

Criminal Justice in Scotland

Edited by Hazel Croall, Gerry Mooney and Mary Munro

Due for publication by Routledge/Willan on 28 September 2010.

[Routledge catalogue page and order form.](#)

Reviews

'This excellent volume gives the reader an accessible, illuminating and up-to-date picture of Scottish criminal justice. Locating the distinctive character of the Scottish system in a social and comparative context, these incisive essays challenge complacent national myths and replace them with sharp, well-informed analysis.'

- David Garland, Arthur T. Vanderbilt Professor of Law and Professor of Sociology, New York University

'*Criminal Justice in Scotland* makes a valuable and timely contribution to the growing field of comparative criminology.'

- Pat Carlen, Visiting Professor at the Universities of Kent and Westminster, and Editor-in-Chief of the *British Journal of Criminology*

'At last we have a well-informed and up to date discussion of issues in Scottish criminal justice in one volume. It is also high time that more readers outwith Scotland became aware of some of the distinctive features of crime and punishment in this complicated, often troubled, sometimes profoundly innovative place; and, moreover, that criminology in general ceased to think about the United Kingdom as a unitary state. In all these ways Croall, Mooney, Munro and their contributors have done the field, in and beyond Scotland, a great service.'

- Richard Sparks, Professor of Criminology at the University of Edinburgh, and Co-director of the Scottish Centre for Crime and Justice Research

Contents

Part 1: Thinking About Crime and Criminal Justice in Scotland 1. Criminal Justice in Scotland: themes, issues and questions, *Hazel Croall, Gerry Mooney and Mary Munro* 2. Social Inequalities and Criminal Justice in Scotland, *Gerry Mooney, Hazel Croall and Mary Munro* 3. Urban 'disorders', 'problem places' and criminal justice, *Alex Law, Gerry Mooney and Gesa Helms* **Part 2: Issues in Criminal and Social Justice** 4. Youth Crime and Justice in Scotland, *Lesley McAra and Susan McVie* 5. Gender, Crime and Criminal Justice in Scotland, *Lesley McMillan* 6. Race, Ethnicity, Crime and Justice in Scotland, *Hazel Croall and Liz Frondigoun* 7. Corporate Crime in Scotland, *Jenifer Ross and Hazel Croall* 8. Environmental Crime, *Reece Walters* **Part 3: Aspects of Criminal Justice Process and Practice** 9. Policing in Contemporary Scotland, *Nicholas R. Fyfe* 10. Sentencing and Penal Practices: is Scotland losing it's distinctiveness?, *Cyrus Tata* 11. Fines, Community Sanctions and Measures, *Mary Munro and Fergus McNeill* 12. Prisons and Imprisonment in Scotland, *Jacqueline Tombs and Laura Piacentini* **Part 4: Looking Ahead** 13. Criminal Justice in Scotland: overview and prospects, *Mary Munro, Gerry Mooney and Hazel Croall*



Chapter 1: Criminal justice in contemporary Scotland: themes, issues and questions

Gerry Mooney, Hazel Croall and Mary Munro

Extract from pages 5-8

"In this collection we have brought together a number of leading academics and researchers who are actively engaged in developing an understanding of a disparate range of crime and criminal justice issues from a 'Scottish perspective'. However, although the chapters introduce a range of topics, all address the central concern of this book: to enhance our knowledge of the state of criminal justice in Scotland today, perhaps pointing to possible future directions and to address what we think are a number of myths and misunderstandings about criminal justice in Scotland.

In part these myths and misunderstandings maybe due to what can only be described as a general neglect of 'Scotland' in many key criminology and criminal justice texts, other than the occasional ritual nod to the 'unique' children's hearing system (see, for example, Cavadino and Dignan 2006). Scotland and Scottish criminal justice is either overlooked completely or marginalised, at best 'tacked on' to a discussion that otherwise is England and Wales centred and driven by the concerns of policy-making in that jurisdiction – as Garland, in his preface to a previous collection of articles on Scottish criminal justice pointed out, 'the UK' all too often 'really means England and Wales' (Garland 1999: pxiv). A relatively recent Student Handbook of Criminal Justice and Criminology (Muncie and Wilson 2004), for example, contains one chapter devoted to 'Scotland' (Reuss 2004) for which there is no other index reference in the preceding 18 chapters covering key criminological and criminal justice areas. What is regarded as the major British criminology text, the Oxford Handbook of Criminology (Maguire et al. 2007), contains 32 chapters. Without singling out individual chapters it is fair to say that the vast majority focus almost entirely on England and Wales, even where there are significant divergences not only with Scotland but also Northern Ireland, and indeed between England and Wales. It is notable that the index for 'comparative criminal justice' refers specifically to France, Germany, Holland, Italy, Japan and the United States (Maguire et al. 2007: 1144) but not to Scotland or Northern Ireland. Similarly, a 2004 collection on Criminal Justice and Political Cultures: National and International Dimensions of Crime Control (Newburn and Sparks 2004), which includes chapters on policy transfer, divergence and convergence, includes only four index references to Scotland, all in relation to youth justice (Muncie 2004). A chapter on US and UK crime control policy takes English and Welsh policies and Criminal Justice Acts as examples of UK policy and there is only one mention of Scotland in relation to the Strathclyde Police 'Spotlight' initiative as an example of changes in policing (Jones and Newburn 2004). In this, as in so many British texts, it is (without acknowledgement) typically the English system which is used as an example of general points. We suggest that this is an unjustifiable and curious omission and propose that a wider consciousness of what is both shared and diverse within and across all the UK jurisdictions (including Northern Ireland) would contribute to a richer, more complex and more challenging British criminology.

In part some of the confusions are a product of the nomenclature that is applied to key knowledge sources. As Ian Jack (2009) has recently commented:

Readers of London newspapers are used to blank spaces north of the border. Maps illustrating variations in house prices, healthcare provision, obesity rates, knife crime, tourist numbers – they show white beyond the diagonal that links a point north of Berwick to another point north of Carlisle. These maps and charts might describe their statistics as 'national' or 'British' but in fact they reflect the society of England and Wales (and sometimes just England alone).

For example, the 'British' Crime Survey is concerned only with the patterns of crimes in England and Wales, as are most Home Office criminal justice statistics. Not only that, but the

governance and administration of institutions and agencies of Scottish criminal justice, from prosecution to social work to prisons, are distinct from those south of the border. However, this all helps to promote a general confusion among students and not a few academics (and of course journalists and the wider public) about the existence of different jurisdictions and the relations between them.

Other confusions arise from the misconception that devolution created a new Scottish criminal justice and that prior to 1999 criminal justice and the legal system, while distinctive in important respects, largely followed a Britain-wide model. On the contrary, Scotland's legal system was one of the three 'pillars' of Scottish 'civil society', along with the education system and Presbyterian Church Government, that were protected by the 1707 Act of Union of the Scottish and English Parliaments. The evolution of Scottish justice, has in many senses, been uninterrupted by the existence of the Union.

To help us address such confusions, and to develop a more informed understanding of the current state of criminal justice in Scotland, several interrelated themes underpin this collection. Contributors were asked to address first, and where appropriate and feasible, the distinctiveness of crime and criminal justice in Scotland in both UK and wider international contexts, and secondly, the extent to which devolution has made any significant difference to this. A key concern is whether devolution has led to a deepening and widening of such distinctiveness – or alternatively to a lessening of it and arguably to a convergence between Scottish criminal justice and other jurisdictions. A third important analytical theme is to locate questions of criminal justice within the wider realm of social policy and social welfare. Issues of social justice and injustice, inequalities, social divisions and power recur across the chapters. This critical voice departs from the tone of other texts which have been concerned with aspects of criminal justice in Scotland.

Duff and Hutton's (1999) edited collection on *Criminal Justice in Scotland* represented what was at the time an extremely valuable collection of work on a wide range of aspects of crime and criminal justice in Scotland. While it did address some of the most distinctive aspects of Scottish criminal justice, and many articles explored the influence of global trends, it could only look forward to devolution and, unlike this volume, it did not seek to move beyond more conventional criminological concerns to address issues of inequalities or social justice. It remains nonetheless an invaluable source of information about the state of key areas of Scottish criminal justice immediately prior to devolution. Other books relating to Scotland, or containing substantial amounts of work on Scotland such as McIvor's (2004) collection on *Women Who Offend*, which contains a number of Scottish articles, Donnelly and Scott's (2005) *Policing Scotland* and McNeill and White's (2007) book on *Social Work and Community Justice in Scotland* have focused on specific areas of Scottish criminal justice policy. This collection is distinct therefore in addressing the major themes identified below from the vantage point of over ten years of devolution."

Chapter 2. Social inequalities, criminal justice and discourses of social control in contemporary Scotland

Hazel Croall, Gerry Mooney, and Mary Munro

Extract from pages 22-23

"In Scotland's major towns and cities, repeated and continuing connections are drawn in many different ways between places of disadvantage/impoverished communities and issues of crime and disorder (Damer 1989a). From the slums of nineteenth-century Dundee, Edinburgh and Glasgow to the recurring focus on the 'problems' of Scotland's public housing schemes in the late twentieth century and early 2000s, we do not have to look far to uncover such associations, even if many are problematic in multiple ways.

Mainstream criminological theories and research echoed these perceptions by accepting the assumption that the 'lower' classes were more prone to crime and investigating their assumed 'problems' such as physical or psychological pathologies, 'dysfunctional' families, social disorganisation and delinquent subcultures. To structural theorists crime was dysfunctional and

indicated a problem with the social structure, often related, to a 'strain' between the notion that all could achieve wealth and high status and the impossibility for many of achieving these cultural goals by legitimate means (Merton 1938). While this did highlight the significance of social disadvantage and unequal opportunities, it reflected a tendency to 'blame the poor' and indeed to 'over-predict' lower-class crime (Matza 1964). It is important to recognise that not all lower-class individuals resort to crime, nor is all crime committed by lower-class individuals. Indeed the very existence of 'middle-class' and corporate crime, explored in later chapters in this book, challenges these assumptions.

Crime in Scotland, with its high levels of socio-economic inequality (outlined in the following section), has long been attributed to aspects of social deprivation. While much attention has been focused on the former heavy industrial areas of Glasgow and Clydeside, with their reputation for gang violence and organised crime, other cities have also been depicted as places where crime and disorder are factors of everyday life. This is exemplified in the Edinburgh-set film *Trainspotting* (1996) while Dundee's gang culture from the 1960s and 1970s, a period in which the city was being badly affected by long-term economic change and decline, featured in BBC Scotland's Radio Programme *Street Gangs of Dundee* (2007) and Gary Robertson's *Gangs of Dundee* (2007). Scotland's cities, or particular districts within them, together with other towns across the country also feature in the growing number of websites devoted to detailing youth gang activities, gang cultures and the 'hardness' of one locale compared to others.

Many politicians have stressed the significance and negative consequences of Scotland's 'booze and blade' culture, often linked to issues of poverty and deprivation. Responding to widely publicised indications in the *Scottish Crime and Victimisation Survey* that victims attributed around 45 per cent of minor assaults to perpetrators under the influence of alcohol, Kenny MacAskill, then SNP spokesperson, stated that the 'social factors that contribute to crime', were 'chiefly drink, drugs and deprivation'. Here MacAskill is echoing the commonplace analysis of criminality prevalent a century ago:

Drunkenness has long been a social evil [in Scotland] of very grave magnitude. The poverty, squalor, vice, and crime of the slum districts of the large towns are largely traceable to this evil. But the drink demon lurks in every corner of the land and among all classes, and its shadow is a blot on the fair name of Scotland. (MacKinnon 1921: 262)

Chapter 13. Criminal Justice in Scotland: overview and prospects

Mary Munro, Hazel Croall, Gerry Mooney

Extracts from pages 262-3

"Scottish criminal justice was exposed to international scrutiny in an unprecedented fashion on 20 August 2009 when the Justice Criminal Justice in Scotland Secretary announced his decision to release the man convicted of the Lockerbie bombing in 1988, Abdelbaset Ali Mohamed Al-Megrahi, on compassionate grounds, commenting that 'in Scotland, we are a people who pride ourselves on our humanity' as a 'defining characteristic of Scotland and the Scottish people' (MacAskill 2009). As he defended this decision in the face of the outrage of many in the Scottish Parliament and elsewhere he would have done so with the Parliamentary Mace and its inscription 'Wisdom – Justice – Compassion – Integrity' in view. If the political estate lays claim to these virtues on behalf of a dissenting nation to what extent may it be said that Scottish criminal justice embodies and practises them?

First though we return to the question of mythologies. One such is the idea that a particular pedigree of libertarian and 'democratic' sentiment in Scotland may be traced from the 'declaration' of Arbroath in 1320, then in Buchanan's 1579 secular fulminations against tyranny, through to the remarkable Scottish contribution to Enlightenment philosophy in the eighteenth century and, through twists and turns, culminating in the singing of *A Man's a Man* at the opening of the Scottish Parliament in 1998 (Reid 2006). Of course there is an obverse history that would foreground the intolerant state theocracy of Calvinism and Presbyterianism, the bloody civil wars and rebellion, the persistence of feudalism, the clearances, the pitiless

industrialisation and widening social inequality, perhaps culminating in the A & E departments of major Scottish hospitals in the emergency treatment of another casualty of a drunken stabbing. However, our business here is not history, nor do we profess to have any expertise in that discipline. What is of relevance to this review is the traction of myth, especially benign myth, to Scotland's particularist view of itself, especially, as is implied in the Scott extract above, as a more rational, benevolent and equal society than that of the greater power south of the border (see Mooney and Poole 2004).

Historical criminology both of the history of the past and a detailed critical 'history of the present' is undeveloped in Scotland. This matters first because rich accounts of pivotal events such as the creation of the children's hearings system and the closure of the Barlinnie Special Unit, penetrating down to the possibly crucial role of key individuals and networks as well as wider contexts, call out for research before key protagonists with accurate memories are lost. This matters secondly because we are persuaded by Lacey's point that contemporary penal differences between relatively similar societies should be understood in terms of historical differences, and that because of these, globalisation and the communication revolution of recent years, will not necessarily or inevitably result in convergent penal policies (Lacey 2008). In thinking about Scotland, as Farmer has pointed out, the preservation of the separate legal jurisdiction at the Act of Union in 1707 has meant that the practices and institutions of law have in important ways come to represent and carry the burden of Scottish culture, identity and privilege (Farmer 1997; Michie 1997). This insight helps account for a persistent and sometimes explicit claim to an intrinsic superiority, both morally and technically, for Scottish justice. So we find that the eighteenth-century legal scholar Baron Hume defends the Scots' criminal common law against the codification he observes in England, 'a country, where, owing to the much greater number of dissolute and profligate people, and to the greater progress of every refinement, and every sort of corruption, crimes are both far more frequent, and far more various in their nature, than among ourselves' (Hume 1844 edn, p. 4). Furthermore, he observes 'our custom of punishment is eminently gentle' compared with the excessive resort to the death penalty in England (Hume 1844 edn). Writing in his *Practice of the Criminal Law in Scotland* (1833) Archibald Alison made a similar point, that Scottish practice achieved a more humane and enlightened procedure than the 'laws of some other states' (quoted in Michie 1997). However, he did so as a landed Tory who vigorously suppressed political dissent. The schizoid space between the benevolent sentiment and the perhaps harsh or malevolent actuality is one that in various forms we find recurring both in Scottish literature (for example, Stevenson's *Jekyll and Hyde* or Hogg's *Confessions of a Justified Sinner*) and the shade and the light, the complexity that is Scottish justice."

The content of this document is licensed under a [Creative Commons Licence](#). Please include the following information in a reference when citing or using these extracts.

Name of the author
Title of the article
Date of article
URL (see below)

These extracts were published by Mary Munro on this web site on 3.9.10. The rest of the book is subject to copyright (see publisher information).

The URL for this pdf is: <http://www.cjscotland.org.uk/pdfs/CJinStaster.pdf>