Criminal justice in post-devolutionary Scotland

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What is This?
Criminal justice in post-devolutionary Scotland

Abstract
This article reviews recent major developments in key areas in criminal justice policy in Scotland, including the renowned Children’s Hearings System, the role of criminal justice social work, the use of imprisonment and the implementation of antisocial behaviour legislation. It explores the extent to which the welfarist approach that characterized Scottish criminal justice pre-devolution has been challenged by the politicization of criminal justice issues and increasing levels of popular punitivism more familiar in England and Wales under the New Labour government. It explores some of the reasons why there has been greater convergence with policy south of the border rather than the divergence which might have been expected.

Key words: criminal justice policy, devolution, managerialism, popular punitivism, welfare

It is widely argued that criminal justice in Scotland, particularly its Children’s Hearings System (CHS), has been characterized by strong welfarist principles and had, before devolution, largely avoided the more populist, punitive policies associated with England and Wales (Croall, 2005; Cavadino and Dignan, 2006). Since devolution, virtually every aspect of criminal justice has been subject to consultation, review and legislation including reviews of the CHS, the extension of antisocial behaviour legislation and consideration of a single ‘corrections’ agency incorporating Criminal Justice Social Work (CJSW) and the Scottish Prison Service (SPS). A major question is the extent to which devolution has been accompanied by a greater convergence with England and Wales and an erosion of Scotland’s welfarist tradition.

Criminal justice, like other areas of social policy in an era of neoliberalism, is affected by global influences (Muncie, 2005), particularly, argues Garland (1999), in a small jurisdiction. Nonetheless,
the impact of global influences is mediated by local criminal justice networks and traditions and, after devolution, by political priorities and the dominance of New Labour. After a brief look at some of the main global trends in criminal justice policy, this article will outline some of the key features of Scottish criminal justice before devolution. It will then review selected developments post-devolution, emphasizing elements of convergence and divergence.

Trends in criminal justice policy

There have been many analyses of the ‘penal transformations’ that took place during the latter part of the 20th century (Bottoms, 1994; Garland, 1996; McAra, 1999; Muncie, 2005). The modernist ‘criminological project’ had been associated with rehabilitative and welfare based policies, particularly for young offenders, although there has always been a tension between these and more punitive approaches. Towards the middle of the 20th century steadily increasing crime rates and research indicating that ‘nothing works’ were associated with a widespread disillusionment with rehabilitation and a search for new approaches. While it lies beyond the scope of this article to fully discuss these, it is important to point to two major features – managerialism and popular punitivism.

In an influential analysis, Feeley and Simon (1994) identified a ‘new penology’ based on actuarialism, involving a culture of performance indicators, risk management and an emphasis on organizational goals. Offenders became a group to be ‘managed’ and subject to ‘risk assessment’. To Garland (1996), governments faced the problem of rising crime rates which the criminal justice system seemed incapable of reducing along with a ‘fiscal’ crisis created by increasing costs. As in other areas of social policy, this led to a strategy of ‘responsible-ization’ (placing the responsibility for crime on individuals and families and away from social inequalities and deprivation) and to developing measurable indicators of success thus managing rather than attempting to transform the social divisions that contributed to higher levels of crime. This was accompanied by a rise in ‘popular punitivism’ (Bottoms, 1994), whereby governments sought to be seen to be ‘tough’ on offenders.

Popular punitivism was evident in Britain with the politicization of crime and criminal justice during and after the General Election of
1979 with the victorious Conservative Party promising strong action against crime and arguing that it could not be ‘explained away’ by social conditions. The punitive turn continued during the 1990s following the then Home Secretary, Michael Howard’s famous argument that ‘prison works’. Community sentences became cast as ‘punishment in the community’ and the association of the Probation Service with social work was severed by the abandonment of social work training and a strong emphasis on public protection.

The Labour Party, often characterized as ‘soft’ on crime, developed the approach indicated in Tony Blair’s celebrated slogan, ‘tough on crime, tough on the causes of crime’, with the causes seen to lie in families and communities (Young and Matthews, 2003). While emphasizing the role of social exclusion, the New Labour government’s approach to criminal justice policy in England and Wales has been described as ‘populist’ and as ‘punitive managerialism’ (Cavadino and Dignan, 2002). Most agencies now have performance indicators and centralized crime reduction targets and there is a strong emphasis on ‘risk management’. A moralizing tone has accompanied the introduction of tougher measures against offenders such as Antisocial Behaviour Orders (ASBOs), parenting orders, curfews and electronic tagging. The Probation Service has become part of a National Offender Management Service (NOMS) along with the Prison Service. The marketization, managerialization and individual responsibilization of New Labour strategies, described as central to the neo-liberal project (Poole and Mooney, 2005), along with an emphasis on ‘what works’ and efficiency therefore characterize criminal justice as they do other areas of social policy.

Criminal justice in Scotland before devolution

Shortly before devolution, a number of commentators argued that Scottish criminal justice had resisted many of these influences and retained a distinctively welfarist approach (Young, 1997; Duff and Hutton, 1999; McAra, 1999). The Scottish legal system had always been separate with a distinct set of institutional arrangements (Young, 1997). Judicial discretion in sentencing had not been strongly influenced by just deserts philosophies or populist punitivism (Hutton, 1999). Managerialism and an emphasis on public protection were
evident but had not, it was argued, undermined the strong commitment to welfare, seen particularly in relation to the CHS, CJSW and prisons.

The CHS is universally described as unique, and Scotland, following the Kilbrandon Report of 1964, took the radical path of decriminalizing children under 16 who offend by removing them from the criminal courts. Children’s Hearings, in which cases are dealt with by lay panels, are not courts deciding guilt or innocence and their decisions are guided solely by the needs of the individual child. Under the ‘Kilbrandon philosophy’, children who offend are not differentiated from other children who require care. While welfare oriented systems can be associated with excessive, coercive interventions, the Scottish approach has remained one of minimum intervention, high levels of diversion and low rates of residential disposal (Cavadino and Dignan, 2006).

Arrangements for social work are also distinct. The Probation Service was abolished in 1968 and criminal justice social workers became part of a generic social work service. National Standards, introduced in 1991, retained a greater commitment to non-custodialism than their English counterparts and community sentences were not faced with the rhetoric of ‘punishment in the community’ (McIvor and Williams, 1999). The introduction of managerialism did not therefore supplant welfarism but rather, argues McAra (1999), sharpened the focus of effective social work intervention.

Prisons also showed a commitment to rehabilitation and had developed ‘some of the most progressive prison regimes to be found anywhere’ (Young, 1997: 116), such as the renowned special unit at Barlinnie Prison for serious offenders. There was less prison unrest in Scotland than in England and while managerialism was evident in the SPS document Opportunities and Responsibility, it also stressed the need for ‘positive’ regimes and a commitment to rehabilitative programmes (McAra, 1999).

The Scottish system has therefore been widely characterized as ‘relatively immune from the populist tendencies that were rapidly infecting its southern neighbour’ (Cavadino and Dignan, 2006: 231). Garland (1999) refers to a sense that Scotland’s civil society and indigenous political culture had resisted the neo-liberalist policies of UK governments and remained committed to a welfare state ethos. This has been noted across a range of social policy areas and has been related to the greater collectivism of civic culture in Scotland and a
stronger commitment to Labour policies and to social welfare in general (McAra, 1999). Mooney and Scott (2005), however, warn against accepting the imagery of ‘new’ Scotland in which myths about its greater collectivism and insulation from Thatcherism are propounded, and it should be stressed that managerialism and popular punitivism did have some impact.

The CHS for example faced many criticisms that it was too ‘soft’ and 1995 legislation enabled considerations of public protection to overrule welfare considerations (Asquith and Docherty, 1999). There were concerns about the ‘laxness’ of criminal justice social work and managerialism was evident in respect of both criminal justice social work and the Prison Service. A reputation for penal harshness has also characterized prisons and the prison population is relatively high (Young, 1997). Popular punitivism was evident in political rhetoric, particularly that of Conservative politicians, and in an emphasis on physically demanding work in community service and suggestions that offenders on community service wear ‘uniforms’ – which were, however, withdrawn (McIvor and Williams, 1999).

The Scottish system therefore displayed tensions between welfare and punishment, although it can be argued that welfare considerations were more prominent than in England and Wales. A number of factors have been associated with this, including Scotland’s different legal system (Young, 1997). There was a distinctive criminal justice culture and policy network consisting of senior civil servants in the Crown Office, Directors of Social Work and the Judiciary who were not part of the UK government, equivalent to the tightly knit middle class network of professionals who influenced pre-devolutionary economic policy (Law, 2005). The unpopularity of the Conservative governments during the 1980s and 1990s and the independence of this culture from high levels of political involvement were also important. McAra (1999) suggests that if government legitimacy is low the influence of the policy network can increase. To Cavadino and Dignan (2006), the ‘ideological climate’ in Scotland, and the gradual diminution of Conservative Members of Parliament, left fewer ‘populist’ pressures on the civil servants responsible for policy making.

It could reasonably have been expected, particularly in view of the Executive’s early emphases on welfare and social exclusion (Mooney and Scott, 2005) that the gap between Scotland’s and England’s criminal justice policies would widen. There have been, however, as Poole and Mooney (2005) identify, sources of both convergence and
divergence across many policy areas. Initially the Scottish Executive gave a wider role to Committees, and, they argue, involved more actors in the policy process. At the same time, however, New Labour’s pro-business stance and the Executive’s failure to use tax-raising powers restricted the scope for radical social welfarist policies. Particularly important is the lack of ‘political will’ to depart from the influence of the ‘Blair orthodoxy’ of New Labour, a point well illustrated when considering that more radical policies were pursued in Wales, which had a more limited devolution settlement.

These countervailing influences can be detected in criminal justice policy. Two Justice Committees, which call on a wide range of groups to provide evidence, meant not only that more actors were involved but that criminal justice issues were placed more firmly on the political agenda. There was also a ‘sudden and dramatic politicisation’ of criminal justice (McNeill and Batchelor, 2004: 9). Strong elements of popular punitivism were evident in the 2003 election during which the First Minister, Jack McConnell, famously attacked the ‘ned culture’ and ‘antisocial behaviour’. A large number of reviews and consultations appeared to challenge the welfarist tradition and were accompanied by popular punitivist sentiments. The following discussion focuses on some key areas to illustrate these trends – the CHS, the respective roles of CJSW and the Prison Service and the passing of the Antisocial Behaviour Act in 2004 and its subsequent implementation.

Youth justice in Scotland

Change was indicated in the First Minister’s 2004 statement that: ‘We have a children’s hearing system designed for the early 1970s which can’t cope with the way society is in the early twenty-first century’ (Adams, 2004b). This was accompanied by a review process which many feared would see the introduction of more punitive strategies such as fast track children’s hearings and youth courts – measures, argue Cavadino and Dignan (2006), ‘redolent’ of policy developments south of the border.

The Children’s Hearings System

A number of concerns had been raised about the CHS, particularly about gaps in provision and delays. An Audit Scotland (2003) report
found, for example, that around half of the children referred for supervision were only seeing social workers once a month. In some areas there were no care or action plans, in part due to a shortage of qualified social workers. One major review, carried out by NCH, the children’s charity (NCH, 2004), addressed the question of whether problems lay in the system itself or in the way it was managed and resourced (Mellon, 2003). It identified a number of problems chief amongst which was under-resourcing of the agencies involved in the system. Other problems included difficulties of recruiting and retaining panel members, their lack of social diversity and an absence of systematic evaluation. Overall the inquiry, having looked critically at what was assumed to be a more punitive system in England and Wales, strongly supported the existing system which, it argued, was economic and effective and should be better resourced and strengthened.

Broadly similar conclusions emerged from the Executive’s review process, launched in 2004, justified on the grounds that the system had not been thoroughly reviewed since its inception and faced a changed society (www.childrens-hearings.co.uk/review.asp, accessed 15 May 2004). Persistent young offenders and local variations in delivery were also cited as issues, and the review was accompanied by fears that the Executive intended to reserve the CHS for non-offenders and to refer more offending children to courts (Croall, 2005). Respondents, however, strongly supported retaining a child centred system (Stevenson and Brotchie, 2004). There were mixed views about parenting orders and the need for more evaluation of the system and greater efforts to ensure that panels reflect the diversity of local communities was stressed. A report by the Justice 2 Committee also ‘unanimously’ supported the principles of the CHS and expressed concern about gaps in some services and about funding (Scottish Parliament, 2005). Subsequently measures were announced to increase co-operation between police and social workers and to enable persistent and serious young offenders to appear more frequently to review progress (Scottish Executive, 2005a).

**Fast track hearings and youth courts**

These plans emphasized the perceived problem of persistent young offenders, with the Minister for Education and Young People promising to ‘tackle persistence with persistence’ (Scottish Executive, 2005a). This group of offenders, currently defined as ‘young people
who have been referred to a Children’s Hearing on offence grounds in respect of at least five offending episodes in the last six months’ (McNeill and Batchelor, 2004: 11) are said to constitute around a tenth of children referred to Panels and to be responsible for around a third of offences. Research indicates that they suffer more severely than other offenders from a range of family, housing and educational problems (Tombs, 2000), necessitating early intervention which is hindered by delays in the CHS.

This problem was addressed in a pilot system of ‘fast track’ hearings, although evaluations of these have produced mixed results. An initial report found strong support for the initiative which had led to speedier referrals (Scottish Executive, 2003a). A later report, however, found that while cases were being dealt with quicker and action plans were being developed, there had been no significant impact on reoffending (Scottish Executive, 2005b). The Executive has also set targets for reducing the number of persistent young offenders, targets which, it was widely reported, many local authorities have failed to meet (King, 2005). Resources for the fast track pilots were diverted and a new target, to reduce numbers to 120 by March 2006, was set with the Justice Minister warning local authorities to ‘raise their game’ (King, 2005).

Another problematic group is young people aged between 16 and 18 who are dealt with in criminal courts, moving from a welfare to a punishment centred approach (McNeill and Batchelor, 2004). This has also been associated with high rates of young people in custody (Cavadino and Dignan, 2006). Youth courts, presented as a tough option to tackle serious and persistent offending have been successfully piloted for this group (Scottish Executive, 2005c). Nonetheless, argue McNeill and Batchelor, the second objective of these courts is to promote ‘the social inclusion, citizenship and personal responsibility of young offenders whilst maximising their potential’ (Scottish Executive 2003b cited in McNeill and Batchelor, 2004: 9).

The youth justice system therefore continues to display tensions between punishment, public protection and welfare (Asquith and Docherty, 1999), and between divergence, seen in the continued strong support for the Kilbrandon philosophy, and convergence, illustrated in the greater politicization of youth justice and the stress on persistent young offenders. While the Hearings System remains intact, more managerial and punitive approaches are evident in the setting of targets for persistent young offenders.
Criminal justice social work in Scotland

As outlined above, arrangements for CJSW also differ considerably from those in England and Wales, with a greater emphasis on social work and welfare. In 1998, *The Tough Option* (Scottish Office, 1998) indicated a toughening attitude by stating that the paramount aim of probation was public safety, an attitude reiterated in the 2001 *National Priorities* for CJSW (Justice Department, 2001; Robinson and McNeill, 2004).

Robinson and McNeill (2004) contrast Scottish arrangements with those in England and Wales where the Probation Service has become more oriented towards ‘law enforcement’ than social work. While the primary aim of both systems is the protection of the public, the second of the Scottish *National Priorities* is ‘to reduce unnecessary custody by providing effective community disposals’. Indeed a Justice Committee review explored how courts might be encouraged to make greater use of community sentences (McIvor, 2004). There is no equivalent aspiration in England and Wales where the second priority is ‘reducing offending’. The third of the *National Priorities*, to promote the social inclusion of offenders, has no counterpart in England and Wales, where punishment and enforcement are seen as legitimate objectives but are not present in the Scottish priorities document.

These differences enable variations in implementation. While both governments share a commitment to evidence based policy, and to a ‘what works’ approach, a ‘medical model’ emphasizing cognitive behaviour therapy focusing on personal ‘defects’ and thinking and social skills has tended to dominate in England. This can neglect offenders’ social circumstances and the Scottish approach has been more personalized and holistic, incorporating offenders’ employment and other problems (McIvor, 2004). This can be associated with a desistance approach (McNeill, 2002), which, by taking key aspects of offenders’ lives into account, challenges the correctionalist approach of assessing offenders as ‘risks’, of managing groups rather than focusing on individuals. A personal, holistic approach has also been found to have a more positive impact in relation to Community Service (McIvor, 2002).

These approaches are said to be more possible within the Scottish framework in which social work interventions can be justified as
better protecting the public (McNeill, 2004) and McIvor (2004: 324) argues that there are still ‘reasons to be optimistic that policy and practice will resist being driven by the narrow empiricist agenda that has typified recent developments in England and Wales’. Nonetheless, there have also been signs of convergence and a major consultation in 2004 was launched which included proposals for a ‘corrections’ agency for managing offenders, discussed below.

Imprisonment in Scotland

As seen above, Scotland has had a reputation for ‘penal harshness’ (Young, 1997: 116), and there is much current concern about the rising prison population. In 2003, prison statistics cited a ‘new record’ average daily population of 6525 along with a new record for the numbers of women in prison which had risen by 7 per cent to 297 (SPS press release, 26 August 2004). In 2003, Scotland had the fourth highest rate of imprisonment in the European Union, at 129 per 100,000 of population although this was lower than in England and Wales. Conditions within prisons remain harsh with as many as 1200 inmates still having to slop out – now rare in England and Wales (BBC News, 2004). Recurrent reports of the Scottish Prison Inspectorate stress poor conditions – it was reported that 22 per cent of inmates in Edinburgh Prison had to slop out and lived in cells with no electricity other than lighting. Scotland also imprisons high numbers of fine defaulters, a particularly acute problem for women (Tombs, 2004).

The current ‘vision’ of the SPS, developed in 2000, continues to show a mixture of managerialism and rehabilitation – it aims at a ‘Correctional Agenda’ which ‘helps to reduce recidivism’ and discusses ‘sentence management’ and ‘risk assessment’. At the same time, the 2000 document *Intervention and Integration for a Safer Society*, acknowledges the special challenges posed by groups drawn from the most disadvantaged and the SPS is committed to ‘Making a Difference’ to prisoners’ lives and to ‘reducing offending and enhancing inclusion’. A report commissioned by the SPS underlines the links between punishment, imprisonment and social exclusion, finding that 28 per cent of the prisoner population came from the poorest housing estates compared to 10 per cent of the general population. Imprisonment is indeed seen to be a correlate of social deprivation as the report estimates
that about 1 in 9 of young men from deprived communities will spend time in prison by the time they are 23 (Houchin, 2005a, 2005b).

The continuing high rates of imprisonment coupled with, as will be seen below, high rates of recidivism, raise important issues about the exercise of political will. Most criminologists agree that there is no necessary correlation between crime rates and rates of imprisonment and to Tombs (2005), such high rates are a matter of political choice. Scotland’s high imprisonment rate, which exists despite a wide range of community penalties, is not, she argues, inevitable, particularly when compared to countries with similar social and demographic characteristics and a high commitment to social welfare, such as Norway and Finland, the latter of which has successfully reduced its prison rate to 69 per 100,000. Scotland’s prison population, on the other hand, has been estimated in a Prison Estates Review as being likely to rise to 8000 in less than ten years (cited in Tombs, 2005).

The management of offenders

The high costs and relative ineffectiveness of prison in reducing offending were the subject of the Executive’s major 2004 consultation *Reduce, Rehabilitate, Reform* (Scottish Executive, 2004d). This cited high reconviction rates – for example 60 per cent of offenders released from prison in 1999 were reconvicted of another offence within 2 years. They considered the creation of a single agency combining the SPS and CJSW, which could achieve a ‘co-ordinated service which manages offenders throughout their sentence to re-entry into a law abiding lifestyle’. They further stated that agencies dealing with offenders were not well co-ordinated, used different risk and need assessment tools and that there was a lack of consistency in the design, quality and delivery of programmes.

These proposals were strongly opposed. Professional social work associations promised to fight them ‘tooth and nail’ and claimed there was little evidence to support such an agency (McNeill, 2005a, 2005b). The Scottish Consortium on Crime and Criminal Justice (SCCCJ) (2004) pointed out that community based provision for offenders would be better enabled within community planning structures encompassing health, community care, community safety, anti-social behaviour and children’s services. They, along with others, feared that prisons would become the dominant partner in any single agency which could increase rates of imprisonment, as was the case in
New Zealand following the creation of a Department of Corrections in 1995 (Adams, 2004a).

The majority of submissions to the consultation opposed the idea of a single agency, although there were many concerns about gaps in provision, difficulties of liaison between agencies, a lack of continuity of through care and delays in the criminal justice process. The system was perceived as increasingly punitive and there was concern about the high use of custodial, particularly short-term, sentences. More integrated working, improved links and information sharing between agencies was therefore preferred to the creation of one agency (Scottish Executive, 2004a).

In the face of such opposition, the Executive did not proceed, with the Justice Minister stating that ‘our re-offending consultation persuaded me that we can achieve integration, accountability and direction without bureaucratic changes to staff terms and conditions’ (Scottish Executive, 2004b). Instead, eight Community Justice Authorities (CJAs) are to be created, along with a National Advisory Board for offender management which will develop a national strategy to reduce reoffending across Scotland. There is also a statutory requirement for the SPS and local authorities to work together to reduce reoffending. CJAs will involve the police, the Scottish Court Service, the Crown Office and the Fiscal Service as statutory partner bodies along with Victim Support and will draw up area plans (Scottish Executive, 2005d).

The proposals for a single agency presented a threat to the welfare orientation of CJSW, and also signalled convergence with England and Wales where the single agency approach, with its emphasis on offender management, punishment and the reduction of offending, has been associated with the expressive, instrumental and correctionalist aspects of new penology (McNeill, 2004: 426). Reduce, Rehabilitate, Reform stressed the need for efficiency and public protection, although its emphases on reducing numbers in custody and rehabilitation retained elements more typical of the Scottish approach. The rejection of the single agency approach could be taken to indicate a survival of welfarism, however CJSW still faces major reorganization. McNeill (2005a, 2005b) argues that while the compromises in the new proposals retain CJSW within local authorities, the discursive shift towards ‘seamless’ offender management may be more significant than organizational change as it may lead to the prioritization of reducing reoffending over discussions about prison versus community
sentences. This, he argues, ‘finesses away penal reductionism’ (McNeill, 2005a). Other criticisms of the reforms argue that they will have little impact in reducing the prison population, particularly since the Executive is investing heavily in providing more prisoner places at the same time as purportedly aiming to reduce the numbers imprisoned (Houchin, 2005b).

**Antisocial behaviour**

Some of the clearest examples of penal populism can be found in the consultations leading up to the 2004 Antisocial Behaviour (Scotland) Act and in its subsequent implementation. This also indicates convergence with England and Wales where the increasing focus on antisocial behaviour has been associated with increasing punitivism, to a process of ‘criminalizing’ social policy (Hughes, 2002), and demonizing young people.

The Act introduced a number of measures including the extension of ASBOs and electronic tagging for 12–16 year olds. The police were given powers to designate ‘dispersal zones’ and disperse groups and parenting orders were introduced. It was preceded by a consultation paper, responses to which were deeply divided (Flint, Atkinson and Scott, 2003). While some did see antisocial behaviour as a serious problem and welcomed some of the proposals, young people doubted their effectiveness and expressed resentment at being targeted and stigmatized (The Scotsman, 7 January 2004). Others felt that the proposals were over-punitive and neglected the wider, social, causes of antisocial behaviour while Shelter Scotland argued that they were socially divisive by targeting young people, social housing tenants and residents in deprived communities.

Proposals to extend ASBOs and electronic monitoring to under 16s were particularly contentious, with the Children’s Commissioner warning that tagging children under 16 could be in breach of the United Nations convention on the rights of the child (Fraser, 2004). Parenting orders were said to encourage a ‘blame culture’, and powers to disperse groups of young people were seen as unnecessary, draconian and unlikely to be used.

The Executive argued strongly that they were responding to people’s concerns in communities and rejected the arguments of so called ‘experts’ – with the First Minister commenting that critics
from the ‘trendy heights’ were ‘out of touch’ (Denholm, 2004). The Communities Minister argued that sometimes politicians had to disagree with professionals to respond to the concerns of ordinary Scots, many of whom were plagued by group disorder – ‘we owe it to those communities who have been pleading for these powers, even in the light of scorn from those who think otherwise, to give them the respite it will afford’ (The Scotsman, 18 June 2004, p. 12). Introducing the new powers, the Justice Minister stated that the measures were

. . . designed to help communities across Scotland stand up to the scourge of antisocial behaviour . . . when we consulted on our proposals to deal with the problem of antisocial behaviour it was clear that we had struck a chord with the ordinary, hard-working people of Scotland who . . . had had enough of . . . [behaviour which] . . . brings misery to lives and which knocks the stuffing out of a community’s confidence. (Scottish Executive, 2004c)

Since the passage of the Act, community wardens have been appointed and antisocial behaviour units have been set up across Scotland. A browse through the CJScotland weblog (http://www.cjscotland.org.uk/ee.php) reveals recurrent local newspaper articles about new strategies. Measures introduced include banning orders for football hooligans (in line with England and Wales) (www.bbc.co.uk, 2 September 2004) and powers to tackle ‘boy racers’ (Scottish Executive, 2005e). There have been over 1500 on the spot fines to curb unacceptable street behaviour including breach of the peace and urinating in public (Scottish Executive, 2005e). The Executive has been keen to encourage local authorities to make greater use of their powers (Adams, 2005). In September, following a visit to Manchester the First Minister created controversy by speaking favourably about schemes involving the ‘naming and shaming’ of adults in receipt of ASBOs (MacMahon, 2005).

Nonetheless research commissioned by the Executive has revealed variable implementation, with some councils having been slow to apply for ASBOs (Scottish Executive, 2005f; Howie, 2005). It also reported little relationship between levels of antisocial behaviour and the use of orders with some Sheriffs being reported as unsympathetic and other councils preferring mediation. This, along with a finding that over a quarter of orders had been allegedly breached, produced strong tabloid press criticism, along with complaints about the lack
of action in relation to parenting orders and dispersal zones (Sinclair, 2005).

Dispersal zones were a particularly controversial aspect of the legislation and the police were criticized for not being prepared to use them. One Edinburgh councillor complained that the police were too afraid of being painted as ‘bully boys’ and the Justice Minister was reported as warning police forces that money would be withheld if they refused to introduce zones (Rose, 2005). Since then there have been widely reported uses of these powers, with one recent example being their use in the commuter village of Mid Calder, reported as being ‘plagued’ by groups of up to 50 youths vandalizing property and leaving locals too scared to leave their homes (The Scotsman, 5 December 2005).

These initiatives, and the discourse used in their introduction, demonstrate the determination of the Executive to move ahead in the face of strong opposition and also provide examples of the ‘penal populism’ so characteristic of New Labour politicians south of the border. Critics of ASBOs argue that they can criminalize young people and social housing tenants, as well as be exclusive. They signal the criminalization of social policy and also, argues Brown (2004), blur the boundaries between criminal and other forms of social control.

Conclusions

It can therefore be argued that Scottish criminal justice policy post-devolution displays signs of both convergence and divergence with England and Wales and wider global influences. Despite apparent threats, the CHS has reaffirmed its child centred approach, and CJSW remains associated with a social work tradition. At the same time, however, the tone of the debates surrounding proposed reforms and the eventual legislation show many signs of managerialism and popular punitivism. This can be seen in the very title of the Management of Offenders Bill (McNeill, 2005a, 2005b) and the introduction of targets for persistent offenders, parenting orders and electronic tagging. Scotland, despite its welfarist tradition, continues to have very high numbers in prison and many doubt the political will to substantially reduce this.
It is perhaps ironic that a system that prided itself on being distinctive has seen greater convergence with England in the post-devolutionary era, a development that can be related to some of the processes of devolution identified by Poole and Mooney (2005). The introduction of widespread consultation and two Justice Committees has indeed drawn a wider range of actors into the process – not least politicians who have echoed the politicization of criminal justice, youth crime and antisocial behaviour south of the border and its ‘popular punitivism’ to a point where the control of antisocial behaviour is seen as a key policy area. This contrasts with the more professional, welfarist approach of the policy network before devolution.

As Cavadino and Dignan (2006: 232) suggest in relation to youth justice:

. . . it appears distinctly possible that one effect of devolution has been to establish a national assembly whose elected members are more responsive to public and media concerns over youth justice issues and that this could ultimately change the conceptual framework underpinning the juvenile policy making process, shifting it from a holistic welfare based approach towards a more neo correctionalist youth crime agenda. If so, one paradoxical long term effect of devolution may ultimately be to undermine the distinctiveness of the Scottish system and to push it closer in some respects towards a more populist English model.

This is not an inevitable product of devolution. As Poole and Mooney (2005) point out the Welsh Assembly has, albeit with fewer powers, taken a different direction in some social policy areas and there are signs of a policy divergence between England and Wales in respect of youth justice. The Welsh Assembly has located youth justice services in Health and Social Services as opposed to crime prevention and has prioritized a ‘children first’ rather than an (English) ‘offender first’ philosophy (Muncie, 2005). This reiterates the importance of ‘political will’ and the failure of the New Labour–Liberal Democrat coalition to take radical steps in respect of not only criminal justice but other policy areas (Scott and Mooney, 2005). This can be seen not only in the stance taken by the Executive to antisocial behaviour but also in their failure to take substantial steps to reduce the prison population.

An important aspect of studying criminal justice policy in the context of devolution is that it provides an illustration of sources of diversity in the face of the supposedly homogenizing effects of globalization. This has several implications. The case not only of Scotland but
also of Wales and Northern Ireland challenges the almost universal tendency of textbooks and analyses of criminal justice published in the UK to virtually ignore the different cultures and traditions within the UK, let alone the regional variations within England noted in respect of youth justice (Muncie, 2005). The processes leading to convergence and divergence provide a good example of what Muncie describes as the twin and contradictory processes of delocalization and relocalization. Studying youth justice across the world, he argues, reveals not uniformity but diversity found not only between but within nations and it also reveals examples of national, regional and local enclaves of difference, coalition and resistance.

References


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