CONTINUITY AND CHANGE IN THE HISTORY OF SCOTTISH JUVENILE JUSTICE

Christine Kelly[1]

Abstract:

This paper explores the theme of continuity and change in the history of Scottish juvenile justice, drawing attention to the longer historical view which enables us to focus on the underlying continuities between nineteenth and twentieth century developments. In this context the paper presents a number of key research findings based on extensive primary research on Victorian and Edwardian Scotland. These focus on three areas: the role of reformatory and industrial schools, the operation of the early juvenile courts and the impact of new scientific discourses. The paper argues that these insights are of value in supporting an interpretation of reform which in many ways complements explanations in the existing literature but is also distinctive in placing particular weight on mid nineteenth century philanthropic dynamism as a primary catalyst of reform.

Keywords: Scottish juvenile justice, philanthropy, Children Act 1908, child welfare, juvenile court, penal welfare

Introduction

This paper explores the theme of continuity and change in the history of Scottish juvenile justice. In doing so it emphasises the role of nineteenth century philanthropic activism as a vehicle for the reform of juvenile justice. It also draws attention to the longer historical view which enables us to focus on the underlying continuities between nineteenth and twentieth century developments. This is a perspective based on extensive primary research on the history of juvenile justice in Victorian and Edwardian Scotland, which examines a wide range of sources including court reports, legislation, parliamentary papers, inspectorate reports, newspapers, periodicals and the writings of those active in juvenile justice reform.

It is in this context that the paper presents a number of key research findings some of which modify, complement or, to a certain degree, conflict with existing scholarly work in this area. The first key finding concerns the Victorian network of reformatory and industrial schools for criminal and destitute children. The paper calls for re-evaluation of the role of these institutions; this involves recognising their public function as an arm of the criminal justice

[1] Dr Kelly is a British Academy Postdoctoral Fellow, School of Law, University of Glasgow Christine.Kelly@glasgow.ac.uk This work is supported by the British Academy, reference pf130044.

system. The second point concerns the juvenile court. While recognising the importance of the creation of the juvenile court under the Children Act 1908, the paper argues this should not be viewed as a radical departure. The case reports show that for the most part the early juvenile court in Scotland continued to operate in much the same way as the pre-existing courts in that there was considerable continuity with existing legislation and practice. And the third issue addressed is the influence of scientific discourse on the way young offenders were perceived: it is argued here that the new scientific ideas were less pervasive than has sometimes been suggested. Although new positivist ideas were making inroads in certain areas, there is evidence that these sometimes met with strong resistance from those who refused to countenance the notion that children who offended were in any fundamental sense different from other children or disposed towards criminal conduct for some recently discovered scientific reason.

The paper goes on to argue that these insights are of value in supporting an interpretation of reform which in many ways complements explanations in the existing literature but is also distinctive in placing particular weight on mid-nineteenth century philanthropic dynamism as a primary catalyst of reform. Other writers have concentrated more on the fin de siècle era as initiating reform processes. Considerable attention has been focused on this period. For instance David Garland[2] has influentially argued that the period 1895 to 1914 was an especially transformative time for the criminal justice system across Britain, marked by a discernible departure from Victorian criminal justice towards a system concerned with classification of offenders, new knowledges and individual reformation. This was an altered penal landscape, a modern penal complex,'[3] which challenged established principles of classical legal philosophy such as proportionality, equality and uniform treatment. Instead, it offered a regime of 'individualisation' tailored to particular offenders[4] and an important element in this penal apparatus was the new juvenile court which gave scope for wider, state sanctioned intervention into the domestic world of the family.[5]

Martin Wiener[6] also detects fundamental changes occurring at this time of upheaval associated with the birth of the welfare state. However, he adopts a more culturally directed approach than Garland's political interpretation, paying more attention to the effect of wider cultural forces on penal policy. Many other scholars also point to landmark changes

[2] David Garland, *Punishment and* Welfare, Aldershot, Gower, 1985.
[3] Garland, *Punishment and Welfare*, p.18.
[4] Ibid, p.32.
[5] Ibid, pp.222-3.
[6] Martin Wiener, *Reconstructing the Criminal: Culture, Law and Policy in England, 1830-1914*, Cambridge University Press, 1990.

occurring around this time, identifying similar themes to those underlined by Garland and Wiener, with the growth of the state, the search for new methods such as probation and the impact of emerging disciplines including criminal anthropology. Hendrick, for example, stresses the impact of new scientific knowledges like child psychology and psychiatry.[7] Bradley also demonstrates the way new knowledges and discourses influenced those engaged in reforming juvenile justice in the early twentieth century.[8] Similarly, Logan's analysis of the 'gendering' of the juvenile courts looks at those directly engaged in juvenile justice reform and the way this related to feminism, socialism and policy networks.[9] Bailey's study pays particular attention to political discourse and policy-making surrounding delinquency and citizenship in the wake of the Great War and the inter-war period.[10] And Behlmer's analysis convincingly makes the connection between the 1908 statute and the burgeoning body of Victorian child welfare legislation.[11] Common to many of these studies is a recognition of the consolidation and codification of the law relating to children in the Children Act 1908 while at the same time seeing in the statute's emphasis on child welfare a template for the future of juvenile justice for many decades to come. My research on the situation in Scotland reinforces the point that there were many continuities with the nineteenth century history and sees the Children Act 1908 as a natural staging post on a well signed road to reform.

However, my research is more focused on locating the origins of reform in the mid-nineteenth century with the rise of dynamic philanthropic activism[12] to create diversionary systems to address the needs of the marginalised and neglected children of the streets who, almost inevitably, were drawn into the ambit of the criminal justice system, whether for minor crime or simple vagrancy: indeed it was often the case that their very mode of life ensured that they could not avoid transgressing the laws prohibiting vagrancy. My research on

[7] Harry Hendrick, *Child Welfare: England 1872-1989*, London, Routledge, 1994.
[8] Kate Bradley, 'Inside the Inner London Juvenile Court, c. 1909-1953', *Crimes and Misdemeanours*, 3/2 (2009) 37-59; Kate Bradley, 'Juvenile Delinquency, the Juvenile Courts and the Settlement Movement 1908-1950: Basil Henriques and Toynbee Hall', *Twentieth Century British History*, 19(2) (2008) 133-155.
[9] Anne Logan, 'A Suitable Person for Suitable Cases: The Gendering of Juvenile Courts in England, c. 1910-39', *Twentieth Century British History,* 16(2) (2005) 129-145; Anne Logan, 'Policy Networks and the Juvenile Court: The Reform of Youth Justice, c.1905-1950', *Crimes and Misdemeanours*, 3/2 (2009) 18-36.
[10] Victor Bailey, *Delinquency and Citizenship: Reclaiming the Young Offender, 1914-1948*, Oxford, Clarendon Press, 1987.
[11] George K. Behlmer, *Friends of the Family*: *the English Home and its Guardians, 1850-1940*, Stanford University Press, 1998.
[12] Richard R. Follett, *Evangelicalism, Penal Theory and the Politics of Criminal Law Reform in England, 1808-1830*, Basingstoke, Palgrave, 2001; Olive Checkland, *Philanthropy in Victorian Scotland,* Edinburgh, Donald, 1980; Frank Prochaska, W*omen and Philanthropy in Nineteenth Century England*, Oxford University Press, 1980; Frank Prochaska, *Christianity and Social Service in Modern Britain*, Oxford University Press, 2006.

developments in Scotland argues that the route to juvenile justice reform was shaped by the interaction between voluntary, philanthropic action in the form of the Scottish industrial school movement[13] and state intervention as the state stepped in to assume statutory regulation of industrial and reformatory schools. The associated combination of centralising influences and standardising UK legislation was to impact negatively on the original Scottish system of day industrial schools, ultimately subverting its welfare-based ideals of reform. This is an argument which I have explored more fully elsewhere but which I will briefly summarise in the next section of this paper.[14] But for the moment, the crucial point here is that this new periodization allows us to see things differently, re-directing our gaze onto the longer view. This wider picture brings greater clarity to the important continuities between the nineteenth and twentieth century history, allowing us to see the areas of underlying stability. It also permits us to see that some features of the world of penal welfare, such as the effect of new scientific knowledges, were not completely visible until well into the twentieth century.

In presenting evidence to support my argument this paper draws on a number of sources in particular, including the Report of the Morton Committee set up to review juvenile justice in Scotland in 1925, archival case reports, statutory material, reports delivered by the UK Inspectorate of reformatory and industrial schools, newspapers and other primary material. It should be noted that the contemporary commentators cited in this paper are mainly concerned with the situation in England or the UK generally without specific reference to Scotland, with the notable exception of David Barrie's and Susan Broomhall's recent book on Scottish police courts, Linda Mahood's study of Scottish child saving institutions and Andrew Ralston's article on Scottish industrial and reformatory schools.[15] In general the Scottish dimension has received little scholarly attention until recently and it is hoped that this paper will encourage further interest in this important aspect of juvenile justice history.[16] The next section considers the re-evaluation of industrial and reformatory schools. The

[13] William Watson, *The Juvenile Vagrant and the Industrial School*, Aberdeen, George Davidson,1851; William Watson, *Chapters on Ragged and Industrial* Schools, Edinburgh and London, William Blackwood and Sons,1872; William Watson, *Pauperism, vagrancy, crime and industrial education in Aberdeenshire 1840-75,* Edinburgh and London, William Blackwood and Sons,1877; William Watson, *My Life, Volume I* (unpublished handwritten manuscript) Aberdeen City Library; Christine Kelly, 'Criminalisation of Children in Scotland 1840-1910', unpublished PhD thesis, University of Glasgow, 2012; Andrew Ralston, 'The Development of Reformatory and Industrial Schools in Scotland, 1832-1872', *Scottish and Economic Social History*, 8 (1988) 40.

[14] Kelly, 'Criminalisation of Children in Scotland'.

[15] David Barrie and Susan Broomhall, *Police Courts in Nineteenth Century Scotland, Volume 2: Boundaries, Behaviours and Bodies*, Ashgate, 2014, ch.2. [Editor see accompanying Book Review in this issue]; Linda Mahood, *Policing gender, class and family, 1850-1940*, London, UCL, 1995; Ralston, 'The Development of Reformatory and Industrial Schools in Scotland'.

[16] Kelly, 'Criminalisation of Children in Scotland'. See also Barrie and Broomhall, *Police Courts in Nineteenth Century Scotland, Volume 2*.

paper will then focus on the Children Act 1908 and the early juvenile courts in Scotland before going on to examine the question of scientific discourse.

1 Reformatory and Industrial Schools in the Victorian Criminal Justice System

One of the hallmarks of the Victorian era in Britain was public intervention in the private sphere in the form of legislative action, particularly in relation to child welfare.[17] Nowhere was this interplay between the public and the private more evident than in the operation of reformatory and industrial schools catering for criminal and destitute children. Here we can witness the obvious co-opting of voluntary, philanthropic action by the state from the mid nineteenth century onwards with the assumption of legislative control over previously private reform initiatives. In the area of juvenile justice this took the form of statutory regulation of industrial and reformatory schools.

In the 1840s and 1850s philanthropists north and south of the border pioneered diversionary approaches to juvenile offenders. To present a necessarily truncated version of events, the reformatory movement in England and the day industrial school system in Scotland combined forces to campaign for a statutory framework governing diversionary institutions for criminal and destitute children.[18] My research shows that, although there were significant differences in ethos and approach between the Scottish and English reform movements, they both regarded a statutory base and the financial benefits it offered as a solid foundation on which to develop and expand networks of reform. The resulting body of legislation governing certified industrial and reformatory schools began with two statutes enacted in 1854: the Reformatory Schools (Scotland) Act 1854 or Dunlop's Act which applied to Scotland and the Youthful Offenders Act 1854 which was a UK measure. Over the ensuing 12 years a number of statutes followed, some applying to Scotland[19] and some to England,[20] or to both.[21] Over time the statutory system became firmly embedded in a complex standardising process which was accentuated by the appointment of a national inspectorate to oversee the institutions throughout the UK; this exerted pressure for uniformity of approach in both jurisdictions. All of this culminated in 1866 with consolidating UK legislation, the Reformatory Schools Act 1866 and the Industrial Schools Act 1866. Although

[17] On twentieth century perspectives see G. Finlayson, 'A Moving Frontier: Voluntarism and the State in British Social Welfare, 1911-1949', *Twentieth Century British History*, 1(2) (1990) 183-206.
[18] Kelly, 'Criminalisation of Children in Scotland'.
[19] Industrial Schools (Scotland) Act 1861.
[20] Industrial Schools Act 1857; Industrial Schools Act 1861.
[21] 1856 'Act to amend the mode of committing Criminal and Vagrant Children to Reformatory and Industrial Schools'.

altered in some respects by amending legislation, the 1866 Acts remained in force at the end of the nineteenth century and were the principal statutes defining the conditions under which children were admitted to certified schools. This legislative process, and the centralising pressures for uniformity accompanying it, had unforeseen consequences: ultimately, the distinctiveness of the welfare-based Scottish day industrial system was sacrificed, its original ideals gradually undermined as it was subsumed into the national UK mould which shaped residential industrial and reformatory schools of a penal character.[22] This was a prime example of philanthropic effort being co-opted by the state.

The considerable scale of the statutory system of reformatory and industrial schools raises a number of important issues. At the end of the nineteenth century there were about 24,000 children under detention in the 50 reformatories and 141 industrial schools across Britain, with around 5,500 of these detained as inmates in 43 Scottish institutions.[23] The magnitude of this network of schools calls for a reassessment of the relative significance of reformatory and industrial schools within the nineteenth century criminal justice system. The schools were not simply private institutions on the fringes of the system, as the existing literature on the UK network of schools has sometimes suggested: for example, while recognising the influential role of the schools in terms of their reformative ethos, Garland makes reference to the schools being positioned on the 'margins' of the criminal justice system in Britain.[24] Similarly, other scholars such as Mahood, Cale and Moore have placed less emphasis on the legal significance of the schools as part of the criminal justice system, placing their primary focus on the sociological study of the schools as child saving institutions.[25] Although all the schools were under independent management and were run on the 'voluntary principle,' they were regulated by statute, children were ordered to them by the courts and they were under Home Office direction. They were under statutory inspection, received public funding and were very much viewed as an integral part of the criminal justice system. They may not have been state prisons but, as statutorily certified institutions to which many children were sent by the courts, they were central to the running of criminal justice system.[26] The public function of the schools was widely recognised and debated in Parliament in 1866 when the consolidating legislation was under consideration. One MP explained the position of the schools as 'public institutions': 'These schools were originally

[22] Kelly, 'Criminalisation of Children in Scotland'.
[23] Report of the Departmental Committee on Reformatory and Industrial Schools, 1896, pp.8 and 132.
[24] Garland, *Punishment and Welfare,* p.8.
[25] Michelle Cale, 'Working for God? Staffing the Victorian reformatory and industrial school system', *History of Education*, 21(2) (1992) 113-127; Michelle Cale, 'Girls and the Perception of Sexual Danger in the Victorian Reformatory System', *History,* 78(253) (1993) 201–217; Mahood, *Policing gender, class and family*; Marianne Moore, 'Social control or protection of the Child? On the industrial schools Acts 1857-94', 33(4) *Journal of Family History* (2008) 359-387.
[26] Under section 12 Reformatory Schools Act 1866, the Home Secretary was required to produce rules regulating reformatories.

founded upon the voluntary principle, but they had become in some degree state institutions, and were partly maintained by public money.'[27]

All of this necessitates re-evaluating their position in recognition of the important place they occupied within the criminal justice system. This reassessment has significant implications for ideas about reformation of individual offenders. There is a scholarly consensus that a focus on individual reformation developed in Britain at the end of the nineteenth century, marking a departure from the Victorian ideal of uniformity in dealing with convicted criminals. Wiener, Garland and others have convincingly presented this argument, showing that the closing years of the century witnessed a burgeoning interest in new knowledges and discourses which placed the emphasis on employing scientific insights to understand individual offenders.[28] But there is also clear evidence from studying primary sources, such as the annual reports of the inspectorate of reformatory and industrial schools, that the ethos of the reformatory school system throughout Britain was from its origins in the mid nineteenth century based on developing programmes of reformation to meet the needs of the individual offenders.[29] This indicates that discourses of individual reformation were widely disseminated across Britain far earlier than previously thought. There has been appreciation of the definite influence of the schools as a Victorian example of institutionalised reformation of a religious kind by scholars such as Garland. However, the accompanying perception of the schools as being somewhat marginal to the whole criminal justice project has meant that their significance has been rather understated. It was a prime aim of the influential first national inspector of reformatory and industrial schools, Sydney Turner, that reformatory schools should adapt their programmes of reformation to meet the needs of the individual offender:

> Reformatory training is of necessity essentially based upon religious influences. Little permanent impression can be made unless a sense of religious duty is aroused and religious affections awakened. For this simple free Scriptural teaching with careful personal application to the individual character is specially required.[30]

That this was the ideal method advocated by Turner, who assiduously oversaw the inspection of the large network of schools throughout the UK from his appointment in the mid-1850s, does not entirely correspond with the widely held scholarly opinion[31] that notions of individual reformation were unfamiliar in the mid nineteenth century: a view expressed, for

[27] Mr Stephen Cave M.P, HC 27th July 1866, Hansard Vol. 184 cc 1606-13.
[28] Garland, *Punishment and Welfare*; Wiener*, Reconstructing the Criminal*. On the impact of new knowledges on the understanding of offenders see also Hendrick, *Child Welfare: England 1872-1989* and Bradley, 'Inside the Inner London Juvenile Court, c. 1909-1953'.
[29] Annual Report of the Inspector of Reformatory and Industrial Schools, 1876 (C.1534) p.11.
[30] Ibid.
[31] Garland, *Punishment and Welfare*; Wiener, *Reconstructing the Criminal.*

example, by Garland's assertion that in the Victorian criminal justice system 'each individual was treated "exactly alike" with no reference being made to his or criminal type or individual character.'[32] Similarly, Wiener refers to the 'hallowed nineteenth century principle of uniform treatment.'[33] Turner's comments suggest this idea requires qualification and that some concept of individual reformation had wide currency in the mid nineteenth century.

2 The Children Act 1908 and the Creation of the Juvenile Court

In many ways the Children Act 1908 was very significant for children in the criminal justice system, effectively removing the option of child imprisonment in all but exceptional cases and setting out the statutory framework for juvenile courts in the UK. Known as the Children's Charter, the Act was lauded as the crowning point of a gradual process of statutory recognition of the vulnerability of children.[34] Writing in 1909 a distinguished London magistrate, William Clarke Hall, described the Act as 'a great charter of the helpless.'[35] And its Parliamentary champion, Herbert Samuel, Under-Secretary at the Home Office, described it as a measure 'so striking and important' that it was fully deserving of wide public and parliamentary support.[36] Behlmer is in no doubt that English reformers, inspired by the success of American experiments, saw the proposed new juvenile courts as ushering in the 'dawn of the modern age.'[37] Similarly, Heywood concludes that the Act represented 'a great and fundamental step in child protection.'[38] However, despite its reputation as a landmark measure, it will be argued here that the Act was less of a watershed than has been supposed.

The Act should be located in the context of a body of Liberal social welfare measures concerned with infant welfare such as provision of school meals and school medical inspection.[39] In keeping with this protective vision, the Act addressed a diverse range of issues including prevention of cruelty to children, infant life protection and prohibitions on the sale of tobacco to children. Under the Act courts of summary jurisdiction hearing children's cases were required to sit as juvenile courts 'either in a different building or room from that in which the ordinary sittings of the court are held, or on different days or at different times from

[32] Garland, *Punishment and Welfare*, p.14.
[33] Wiener, *Reconstructing the Criminal*, p.367.
[34] William Clarke Hall, *The Law Relating to Children*, London, Stevens and sons Ltd., 1909, p.2.
[35] Ibid.
[36] Quoted in Harry Hendrick, *Child Welfare: Historical Dimensions, Contemporary Debate*, Bristol, Policy Press, 2003, p.86.
[37] Behlmer, *Friends of the Family*, p.245.
[38] Jean S.Heywood, *Children in Care: The Development of the Service for the Deprived Child*, London, Routledge and Kegan Paul, 1965, p.108 cited in Hendrick, *Child Welfare: England 1872-1989,* p.121.
[39] Hendrick, *Child Welfare: England 1872-1989*.

those at which the ordinary sittings are held.'[40] Only those directly concerned with the case were allowed to attend except by leave of the court.[41]

The introduction of juvenile courts in the UK should be viewed in the wider context of the development of juvenile courts in other jurisdictions[42] with the US being of special influence. The atmosphere in which the first American juvenile court was created in Cook County Chicago in 1899 was one which regarded the new social sciences as central, with great interest in uncovering the social causes of crime and 'socialising justice.'[43] Medical-therapeutic ideas of individualised treatment of juvenile 'delinquents' and 'dependents'[44] were given free rein with expert advice on hand to deliver appropriate treatment in each case. Informality and a lack of procedural constraints were regarded as key. A defining feature of the American juvenile court was its paternalist ideology which manifested itself in the concept of 'parens patriae,'[45] which meant that the child was regarded as a child of the state and the court acted as a parental court.

But, of course, there was wide variation in the way reforms such as the juvenile court were implemented in individual jurisdictions. The newly created Scottish juvenile court was a far cry from the American version: magistrates in the Scottish courts lacked special expertise in children's cases and medical-therapeutic notions of individualised treatment were of little influence.[46] Unlike the American juvenile courts, the new Scottish juvenile courts were formal and adhered to procedural requirements. In essence, the courts continued to conduct business much as before with the main difference that the juvenile court separated children off from adults appearing in court by being conducted at a different time from the adult

[40] Section 111(1).
[41] Section 111(4). However journalists were not excluded.
[42] On juvenile courts in the US see Anthony Platt, *The Child Savers: The Invention of Delinquency,* Chicago University Press, 1977; David Tanenhaus, ' Growing up Dependent: Family Preservation in Early Twentieth Century Chicago', 19(3) *Law and History Review,* (2001); David Tanenhaus, *Juvenile Justice in the Making* , New York, Oxford University Press, 2004; Michael Willrich, *City of Courts: Socializing Justice in Progressive Era Chicago,* New York, Cambridge University Press, 2003. For Australian juvenile courts see L. Ritter, 'Inventing juvenile delinquency and determining its cure (or, how many discourses can you disguise as one construct?') in Mike Enders and Benoit Dupont (eds.) *Policing the Lucky Country*, Sydney, Hawkins, 2001. Under the terms of the State Children's Act 1886 South Australia introduced juvenile courts in 1890.
[43] Willrich, *City of Courts*.
[44] Tanenhaus *Juvenile Justice in the Making*; Willrich, *City of Courts*.
[45] Tanenhaus, 'Growing up Dependent', p.555; Willrich, *City of Courts,* p.79.
[46] See the Report of the Morton Committee on Protection and Training set up in 1925 to review juvenile justice in Scotland, under the chairmanship of Sir George Morton K.C. The Committee was appointed to investigate the treatment and training of young people and young offenders requiring care and protection and reported in 1928 (Edinburgh, HMSO, 1928). The Report stated that the main source of information provided to the juvenile court was simply a police schedule

courts.[47] This was confirmed by the evidence of witnesses appearing before the Committee on Reformatory and Industrial Schools in 1914.[48] For instance the Chief Constable of Dundee, John Carmichael, was asked whether there was a special magistrate for the juvenile court in Dundee:

> No, the ordinary magistrate. The sitting is heard in the ordinary police court room, but at a different hour from the ordinary police court, and the children do not meet with adult criminals coming to the court. Our ordinary sitting is half – past nine and the juvenile court is at half past ten. If the ordinary police court is sitting at that later hour the children are all taken to a separate room and do not rub shoulders with the ordinary criminal at all.[49]

This makes plain that, while one of the main objectives of establishing the Children Act, the segregation of children appearing in court, had been realised, that of ensuring that children's cases were dealt with by those with a special knowledge of children had not. And Edinburgh magistrate, James Rose, confirmed there was no special magistrate for the children's court in Edinburgh either:

> *Are you in any sense a magistrate of the children's court? Is there a children's court in Edinburgh with separate magistrates?*
> No, we all just take our turn.
> *Do the whole of the magistrates take their turn of that work?*
> Yes.[50]

James Rose went on to criticise the use of the juvenile court to deal with child offenders, especially in view of the extremely minor nature of most of the offences, such as playing football in the street or 'hanging on to tramway cars'. He emphasised that appearing in court was a traumatic and stigmatising experience:

> To describe them as children's courts only means that the children brought before them are not now brought into contact with the demoralising sights and disclosures of the ordinary police or criminal courts. This is certainly an improvement, but the institution of these courts has not removed to any extent the difficulty felt by most judges in dealing with children brought before them, in most cases for petty offences for which it is not easy to prescribe the adequate penalty or treatment ... I think an effort should be made to remove from our courts the prosecution of children.[51]

This scathing critique illustrates the frustration felt by some magistrates, indicating that while the early juvenile court kept children separate from adult offenders, it was certainly not a

[47] See Leon Radzinowicz and Roger Hood, *The Emergence of Penal Policy in Victorian and Edwardian England (A History of English Criminal Law, Vol 5)*, London, Steven & Sons, 1986, p.631; this gives a perspective on the English juvenile court, noting that early examples of juvenile courts were set up in England after one was established in Birmingham in 1905.
[48] Departmental Committee Report on Reformatory and Industrial Schools in Scotland, 1914-16 [Cmd. 7887].
[49] Ibid. p.809.
[50] Ibid. p.291.
[51] Ibid. p.290.

properly specialist court. This criticism could also have been justifiably levelled at the newly created juvenile courts in England and Wales: according to Radzinowicz and Hood the juvenile court in practice was 'far short of the radical version of a true family welfare court ...The legislation was little more than a device to dissociate young delinquents from adult criminals.'[52]

If we look some years ahead, to the committee appointed in 1925 under the chairmanship of Sir George Morton K.C. to investigate the treatment and training of young people and young offenders requiring care and protection, we can see that little had changed in Scotland. Reporting in 1928, the committee lamented the continuing absence of specialist magistrates:

> In no Scottish town, so far as we are aware, have arrangements been made to delegate the work of the juvenile court to one or perhaps two Magistrates specially chosen because they have experience of the difficulties of youth and understand the problem of juvenile delinquency.[53]

To remedy this, the Morton Report recommended the setting up of a widespread system of specially constituted justice of the peace juvenile courts manned by those particularly qualified to deal with children's cases.[54] This proposal was statutorily enshrined in the Children and Young Persons (Scotland) Act 1932 which allowed for such courts to be set up by the authority of the Secretary of State in areas where the local authorities requested them.[55] Only four areas elected to introduce these courts: Aberdeen, Ayrshire, Fife and Renfrewshire.[56] In England, on the other hand, following the recommendation of the English Young Offenders Committee,[57] similarly constituted courts were set up as juvenile courts under the Children and Young Persons Act 1933.[58] Of course, as Logan's work on the reshaping of London's juvenile justice system shows, the capital had taken the lead in

[52] Radzinowicz and Hood, *The Emergence of Penal Policy in Victorian and Edwardian England*, p.633.

[53] Report of the Morton Committee, p.42. This was despite a Scottish Office Circular of 1923 which stressed the desirability of having a separate rota of magistrates or justices for juvenile courts with experience of dealing with 'the problems of juvenile delinquency as social workers or teachers or who are otherwise specially interested in the training of young people.' No. 1933, p.5. Similarly, in England this concept was reinforced by the Juvenile Courts (Metropolis) Act 1920, section 1(2) which directed that in selecting magistrates as Presidents of juvenile courts regard should be had to their experience and qualifications for dealing with juvenile offenders. This Act only applied to the Metropolitan Police Court District.

[54] Report of the Morton Committee, p.43.

[55] Section 2(1). The Children and Young Persons (Scotland) Act 1932 was consolidated in the Children and Young Persons (Scotland) Act 1937.

[56] Note Lord Kilbrandon's comments approving these specialist courts in Kilbrandon, 'The Scottish Reforms: The Impact on the Public', *British Journal of Criminology* 8 (1968) p.235.

[57] Under the chairmanship of Sir Thomas Molony, 1927, Cmd.2831, the Molony Report.

[58] Children and Young Persons Act 1933 which consolidated the provisions of the Children and Young Persons Act 1932.

creating specialist juvenile court panels under the Juvenile Courts (Metropolis) Act 1920.[59] But it was only in the wake of the English Act in 1933 that the concept of specialised juvenile courts was truly crystallised south of the border. For Scotland, regretfully, this notion was only realised in an extremely limited way for the first half of the twentieth century.

It seems that, in practice, by the mid-1920s the implementation of the provisions of the Children Act 1908 in Scotland left much to be desired. Certainly, the Morton Report did not mince its words in describing failures to respect the Act's provisions:

> We do not think that what we may describe as the spirit of the Children Act was generally observed. The Act provides that juvenile courts be held in a different building or room from that in which the ordinary sittings of the court are held, or on different days or at different times from those at which the adult court meets. In many districts, the provisions of the Act were complied with in the past merely by holding the juvenile court in the forenoon at an hour immediately before or immediately after the ordinary police court. We strongly deprecate this practice. There has been the possibility of contact, more or less direct, with those who frequent the adult court, and indeed we have had evidence that, after the juvenile court was held in one police court, juvenile offenders under 14 years of age were allowed to remain during the hearing of adult cases. This is, of course, a contravention of section 115 of the Children Act.[60]

The evidence here supports the conclusion that the chief importance of the creation of the early juvenile court in this period was on the conceptual level in its recognition of the special position of children.

While the creation of the juvenile court was a significant step conceptually, it is important to appreciate that in practice the new juvenile court did not greatly change the way children were treated. For instance, analysis of the grounds of admission to industrial and reformatory schools reveals that they were not significantly expanded by the 1908 Children's Act, which in the main consolidated the earlier legislation governing admissibility and added one or two amendments. There was little that was innovative in section 58 listing the conditions of admission to industrial schools. It replicated the provisions of the Industrial Schools Act 1866 concerned with begging, wandering, being found destitute, frequenting the company of thieves, being 'refractory' in a workhouse or poor law school and being beyond control. It also repeated section 1 of the Industrial Schools Amendment Act 1880 concerned with a child found residing with prostitutes. There were only two completely new provisions. The first related to the admission of a girl to an industrial school if she was the daughter of someone convicted of a sexual offence in respect of his daughters under section 4 or 5 of the Criminal Law Amendment Act 1885. The second was section 58(1)(d) which provided

[59] Logan, 'A Suitable Person for Suitable Cases'; Logan, 'Policy Networks and the Juvenile Court'.
[60] Report of the Morton Committee, p.51.

that a child was liable to be sent to an industrial school where his parent was 'by reason of criminal or drunken habits unfit to have care of the child.'[61] There was some adjustment of the earlier provisions relating to child offenders: where a child under 12 was charged with an offence he could be admitted to an industrial school but the requirement under section 15 of the 1866 Act that there should be no previous conviction was dispensed with.[62] Moreover, a child of 12 or 13 with no previous conviction could be sent to an industrial school if the court was 'satisfied that the character and antecedents of the child are such that he will not exercise an evil influence over the other children in a certified industrial school.'[63] In relation to reformatories a child convicted of an offence between the ages of 12 and 16 could be admitted to a reformatory, as previously; but the minimum age of admission was fixed at 12 so that younger children with a previous conviction were no longer admissible.[64] In general, though, the provisions were much the same.

Even the section enabling magistrates to admit children where their parents were deemed unfit by reason of criminal and drunken habits was not completely new, as criminality of parents had been a ground of admission since the mid nineteenth century.[65] Under the 1866 industrial school legislation children in a workhouse or poorhouse school with a parent in prison had been candidates for admission.[66] Similarly, under the Prevention of Crimes Act 1871, children of a woman twice convicted of crime could be sent to an industrial school.[67]
The important point about this pattern of underlying stability is that it somewhat undermines the view held by some scholars that the juvenile court was a central element of a new world of penal welfarism where there was extended capacity for interventionism and control over family life. This argument was influentially made by David Garland who associated the new juvenile courts across Britain with a different form of penality characterised by specialist expertise, probationary investigation, and increased surveillance.[68] A key point emphasised in his argument in relation to the 1908 Act was that it introduced the notion that family problems were 'to be administered not solely by charity and voluntary social work, but through a series of public channels presided over by the specialist juvenile court.'[69] And in Herbert Samuel's declaration that the state should intervene where home discipline had

[61] Section 58 (1)(d).
[62] Section 58(2).
[63] Section 58(3).
[64] Section 57. Under the Reformatory Schools Act 1893 commitment to reformatories was allowed for convicted offenders between 12 and 16 but younger children were admissible if they had previous offences.
[65] Section 58(1)(d)
[66] Section 17 Industrial Schools Act 1866.
[67] Section 14.
[68] Garland, *Punishment and Welfare,* p. 222.
[69] Ibid.

failed, Garland detected 'the extension of state interventionism beyond the limits of offence behaviour stipulated by the criminal law.'[70] John Clarke also supported the idea that from its inception the juvenile court was invested with the power to 'intervene to rescue the child from the vagaries of working-class socialisation.'[71] Other scholars, most notably Donzelot, have also drawn attention to the extensive scope of the juvenile court for exercising control over family relations.[72] So, with Donzelot writing on the French situation and Lasch[73] making observations in a similar vein on the American experience, this has been a familiar Foucauldian theme in studies of the juvenile court apparatus in other jurisdictions too.[74]

However, my archival research on industrial and reformatory school admissions in Victorian Scotland shows that there was considerable scope for judicially sanctioned intrusion into domestic circumstances well before the appearance of juvenile courts.[75] This is evident from an examination of cases concerned with admissions to industrial schools in Edinburgh[76] which reveals that from the 1880s many cases were brought to court at the instance of the Royal Scottish Society for the Prevention of Cruelty to Children (RSSPCC) whose methods were particularly invasive.

The rise of the English branch of the organisation (RSPCC) under its charismatic leader, Benjamin Waugh, and the society's tireless campaign in the interests of child protection south of the border have been well documented by Behlmer: his study charts the far reaching impact of this voluntary organisation dedicated to the care and safety of vulnerable children with its network of local inspectors ready to investigate suspected cases of child abuse.[77] The work of Mahood[78] and Clapton[79] also shows that the Scottish version of the

[70] Garland, *Punishment and Welfare,* p.223.
[71] J. Clarke, 'The three Rs – repression, rescue and rehabilitation; ideologies of control for working class youth', CCCS stencilled occasional paper, 41, 1975. Quoted in Garland, *Punishment and Welfare,* p.223.
[72] Jacques Donzelot, *The Policing of Families*, London, Hutchinson, 1979. See Mahood, *Policing gender, class and family* for discussion of Donzelot's influence.
[73] Christopher Lasch, *Haven in a Heartless World; the Family Besieged*, New York, Basic Books, 1979.
[74] See Behlmer's references to Donzelot, Lasch and commentators on English juvenile justice. Behlmer, *Friends of the Family*, p.231; J.W. Scott, 'The History of the Family as an Affective Unit', *Social History*, 4(3) 1979 509-516; Michel Foucault, *Discipline and Punish: The Birth of the Prison*, London, Allen Lane, 1977.
[75] Kelly, 'Criminalisation of Children in Scotland'; archival material on industrial school admissions in Edinburgh from 1871 up to 1935 is available in the Industrial School Complaints Books for Edinburgh presented in large volumes with details of the burgh court process relating to each child: Industrial School Complaints Books 1871-1935, Edinburgh City Archives.
[76] Kelly, 'Criminalisation of Children in Scotland'; Industrial School Complaints Books 1871-1935, Edinburgh City Archives.
[77] George K.Behlmer, *Child Abuse and Moral Reform,* California, Stanford University Press, 1982; Behlmer *Friends of the Family*.
[78], Mahood, *Policing gender, class and family*.

organisation was equally assiduous in its efforts to rescue children deemed to be at risk in some sense, whether through abuse or exposure to potential corruption.

Commonly known as 'the cruelty,' the Society's inspectors assumed the responsibility of intervening in cases involving possible neglect: they were particularly vigilant in inspecting even the personal cleanliness, beds and bedding, home conditions, character and earnings of families.[80] Sometimes assisted by other associations such as missionary groups, the RSSPCC was extremely active in Edinburgh. My research reveals that they vigorously rescued neglected children who were reported to them or discovered wandering destitute on the street, making it their business to direct them promptly, via the burgh court, to institutional care in an industrial school.[81] The scope for intrusion entailed in the activities of the society was particularly evident in cases of children committed under section 1 of the Industrial Schools Amendment Act 1880 which provided that a child was eligible to be sent to an industrial school if found residing with prostitutes. In such cases there was often a note of written evidence provided by an RSSPCC inspector with details of the numerous visits he made to the residence of the children investigating their situation and these findings were usually well corroborated by two police constables. Clearly, close surveillance and intrusive control of family circumstances on welfare grounds was well established in nineteenth century practices and was nothing novel by 1908.

One interesting example from my archival research on Edinburgh burgh court shows the operation in practice of section 58(1)(d) of the Children Act 1908, making it a ground for being sent to an industrial school if a child is 'under the care of a parent or guardian who, by reason of criminal or drunken habits, is unfit to have care of the child.' This was a case from 1909 concerning Mary Ann and James Sutherland.[82] The process was initiated by the RSSPCC inspector responding to a complaint that the children, aged eight and six, were neglected and attended school in a dishevelled state. The parents disputed the allegations and had two witnesses to support them. The inspector countered that they had previous convictions for theft, fraud and assault, were of intemperate habits and neglected their older children who were in industrial schools already. The case was deferred pending further reports and there are expansive notes of further visits and investigation by the RSSPCC, as

[79] Gary Clapton, 'Yesterday's Men: The Inspectors of the Royal Scottish Society for the Prevention of Cruelty to Children, 1888 -1968', *British Journal of Social Work*, 39(6) (2009), 1043-1062. The RSSPCC was the Scottish branch of the Royal Society for the Prevention of Cruelty to Children, previously the National Society for the Prevention of Cruelty to Children (NSPCC).
[80] According to NSPCC circular of 1909 referred to in Clapton, 'Yesterday's Men', p.1047.
[81] Industrial School Complaints Books for Edinburgh, Edinburgh City Archives.
[82] Industrial School Complaints Books for Edinburgh 1909, Edinburgh City Archives.

a result of which the parents seem to have dramatically improved their care of the children and the case was ultimately dropped. The notes record that,

> The house was clean and tidy and also the children. The children are attending school and the mother signed the pledge on the fourth of January. The father is working constantly and keeping straight and gives his wife his wages of 15s a week.[83]

In line with the Garland thesis, this case could be interpreted as illustrating the extent to which the 1908 Act allowed extended scope for intervention in the domestic domain, sanctioning surveillance and invasive control of the family on welfare grounds. However, the analysis of earlier cases relating to children committed under section 1 of the Industrial Schools Amendment Act 1880 amply demonstrates that intrusion into the private sphere was already a well-established feature before the Children Act 1908.

To underline the continuities between nineteenth and twentieth century developments further, RSSPCC inspectors occupied a central role in early twentieth century probationary systems. Giving evidence to the Morton Committee, John Soutar, a Procurator Fiscal in Dunfermline in the 1920s, commented that in his experience 'cruelty' men made admirable probation officers: he was of the view that they were 'men of common sense and took an interest in the children.'[84]

It seems fair to conclude that, although it was significant in many ways, the 1908 Act was not the decisive break with the past that has been supposed. In fact, there were very strong continuities with the Victorian criminal justice system. The evidence points to the early juvenile court being little more than a mechanism to separate children appearing in court from contact with adult offenders. And the argument that the juvenile court represented a new field of expanded intervention appears overstated in the light of the evidence that the grounds for intervention were not greatly extended by the Children Act 1908. Indeed the evidence from the examination of case material points to there being considerable capacity for social intrusion into domestic circumstances accompanied by wide scope for removal of children to institutions long before 1908. All of this points to a pattern of underlying stability in many respects.

[83] Ibid.
[84] Report of the Morton Committee, ninth day of evidence, 15 December 1925.

3 The Influence of Scientific Discourse

The third key argument proposed here concerns the impact of scientific discourse. It has been widely argued that the late nineteenth century advent of new scientific theories on understanding the child, accompanied by growing recognition of the psychology of adolescence,[85] changed responses to the young offender.[86] For example, Martin Wiener has described how child psychology in the 1890s defined adolescence in terms of its autonomy as a stage of life.[87] Gillis also discusses the new scientific discourse surrounding the 'discovery' of adolescence, noting that the concept of adolescence had replaced social origins as 'the perceived cause of misbehaviour.'[88] As Hendrick shows, the late nineteenth century saw the rapid development of the field of child study as children increasingly became a subject for scientific investigations, both physiological and psychological.[89] A number of other scholars discuss the impact of this growing scientific discourse surrounding childhood with Behlmer, Garland and Bradley all referring to the significance of psychological expertise on the operation of juvenile justice.[90]

However, it is important to note that new positivist ideas were not always greeted with universal enthusiasm. This was an area marked by ambivalence and conflict. There was sometimes a wary reception in official circles in Britain to aspects of scientific discourse, especially where the new theories emanated from continental sources, as Garland has rightly pointed out.[91] This cautious approach was very clearly illustrated in the influential 1896 Report of the Departmental Committee on Reformatory and Industrial Schools.[92] While the Report espoused the language of psychology in its talk of the depression faced by child inmates and the negative effects of institutionalisation on their 'inner life',[93] it was not prepared to accept the new scientific discourse suggesting that children detained in the

[85] Ibid. For example, the Gladstone Report, the Report from the Departmental Committee on Prisons, 1895, (Cmd.7702), referred to offenders under the age of 21 as 'plastic' and especially susceptible to influence by external factors; Wiener, *Reconstructing the Criminal*.
[86] Garland, *Punishment and Welfare*; Wiener, *Reconstructing the Criminal*; John R. Gillis, *Youth and History; Tradition and Change in European Age Relations 1970 – Present*, London, Academic Press, 1974; Michael Blanch, 'Imperialism, Nationalism and Organised Youth' in J. Clarke et al (eds.) *Working Class Culture; Studies in History and Theory,* London, Routledge, 2007.
[87] Wiener, *Reconstructing the Criminal*.
[88] John R. Gillis, 'The Evolution of Juvenile Delinquency in England, 1890-1914', *Past and Present,* 67 (1975) 96.
[89] Hendrick, *Child Welfare: England 1872-1989*; Garland, *Punishment and Welfare*; Gillis, *Youth and History*.
[90] Behlmer, *Friends of the Family*; Garland, *Punishment and Welfare*; Bradley, 'Inside the Inner London Juvenile Court, c.1909-1953'.
[91] David Garland, 'Of Crimes and Criminals: The Development of Criminology in Britain' in M. Maguire, R. Morgan and R. Reiner (eds.) *The Oxford Handbook of Criminology*, Oxford University Press, 2002, pp. 7-50.
[92] Report of the Departmental Committee on Reformatory and Industrial Schools, Vol.I. Report and Appendices,1896 (Cmd 8204).
[93] Report of the Departmental Committee on Reformatory and Industrial Schools,1896, p.20.

institutions were different from other children or required specialised treatment.[94] It was entirely dismissive of the results of a system brought to its attention by witnesses, explaining an elaborate and extensively tested method that had been tried out to examine children for evidence of 'abnormality.'[95] This system was explained by expert witnesses, Dr Warner and Mr Legge. They presented the results of an investigation carrying out individual examinations of more than 100,000 children in different kinds of schools including certified industrial schools, poor law schools, orphanages and day schools. This involved examining physical development such as 'nerve signs' and evidence of low nutrition as well as signs of 'mental dullness.' The Report emphatically declared that the Committee was 'not at all prepared to admit the theory' that the children were physically and mentally different from others.[96]

The robust terms in which ideas about the depravity of child offenders were rejected by the Report indicates that such notions did not meet with universal acceptance. Any concept of the inherent deviance of young offenders was vehemently rejected as unfounded. The Report referred approvingly to the words of the first reformatory and industrial school inspector Sydney Turner: 'Nothing has been more certainly demonstrated in the practical development of the reformatory system than that juvenile crime has comparatively little to do with any special depravity of the offender, and very much to do with parental neglect and bad example.'[97]

Refuting ideas of 'depravity,' the Report stressed that children in these institutions were victims of neglect whose 'reclamation' [98] could be achieved with kindness and attention. It was a manifest absurdity to stigmatise as depraved reformatory children often committed for 'venial' offences or young industrial school children detained because of poverty, 'petty delinquencies,' or the faults of parents.[99] The Report also emphasised that the large numbers of children in these schools also meant that it was very unlikely that they were different from other children.

This pragmatic approach to the issue of the criminality of children was similar in tone to the assessment of the Gladstone Departmental Committee on Prisons in 1895 that criminal anthropology was an 'embryo' science and also its cautious approach towards scientific

[94] Report of the Departmental Committee on Reformatory and Industrial Schools,1896, p.20.
[95] Ibid, p.22.
[96] Ibid.
[97] Ibid.The Report referred to the 17,000 children in industrial schools.
[98] Ibid.
[99] Ibid.

investigation which it deemed valuable but inconclusive and beset by 'conflicting theories.'[100] As Garland notes, this was only 'passing approval.'[101] But despite this limited endorsement of the new science, the Gladstone Report also stated that, 'the great majority of prisoners are ordinary men and women amenable, more or less, to all those influences which affect persons outside.'[102] These sources indicate that there was a strong current of resistance to the new scientific discourses on criminality. As previously suggested, the foreign origin of much this type of theory probably did little to assist its acceptance.[103] There is also evidence that the judiciary was unimpressed by the new ideas and disinclined to have regard to them in their sentencing of offenders as Victor Bailey argues.[104]

In fact there is evidence that it was not until considerably later that scientific discourse, and psychology in particular, began genuinely to colour understandings of the young offender in England, especially following the publication in 1925 of the influential psychological study *The Young Delinquent* by the psychologist to the Education Department of London County Council, Cyril Burt.[105] Similarly, in Scotland it was not until the 1930s that psychology began to have a tangible impact on juvenile justice as Child Guidance Clinics came into vogue and became established as a resource to which children could be referred by the courts.[106]

In Scotland the evidence from the Morton Committee shows that in the mid-1920s, the influence of scientific discourse on the practical operation of the juvenile justice process continued to be far from pronounced, with evidence from experts being notably absent from the juvenile courts. In this period the main source of information provided to the courts was

[100] The Gladstone Report, p.8. (See fn.85).The Committee was under the chairmanship of Herbert Gladstone, a future Home Secretary. Though the Report was dubious about criminal anthropology, it alluded approvingly to the concept of individual reformation, opening the way to new ideas about treating different types of offenders. See too Departmental Committee on Habitual Offenders, Vagrants, Beggars, Inebriates, and Juvenile Delinquents (Scotland) 1895 (Cmd.7753-I).
[101] Garland, 'Of Crimes and Criminals', p.32.
[102] Ibid.
[103] In 1924 the prison administrator Ruggles-Brise wrote dismissively about the 'dogmas of Lombroso' and the minimal influence of American and European criminological theory on the English criminal justice system. E. Ruggles-Brise, *Prison Reform*, London, Macmillan & Co., 1924, p.15.
[104] Victor Bailey, 'English Prisons, Penal Culture and the Abatement of Imprisonment', 1895-1922', *The Journal of British Studies*, 36(3) (1997), p.293.
[105] University of London Press, first printed in 1925 with a second edition in 1927. In England the first child guidance clinic was established in Islington in 1928, the London Child Guidance Clinic. Bailey, *Delinquency and Citizenship*.
[106] 'Juvenile Delinquency: Child Guidance Clinics', *The Scotsman*, 28 February 1935; 'Child Guidance: Scotland's Social Service Need', *The Scotsman,* 28 February 1936; 'Child Guidance Clinic: Work of Dundee Organisation', *The Scotsman,* 21 December 1939; 'Child Guidance: Proposed Clinic in Fife', *The Scotsman*, 5 September 1941.

simply a police schedule.[107] The Committee noted that a number of witnesses had described the report on home conditions usually included in the schedule as 'not really satisfactory or adequate.'[108] In view of this the Committee recommended the establishment of an efficient probation service in Scotland which would undertake appropriate investigations and provide reports for the guidance of the court. It is also clear that the Morton Committee was well aware of the scientific dimension, particularly in relation to the purported connections between 'mental deficiency' and delinquency.[109] In situations where 'mental defect' was suspected it recommended that a medical examination should be carried out but, 'for reasons of expense,' it was not prepared to extend this type of investigation to other, more general, cases.[110]

The point to be emphasised here is that by the mid-1920s scientific discourse had permeated the outlook of the Morton Committee to a certain degree, even if this was not reflected in the practice of the courts of the period. The Committee stated that it was 'deeply impressed by the necessity of careful study of the antecedents of delinquency, and in particular of the mental, moral and physical characteristics of the offender.'[111] It also noted with interest the potential value of recently established psychological clinics in Edinburgh and Glasgow, predicting they would become 'more prevalent when the public realise both their need and value' in establishing 'the root of delinquency by determining the level of intelligence and the emotional make-up of the individual.'[112] On the other hand, as we have seen, the Committee restricted its recommendation for individual examination to certain cases of suspected mental deficiency or associated physical defect. Significantly, the Report was silent about the lack of access to psychological expertise in the juvenile courts: the evidence of Edinburgh University psychologist, Dr Drever, to the Committee spoke of some probation officers referring their clients to his newly established psychological clinic but he stated that his clinic had no involvement in provision of expert reports or testimony for the juvenile courts.[113]

[107] In some courts a representative of the education authority might also be available to provide information about the young offender, but practice varied across different courts. Report of the Morton Committee, p.45.
[108] Report of the Morton Committee, pp.44 and 45. The Committee envisaged this would be on the lines of Part 1 of the English Criminal Justice Act 1925.
[109] Ibid p.167.
[110] And in instances of 'puzzling cases of emotional and moral instability ' requiring prolonged observation the Committee recommended retention in a special unit of an institution dealing with mental defect for the period of observation deemed necessary. Report of the Morton Committee, p.59.
[111] Ibid.
[112] ibid, p.47.
[113] ibid, sixth day of evidence.

Dr Drever's reference to the influence of Cyril Burt on his work reflected the widespread interest in Burt's ideas in scientific circles at this period. But, despite this growing academic interest, which was especially marked in England, the English Young Offenders Committee, like its Scottish counterpart the Morton Report, recorded that the main source of information on offenders available to English juvenile courts in the 1920s was usually a report prepared by the police. Less commonly, officers of the local education authority and probation officers would also provide information to the English juvenile courts. [114] As in Scotland, there was a notable absence of direct practical input to the courts from psychological experts.[115] This was despite the increasing awareness of psychological influence on understandings of delinquency both across the UK and farther afield. But although the Committee noted that in general most English juvenile courts had no access to medical examination for young offenders there were exceptions: in the case of London a magistrate could secure expert reports, including psychological reports, for children in places of detention, an arrangement described as 'in no sense systematized.'[116] This reflected the innovative stance taken by early London juvenile courts, particularly those presided over by the pioneering magistrate William Clarke Hall, a strong advocate of juvenile probation and enthusiast of the scientific approach.[117] Hall was the son-in-law of the prominent NSPCC leader Benjamin Waugh who had argued for a special tribunal for children as far back as 1873 in *The Gaol Cradle – Who Rocks It?*[118] But the progressive ideas of London juvenile courts were far from typical and within the London magistrates' bench the new ideas were not always greeted with enthusiasm. For instance one sceptical magistrate was forthright in his criticism of the new London juvenile courts:

> They became the happy hunting grounds of all the cranks, male and female. Psycho-analysts, psychiatrists, Christian scientists all got to work and it was not too easy to keep them in order.[119]

However, there is evidence that psychology was making broader inroads into the system in other ways: for example, the English Young Offenders Committee took cognisance of the scientific approach in recognising the need for new remand provision dedicated to examining

[114] Report of the Young Offenders Committee (Molony Report) p.34.
[115] But note that in the early 1920s Birmingham justices referred children said to be suffering from 'mental inefficiency' to specially appointed experts, Dr W.A. Potts and Dr Hamblin Smith. Bailey, *Delinquency and Citizenship*.
[116] The Molony Report, p.44.
[117] Behlmer, *Friends of the Family*, William Clarke Hall, *Children's Courts*, London, George Allen and Unwin Ltd., 1926; Bradley, 'Inside the Inner London Juvenile Court, c. 1909-1953'.
[118] Benjamin Waugh, *The Gaol Cradle – Who Rocks it?* London, Stahan and Co., 1873.
[119] C. Biron, *Without Prejudice: Impressions of Life and Law*, London, Faber & Faber, 1936, p.259. cited in Behlmer, *Friends of the Family* p. 253.

young offenders.[120] But it is also worth noting the Committee's description of psychology as a 'comparatively new science' bedevilled by 'sharp controversies about particular theories.'[121] This ambivalence sounds remarkably similar to the note of caution sounded by the Report of the Gladstone Departmental Committee on Prisons in 1895 in its assessment of ideas of criminal anthropology as an 'embryo' science and its reference to scientific investigation as inconclusive and beset by 'conflicting theories.'[122] And, looking back to the turn of the century, the 1896 Report, as we have seen, had little time for new scientific theories.

All of this suggests that the influence of scientific discourse in Britain in the late nineteenth century may have been overstated. It indicates that new scientific theories about criminality were sometimes liable to be treated with scepticism and, ultimately, pragmatic common sense was commonly a predominant factor in practice. This suggests that at least some degree of qualification is needed of the concept supported by Wiener, Garland, Hendrick and other scholars that new knowledges had a significant role in an altered penal landscape where professional expertise in areas such as psychology and psychiatry were an important factor.[123] Looking towards developments in the early decades of the twentieth century it is arguable that certain elements of scientific discourse, especially psychological services, took some time to become genuinely established as an expert resource for the courts as child guidance clinics began to flourish in the 1930s.

4 Concluding Comments: The Impetus for Juvenile Justice Reform

So far this paper has presented a number of key research findings which, it is argued, modify, complement or even conflict with existing scholarly work in this area. And, crucially, drawing on my wider primary research on juvenile justice in Scotland in the Victorian era, the paper proposes an alternative interpretation of juvenile justice reform, arguing that philanthropic activism started the ball of reform rolling in the mid nineteenth century. This emphasis on the importance of philanthropic forces as a catalyst of reform at this period differs from the approach of scholars who place particular stress on the years surrounding

[120] The Molony Report, pp.45-47. The Report recommended new remand provision in the shape of three central remand homes or observation centres providing facilities where examination of young offenders under the age of 21 could be undertaken. In reaching this decision the Committee noted the success of the observation centre at Moll in Belgium which was visited by two Committee members who were favourably impressed by the system. Bailey, *Delinquency and Citizenship*, p.35.
[121] The Molony Report, p.43.
[122] The Gladstone Report, p.8.
[123] Garland, *Punishment and Welfare*; Hendrick, *Child Welfare: England 1872-1989*; Wiener, *Reconstructing the Criminal*.

the birth of the welfare state as the critical time when reform processes were initiated.[124] As was noted earlier, many scholars have identified very significant developments which accompanied the growth of the state in the early years of the twentieth century: the growing use of probation, the effect of new knowledges such as psychology [125] and criminal anthropology as well as new political and feminist discourses.[126]

But it has been argued here that close analysis of the interface between voluntary initiatives and state intervention in the realm of nineteenth century juvenile justice supports an alternative interpretation of reform: this indicates that the key timeframe in which the impetus for reform began was in the mid nineteenth century, when voluntary, philanthropic activism produced the impetus for change, introducing reforms which were subsequently co-opted by the state. Viewed from this perspective, the trajectory of reform turns out to be a story about increasing centralisation during the mid-nineteenth century, about what happened when the state laid claim to the previously private territory occupied by voluntary initiatives.

This public intervention in the private sphere took shape in the form of legislative control. In the case of juvenile justice this meant statutory regulation of industrial and reformatory schools, as discussed earlier. It is important to recognise that this legislative impulse encompassed not only juvenile justice but a whole host of issues concerned with child welfare: the vulnerable child, whether delinquent, neglected, uneducated, abused or exploited in the workplace, became increasingly visible as a focus of public concern. As the previously inviolate sanctuary of the family came to be regarded as the legitimate object of official scrutiny the deluge of legislation continued. Increasingly, parents were rendered accountable to the state for the welfare of their children. Thus parents of children sent to reformatory and industrial schools were statutorily required to contribute to their children's support.[127] The 1870s saw the introduction of universal compulsory education with parents criminalised for failing to ensure their children's attendance at school.[128] The home was no longer a castle if there was any suspicion of child abuse. For example, from the 1860s medical professionals pressed for legislative intervention to protect unwanted infants from infanticidal 'baby farming' practices conducted in private homes, a campaign which led to the 1872 Infant Life Protection Act.[129] From the 1880s philanthropic concern about the wider

[124] Garland, *Punishment and Welfare*; Wiener, *Reconstructing the Criminal*.
[125] Hendrick, *Child Welfare: England 1872-1989*; Bradley, 'Inside the Inner London Juvenile Court, c. 1909-1953'.
[126] Logan, 'A Suitable Person for Suitable Cases'.
[127] For example under sections 3 and s.5 of the Youthful Offenders Act 1854.
[128] Elementary Education Act 1870 (English measure); Education (Scotland) Act 1872.
[129] Following renewed concern about the issue of baby farming a further Infant Life Protection Act was introduced in 1897.

issue of child abuse saw the rise of the formidable National Society for the Prevention of Cruelty to Children. As we have seen, this was a voluntary organisation dedicated to the care and protection of vulnerable children with a network of local inspectors, 'cruelty men', ready to investigate suspected cases of child abuse.[130] The society campaigned doggedly for legislation on child protection issues and saw its efforts bear fruit with the 1889 Prevention of Cruelty to Children Act; like the Children Act 1908, this was given the accolade the Children's Charter. The 1880s also saw the culmination of a long period of agitation by social purity groups concerned about juvenile prostitution: their campaign to raise the age of consent began with a failed bill in 1857 and continued until the 1885 Criminal Law Amendment Act finally raised the age of consent to 16.[131]

The point to note here is that from the mid nineteenth century, and especially from the 1870s onwards, there was unprecedented public focus on child welfare issues which was reflected in a large body of legislation concerned with the protection of children.[132] Inevitably, this was a process accompanied by intrusion into the private domain of the family as issues such as neglect of children within the home came under official scrutiny, indicating that extensive intervention into domestic life was well established in the nineteenth century.

This is the wider context in which juvenile justice reform should be viewed. In the light of this interpretation the Children Act 1908 which created the juvenile court assumes shrinking significance, appearing to be less of a watershed statute and more a staging post already well signposted by earlier developments. All of this emphasises the underlying pattern of stability and continuity with the nineteenth century history.

[130] Behlmer, *Child Abuse and Moral Reform*; Behlmer, *Friends of the Family*.
[131] Criminal Law Amendment Act 1885 48 & 49 Vict., c.69. See Louise Jackson, *Child Sexual Abuse in Victorian England*, London, Routledge, 2000.
[132] Behlmer, *Child Abuse and Moral Reform*; Behlmer, *Friends of the Family*.