1975; The Equal Pay Act 1974; The Employment Equality (Sexual Orientation) Regulations 2003; The Disability Discrimination Act 1995/2005 and The Age Discrimination Act 2006.

Legislation has tended to focus on individual equality issues and there now seems to be a move towards a more coherent approach, recognising that imbalances and discrimination can involve one or more of the equality strands. The creation of the Commission for Equality and Human Rights (CEHR thereafter) goes some way towards a coherent approach to tackling equality.

Scotland, post devolution, has the power to legislate on devolved matters via the Scottish Parliament. The UK's membership of the European Community also provides an extra layer of legal regulation above that emanating from Parliament. European Union (EU) law is part of our domestic law in England, Wales and Scotland because of the *European Communities Act 1972*.[5]

At this point, it is also worthy of note that the Scottish equality, diversity and human rights context differs from the rest of UK. *The Scotland Act 1998* established the devolved institutions (Scottish Parliament and Scottish Executive) and provides them with specific powers and duties relating to equality and human rights.[6]

The Scotland Act (1998) defines "equal opportunities" as:

"the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes including beliefs or opinions such as religious beliefs or political opinions"[7]

To encourage equal opportunities the Scottish Executive and Scottish Parliament have used these devolved equality powers to impose duties on many Scottish public authorities. This includes local government and the NHS. An Equal Opportunities Committee has also been established by the Scottish Parliament. It is responsible for considering equal opportunities issues in Scotland, both within and outside the Parliament, and reports its views on these issues to the Parliament. The Scottish Executive also has an Equality Unit that has published an Equality Strategy and is responsible for ensuring that the principle of equality underpins all work in the Scottish Executive.

5 A more detailed exploration of the possible implications for the compatibility of EU legislation with the Equality legislation (2006) will be discussed in Johnstone, J & Leacock, V (forthcoming) 'Managing Equality in Criminal Justice'.

6 See http://www.eoc.org.uk/default.aspx?page=18310&theme=print for a more detailed overview

7 http://www.cehr.org.uk/content/scotland.rhtm

Whilst there are a number of equality organisations in Scotland, including the specific Scottish offices of the three existing statutory equality commissions: the Commission for Racial Equality, Disability Rights Commission, and Equal Opportunities Commission, there is also the Equalities Coordinating Group (ECG) consisting of representatives of these Commissions and the three new equality strands (sexual orientation, religion/belief and age). The new legislation aims to pull all these strands together.[8]

Understanding Gender, Criminal Justice and the GED

It is well established that criminal justice is more of a process than a clear functioning and linear system. Different criminal justice agencies have different management structures, different values, different performance targets and key performance indicators. The criminal justice process is also embedded in other 'systems' – for example, the legal profession (courts and lawyers are influenced by legal aid and professional rules), Crown Office of the Procurator Fiscal (COPFS thereafter (is very independent with its own targets), and policing as a service covers a range of activities (not just crime).

Drawing on Foucault's (1972) theories of discourse and, specifically, 'authorities of delimitation', the idea is that practitioners work within a delimited set of rules/conditions and occupational culture. This results in individual agencies developing and possessing particular knowledge and authority with each delimiting the object of crime. So the idea of a process rather than a system provides the framework to make sense of the variation in practices and cultural and institutional differences that can give rise to producing different outcomes (sometimes discriminatory) for both men and women (young and old, victims and offenders). It allows the examination of the degrees of power and discretion afforded to different agencies at different stages of the process.

In order to develop the guidance, we undertook a review of criminological research material on gender and equality, as well relevant policy and practice documents from central and local government regarding diversity, equalities and tackling discrimination in order to source facts and information on good practice examples of ensuring gender equality. Telephone interviews with practitioners from public and voluntary sectors were also undertaken regarding their organisation's degree of preparation for the GED, and to identify and explore what factors might hinder and/or facilitate the

8 For a more detailed analysis see http://www.cehr.org.uk/content/scotland.rhtm

implementation of the GED. A thematic analysis was undertaken to identify agencies degree of preparation, establish whether any barriers exist, look at the types of data systems and types of data collected. We also examined the gender implications for both victims and offenders moving through the criminal justice process and created a set of flowcharts which mapped the process, and highlighted how and where gender considerations are pertinent. These flowcharts (which can be accessed on-line from web-site details) are being developed as an interactive tool available for use amongst academics, practitioners, and students

Interviews with practitioners explored, their organisation's definition and understanding of gender equality; the existence and detail of equality and diversity policies already in place and strategies/frameworks on gender equality in each organisation as it applies to victims and offenders. This included an exploration of whether gender equality guidance, as it intersects with other variables such as race and age, exists for staff in dealing with different service user groups. We also tried to ascertain whether organisations already have systems in place and are prepared to collect data that can be disaggregated by gender and other variables.

The research included interviews with various key participants within the criminal justice agencies including the Police, Crown Office of the Procurator Fiscal Service and the Courts. Overall whilst there was variation in terms of awareness and preparation for the GED. All seemed to be in favour and viewed the GED as a positive development for their organisation, there was a marked variation in terms of awareness and preparation for the GED

Understanding of Gender Equality
Agencies understanding of the term 'gender equality' varied in terms of what it meant for their organisation. There was a recognition that gender equality includes: tackling discrimination against women *and* men; and recognising individuals with transgender status; and avoiding discrimination on the grounds of sexual orientation. The GED was also seen to include equal outcomes for both genders and avoiding stereotyping and this was seen to be key in ensuring gender equality.

Current Policy
All respondents were positive about the development of the GED and felt that it would make some difference to their organisations' work. It was evident that high-level policy documents often existed in agencies but little existed in the way of gender specific guidance. However, organisations were aware

that they had to recognise the importance of the GED and that they should reflect this in its policy documentation. Strategies and frameworks were found to exist to deal with equality and diversity more generally and there were various other sources including the Scottish Executive's Vulnerable Witnesses Guidance, Commission for Racial Equality 10 Point Guidance and as part of the promotion of the GED, the Three Commissions Public Sector Duty position paper which some organisations have been using.[9]

Preparation for the GED

Generally, as with the introduction of any new requirement, some systems were more adaptable and prepared than others to collect, monitor and review data on gender. It was evident that there is a real need to try and encourage agencies to develop a core minimum dataset and to fit in with the GED requirements and to provide a more coherent approach so that statistics on gender can be collected for the whole criminal justice process. There is a need to re-engineer systems as statistics are generally difficult to compare. Most agencies do not tend to collect information on transgender or sexual orientation. Equally, some systems do not allow for meaningful disaggregation of data across variables such as gender, race, ethnicity, disability and age.

Good Practice

One of the purposes of the study was to collate examples of good practice.[10] Some good practice involved linking up and networking with specialist voluntary sector organisations, especially in terms of policies to tackle violence against women, and the creation of a specialist domestic abuse court with the fast tracking of domestic abuse cases. Some examples of good practice highlight the need to proactively address the individual needs of women and men in all their functions. In certain circumstances, criminal justice agencies may, therefore, wish to address gender inequality by developing policies or providing services on a single-sex basis. The most common examples of this, in practice, are rape crisis centres or refuges for women who are victims of domestic abuse. Amongst these examples, there was also some evidence of multi-agency working in terms of developing joint protocols for info sharing e.g. in area of domestic abuse. That said, a key finding was the existence of a view of the 'system' as dysfunctional and disjointed in nature and more partnership working was seen as necessary in an attempt to improve coherence.[11]

9 EOC, DRC, CRE (2005) Three Commissions Public Sector Duty Position Paper at http://www.eoc.org.uk/PDF/DRC_jointpsps_all(051024).pdf

10 EOC Gender Equality Duty and Criminal Justice Agencies guidance at http://www.eoc.org.uk/Default.aspx?page=20200

11 See Guidance for examples of best practice

Barriers

Various barriers that organisations have to overcome in order to make the duty work were identified. Collating and collecting information was viewed as a particular problem area. The Justice Department of the Scottish Executive collates and publishes data on recorded crime, court proceedings, sentences and other disposals such as community orders, and the prison population. However, a major gap lies in the lack of disaggregation of statistics by sex combined with other key variables, especially ethnicity and disability. Arguably there is need to develop a core minimum dataset having regard to the GED and the other equality strands. Equally there is a need to work towards developing a coherent strategy among the agencies for collecting data on gender, transgender/trans-sexuality (being aware of data protection issues).[12]

From the interviews there was some sense that there might be individual and organisational resistance to the GED and cultural barriers to overcome. There was a general feeling that agencies had already addressed the issue of the GED within their organisations but equally an acknowledgement of the need to tackle complacency and ensure that people know that gender matters e.g. stereotyping within CJP in the prosecution of rape and sexual offences.

Some respondents identified the lack of diversity, in terms of employees, and the male dominated nature of the environment within the criminal justice system as potential barriers to implementation of the GED. Many raised the question as to whether CJ agencies can ever tackle the wider social problem of structural gender inequalities? Overcoming some of these barriers – for example, altering systems and processes brings with it resource implications which some agencies felt would make it difficult to meet the GED requirements.

Web based interactive flowcharts

A key output was the creation of flowcharts mapping criminal justice processes. The flowcharts are a means of representing the key stages in the criminal justice process, from first official engagement with a suspected offence through to trial and beyond. The terms of the GED require that agencies take steps to recognise the potential for discriminatory behaviours

12 For example developing protocols for sharing information

and actions, and the flowcharts can be used as a tool to indicate where and how in the process the GED might be needed to be taken into consideration.[13]

Vulnerable points

Although there is a clear need to be mindful of gender considerations throughout the criminal justice process, some points were identified which were particularly vulnerable to gender discrimination. These vulnerable points exist at three key stages within the criminal justice process which includes the investigative stage; the Court stage; and post sentence. The flowcharts and attached notes identify some of those key areas[14].

In terms of young people, the transition from the Children Section 0s Hearing System to the adult criminal justice system can be a particularly vulnerable point where gender discrimination can occur especially where the types of service provision differ for young male and female offenders. For example, there is only one female prison in Scotland and no young offenders Section 0 institution which results in young women being sentenced to the female adult prison.

Policy implications and issues for future consideration

The study findings have been used in a number of ways, namely to: (i) develop the Guidance; (ii) identify issues for awareness raising and training of criminal justice professionals; (iii) identify gaps and needs in data collected on gender within criminal justice agencies in Scotland; (iv) identify good practice by criminal justice agencies in Scotland, that could be replicated elsewhere; (v) the development of an interactive web tool to assist agencies to adapt their systems to be equipped for the GED.[15]

The research has identified some further areas for analysis one of which is what impact will the GED have on wider policy development in the criminal justice process? The GED and Guidance relates to how public bodies will develop systems and practices to meet the GED but there needs to be an awareness that these public bodies work within a wider process the criminal justice process. It follows that information sharing, multi-agency

13 We have also produced notes to accompany each of the flowcharts indicating the key agencies involved in decision-making and cross references are provided to relevant legislation. The flowcharts are not definitive but are to be used as a means of allowing criminal justice agencies and organisations to reflect on whether their actions, decisions or procedures at each particular stage fully reflect the requirements of the Gender Equality Duty. They are designed to be used in conjunction with the criminal justice guidance. The flowcharts can be accessed at www.sccjr.ac.uk

14 The flowcharts can be accessed at www.sccjr.ac.uk

15 The researchers also intend to develop this as an academic and teaching resource as well as a community resource for the public to access and gain a better understanding of how the process works.

development of working practices and protocols will help to mainstream the GED within the process. Examples of these already exist in relation to specific offences or stages within the criminal justice process. For example, the police and procurator fiscal protocol developed for dealing with cases of domestic abuse. The research found that many agencies recognised the value of working together and developing strategies and protocols for improving practice (ref the Guidance).

The second question is how will the new Commission work with other regulatory bodies (e.g. Inspectorates) in both an advisory and guiding capacity in addition to a regulatory and enforcing capacity?

Thirdly, the Gender Impact Assessment (GIA) is a key stage in the development of the Equality Scheme, and will help organisations to continually improve the way they embed gender equality into their work. Organisations will have to assess the impact on gender equality of existing policies and practices as well as future developments. Agencies have discretion about how to develop and implement their Gender Impact Assessment tools and ensure that, for example, their policies, systems, employees are prepared for monitoring and assessment. There are clearly stipulated requirements and specific timetables/deadlines (April, June and Sept 2007 deadlines and then three years from April 2007 for the GIA) that agencies must meet.

As discussed above, agency discretion and independence within the criminal justice process has its advantages from the point of view of allowing agencies to tailor and adapt current systems and resources. However, it has its disadvantages in that, it could lead to discrepancies and disparities in the collation of data and development of tools. Lack of coherence within the criminal justice process is a major problem and a key question is how will agencies effectively ensure that they are developing systems and a monitoring framework that goes further than reflecting their current policies and practice, to identify and fill any gaps that exist? Clearly, organisations will develop different frameworks and strategies and this raises some questions regarding comparing progress in mainstreaming gender equality for offenders and victims across the whole criminal justice process. However, the recent review of the *Crime and Disorder Act 1998* has recommended the strengthening of s115 to give relevant agencies the ability to share de-personalised data, which if used for the GED may provide a more coherent approach to gathering and analysing data relating to gender (Home Office, 2006).

Fourthly, there is the question of resources. Agencies felt that they need support to adapt their systems to effectively implement the GED. Policy makers, internal to the agency, will need to consider what contingencies are in place and which resources are available firstly, to implement the Duty and secondly, to enable organisations to have the resources to address complex cases where gender is pertinent.

Fifthly, contention exists regarding the definition of what is a public body and how it relates to non-public sector organisations providing a public service. We didn Section 0t interview anyone involved in the administration of CJ from the private sector, but we did raise the issue of private sector involvement with the EOC bringing to their attention the problems with (2) things (i) defining what is meant by a public body and or bodies carrying out a public function a term quite vague in the legislation and (ii) how to regulate private sector compliance with the GED? This is an issue that might create some difficulties as the Duty comes into force.

Conclusion

This leaves us with some final questions. First, will the GED, if successfully, implemented, mean better outcomes/service for victims and offenders? The interviews with key personnel working within criminal justice and the review of internal equality policies provided an insight as to how the process or system needs to be developed to recognise gender equality. The existing focus within the sector tends to be on gender issues in relation to males and females, but it is clear that there also needs to be recognition of transgender and sexual orientation within the policy documentation and development of strategies and frameworks. The GED provides the impetus for public bodies working within the criminal justice process to re-evaluate their practices and processes in relation to gender. The legislation, the GED and the Guidance for Criminal Justice are seen as positive developments. The key concern of the agencies is ensuring the effective implementation of the GED and that it fits within their organisation and they can overcome the barriers that they themselves have identified.

Our research has been conducted within a wider climate of recognition and awareness of all the six equality strands across the public sector. The forthcoming CEHR will take responsibility for ensuring that public bodies are meeting the requirements of the new duties. But there is a potential gap in terms of the CEHR Section 0s ability to regulate all criminal justice service provision and this gap lies in the existence of a mixed economy of criminal justice provision. A second question is how will the GED and

other Duties apply to private and voluntary sector organisations? It has to be recognised that many private sector or voluntary sector organisations provide services to criminal justice (public sector) organisations. These public sector organisations are accountable/responsible for ensuring that any organisations they work with, adhere to public sector principles. Arguably, evaluation and research is needed to identify how these Duties can be effectively implemented within, not only, the criminal justice process but also other public services and how this relates to the private and voluntary sectors.

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Statistics

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Web resources

Scottish Centre for Criminal Justice Research Flowcharts at
http://www.sccjr.ac.uk

All guidance is available from our website at www.eoc.org.uk/genderduty.

http://www.eoc.org.uk/PDF/GED_Scottish_Criminal_Justice_Guidance.pdf

(see *Criminal Proceedings in Scottish Courts, 2004/05*
http://www.scotland.gov.uk/Publications/2006/04/25104019/0)

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Domestic Violence Crime and Victims Act 2004
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Criminal Justice On-Line
http://www.cjsonline.gov.uk/offender/index.html

Defendant virtual walk through
http://www.cjsonline.gov.uk/defendant/walkthrough/index.html

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http://www.cjsonline.gov.uk/offender/walkthrough/index.html

National standards for Scotland's Youth Justice Services

National Strategy to Address Domestic Abuse at
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Tit for Tat: Criminal Justice Policy and the Evolution of Cooperation

By Simon Mackenzie of the Scottish Centre for Crime and Justice Research, University of Glasgow

Criminal justice is not a game. We don't do it for fun. Rather, its rules are ultimately grounded in conceptions of right and wrong rather than arbitrarily constructed to encourage competition. The consequences for the 'losers' are often of such gravity that thinking of crime as a game insults the sensibilities we harbour around concepts such as justice. Despite these good reasons for declining to view criminal justice as a game, there can be no doubt that the systems we have generated to dispense justice bear some of the indicators of games, and that they encourage participants in some respects to treat them as such, from lawyers making strategic decisions in the face of a structure of rules that determine outcomes, to criminals deciding whether to gamble on a not-guilty plea or settle for a plea-bargain.

In this essay I will suggest that, in an admittedly highly reductionist way, criminal decision-making can be thought of as taking place against a background of rewards and disincentives in which the criminal justice system plays a central role. I will attempt to draw out some of the lessons such a game theoretical analysis offers for the place of the criminal justice system in crime prevention, and conclude by proposing that in spite of the many and serious critiques made of analyses of this sort – analyses with their root in rational choice theory, that is, or 'economic' analyses as they are often called – the paring down of social decision-making to models of basic strategy can reveal flaws in the practical construction of systems such as criminal justice. This strengthens the case for new approaches which are both more effective in controlling the problem of crime, and more compatible with common understandings of social justice and fair exchange.

The prisoner's dilemma

Game theory has developed as a means of analysing the decisions made by actors under game-type conditions; i.e. where there are set rules, multiple 'players', payoffs and penalties (see Axelrod, 1990 [1984]; Carmichael, 2005; and in respect of criminal justice, Sieberg, 2005). The most famous game in the theoretical literature is the 'prisoner's dilemma', a game in which choices must be made by two players in light of a fixed risk/reward structure

without knowledge of the decision the other player will make. Importantly the 'value' of the choice made by one of the players will depend on the choice made by the other, but there is no way in the classic version of the dilemma to predict what that other's choice will be.

The original invented story behind the prisoner's dilemma is of two offenders charged with a common crime, kept in isolation from each other and each given a chance to incriminate the other. Let's call the prisoners P1 and P2. If P1 incriminates P2, but P2 says nothing, P1 will be given a pardon by the prosecutor and P2 will be severely punished. If P1 says nothing and P2 incriminates him, P2 will be released and P1 will be severely punished. If both incriminate the other, both will receive punishment, but each in lesser measure than in the cases of solo punishment above. Finally, if both stay silent, both will receive punishment of a measure lighter still than in the case of this mutual incrimination. This gives rise to the payoff matrix below (taken from Axelrod, 1990 [1984]: 8) which is a slight variation on the classic story, but maintains a similar payoff structure:

	Cooperate	**Defect**
Cooperate	R=3, R=3 Reward for mutual cooperation	S=0, T=5 Sucker's payoff, and temptation to defect
Defect	T=5, S=0 Temptation to defect and sucker's payoff	P=1, P=1 Punishment for mutual defection

Here, the two players, one represented in rows and the other in columns, can choose cooperation or defection. The respective payoffs are represented by the first number for player 1 and the second number for player 2. So if both choose cooperation, both receive 3 points. If both choose defection (i.e. mutual incrimination in the classic version) both receive 1 point. But if one defects when the other chooses to cooperate (in the classic game, incrimination by one player in the face of silence by the other), the defector will receive 5 points while the 'sucker' whose cooperation meets a defection receives nothing.

If faced with a 'one-shot' prisoner's dilemma, i.e. where the players play one game only and will not meet each other again in similar circumstances,

rational choice results in mutual defection. If this is not immediately apparent, it is easily explained as follows. Suppose I am the row player. If I think the column player will cooperate, my payoffs are dictated by the first column in the table above. I can cooperate too, in which case I will get 3 points, or I can defect, in which case I will get 5. I should defect. If, however, I think the column player will defect, my payoffs are dictated by the second column. I can cooperate, in which case I will get 0 points, or I can defect, in which case I will get 1. Again I should defect.

The same goes for the other player, leading to a 'Nash equilibrium' of mutual defection in a one-shot prisoner's dilemma of this sort. Note that although each player has achieved the best result possible given a rational appraisal of the choices the other might make (1 point each) this is not as much as could have been achieved by mutual cooperation (3 points each). The game is structured to mirror those life situations where more can be achieved through cooperation than through the general pursuit of individual self-interest, such as trade tariff wars (Bagwell and Staiger, 2004), nuclear non-proliferation, and – perhaps – crime control.

Where a game such as this is played multiple times between the same players, it becomes an 'iterated' prisoner's dilemma. This adds the interesting dimension of history (and a projected future) to the developing structure of choices made by the players. Such a historical relationship brings two important new aspects to the game: that I might be able to predict the forthcoming choice of the other player through an analysis of her past moves; and that I can through my moves 'punish' her for her previous defection(s) or 'reward' her for cooperation.

In 1984, political scientist Robert Axelrod published the results of a computer tournament he had organised to attempt to determine which was the most effective strategy a player could adopt when playing an iterated prisoner's dilemma (Axelrod, 1990 [1984]). Game theorists from around the world were invited to write computer programmes which would play each other at the above iterated game in round robin fashion. A strategy called 'tit for tat' won. Tit for tat was the simplest strategy entered in the competition. It won the first round against 14 other programmes, and it won the second round against 62 others, all of which knew it had won the first round and therefore can be assumed to have specifically devised programmes to try, amongst other things, to beat it.

Tit for tat is an almost ludicrously straightforward form of reciprocity. It

always cooperates on the first move, and thereafter it returns whatever has been done to it on the prior move by the other player. Axelrod describes it as a 'nice' strategy, in that if you always cooperate with tit for tat, it will always cooperate back. Further, if you defect against tit for tat, it will defect in return on the next move – thereby 'punishing' you – but it won't hold a grudge and thereafter you are free to resume your cooperation with it, which will be reciprocated.

Tit for tat won both rounds of the tournament because of the consistency with which it encouraged other strategies to enter into a mutually-rewarding 3-point each relationship of stable, long-term cooperation. You can always get 5 points from tit for tat by defecting when it cooperates, leaving it with the sucker's payoff of 0, but you can be sure it will defect on the next move – in which case the best you can achieve on that move is 1 point, by defecting yourself. Over two moves, therefore, your attempts to 'get rich quick' have given you 6 points, which is anyway what you would have received over 2 moves from tit for tat had you cooperated. Worse, your latest defection will be reciprocated, and the best you will get from tit for tat on the third move in the sequence will again be a 1 point defection.

Tit for tat will defect on the next move, and so on; you have entered a cycle of reciprocated defection, each only gaining 1 point as opposed to the 3 points per turn you would have received in a stable cooperative relationship. Tit for tat therefore rewards cooperation, in the long run if not on any given move (where defection in the face of tit for tat's cooperation would pay more) and it resists being taken advantage of, by simply giving back what it receives. Axelrod puts it forward as a robust strategy for ensuring long-term compliance, and this seems quite plausible.

Criminal justice as an attempt to induce cooperation

Retributive justice, the model of justice which most closely fits the criminal justice system as we know it, is in design something like a tit for tat model. It punishes offending ('defection') and 'rewards' cooperation through refraining from the imposition of sanctions and, in the imaginary at least, allowing the individual to reap the manifold benefits of the structures of success and happiness in our free world of opportunity. Let's consider crime and punishment through the lens of a payoff matrix for an iterated prisoner's dilemma.

	Don't punish (cooperate)	**Punish (defect)**
Obey the law (cooperate)	3,3 Law obedience with no punishment – social stability	0,0 Miscarriage of justice
Break the law (defect)	5,0 Successful crime without capture	1,1 Crime and punishment

Here we see that criminal justice can, from the point of view of the offender, be constructed as an iterated prisoner's dilemma. Moreover, it is an iterated game in which the State (the column player in the scheme above) has no incentive to defect in response to an individual's cooperation. This would represent the case where an individual has cooperated (obeyed the law) and yet been punished in return (a defection by the State) – a miscarriage of justice, in legal terminology. Such a miscarriage can be presumed to be a bad result both for the innocent individual punished, and for the State. It will be bad for the State both in the detrimental effect it has for the legitimacy of its mechanisms of governance, and in its propensity to encourage future punitive reciprocation by the wronged individual.

The game model would predict this propensity, for in order to encourage cooperation one player should reciprocate the other's cooperation and only defect when her opponent (truly) defects, as tit for tat does. This punitive reciprocation by the individual may occur, for example, where a youth from a minority ethnic background is subject to repeated unjustified stop-and-searches, and considers offending either as a means of 'resistance', thinking this will 'pay the State back' or 'serve it right' for its transgressions, or through a psychological reorganisation linked to the process of labelling (Lemert, 1951; Becker, 1963; Schur, 1971). Unlike a standard iterated prisoner's dilemma therefore, the individual can be reasonably confident that the State will reciprocate cooperative behaviour.

This is dilemma-busting knowledge indeed! In Axelrod's competition, tit for tat proved such a robust and successful strategy in large part because it was predictable in its reciprocating behaviour. Once an opponent had worked out that they were playing against tit for tat, the most rewarding strategy was to cooperate with it and to enjoy in the long term the fruits of a continuing cooperative exchange. And here we are with a broadly comparable tit for tat-

style model of governance in the criminal justice system which does nothing less than make a point of establishing itself in terms of public principle on a platform of reciprocal cooperation through non-intervention where this is given by the individual.

Further, aside from the odd miscarriage of justice, it lives up to its word. In such a situation - a non-zero sum game where your opponent will only defect if you do - game theory would predict uniform cooperation unless (a) some individuals in society were not rational, (b) some individuals in society were masochists, eschewing available rewards in favour of punishment, or (c) the payoff matrix in the real world is different from the payoff matrix above, or does not function effectively. Why, then, do people offend?

The answer to this question is of course the central problematic of criminological study, and given what we know about the various correlates of crime - developmental, socio-economic, psychological, environmental, and more – is not something that can be answered in a thorough and responsible fashion with reference only to games and rational choice. However, the argument I wish to advance here is that even in the absence of all of these more difficult psycho-social attendants to criminality, that is, *even if everyone behaved all the time in a purely rational fashion and approached the question of whether to offend in the rational, logical way necessary to do well in an iterated prisoner's dilemma, they would still not be held under the sway of cooperation that the model above would predict.*

The qualification inherent in this argument should not be taken to undermine the value of its tenets, I would suggest. It has been shown that humans act in ways which are sometimes irrational (Henrich et al., 2004), and sometimes rational only in the bounded sense that is possible with imperfect information (Simon, 1982) or a strong will or desire to achieve a goal which urges the circumvention of legitimate constraints (Matza, 1969), or in the mists of self-delusion which include neutralisations, rationalisations and justifications of action known on some level to be 'wrong' (Sykes and Matza, 1957; Cohen, 2001), or simply perhaps under the lure of the kicks one can get from nothing more than breaking rules (Cohen, 1955; Katz, 1988).

Still, do we not value the social creation and maintenance in society of 'rational' beings as opposed to irrational ones, or quasi-rational ones, and in this sense is rationality not the gold standard by which to judge social policy? That is, social policies should make rational sense to rational beings affected by them? If that is the case, and I would suggest a reading of contemporary

neoliberal political economy strongly suggests it is, then we are within our rights to critique the failings of social policy – in this case the activities of the criminal justice system – on the grounds that it fails to achieve what it purports to desire, and that the practical application of its mechanisms of enforcement render it ineffective even in the hypothetical case that it does meet a purely rational offender, since such an offender is the model of individual agency that the criminal law, and its attendant enforcement arms, by and large create as representative of their clients.

We can explore here the reasons for the practical failure of this rational choice game model adequately to control crime. Some of these are classic criminological common-knowledge - others are less obvious – but in sum they show us that criminals play a game with an opponent that is quite different from the omniscient, fair-minded, generously forgiving one which proved itself so cooperatively successful and firmly resistant to abuse in Axelrod's tournament.

The first reason rational individuals would deviate from the equilibrium of cooperation when faced with an iterated prisoner's dilemma such as that which we have modelled for the relationship between the CJS and the actor above, is that the model depends on each actor being aware of what the other has done on any given turn. For the CJS to decide to 'defect' in punishment for an individual's defection, the CJS must know that the individual has defected. The general ignorance of the CJS in respect of matters of social action is part of what the Prime Minister has recently called 'the justice gap' (BBC News, 2006).

One of the more recent summaries of the justice gap is found in a report from the Crime and Society Foundation (Garside, 2006). In 1981, approximately 1 individual was convicted for every 25 offences estimated by the British Crime Survey. In 2000, the figure was approximately 1 individual convicted for every 30 offences estimated by the British Crime Survey (Garside, 2006: 10). These figures, however, are thought to be radical underestimations of the true extent of the justice gap – which of course can never be known.

A Home Office Study in 2000 estimated that 60 million indictable offences were committed in the year 1999-2000, which would mean that around 125 offences were committed in that year per successful conviction (Brand and Price, 2000; Garside, 2006: 12). In the same year, Lord Birt estimated that the real level of indictable offences 'was as high as 130 million' which Garside points out means around one conviction per 250 indictable offences (Birt,

2000; Garside, 2006: 11). On either Birt's or Brand and Price's measure, over 99% of indictable offences would not have resulted in an individual being convicted in that year.

Included in this statistic is the phenomenon called attrition – the fact that the number of bodies decreases in a 'crime funnel' as people drop out the further along the CJS we look (Burrows et al., 2005). Not all detected offenders are charged, not all those charged are prosecuted, not all those initially prosecuted are ultimately convicted, and not all those convicted receive a disposition which would colloquially be interpreted as 'punishment' – suspended sentences and token fines, for example.

In terms of the payoff matrix of a prisoner's dilemma, then, all this suggests that the individual 'playing' the CJS will not experience a tit for tat strategy from his opponent, despite that being the strategy the CJS tries to use. Meeting tit for tat, remember, the individual would expect each defection to be met with a reciprocal defection; in other words each offence to be met with punishment. In fact, what these statistics suggest the individual will experience is defection by the CJS only in the face of less than one defection in a hundred by the individual. In comparison to the strategies entered into Axelrod's tournament, such a strategy is a hopeless pushover and rather than encouraging cooperation, it would encourage defection in the individual. Where your opponent seems to cooperate no matter what you do, the winning strategy in the prisoner's dilemma is defection.

What the CJS lacks in surveillance and celerity (both in response and reciprocity) it tries to make up for in gravity of punishment. The deterrent idea here is that although in respect of the commission of any given offence it is unlikely that an offender will be detected, it is hoped that severity of punishment if detected, prosecuted and convicted will be sufficient to compensate for the improbable nature of that eventuality. This is something of a doomsday approach to crime and punishment: you are unlikely to be caught, but if you do the enormity of the system's response (including its destructive effects on family ties, on current and future employment, and other deleterious consequences of 'labelling') may ruin your life.

This may be less the case for juvenile delinquents (on which, more shortly) but is precisely the approach that has been adopted in order to try to deter hard-to-detect white-collar crimes such as insider trading where, particularly in the US, extraordinarily high financial penalties are available to be applied to the small number of criminals in respect of whom there is enough evidence for a successful prosecution (Polk and Weston, 1990).

The problem with this structure of punishment is that indicators in the developmental behavioural literature point to it being a particularly unimpressive way of encouraging compliance (Skinner, 1938; Skinner and Ferster, 1957; Skinner, 1968). All other things being equal, encouraging a pattern of prosocial behaviour is likely to be most effectively done, in operant conditioning terms at least, by means of (i) positive inducement (ii) following with some immediacy upon the action in question (iii) made consistently over sustained periods (iv) perhaps in relatively small doses; rather than (i) negative inducement (ii) made after a significant lapse of time from the act in question (iii) made once only, or otherwise infrequently (iii) no matter how large/severe the dose.

That juvenile delinquents have less to lose from penal sanction has led to a different problem – that of cultural symbol. Recent research has suggested that Anti-Social Behaviour Orders have become a 'badge of honour' among delinquent youth (Solanki et al., 2006), and this raises the issue of the social construction of punishment. In essence, the argument may be made that what is punishment for me may not be for you (think of sadomasochism). This is a classic problem of proportionality and fairness in respect of punishment – as has been noted elsewhere, a prison sentence may be a breeze for some people and an end-of-the-world experience for others (Friedrichs, 2007).

Community sentences may also be differentially experienced: for example cleaning a wall may be considerably easier, physically and in terms of self-esteem, for a young man than for an elderly offender. These are not new problems, but the point for our game analysis is that if the 'points' awarded to the individual in respect of a defection by the State are not set but are dependent on individual differences in the 'players' the State meets, then we cannot be sure that any given individual will prefer cooperation.

This is particularly so if the 'points' awarded for cooperation vary also. And they do. One of the greatest deceptions of the neoliberal age is the ideological adherence to the fiction that for all members of society adherence to social, moral and legal norms is more rewarding than deviance. For those at the bottom of the socio-economic ladder this is palpably untrue; obedience to the law in a context of unemployment, or service-level employment, results in mundane routine lives of service characterised by a lack of opportunity. In a game theoretical analysis, the penal model on which the CJS is constructed assumes that 'non-defection', an absence of punishment, equates to a payoff to the individual, but in the absence of a fair socio-economic opportunity structure and/or considerably more effective political recognition of and

intervention into the problems of poverty and deprivation in the UK, many in our unjust society simply do not experience being 'left to get on with it' as any sort of payoff.

If the tit for tat model of criminal justice reciprocity were to work, the payoff value of cooperation would have to be significantly higher than value of mutual defection (crime followed by punishment), and the evidence suggests that in some sectors of society it isn't. The payoff value of offending while not being punished by the system is significantly greater than the value of cooperation for these sectors, both in terms of material and, it has been argued, existential reward (Katz, 1988), and given the overwhelming statistical likelihood that such a defection will be met with system cooperation (crime without punishment) the model would predict, among individuals hypothesised in a moral and emotional vacuum at least, significant levels of offending.

All of these 'reality checks' therefore undermine the cooperative equilibrium of the iterated prisoner's dilemma we identified as being played between the CJS and the individual, and it should not be surprising in light of these payoff-altering social factors that defection subsists and that a stable uniform universal pattern of cooperation has not evolved.

Conclusion

Criminal justice is not a game, but in its adherence to a model of retributive justice it adopts a tit for tat strategy seen to have great strengths as contender in game situations. Reciprocity has been argued to be a component of justice by some of the great jurisprudential, philosophical and political scientific thinkers (among them Rawls, 1971); it has even been argued to be one of the 'virtues' to which we all should aspire (Becker, 1986). However, as the considerable differences between the artificial construct of an iterated prisoner's dilemma payoff matrix and the real world are made more apparent, tit for tat breaks down as a promising strategy for encouraging cooperation in the form of adherence to social norms and legal rules.

Such a 'real world' analysis reveals the empirical reality of the limitations on the capacities of the CJS in surveillance, celerity, accuracy in fact-finding, and consistency. It reveals the destructive effect on otherwise robust strategies of social cooperation which can be wrought by social, as opposed to legal, injustice which restricts opportunities in respect of certain segments of society and distributes rewards without reference to need or an appropriate justifiable conception of merit, thereby disrupting the supposedly uniform attractions of law-obedience across individuals, across races, and across social classes.

Greater attention to game theory would inform criminal justice policy in productive ways. It would advise that reciprocal defection does not need to be draconian, but just needs to be enough to signal that the behaviour will not be tolerated, and to punish the individual to the extent that it dissuades a non-cooperative strategy. Such punishment needs to be a swift, certain response to defection, in a continuing relationship of exchange between the individual and the State, or society, which allows the shadow of the future to affect contemporary decision-making. It must be of a suitable duration and level to 'repay' the offender his offence, but to allow the adoption of a mutually cooperative exchange to resume once complete.

Above all it should be forgiving, reciprocating defections but never in such measure as to adversely affect the potential of the individual to make good in the future: where punishment casts its own shadow over offenders' futures even after the sentence is complete, and where during the sentence it depletes the belief of the offender in the value of social normativity and adherence to law, perhaps through being viewed as disproportionately severe, through exposure to anti-social peer values (Sutherland and Cressey, 1974), or through rage in the face of perceived irresistible constraints on personal autonomy, the game model would not support it.

Current criminal justice policy and practice fails on all these counts, privileging attempts at one-shot 'nip it in the bud' punishment over more productive longer-term reintegrative engagement with individuals, and allocating punishment across the population of offenders in such an unsystematic way as to verge on the random. Worse still than random, this penal strategy is allocated disproportionately across Scotland's socially and economically most disenfranchised communities and individuals, in an apparent attempt to remedy the low level of social control provided by their meagre access to social rewards with unsustainable threats of punishment for law-breaking. The number of jailed criminals grows; we have managed to turn a prisoner's dilemma into a prisons dilemma.

If we take this analysis seriously it recommends, I would suggest, attention to the capacities of communities to act as agents of crime control. The State, acting through the CJS, is simply not well-placed to administer the level of surveillance and response necessary to put an effective tit for tat strategy into operation. The financial costs of attempting such a regime would be massive. The relationship between individuals and communities, however, adverts to the potential to achieve realistic systems of incentives and punishments at the community level. Community 'activation' has become a hot topic in

recent years, but the reality remains that the concept remains rather rootless: the capacities of communities to 'activate' and the precise manner in which policy-makers might achieve such activation are unclear.

A theory of reciprocity holds potential to form the philosophical platform on which community crime control programmes can be designed. The idea of reciprocity incorporates the sorts of practical rational control mechanisms mentioned above, which can be thought to operate on the level of the individual. It can also offer prescriptions for engaging communities in the provision of communal, 'public goods' such as safety through the mechanism of what criminologists call 'informal social control' (Hope, 1995); that is, the daily social interactions between individuals in communities which are the precursor for the delivery of any structure of social punishments and rewards to individual actors.

This latter idea, informal social control, can be viewed as the acting out of public duty. In the balance of rights and responsibilities, Scotland has traditionally ploughed a rather noble furrow in which civic duty looms large, and the atomistic individual rights-as-consumption model of the citizen increasingly seen to be a central component to American 'Dreams', has been resisted. We should invest our energy in re-invigorating this particularly Scottish way of doing 'community', addressing the rational calculating elements of offending behaviour mentioned above through communal efforts in which we all take some responsibility for shaping the world as we would wish it.

In holding to this model of civic duty, we challenge the rise of an isolated *homo economicus* in both theoretical and practical terms, unwinding the paradigm of individualism with communal efforts. The Scottish Centre for Crime and Justice Research, through its Crime and Communities research network, is starting a major research project on the relationship between crime, communities, and structures of reciprocity, and in the spirit of civic participation adverted to here (!), interested readers are invited to contact the author with expressions of interest in participating, learning more, or of course for the exchange of ideas.

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Book Reviews

Reducing Reoffending: Social work and community justice in Scotland

By F. McNeill & B. Whyte, Willan, Cullompton, 2007

Reviewed by Dan Gunn

A new book on any aspect on Criminal Justices in Scotland is as welcome as it is rare. Its specific title referring to 'Reducing Re-offending' and to 'Community Justice' ensures instant resonance and relevance for all practitioners. Given that the key partner agencies now have a specific target to reduce re-offending and our 8 Community Justice Authorities are up and running this book's content offering a combination of theory and practice could not be more timely.

This work designed to be inter-disciplinary is structured in three distinct parts.

The first provides a critical analysis of the challenge of reducing re-offending through offering a historical context, an evidence based assessment of the successes and failures of community sentences and finally tackling the still new to many theory of desistance and the various emerging interventions to support the desistance processes.

The second addresses the legal context of criminal justice social work. Specific examples highlighted include social enquiry reports, probation, community service and other alternatives to custody. A further chapter is devoted to analysing social work services in and out of custody linked to the perennially controversial area of release arrangements. The third part offers a penetrating assessment of Case Management arguing for the term **Change Management** rather than what is in vogue present both North and South of the border Offender Management. A succinct summary of offender needs is offered and defined as motivation capacity and opportunities. All of us involved in community justice and criminal justice will gain a valuable understanding by recognising these needs and adjusting our responses accordingly. A welcome chapter offers the latest evidence on the role and impact of change programmes. As so many of us want to advance our

knowledge of these programmes, this chapter may prove to be the first port of call.

A brief mention should also be given to the Study Guide designed for social work tutors and students. The summaries offered highlight the current debates in a reflective and balanced manner which will inform all readers however well informed.

Criminal Justice and now Community Justice have never enjoyed a higher profile than today. Crime and Punishment to use a different overarching term is now an integral part of the Scottish Political Currency. Just over a decade ago, England was viewed as having succumbed to 'populist punitiveness'. If the prison population is seen as an accurate barometer, then Scotland is rapidly following suit. However this book with its positive and well-argued agenda for change will act as an inspiration to us all. Offender change is an aspiration and objective we all share, irrespective of our own backgrounds. *'Societies that do not believe Offenders can change will get Offenders who do not believe they can change'*. Community Justice offers a holistic vision of community based joined up services responding to and anticipating the needs of Offenders and providing a real opportunity to move away from a reliance on Criminal Justice, 'tough' penal sentencing and correctionalism. This is surely the way to Reducing Reoffending.

The two authors are well known in SASO circles and indeed we are privileged to have one as a Council member. This book epitomises what SASO stands for–an effervescent cocktail of evidence led practice underpinned by theory enhancing shared understanding.

Youth Justice and Child Protection

Edited by Malcolm Hill, Andre Lockyer and Fred Stone
London: Jessica Kingsley Publishers, 2007.

Reviewed by Jenny Johnstone

The book is a result of a conference held in Scotland in September 2003 which reviewed the Children's Hearing System in light of developments in other jurisdictions[1]. Hill, Locker and Stone set out the aim of the book which is to deal with the 'interface between policies and practices in the realms of what are usually designated youth justice or juvenile justice, on the one hand, and child care or child welfare, on the other.' (p. 9)

The editors have divided the book into four parts. The book first discusses different approaches to the Youth Justice-Child Care and Protection interface. It then goes on to consider trends in Child Protection and Youth Justice Policy. Issues of evaluation, decision-making and rights are then discussed in parts three and four respectively. The book brings together papers arising out of a conference reviewing the Scottish Children's Hearing System in light of developments in other jurisdictions. These jurisdictions focus on countries within Western Europe and North America. It addresses important issues and key theoretical, policy and practice issues relating to the above four themes within these jurisdictions. The book concentrates on youth justice responses to problems effecting children.

The chapters in part one seem to have an underlying theme and that is the role of educational and social policy models to provide a framework of dealing with child-care and protection. These models often involve the commitment of key agencies to provide a multi-agency and holistic response to the child's care and welfare. One key issue emerges in that parental 'attitudes and behaviours' are identified as being problematic and much of the policy and programmes seem to be aimed at altering those attitudes and behaviours. They link this to one of the key factors which are seen as an indicator of a young persons propensity to commit crime: that is that it is a result of parental attitudes and behaviours.

The book does identify that there are different systems and processes operating here. Systems or process of youth justice have been based on

1 The conference was held at Glasgow University and was entitled 'The Scottish Children's Hearings at a Crossroads'

balancing on the one hand the need to punish or control young offenders and encourage them to take responsibility for their actions with on the other hand the need for strategies which take account of the many problems which may lead to involvement in crime a welfare based approach. The book by drawing upon the experiences within different jurisdictions provides a mixture of these different approaches and the tensions which exist. In England and Wales the Crime and Disorder Act 1998 made radical changes to the system and according to Newburn (2003) provides a clear example of the Labour Governments approach of being 'tough on crime and tough on the causes of crime'.[2] The new approach reflects another model of criminal justice, that of - managing offender behaviour. Here the offender becomes the focus of a wide range of intervention strategies combining rehabilitation with punishment with intensive monitoring in an effort to control and limit the opportunities for criminal activity.[3] The restorative (and re-integrative) approach, in the youth justice context, is also gaining momentum in the UK. In the USA, Creekmore (Chapter 3) discusses community based problem solving and evidence based practices and points towards other community approaches including community prosecution, Family Group Decision Making and Restorative Justice that are developing within the various Federal States. These initiatives suggest that not only are children and families accountable to the community but the community are accountable to children and families so responsibilisation (Garland: 1996) of the community, children and families is occurring. But Creekmore goes on to suggest that these practices provide for bridging service systems such as child welfare and youth justice.

This takes us to the debates also raised in part two of the book which considers trends in Child Protection and Youth Justice Policy, focusing mainly on Scotland and England and Wales. As Kemp and Bottoms (Chapter 7) illustrate initiatives such as the development of the Youth Offending teams[4] (ref) within in England and Wales and the role of the Children's Hearing system emphasises this need for a coherent, holistic and multi agency response. Whilst this approach was initially resisted by YOTs and whilst, Bottoms and Kemp, have found that this collaborative approach has become accepted there is still evidence of provision of a fragmented service. YOTS may address offending behaviour but care and protection issues are not. Hollander and Tarnfalk (Chapter, 4), also identify the

2 See also A Rutherford (1993) 'Working Credos' from *Criminal Justice and the Pursuit of Decency,* Oxford: Oxford University Press, pp 1-24. (I have photocopy that you can borrow)
M. King (1981) *The Framework of Criminal Justice*, Croom Helm: London, Ch 2King

3 For example the Intensive Supervision Surveillance Programmes that requires supervision for at least 25 hours per week with specified activities, curfews and monitoring.

4 See http://www.yjb.gov.uk/

difficulties of 'intertwining social welfare with the criminal justice system' adding that 'it becomes more difficult for all involved to decide on what grounds interventions should be made'. They conclude that there is a risk that interventions may be generated from crime rather than the needs of the child. Buckley and O'Sullivan (Chapter 2) point to challenges faced by inter-agency cooperation in responding to youth justice and child protection raises issues of sharing information and developing working protocols.[5] Not only that but the challenges of laws and regulation for different aspects of child welfare (protection) and youth justice provide a potential barrier.

The third section on the book addresses issues of evaluation. Kuenssberg (Chapter 9), who provides an interesting 'insiders view' highlights the barriers to assessing and evaluating how systems work. She focuses on the Scottish Hearing System and points towards the lack of data, dearth of research, lack of clear aims, different perspectives and the views of service users. These issues are applicable to many areas of research in criminal justice, youth justice and social welfare. The ability to evaluate and assess the effectiveness of schemes provides evidence and impetus for improvement and change. Waterhouse (Chapter 10) identifies the next steps as the need for empirical comparative studies between the Children's Hearing System and alternative models in other jurisdictions. This in respect of comparing jurisdictions with policies based on the concepts of need and help that are being replaced by guilt and punishment or proportionality and culpability (Sweden, Chapter 4). The pilot of the Youth Court in Scotland provides a departure away from the underlying philosophy of the welfare oriented approach and has arisen out of a missed opportunity or absence in developing a longitudinal analysis of the role of the Children's Hearing System especially important when it is one of the few welfare oriented institutions 'dealing with youth justice in northern Europe'. (Chapter 10, p208)

The fourth part of the book considers decision-making and human rights. The Children's Hearing System in Scotland relies on lay panel members who provide the community response both in the youth justice context and in respect of the non-offence referrals dealing with care and protection. Reid and Gillan (Chapter 11) consider the place of lay participation in decision-making. They argue that in both youth justice and care and protection issues the 'appointment of lay decision makers is legitimised by the fact that decisions have a moral component, though nota a moralistic one, and

5 This is where some form of social network analysis or process evaluation will help us to understand how these organisations work, their interrelatedness; their working practices; their different perspectives but working within the same process; understanding cultural difficulties, compatibility of organisational structures, processes, information management and analysis. What takes precedence the process or the organisation?

lay people reflect the range of moral opinion in the community. However formal mechanisms of training, ensuring a cross section of the community is represented and understanding what that 'community is' may all impact on the effectiveness and legitimacy of the panel. The welfare approach in Scotland is based to some extent on informalism which brings with it a concern for ensuring that due process and rights are recognised throughout the process. Coercive elements or outcomes of any process would suggest that rights and due process safeguards would need to be apparent. The welfare approach of the Children's Hearing System also would suggest that the interests of the child are paramount which echoes the sentiment of the United Nations Convention of the Rights of the Child[6] For the Children's Hearing System it would be ensuring that users of the process know where the due process safeguards are and how to activate them. Marshall (Chapter 14) identifies some of the tensions that exist within the Scottish Hearing System and some challenges that the Children's Hearing System has faced[7].

Overall this book provides a very useful and timely insight to the tensions that exist not only within Scotland but within other jurisdictions in reconciling the need to respond to youth crime but also in considering the needs, welfare and protection of the child. Although the majority of the book focuses on the Scottish Children's Hearing System the contributions from other jurisdictions remind the reader of the competing paradigms and concepts that exist and reinforce the view that a more detailed comparative analysis of different jurisdictions approaches and some forum for providing that discussion is needed.

6 http://www.unicef.org/crc/

7 For example in S v. Principal Reporter and the Lord Advocate it was held that the lack of legal representation at a Children's Hearing adversely affected the ability of the child to influence the outcome and therefore breached Art 6.1 - legal representation possible where it is the interests of justice to do so. See now the Children's Hearing (Legal Representation)(Scotland) Rules (2002)

SASO – Objects, Membership, Office Bearers, Branch Secretaries and Chairman's Report

Objects

The formal objects of the SASO are: "to initiate, encourage and promote as an independent Scottish body, study and research by all means into the causes, prevention and treatment of delinquency and crime, and to co-ordinate and consolidate existing work of that and the like nature, and to give publicity to such work, and to secure co-operation between bodies, association or persons engaged in any research or work or activity having objects similar or akin to those of the Association".

The Association is managed by a Council. There are branches in Aberdeen, Dumfries, Dundee, Edinburgh, Fife, Perth, Glasgow, Lanarkshire, and in Orkney & Shetland. Each branch carries out its own programme of meetings and local conferences. The Association organises a residential conference each year at Peebles on the third weekend in November. It is Scotland's main criminal justice conference and attracts distinguished speakers from both within and outwith Scotland.

The basic aim of the Association, both nationally and locally, is to create a common meeting ground for the many professional groups and individuals interested in the field of crime and criminology. The membership is drawn from the Judiciary, the Legal Profession, the Police, the Prison Service, Social Work Services, Administrators, Academics, Teachers, Reporters to Children's Panels, Children's Panel Members, Doctors, Clergy, Psychologists, Prison Visiting Committees, Central and Local Government. It provides an opportunity for an exchange of views by its members, enabling them to explain their own problems and to appreciate the problems of others engaged in related fields. SASO has no agenda other than to make possible and encourage purposeful dialogue within the Scottish criminal justice system in ways which will contribute to its improvement.

Through study groups and conferences, communication between the professional groups is encouraged and individual members gain the opportunity to meet experts in different fields of study, and to discuss with them matters of mutual interest. In the working parties it is possible for

the members to contribute their own specialist knowledge or experience. Among the most valuable results of membership are the opportunity to meet and know others with whom it may be necessary to make contact during the course of one's professional life, and the consequent building of trust and confidence between members.

Membership

SASO has around 400 members. Those wishing to join should contact the Administrator, Carol McNeill, 56 Ava Street, Kirkcaldy, Fife KY1 1PN.
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Chairman's Report, 2005-06
Given to the AGM of the Association at Peebles on 17 November 2006

General

SASO has had another very successful year, bringing together all those involved in the justice system in Scotland. Our membership now stands at 404 but, of course, many non-members attend our lectures and conferences and our level of support is higher than the membership figure suggests.

Conference

The 2005 Conference took as its theme "Crime and the Media" and was once again a most successful and enjoyable event. We opened the Conference with our Dinner on the Friday night. The after dinner speaker was the Very Reverend Graham Forbes, Chairman of the Scottish Criminal Cases Review Commission, who spoke about the important work of the Commission in rectifying miscarriages of justice. On Saturday morning, the Conference Chairman, Professor Neil Hutton, Dean of the Faculty of Law Arts and Social Sciences at Strathclyde, opened the Conference and introduced the first speaker, Professor Robert Reiner, Professor of Criminology at the London School of Economics. He spoke on the media construction of law and order and how the way in which crime is portrayed in the media has changed since the War. Professor Richard Sparks, Professor of Criminology at Edinburgh University, spoke on media discourse and states of emergency, looking also at how the media present issues of law and order. These two excellent addresses formed the backdrop to the interactive session in the afternoon. This was a fascinating event organised by members of the Strathclyde School of Journalism. We followed a news story through its development as it illustrated the many issues which have to be confronted by journalists in reporting crime. The afternoon closed with an entertaining and informative talk by Duncan Campbell of The Guardian who compared the press and their treatment of crime in the UK and the USA. On Sunday morning, Elizabeth Cutting, Public Information Officer for the Judiciary in Scotland, spoke about the aims and activities of her important new post. The conference closed with the illuminating reminiscences of Lord MacLean and his fifteen years on the Bench.

Branches

The Conference is our single largest event but through the year the Branches provide a wide range of lectures locally and provide an important local meeting place for those involved in criminal justice.

Glasgow's Branch continues to flourish with Sheriff Rita Rae as Chair and Jackie Robeson as Secretary. It organises a first class day conference, a debate on a topical issue and a series of lectures which are always well attended.

In Edinburgh, Sheriff Andrew Lothian has handed over the Chairmanship to Sheriff David Mackie. Andrew Lothian has contributed hugely to the thriving state of the Edinburgh Branch, securing a succession of excellent speakers and this is reflected in the large attendances. This year some lectures are being held jointly with the Howard League. The good audiences draw on the combined membership and support of the two organisations. Bernadette Monaghan, as Secretary, has made a great contribution to Edinburgh's success.

The Fife Branch has been very active under the Chairmanship of Sheriff Brian Donald with the strong support of Chief Constable Peter Wilson, as Secretary. Perth too has continued with a full programme under the Chairmanship of Sheriff Fletcher, with particular thanks to their energetic Secretary, Eilidh Murray, who has also very helpfully acted as secretary to the Council during Margaret Small's illness. Lanarkshire, with Jim O'Neill as Secretary and Sheriff Gibson as Chairman, has held a series of successful meetings and is planning to consult widely locally on what it should do in the future. In Dumfries, Bill Milven, as Chairman and Amanda Armstrong as Secretary, run our most southerly Branch with a wide range of lectures and first class local speakers. Our most northerly Branch – Orkney and Shetland - is run by Sheriff Graeme Napier, in cooperation with other local agencies, with Tommy Allan as Secretary. The Branch is making use of video conferencing to overcome the major problem of getting outside speakers which is created by distance. In Aberdeen, the Chairman is Sheriff McLernan and we have set the reviving of the Dundee Branch as an objective for next year.

This simple list of individuals and branches does not do justice to the huge amount of work that goes into running the lively Branches of SASO. I am very grateful indeed for all the effort put in by a few key individuals to SASO.

Council

Council has met four times this year, as planned, twice in Edinburgh, twice in Glasgow. I am very grateful for all the help I have had from the Council and its office bearers, in particular from Dan Gunn, the Vice Chair, who,

in the past year, has taken on the considerable responsibility of Governor of Edinburgh Prison. Sally Kuenssberg as Conference Organiser puts in a huge amount of work and great attention to detail in making sure the Conference runs smoothly, alongside all her other activities in the voluntary field. Margaret Small our Secretary has been ill this year but we are very glad that she is now recovered and we are delighted to see her here at the Conference.

Finance
Our finances continue to be very healthy, in the capable hands of our Treasurer, Alasdair McVitie, and he will be reporting more fully shortly. I am very grateful to him and also to Ronnie Sinclair for acting as the examiner of our accounts.

Journal
Our Journal continues to be an excellent publication under the Editorship of Jason Ditton, with Professor Michele Burman as Assistant Editor. The Journal combines papers from the Conference with original articles. The Journal now has an Editorial Board which peer reviews original articles and I am very grateful to the Editorial Board to the time they contribute to producing a very worthwhile and informative Journal.

The Website
Nowadays, it is essential for any organisation such as ours to have a good and easily accessible website. Thanks to Mary Munro, we have an excellent website which allows anyone, member of the association or member of the public, to find out when our meetings are and where, how to join, how to contact a Branch Secretary. We also have on the website past Journals. I am very grateful to Mary Munro for having created this essential resource.

Lord Hunter
Lord Hunter, who played a major role in establishing what is now SASO, died in March 2006. A full appreciation appears in the 2006 Journal. He was the Life Patron of the Association in recognition the huge amount he did in establishing the Association throughout Scotland. He and Evelyn Schaffer were the enthusiastic founders of SASD. Lord Hunter was always ready to travel to Branches to speak and to encourage others through his enthusiasm. The Association is very grateful to him and will remember him.

Audrey Chisholm
Audrey Chisholm died in February 2006. She was the Secretary of the

Glasgow Branch and played a large part in the organisation of the Annual Conference. She was one of those quiet people, active in many fields, without which voluntary organisations cannot survive. They deserve to be recognised and we are very grateful to her. An appreciation of her also appears in the Journal

New Life Patron

Lord Hunter was our first Life Patron. After his death, the Council decided to approach Lord Caplan to ask if he was willing to succeed Lord Hunter as Life Patron and we were delighted when he accepted. Lord Caplan had a distinguished career at the Bar before becoming a Senator of the College of Justice. He has always been a strong and effective supporter, first of SASD and now SASO.

Farewell

This is my last report as Chairman of SASO. I have been Chairman for exactly five years and have greatly enjoyed it. SASO is the perfect voluntary body. It has no financial worries and it is financially independent. It has clear objectives and all those involved with it are friendly and a pleasure to work with. It is blessed with a first class administrator in Carol Mac Neill who manages the whole organisation and, in particular, the Conference with a wonderful quiet efficiency which makes the Chairman's job very easy. I am particularly grateful to her. Although I am still much enjoying being Chairman, I do believe that it is important that offices such as this should not be held too long. It is essential for any organisation to have new people with new ideas. I was therefore delighted when Alec Spencer agreed to become Chairman of SASO in succession to me. He has had a very distinguished career in the Scottish Prison Service. He has just retired as Director of Rehabilitation and Care in the Scottish Prison Service. His first degree was in law and politics and he has a postgraduate degree in criminology. He has been Governor of Edinburgh, Peterhead and Glenochil Prisons. He is an Honorary Professor in criminology and criminal justice at Stirling University. He is Chairman of the Accreditation Panel and a member of the Support Team for the setting up of the new Community Justice Authorities. He thus brings a very wide range of relevant experience and will I am sure will have lots of ideas on how to develop the Association.

I would like to close by wishing the Association the very best in continuing what I consider a very important role – bringing together all those working in the criminal justice system in Scotland so that they understand one another's problems better and can work to improve the system as a whole. I would

also like to thank the Association for asking me to be their Chairman in the first place. It has been great fun.

Niall Campbell

Starting a new branch

The Council of SASO is very keen to encourage the establishment of new local Branches of SASO. Local Branches and local Branch activities are the life blood of the Association. The Council has prepared a pack of material for any member or group of members wanting to set up a new local Branch.

If you are interested in setting up a new Branch, do get in touch with SASO's Chairman, Niall Campbell, or the Secretary, Margaret Small. Our names and addresses are in the Office Bearers section of this report. We will be very glad to hear from you and to discuss what we can do to help. SASO has funds which can be used to help new branches get started. For instance, it may be necessary to spend money on initial publicity material. We can provide membership lists so that a new branch knows which members live within its area. We can also provide names and addresses of the criminal justice agencies, organisations and individuals in the area who might be interested in becoming involved in a local branch of SASO. Membership forms for recruiting new members and copies of the programmes of other branches to suggest ideas for new Branches can be provided. We can put you in touch with the office bearers of other Branches who can discuss with you direct how to set up a new branch.

SASO can make an important contribution to improved communication within the criminal justice system and it is one of the declared aims of the Association to do this. An increased number of lively local Branches is one of the most effective way for the Association to make its contribution to the important aim of improved communication within the criminal justice system in Scotland. Do not hesitate to get in touch with us if you would like to start a new Branch.