

GLOBAL POLITICS AND LOCAL CULTURE: CRIME CONTROL AND PENAL PRACTICE IN A SMALL NATION

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Introduction¹

Almost 235 years ago to the day, Dr Samuel Johnson – the well known English essayist and lexicographer - together with his great friend James Boswell (a Scottish lawyer) set out from Edinburgh on their now famous journey around Scotland.

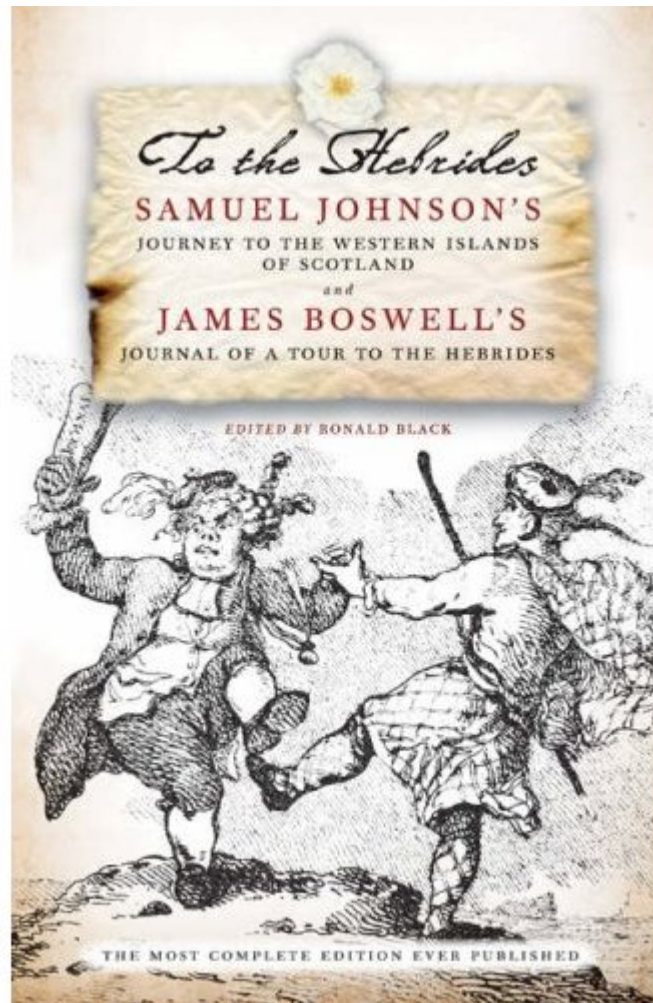


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Johnson, to his secret annoyance, did not find Scotland quite so miserable and barbarous as he had been hoping for. Indeed the front cover of this edition (figure 1) of their accounts of the journey, depicts Johnson as having a high old time, dancing

¹ This paper develops arguments first put forward in the following publications: McAra, L. (2008). "Crime, criminal justice and criminology in Scotland" *European Journal of Criminology* 5 (4): 481-504; and McAra, L. (2007). "Welfarism in crisis: crime control and penal practice in post-devolution Scotland", in Keating, M. (ed.) *Scottish social democracy: Progressive ideas for public policy*. P.I.E. – Peter Lang: Brussels.

(rather drunkenly) with Boswell on top of a mountain. Unfortunately this did not prevent Johnson from drawing the following, rather acerbic, conclusion about Scotland, at the end of their travels:

“[that]the noblest prospect which a Scotchman ever sees, is the high road that leads him to England!”

Johnson’s perspective on Scotland is, arguably, echoed in much mainstream criminological and penological literature (published not only in England, but also across other parts of Europe and within the USA). Indeed within this literature issues relating to crime and punishment in Scotland tend to be marginalised, subsumed under the broader mantle of the UK, or omitted altogether. In my paper this afternoon I want to convince you that rather than being peripheral to our field of inquiry, Scotland should be of central interest to scholars for two key reasons.

Firstly: because the Scottish systems of youth and adult criminal justice have followed a different trajectory from a number of their European and north American counterparts, resisting until very recently the punitive and/or actuarial turn evident elsewhere. As such, the Scottish case confounds most, if not all, dominant theories about the nature and transformation of crime control and punishment in late modernity.

And secondly, because the unique history and development of Scottish criminology as an academic discipline, and in particular its role in helping to sustain Scotland’s divergent trajectory during the 1970s and the 1980s, raises important normative questions about who or what criminological scholarship is for.

I’m going to begin this journey around Scottish crime and justice, with a short contextual overview of how Scotland compares with other jurisdictions in terms of governance, some key demographics and in terms of crime and punishment rates. This will be followed by a review of each of my two claims.

Context

Governance

Pre-devolution, Scottish policy on crime control and penal practice was administered through the Home and Health Department of then Scottish Office. Historically the Scottish Office, under the tutelage of the Secretary of State for Scotland, enjoyed a high level of autonomy from the UK government at Westminster (even although it was itself a UK department of State). Staffed by essentially “progressive” civil servants, it was able to argue for separate policies tailored to the distinctive conditions within Scotland (McAra 2005). Since the Act of Union in 1707, Scotland has always retained a separate education and legal system from England and Wales (and thus our criminal law and criminal justice institutions have always differed in a number of core respects, a point to which I will return, later in the paper).

Pressures for constitutional change grew during the 1980s and early 1990s (at the time of the Thatcher and Major UK Conservative governments) with a resurgence of nationalist/identity politics in Scotland. These pressures were alleviated in 1997 with the election of a New Labour government and the passage of the subsequent Scotland Act 1998 which set out a framework for devolved governance.

Crime control and criminal justice (but not national security) are now devolved matters and come under the purview of the Cabinet Secretary for Justice and Communities. Policy and legislation on criminal justice are scrutinised principally by the justice committee of the Scottish parliament. While the first two devolved administrations were labour/liberal democratic coalitions, from May 2007 Scotland has been governed by a minority Scottish National Party administration.

Key demographics

Scotland is a small nation. It has a population of just over 5 million which is similar in size to some EU member states such as Denmark, Finland and Slovakia but, of course, far smaller than Greater London (which, at the last census, had a population of around 7 million). Scotland has an aging population, and one set to decline over the next 30 years at a much faster rate than other EU countries (ESRC 2007).

Although Scotland is a multi-cultural society, minority ethnic groups constitute a much smaller proportion of the population than in other parts of the UK (2% in comparison with 9% in England). More recently, however, there has been an influx of economic migrants from EU accession states (in particular Poland).

While Scotland has had a growing economy and unemployment levels have been decreasing in recent years (Scottish Executive 2006a), there continues to be enormous disparity in terms of wealth. The proportion of young people not in work, education or training is one of the highest in developed countries (at around 14% of the population aged between 16 and 19) (Scottish Executive 2006b). Within each of the major cities there are concentrations of poverty across specific neighbourhoods (especially Glasgow, which has a fifth of all Scotland's low income households). Poverty is also a major problem in rural areas but it is more dispersed (see Child Poverty Action Group in Scotland 2007).

Increased polarisation in terms of both age and wealth may have important consequences for social cohesion in Scotland in the longer term. In particular, tensions may be increased where a waning younger generation is required to bear the financial/tax burdens of a growing older generation which, in turn, makes heavy demands on social and health services; where there is exponential growth in the group which most fears crime (elderly) and which shows signs of being less tolerant of younger people (see McAra 2004). Tensions may also be increased where key segments of the younger population continue to be excluded and marginalised; and where urban regeneration fails to tackle entrenched layers of poverty and social disorganisation, with deleterious consequences for community empowerment and mobilisation. A key challenge for Scottish Governments is to tackle the criminogenic potential which inheres in many of these tensions before they impact adversely on crime rates.

Crime trends

The International Crime and Victimization Survey shows that Scotland has a below average victimisation rate in respect of the European countries included in the 2004/5 survey. In particular Scotland has a much lower rate of burglary (housebreaking) than England/Wales and also a lower rate of non-lethal assaults and threats (figures 2,3 and 4)

Crime rates in comparative context ICVS 2004/05 : 9 selected crimes

Source: van Dijk et al. 2005

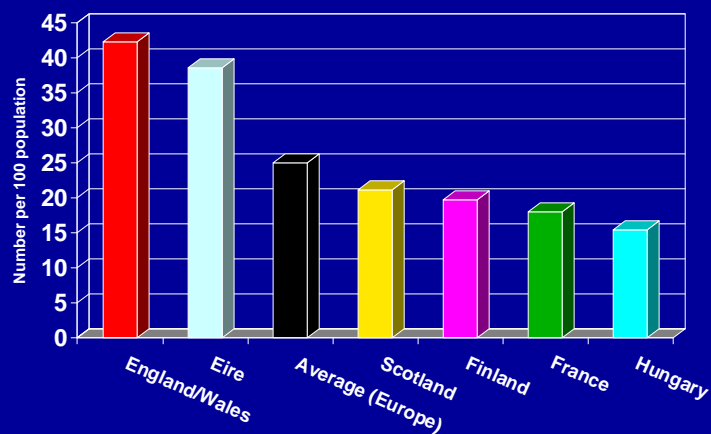


Figure 2

Crime rates in comparative context ICVS 2004/05 : 'burglary'

Source: van Dijk et al. 2005

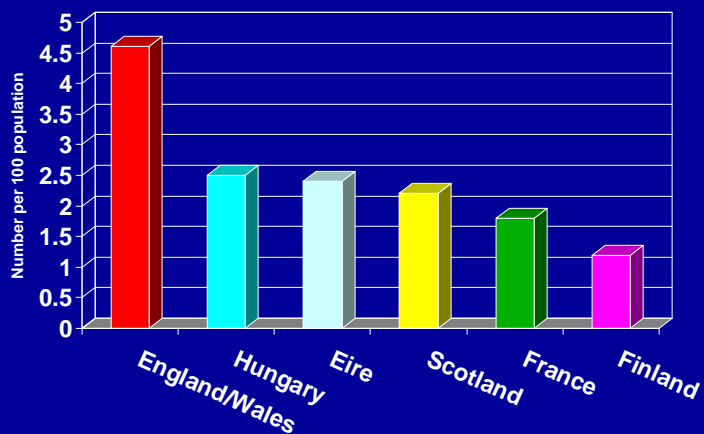


Figure 3

Crime rates in comparative context ICVS 2004/05: assaults and threats

Source: van Dijk et al. 2005

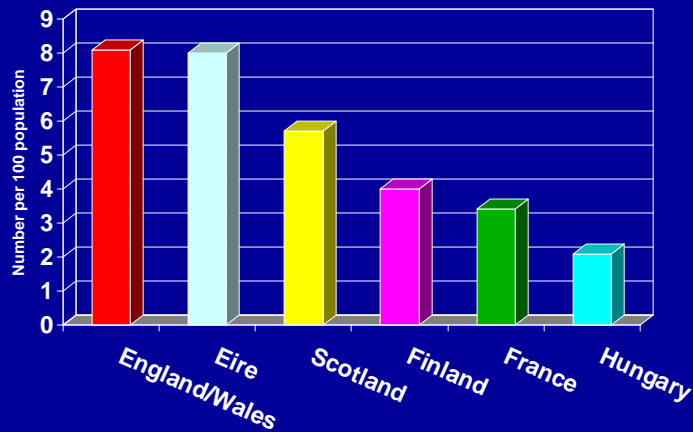


Figure 4

Scotland does, however, have one of the highest homicide rates amongst EU member states. As indicated in figure 5, it has a much higher rate than England and Wales, with Glasgow having elevated rates in contrast to other major cities - including Edinburgh, London, Paris, Amsterdam and Helsinki (figure 6). The high homicide rates in Glasgow are linked to a concentration of factors some of which I have already mentioned: pockets of extreme neighbourhood deprivation; a culture of knife-carrying amongst young males; sectarian/football violence; organised crime and gang culture; and a heavy drinking culture coupled with local “anti-heroes”/role models in the form of the “Glasgow hardman” – (see James Kelman, 1994, and William McIlvanney, 1985, novels for an introduction!).

Homicide rates in comparative context

Source: Scottish Government 2007a

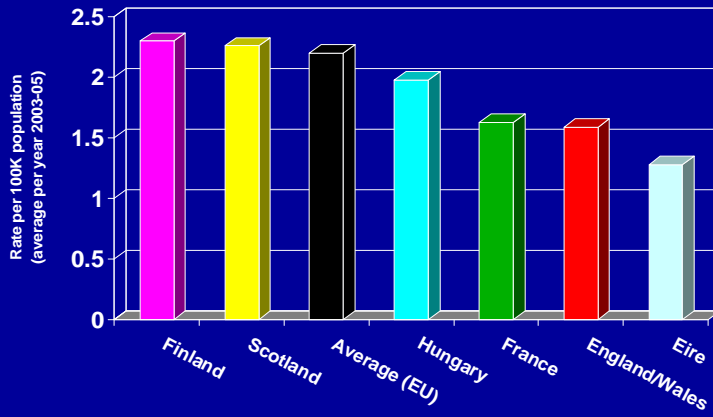


Figure 5

Homicide rates (cont.)

Source: Scottish Government 2007a

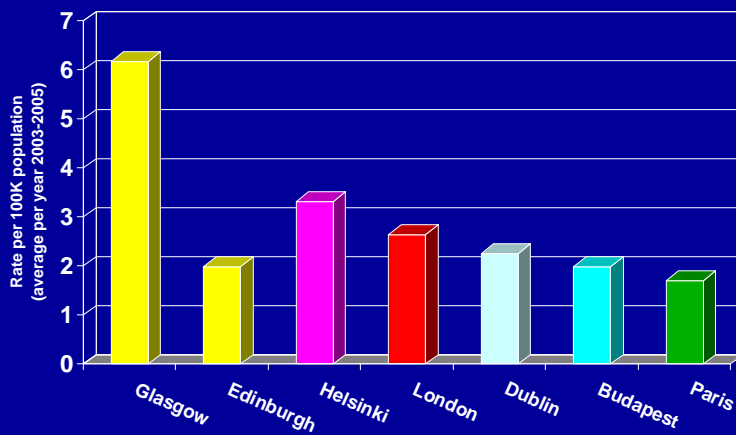


Figure 6

Trends in punishment

While Scotland has lower than average overall crime victimisation rate, nonetheless it has one of the highest imprisonment rates in Europe (figure 7). Importantly this is not accounted for by the high homicide rates – as life sentences (the mandatory sentence for murder) only constitute 9% of the average daily population (ADP) in most years. The rise in ADP is principally due to an increase in the length of sentence which other (non-life sentence) prisoners are now serving. A major cause for concern is the growing number of women who are given relatively short sentences (six months to four years) for petty persistent offending and the 40% increase in the total number of remand receptions since 2000, for men and women, many of whom do not end up with a custodial sentence (see Scottish Government 2007b, Tombs and Jagger 2006). (This high imprisonment rate is, arguably, Scotland’s “disgrace” and the over-use of imprisonment for petty persistent offenders is something which the current SNP administration is rightly exercised about).

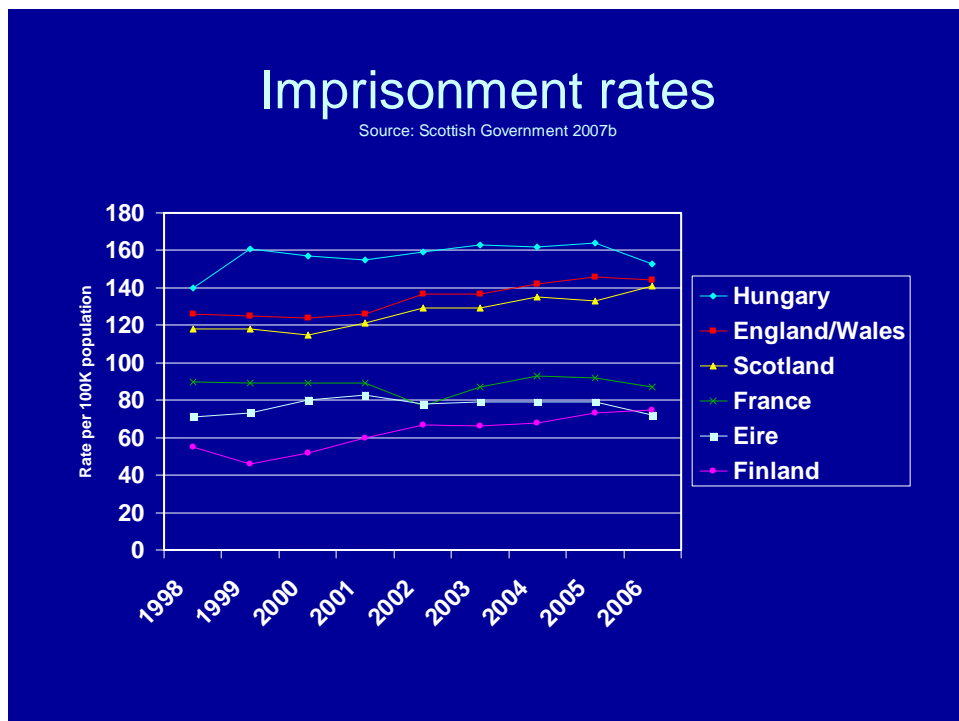


Figure 7

Claim 1: Scotland has followed a different trajectory and confounds dominant theories

Having set out some key contextual features, I now turn to the first of my two claims: that the Scottish adult and youth justice systems have followed a different trajectory from a number of their European counterparts (not least the system south of the border in England and Wales) and thus confound dominant theories.

Scotland's divergent trajectory

From the 1970s until around the mid 1990s the Scottish adult and youth justice systems fully embraced welfare values in contrast to developments in many other western systems (including England and Wales) in which welfare principles gradually diminished in significance, accompanied by a shift towards, what Tony Bottoms has famously termed, populist punitiveness and/or more actuarial forms of justice, predicated on risk management (McAra 2005).

The key watershed in terms of divergent trends came with the passage of the Social Work (Scotland) Act 1968. This Act placed social work at the heart of the criminal justice enterprise by abolishing the older specialist probation service and transferring its functions to newly created local authority social work departments. Importantly the pre-ambule to the Act stated that the primary role of these new departments was to promote "social welfare".

A further radical feature of the Act was that it abolished the older juvenile courts and set in train the Scottish children's hearing system. Predicated on the Kilbrandon philosophy, the new system was aimed at early and minimal intervention the objective being to avoid the criminalisation and stigmatisation of children, with the best interests of the child to be paramount in decision-making.

The framing of key elements of the adult criminal justice system and the children's hearing system in terms of welfare values was a stable feature of Scottish policy for around 25 years. Indeed the point of greatest divergence between Scotland and England/Wales came in the early to mid 1990s, a period in England/Wales which I have dubbed "the darkness" in tribute to Michael Howard. The then home secretary was famously described by Anne Widdicombe as having "something of the night about him" and his dictum that "prison works" flowed into both youth and adult criminal justice policy in that jurisdiction.

The post-devolution period

From the mid 1990s onwards, however, Scotland's divergent trajectory has stalled, with a major retreat from welfarist principles evident in some areas of both juvenile and adult criminal justice. While the roots of this change can be traced to the period immediately prior to devolution, Ministerial appetite for reform has exponentially increased in the post-devolutionary era.

There has been increased managerialism in both jurisdictions (as with other areas of public policy) – strategic planning, national standards, target setting, efficiency, effectiveness, monitoring and evaluating have become key watch words in criminal justice. New forms of vertical and horizontal accountability permeate the system –

premised on multi-agency working and the development of cross institutional cultures. Public protection, risk management and effective, evidence-based practice now frame both adult and youth justice interventions. There has also been a gradual elision between the social exclusion, crime prevention and criminal justice policy frameworks – with communities increasingly being seen as key stakeholders in criminal justice. Rights talk now permeates each system, a process given particular momentum by the incorporation of the ECHR into domestic law. Furthermore both systems are equally in thrall to the promises held out by restorative justice – (as exemplified by the mushrooming of victim offender mediation schemes, conferencing and police restorative cautioning initiatives), with victims also attaining stakeholder status in each jurisdiction. Finally a key policy aim in both jurisdictions is to reduce persistent offending and tackle anti-social behaviour and both jurisdictions have legislated to enable the use of civil orders to tackle low level crime and disorder (ASBOs and parenting orders). Youth courts for 16 and 17 year old offenders have also been piloted in Scotland.

These convergent themes, arguably, have led to a degree of tension within Scottish criminal justice policy - and in particular a tension between inclusionary and exclusionary imperatives: some elements of the policy frame are underpinned by a desire to promote social inclusion, to reintegrate and to enhance citizenship (as exemplified by much of the community safety agenda); other elements by contrast are aimed at exclusion, dispersal and punishment (as exemplified by core aspects of the anti-social behaviour agenda). Indeed at the launch of the youth court pilots in 2003 the then Minister for Justice commented that “punishment is a key part of the youth justice process” (Scottish Executive 2003), a statement that would have been unthinkable 20 years ago in Scotland.

Accompanying these convergent policy trends within Scotland there has been a massive increase in post-devolutionary criminal justice infrastructure. Over 100 new institutions/agencies have been constructed, many with overlapping competencies and many of which are competing for resources: indeed I would argue the system is in danger of collapsing under the weight of its own complexity, as indicated in figure 8. In this figure, the pink shapes represent some of the main institutions created from 1998 onwards. (However there is insufficient space to include within the figure all institutional innovations – thus it omits a raft of new inspectorates, ombudsmen, special advisors, a range of specialist courts etc.). Although some of the linkages between institutions are displayed in the figure, the attempt to show cross-institutional competencies and connections had to be abandoned as the lines would have obliterated the figure! Just how complex the system has become was ably demonstrated by a senior social worker who told me she was managing 40 different funding streams for youth justice and still had to do volunteer, bag packing in ASDA to fund her restorative justice programme !

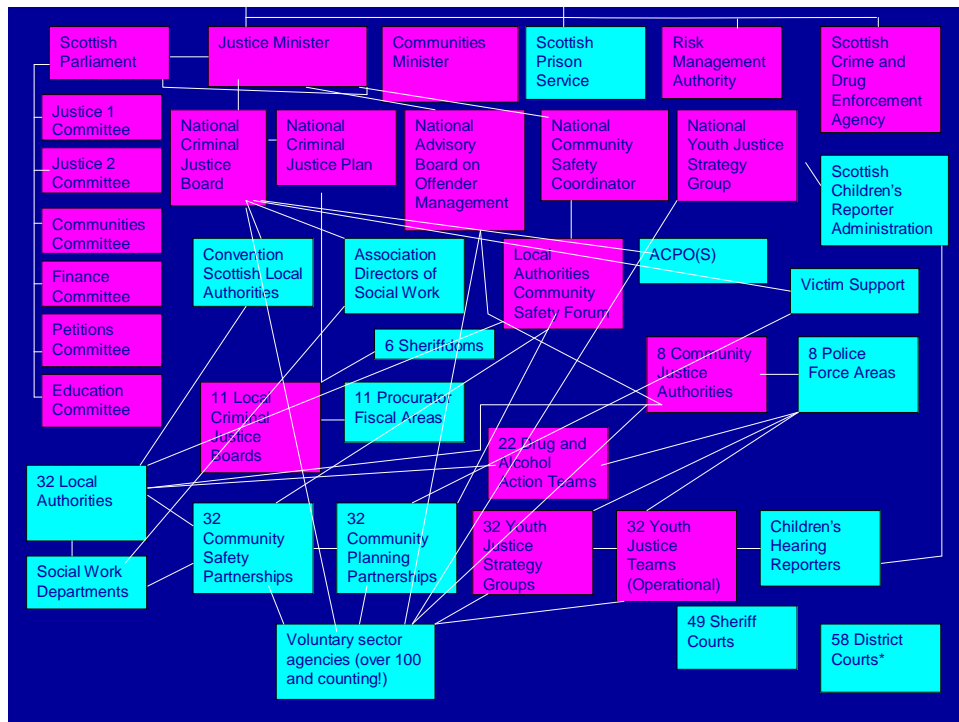


Figure 8

Of key importance is that the “hyper-institutionalisation” evident in figure 8, and the recent convergent and contradictory trends in youth and adult criminal justice in Scotland were developed with no real indication that the crime problem in Scotland was spiralling out of control in the years immediately pre and post devolution. For a coalition government that prided itself on evidence based policy, there simply was no evidence that change was needed! Indeed as indicated in the figures below, police recorded crime rates were relatively stable (figure 9); crime survey data indicate that, pre devolution, crime was falling in Scotland (figure 10); court convictions were also falling (figure 11). Similarly crime survey data indicate that in the period immediately prior to devolution the public were becoming less worried about being a victim of crime (figure 12). Moreover in terms of youth crime, offence referrals to the children’s hearings were also stable over time at just over 2% of the population aged between 8 and 16 (figure 13). (Indeed if one were to be a little unkind to the labour/liberal democratic coalition governments, one might argue that they made the problem of youth crime worse not better, as a major increase in referral rates occurred well *after* the major policy changes!).



Figure 9

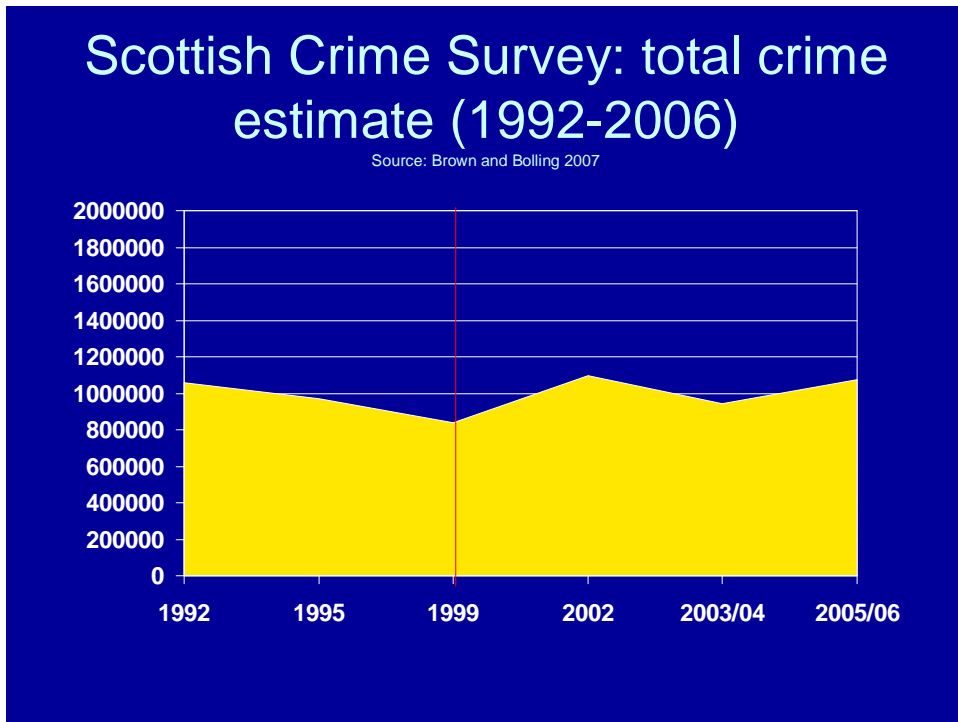


Figure 10

Court convictions (1992-2007)

Source: Scottish Government 2008

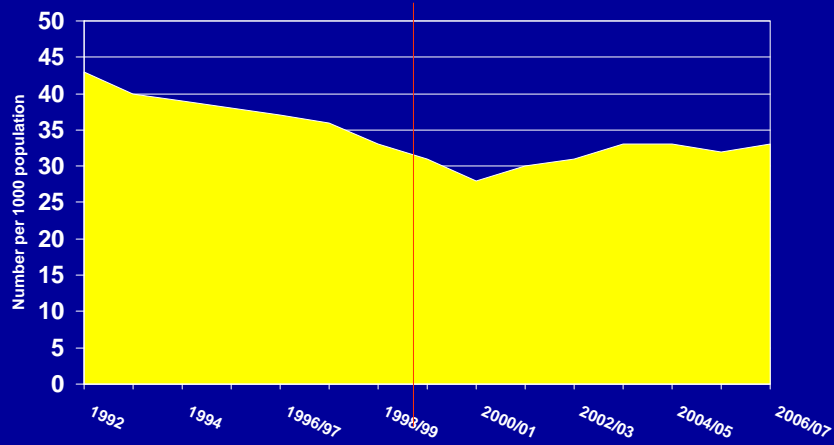


Figure 11

Scottish crime survey :% very or fairly worried that they will be victim

Source: Brown and Bolling 2007

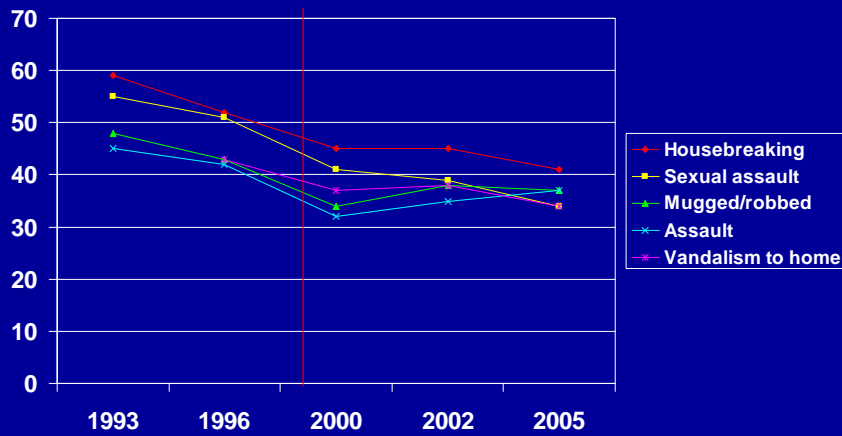


Figure 12

Offence referrals to children's hearing system

Source: Scottish Children's Reporter Administration 2007

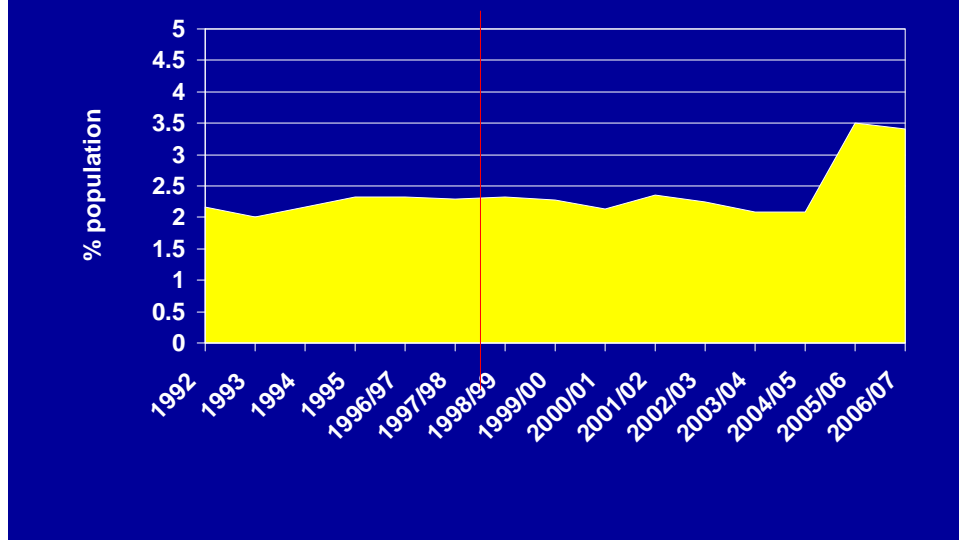


Figure 13

Scotland confounds dominant theories

In what ways then does the Scottish case confound contemporary sociological theories about the changing nature of crime control and punishment in late modernity?

Within the sociology of punishment, two contrasting explanations of penal change can be found: one which places primacy on structural factors (social economic and political) and the other on cultural factors.

One set of commentators (including David Garland 2001, Malcolm Feeley and Jonathon Simon 1995) claim that the more punitive, actuarial and managerialist turn in western criminal justice and penal systems has occurred primarily in response to the social, economic and political processes associated with late modernity. Core themes within their work include: (i) the emergence of so-called risk society in which fear has become a primary mechanism in the promotion of social solidarity; (ii) a crisis of governance and state sovereignty provoked by the forces of globalisation; and finally (iii) by persistently high crime rates, deep social division and increased opportunities for crime which have become endemic features of advanced liberal societies.

The Scottish case poses a conundrum for this set of arguments principally because criminal justice in Scotland remained wedded to penal welfare values for over a quarter of a century in the face of the same macro social and economic transformations which it is claimed prompted change elsewhere and only recently appears to be shifting in its trajectory. So there is a major time-lag of about 35 years to be explained.

A further account of change can be found in the work of Dario Melossi (2001). He has criticised the literature just mentioned, arguing that structural theories linking penal change to factors such as economic development or social stratification can only account for diachronic variation internal to a particular society and not cross cultural variation at any point in time and space. This is because criminal justice and punishment are so deeply enmeshed in the national and cultural specificity of the locale within they are produced. In his work he compares the USA with Italy, linking variations in practice to distinctive religious traditions, the more punitive culture in the USA stemming from Protestantism the more merciful penal culture in Italy stemming from Catholicism.

Scotland poses a conundrum for this account too - if punishment is so culturally embedded in the manner suggested by Melossi, then why has the Scottish system been shedding its Scottish identity at the very time when the extant political structures (devolution) ought to be nurturing all things Scottish? One would have expected devolution to have further tartanized criminal justice but instead the early years of constitutional change have produced a degree of anglicisation.

Re-reading the Scottish case

If neither account fits the facts, then precisely what is going on ? How can the Scottish history of the present be explained?

In order to theorise about the Scottish case, I would suggest that we have to utilise a slightly different vocabulary from that used in the work which I have just described, in particular we need to import the concept of cultural anchorage from political theory (see McAra 2007) and to adapt the concept of structural and cultural strain from Merton (1968). Using this vocabulary, here is a re-reading of the Scottish case.

In the period prior to devolution, one of the reasons why the youth and adult justice systems north of the border were able to sustain a commitment to welfarism in the face of some of the same environmental pressures leading to change in England and Wales, was because of the distinctive nature of Scottish civic and political culture (with its greater emphasis on communitarian values, public provision of welfare and mutual support) (see Paterson 1994, McAra 2005). This culture provided a conceptual locus within which penal-welfare values could thrive, in the context of an increasingly contested political arena and in the face of the macro-social and economic processes driving change elsewhere. The system had *cultural anchorage*. Of key significance was the manner in which the “quasi-State” in the form of the Scottish Office and elite policy networks (comprising civil servants, directors of social work, the judiciary, crown office and key academics) were able to shape a field of expertise and connect it meaningfully to mainstream discourse on Scottishness: and part of that Scottish identity was based on being “other-to-England”.

In the period since devolution, welfarist institutions have found it increasingly difficult to achieve such anchorage. Arguably civic culture in Scotland has gone into a period of drift. Politics is far less polarised and of course, there has been greater ideological congruence between the labour/liberal democratic coalition government in Scotland (which, as noted above, dominated until this May last year) and the Blairite new Labour government at Westminster. This served initially to weaken a sense of

political identity in Scotland based on “other-to-England” with a concomitant weakening of the purchase of welfarism as a principal framework around which debates on criminal justice have taken place: a conceptual space opened up for other, more visceral, penal discourses to leech in.

A further compounding factor which has increased the *strain* between older penal cultures and the broader environment within which they were located, has been the need for post-devolutionary institutions to build political capacity. The early years of the new Parliament were accompanied by a degree of public dissatisfaction/disillusion with the devolved settlement (not helped by the spiralling costs of a controversial new Parliament building). As is well-documented in the criminological literature (see Hall 1980), weak governments often turn to crime control as a ready mechanism through which to overcome crises of legitimacy. Efforts to build capacity are evident in the “hyper-institutionalisation” that has characterised the first decade of devolution, the attempts to construct community solidarities principally via a crime control agenda; and in the harder-edged populist rhetoric accompanying many changes to both youth and adult justice.

Finally the massive organisational changes post-devolution have also led to the fragmentation and dilution of power of older policy networks. While members of the older networks attempted to resist many of the more exclusionary and punitive policies which emerged in the early years of this century (in particular the anti-social behaviour agenda) their functional capacity to effect policy change has, however, been undermined by the new logic of managerialism which has reinforced political control over the system.

Taken together the Scottish case indicates, contra the dominant theories described earlier:

- that the environments within which systems are located are complex and turbulent which contain competing pressures with differential rather than uniform effects;
- that the legitimacy of crime control and penal systems is enhanced where “cultural anchorage” is achieved;

and, finally,

- that while strain between intra and extra systemic cultures forms one of the preconditions for institutional transformation –transformation itself dependent on how pressures mediated by key actors within the system.

Indeed the Scottish case highlights the need to develop a critical pluralist conception of penalty.

Claim 2: the Scottish case raises normative questions

Turning then (more briefly) to my second and final claim: that the unique history and development of Scottish criminology as an academic discipline, raises normative questions about who or what criminological scholarship is for.

Criminology in Scotland

The history of criminology within Scotland differs in important ways from discipline development south of the border in England and Wales. This is primarily because of

the dominance of a stream of “critical” scholarship within Scotland which, pre-devolution, operated as a *unifying* rather than divisive force, and which had a much greater influence on policy and practice than most critical criminological scholars in England would be able to claim. Indeed, as I have already indicated, this tranche of Scottish scholarship actually helped sustain Scotland’s divergent trajectory.

Somewhat paradoxically this critical tradition was nurtured *within* the State apparatus itself. The Central Research Unit within the Scottish Office, (particularly under the tutelage of Jackie Tombs) played an important role in shaping the key objects of criminological inquiry for around two decades (in the 1980s and the early 1990s), producing important and groundbreaking work in its own right (see Chambers and Millar 1983, Moody and Tombs 1982) and supporting the work of key pioneering scholars e.g. Ditton (1979); Carson (1982); Kinsey (1993); Young (1997); Carlen (1983). It also functioned as an incubator for a generation of future academics (e.g. Burman at Glasgow; McVie at the University of Edinburgh).

The paradigmatic influence of the Central Research Unit did, however, steadily decline over the course of the 1990s, with the demise of the in-house research function. In the wake of devolution, government-sponsored criminological research has shifted towards small-scale, short-term evaluations of policy initiatives. A high proportion of contracts are let to survey companies/research consultancies and the accompanying research output has become strongly administrative in orientation, rather than making any specific or ground breaking contribution to theoretical or discipline development. Indeed, within government, researchers have now been restyled as analysts.

The new devolutionary structures created a number of challenges for academics – in particular they had to adapt to a more direct and adversarial relationship with politicians than hitherto and negotiate their way through a much more complex penal architecture. As a consequence in the early years of devolution there were many lost opportunities for research to feed into the policy process. By way of illustration, below are three key messages from research which had absolutely no resonance within the labour/liberal democrat coalition governments.

- Tougher sentences in the community, have not reduced the use of imprisonment but instead have contributed to its growth (Tombs and Jagger 2006)
- The emphasis on public protection and the ‘commodification’ of offender management exacerbates the isolation and exclusion of the offender (McCulloch and McNeill 2007)
- There is widespread public support for community-based sanctions which offer the opportunity for less serious offenders to reduce their offending behaviour. These options are seen by the public as being more effective and, in particular, more cost-effective than imprisonment (Hutton 2005)

If research has no impact, then it does rather beg the question who or what such criminological scholarship is for?

Within Scotland there is, however, some light at the end of the tunnel. Government has poured money into new centres of excellence in particular the Scottish Centre for Crime and Justice Research and the Scottish Institute for Policing Research. Such centres are in the process of developing new modes of working with government, and are aimed at both theoretical and methodological innovation. The fledgling SNP administration within Scotland does appear to be a listening government. The academic community in Scotland, therefore, has a major opportunity both to re-discover its collective *critical* voice and to re-establish the links between knowledge and politics which were forged so effectively in the pre-devolution years. These links as I've argued helped sustain a more just and humane approach to matters of crime and its control – and they are links that we lose at our peril.

Conclusion

By way of concluding the paper, I want to return to where I started with Johnson and Boswell's Scottish journey.



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Johnson's wife was very unhappy about the prospect of the journey: concerned, in particular, that Johnson would be led astray by the wild and exotic women of Scotland and never return. His riposte to her was as follows:

“Madame, we do not go there as to a paradise. We go to see something different”.

In this very short journey around matters Scottish, I hope that I have managed to persuade you that the unique history and development of criminal justice and criminology within our jurisdiction, while not yet a penal paradise, is, nonetheless, of key importance to comparative research and to theory building. Indeed I hope that I have persuaded you, contra Johnson, that one of the noblest prospects criminologists will ever see is the highroad that leads them to Scotland!

About the author

Lesley McAra is a Senior Lecturer in the School of Law at the University of Edinburgh and a member of the Centre for Law and Society. Her main research

interests lie in the general areas of the sociology of punishment and the sociology of law and deviance. Particular interests include: youth crime and juvenile justice; comparative criminal justice; gender, crime and criminal justice; and the impact of multi-level governance on crime control and penal process.

Website: http://www.law.ed.ac.uk/staff/lesleymcara_56.aspx

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