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McNeill, F. (2005) *Offender management in Scotland: the first hundred years*. Criminal Justice Scotland.

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Current writing about Criminal Justice in Scotland

'Offender Management' in Scotland: the first hundred years

CjS 1/2005. This article is based on a longer article entitled 'Remembering probation in Scotland,' which will be published in the Probation Journal (vol. 52, no. 1) in March 2005, and is published with the kind permission of that journal's editor. An abridged version is available at

http://www.cjscotland.org.uk/ee.php/articles/offender_management/



Author

Fergus McNeill is a senior lecturer in Social Work at the School of Social Work (Glasgow and Strathclyde Universities).

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Abstract

Set within the contexts of probation's upcoming centenary in Scotland (in 2005) and the current debate about the future of criminal justice social work in Scotland, this article provides a very brief account of the history of probation in Scotland, focusing on the rarely discussed period between 1905 and 1968. As a defence against the narrowing of our visions for the future, the article pieces together and seeks to understand significant changes in Scottish probation's core identity and purpose from providing supervision as an alternative to punishment, through providing 'treatment' and then 'welfare' services as a means of reforming offenders, to managing offenders so as to protect the public. The article concludes that the current debate in Scotland should shift from 'second order' questions around organisational arrangements to 'first order' questions around which aspects of these various purposes and identities should endure in the 21st century.

Introduction

In Scotland criminal justice social work currently faces the most significant organisational change since the disbandment of the Scottish Probation Service in 1969. The Scottish Labour Party's Manifesto for the Scottish Parliamentary election campaign in May 2003 promised that,

'We will set up a single agency – the Correctional Service for Scotland - staffed by professionals and covering prison and community based sentences to maximise the impact of punishment, rehabilitation and protection offered by our justice system' (Scottish Labour 2003).

The Partnership Agreement between Scottish Labour and the Scottish Liberal Democrats, published following the elections, moderated this position slightly, noting that the Executive would 'publish proposals for consultation for a single agency to deliver custodial and non-

custodial sentences in Scotland with the aim of reducing re-offending rates' (Scottish Executive 2003). COSLA (the Convention of Scottish Local Authorities) and ADSW (the Association of Directors of Social Work) responded to the Labour manifesto commitment by pledging to fight 'tooth and nail' against the proposed measures, arguing that there was no justification for such changes and no evidence that they would work to cut re-offending¹ (*The Scotsman*, 9th May 2003). Towards the end of 2004, the long debate neared its conclusion with the publication by the Executive of 'Supporting Safer, Stronger Communities: Scotland's Criminal Justice Plan'. The measures proposed in this document include the creation of a National Offender Management Advisory Body, chaired by the Minister of Justice, and new legislation both to create specific obligations on Local Authorities and the Scottish Prison Service to work together closely to manage offenders seamlessly and to reduce re-offending, and to establish Community Justice Authorities bringing groups of Local Authorities together to ensure the consistent and effective delivery of criminal justice social work services.

Mike Nellis (2001), writing about recent developments in the probation service south of the border, has warned of the dangers of the 'forced forgetting' of the past that often accompanies such 'modernisation':

'...conscious acts of remembrance and reflection – proper analytical history – could remind the contemporary service of its roots and achievements, its turning points, its lost opportunities, its past ambitions and its unrealised possibilities. In short, a historically tutored memory may help us to realise that the centralised, highly managerial, and potentially short-lived future into which the service is being drawn is not the only – or the brightest - future that it might have had' (Nellis 2001, p35).

Though this brief article lays no claim to being a 'proper analytical history', it is intended as a conscious act of remembrance of probation's origins in Scotland. The current period of transition and the associated contesting of probation's identity in Scotland motivate the task but it is lent a particular timeliness by the upcoming centenary (in 2005) of probation's emergence in Scotland.

Revising Probation Histories

Probation's charitable roots in Victorian philanthropy and Christian mission to the courts form only part of the story of its origins. Vanstone (2004) suggests that:

'although the evangelical humanitarian mission is an important element in the story of early probation, the emergence of the study of individual psychology, the shift from individualism to individualization in the application of punishment, and political and societal concerns about the maintenance of social order have been neglected or at least underplayed' (p34).

Vanstone (2004) draws on the work of Rose (1985, 1996) which describes the emergence of psychiatry (in the broadest sense) as a political science and of its increasing influence in the penal realm. Though earlier ideas of Christian charity endured, probation became progressively more closely aligned to this new science. In effect, the pre-occupation of court missionaries with redeeming lost souls were supplanted by the concern of probation officers to diagnose the aetiologies of offending and to work out how best to 'treat' offenders.

The emergence of this more scientific discourse and its role in the professionalisation of probation was not entirely benign. For example, Vanstone (2004) notes the 'silences' in traditional

¹ [COSLA pledges to fight justice reforms](#)

histories concerning the less palatable aspects of the new science, including the fondness of some of probation's founding figures for eugenics. However, Vanstone (2004) also draws attention to a perhaps more significant silence in traditional histories concerning the role of probation in justifying the use of imprisonment. Although probation seems always to have been about diversion from custody, the process of selecting 'suitable' cases necessarily provided rationalizations for punishment as well as leniency. Thus, just as in the missionary era the precursors of probation officers discursively constructed some as deserving and some as undeserving of 'mercy', so in the scientific era probation officers differentiated amenable from incorrigible offenders by deploying narratives of suitability for 'treatment'.

From Punishment to Supervision (1905-1931)

There are very few sources for a Scottish history of probation. Firstly, there is no established traditional history to revise by contextualising it within broader social and cultural changes. Secondly, there is no comprehensive account of the development of probation policy in Scotland. Thirdly, even if these traditional or official histories did exist, there are precious few surviving accounts from early practitioners with which those histories might be compared. In this paper, all that can be offered is the exploration of a few sources to sketch out some preliminary analysis of some interesting or distinctive features of Scottish probation.

Glasgow was amongst the first parts of Scotland (and of the UK) to establish a recognisable probation service delivered by a state as opposed to a charitable agency (Scottish Office 1947, p5). The Glasgow service was established in 1905 and a very brief history of its first fifty years was published by the City of Glasgow Probation Area Committee in 1955 (City of Glasgow 1955). This document is an intriguing

secondary source, both for what it conveys about the origins of probation in Glasgow and, in the story that it tells, for what it coincidentally reveals about the interests and concerns of the service in the mid-1950s.

The Glasgow history begins by setting the emergence of the idea of the individual reformation of the offender against the context of earlier times,

'now happily long past [when] punishments for offenders against the law were uniformly severe. There was but slight consideration for the individual; the law set the penalty, no matter who the offender or what the circumstances of the offence' (City of Glasgow 1955, p7).

The Glasgow history is striking in that at no point does it associate the origins of probation with religious ideals or church organisations. Rather, in line with the penal reductionism implicit in the opening statement, the origins of probation in Glasgow are linked to public concern about the excessive use of custody for fine-defaulters; 'in view of the admittedly demoralising influence of imprisonment, the serious consideration of all was demanded concerning the welfare of the community' (City of Glasgow 1955, p9). Probation emerged in Glasgow as a response to this penal crisis largely because of the efforts of Bailie John Bruce Murray, a local councillor who had taken a 'great interest in the treatment of offenders and who had studied the workings of the Probation Service in various parts of the United States of America' (City of Glasgow 1955, p9). This American connection is stressed in the document to the exclusion of any significant reference to the development of probation in England and Wales, other than in relation

to the United Kingdom probation legislation of 1887 and 1907. On December 14th 1905, a special committee of the Glasgow Corporation submitted a report, which was later approved by the Corporation, recommending that the Chief Constable be invited to select police officers for each District Police Court to act, in plain clothes, probation officers of the court. Their duties were to include daily attendance at the courts to receive instruction from Magistrates in cases that they deemed suitable for probation; to make enquiries as to the offenders' circumstances and their offence, for the guidance of the courts; to observe and supervise the probationer in line with the method suggested by the Magistrate during the period fixed for continuation, caution or otherwise²; and to make reports to the Magistrate. Six police officers of the rank of Detective Sergeant were subsequently appointed. Shortly afterwards, three women were appointed by the Chief Constable as probation officers to work with child offenders. By 1919, there were eleven (male) police officers working as probation officers and five women probation officers.

It seems significant that, just as religious ideals are absent in the official account of probation's origins in Glasgow, so there is no mention of this initiative building on charitable foundations. In locating probation at the outset within the police service, the

² Under Scots Law, continuations can be used both for administrative reasons or and as purposeful deferrals of sentence to a specific future date. In the latter case, the offender can be required to be of good behaviour in the intervening period. A caution (pronounced 'kay-shun') requires the accused to lodge a sum of money with the court for a fixed period. The sum is forfeit in the event of further offending. The linking of these disposals to supervision by a probation officer could presumably have been done simply by inserting appropriate additional conditions to the continuation or caution, thus having a similar effect to the probation orders introduced in the 1907 Act. The main difference might be that there would be no mechanism for dealing with breach of the conditions until the continuation or caution expired.

Glasgow initiative appears to have pre-empted the 1907 Act's incipient state ownership of probation. In terms of the practices of the officers, although an apparently humanitarian desire to reduce the use of imprisonment seems to have motivated the initiative, the initial emphasis was primarily on delivering supervision rather than care or treatment. The Glasgow history implicitly characterises this model of practice as being limited, noting that it was the Probation of Offenders (Scotland) Act 1931 that (following the report of a Departmental Committee set up by the Secretary of State to review the Protection and Training of Children and Young Offenders) 'completely revolutionised the Probation Service in Glasgow and the idea of treatment, training and reformation of Probationers superseded that of supervision' (City of Glasgow 1955, p11).

From Supervision to Treatment (1931-1968)

As well as effectively creating a comprehensive set of local services by establishing probation committees in each local authority, the 1931 Act created a Central Probation Council to advise the Secretary of State. In terms of the governance of practice however, one of the most intriguing provisions of the 1931 Act was that it expressly prohibited the appointment of serving or former police officers as probation staff, indicating both that this may have been a common practice in Scotland beyond Glasgow and that it had fallen out of favour. This change in staffing arrangements seems closely associated with the transition from supervision to treatment.

That the Glasgow history was written by treatment advocates (the modernisers of the 1950s) is frequently apparent in the history that they construct. The significance for the authors of the new 'science' is evidenced, for example, in the assertion that treatment must be an individual process following on from some kind of selection (if not

diagnosis). Their discussion of selection reflects the assumption (discussed above); that only some offenders are 'reclaimable': probation 'should be applied only to those in whom wrong-doing is not habitual and whose age, record, or home circumstances, gives reasonable hope of reformation' (p7). The discourse of scientific practice continues in the description of the officer as someone who through interviewing and home visiting, '*studies* the habits and surroundings of the Probationer and, by the impact of his personality, ever-ready advice and the force of example, tries to *influence* the offender towards the *normal* in life and conduct. The Probationer is helped to sustain *natural* relations with his fellows – relationships of employment, of friendships and of home ties' (City of Glasgow 1955, p8, emphases added).

The practitioners of this 'normalisation' were selected for their 'knowledge and experience of young people gained as leaders in voluntary organisations and work with delinquents' (City of Glasgow 1955, p12). Despite the secular and scientific tone of the Glasgow history, with regard to the composition of the probation workforce it is intriguing to note that when the service was re-organised after the 1931 Act,

'Roman Catholic Officers were selected to deal with Roman Catholic Probationers and members of the Protestant Churches to deal with Protestant Probationers. The distinction of religious persuasion soon proved to be unnecessary and that [sic] a good Probation Officer of any sept could understand and get cooperation from all religious organisations' (City of Glasgow 1955, p12).

Though the first sentence may suggest an implicitly religious (and arguably sectarian) aspect of practice neglected elsewhere in the Glasgow history, the second perhaps suggests an initial assumption that the affiliations of the officers might affect their ability not to influence probationers but to access appropriate services and positive social networks for them. In terms of the

development of the professional service, it may have been more significant that the five women officers recruited in the Police-Probation era were the only survivors of the 1931 Act's proscription of police-probation officers. The Glasgow history acknowledges that 'the knowledge and experience of these women were of great help in setting the stumbling feet of the newcomers...on the right road' (City of Glasgow 1955, p13).

Following the Second World War, the transition to peace and the lifting of war-time restrictions and disciplines gave rise to concerns about increases in criminal activity. The Glasgow history describes the service faced with these challenges as being 'undermanned and rather war-weary' (City of Glasgow 1955, p15), at least until experienced officers returned from war service and others were recruited. The Criminal Justice (Scotland) Act 1949 created new duties for the service and its officers, including the provision of 'Social reports' on those aged 17-21 and pre-trial reports on children (previously provided by Education authorities). The scale of the post-war service's activities is clear in the appendices to the Glasgow history. In 1954, the Glasgow service provided 3,637 reports for the courts and supervised 2,019 probationers (a rise from 1,313 in 1932). Evidence about the outcomes of supervision was also beginning to emerge. In 1954, 1,096 orders were completed satisfactorily while 141 were completed unsatisfactorily, the vast majority of the probationers in the latter category being committed to approved schools (n=84), Borstals (n=21) or prison (n=12) (City of Glasgow 1955, p25).

The most striking statistics in the Glasgow history however, relate to the age profile of probationers. The data reveals that the increase in the numbers placed on probation between 1931 and 1954 was accounted for entirely by an increase in the number of juveniles under supervision; thus the age profile of the probation caseloads had declined between 1931 and 1954, a change that was most marked amongst girl and

women probationers. That this problem was not limited to Glasgow is well evidenced in a Scottish Office booklet, *The Probation Service in Scotland: Its Objects and its Organisation*, which was published in 1947 to promote the use of probation. This source reveals that in 1932 in courts of summary jurisdiction, probation orders accounted for 950 out of the 9,173 disposals made in respect of children and young people (10.35%) but only 1,117 out of 71,073 disposals involving adults (1.57%). In 1945, the use of probation with juveniles had risen to 2,557 of 18,983 cases (13.47%) but the use of probation for adults had fallen to 513 of 58,764 cases (0.87%). Striking variations in sentencing in different jurisdictions were also noted; indeed no adult probation orders at all were made in 1945 in 19 of the 51 probation areas.

Against this backdrop, later versions of *The Probation Service in Scotland* revised and re-issued in 1955 and in 1961 (Scottish Office 1955, 1961) clearly represent efforts to continue to promote the use of probation, especially with adult offenders. These later documents offer greater guidance to sentencers on the kinds of cases for which probation might be appropriate, clearly seeking to promote the use of probation in the middle ground between 'minor offences committed by those with clean records and good home backgrounds, and grave offences where there would be an undue risk in allowing the offender to remain at liberty' (Scottish Office 1955, p6; 1961, p 6).

All three versions of *The Probation Service in Scotland* also reveal an increasingly modern and recognisable pre-occupation with performance. That said, the data that is presented relates primarily to the use made of probation by the courts rather than to the outcomes of supervision. Though the absolute numbers of orders rose unevenly from 3,666 in 1951 to 4,558 in 1959, probation's share of the increasing number of disposals in the same period declined from 3.76% to 2.87%. Probation continued to be a much more popular disposal option

for juveniles than adults; the proportion of juvenile cases involving crimes (as opposed to offences) leading to probation orders fluctuated between 26.7% and 34.5% during 1951-1959, the corresponding figures for adults varied between 4.3% and 8.0%.

From Treatment to Welfare (1968-1997)

That the story of the development of criminal justice social work after the disbandment of the Scottish Probation Service in 1969 is much better known than the account of probation's origins discussed above is perhaps evidence of the kind of 'forced forgetting' that radical organisational change can initiate. It also permits a more circumspect rendition here of the more recent past.

The publication of the Kilbrandon Report (1964) revolutionised juvenile justice in Scotland through its determination to remove children in trouble (whether for offending behaviour or on grounds of care and protection) from the criminal courts. Though Kilbrandon's most significant and enduring legacy is the Scottish Children's Hearings system, the 'Kilbrandon philosophy', which established the pre-eminence of a welfare based approach predicated on social education principles, also affected the ideology and organisation of adult criminal justice in Scotland (Moore and Whyte 1998). Most significantly in this context, the report led to the integration of the probation service within generic social work departments. Offenders were thus placed alongside others deemed to be in need of social work services, the common duty of which was to 'promote social welfare' (Social Work (Scotland) Act 1968: Section 12). Though this could be read as evidence of the widespread influence of the Kilbrandon philosophy, some veterans of this era suggest that the disbandment of the probation service was at least as much a pragmatic manoeuvre occasioned both by the low numbers of adult probation cases and by the need for the comparatively well-

trained probation staff to join and shape the new social work departments.

By the late 1970s commentators in academic and professional journals were expressing concerns about the viability of probation and after-care services when subsumed within the social welfare functions of the social work departments (Marsland 1977, Moore 1978, Nelson 1977). When in 1989 the Scottish Office initiated central, ring-fenced funding for most criminal justice social work services, this was interpreted by some as recognition that such services had fallen into a state of comparative neglect (Huntingford, 1992, Moore and Whyte 1998). Correcting this neglect was a pre-requisite of the policy of penal reductionism which was re-articulated as 'The Way Ahead' for Scottish penal policy in the late 1980s (Rifkind 1989). At this point, criminal justice social work looked set to follow the 'alternatives to custody' model which had already taken root in England & Wales. Indeed, the first objective delineated in the new National Objectives and Standards (SWSG 1991a) was 'to enable a reduction in the incidence of custody... where it is used for lack of a suitable, available community based social work disposal' (Section 12.1). Though the Standards reflected a 'responsibility model' which counter-balanced welfare with the need to tackle offending behaviour, probation in Scotland was never required to negotiate the ideological traverse towards punishment in the community. Rather, the focus on reducing re-offending, informed from the outset by emerging research evidence (McIvor 1990, SWSG 1991b), was seen as being critical to the enhanced credibility of community penalties on which reduction in the use of custody was thought to depend (e.g. Paterson & Tombs 1998).

From Welfare to Public Protection (1998-2005)

By the mid-to-late 1990s however, a growing emphasis on public protection on both sides of the border coincided with the

introduction of significantly higher risk populations of offenders to probation caseloads. In Scotland, legislative changes in the early 1990s required prisoners serving sentences in excess of four years to undertake compulsory community supervision on release (Prisoners and Criminal Proceedings (Scotland) Act 1993). Subsequently, advances in both the rhetoric and the practice of public protection were rapid. Although it did not appear as an objective in the original standards (SWSG 1991a), by the time of the publication of *The Tough Option* (Scottish Office 1998) the then Minister responsible was declaring both that 'Our paramount aim is public safety' (section 1.2) and that the pursuit of reductions in the use of custody 'must be consistent with the wider objective of promoting public and community safety' (section 1.2.3). Revisions to the Scottish Standards on throughcare services (SWSG 1996) and court reports (SWSG 2000), as well as other central reports and guidance (SWSI 1997, 1998) both presaged and reflected this shift in emphasis (for a more detailed discussion of the emergence and pre-eminence of public protection in official discourses and in practitioners' accounts on both sides of the border, see Robinson and McNeill 2004)³.

Conclusions: The Future of 'Offender Management'

The recurring themes in the century of probation in Scotland are not difficult to discern. On one level, the story is simple. From 1905 to 2004 most informed observers have recognised that the Scottish courts send disproportionate and unacceptable numbers of the population to jail. Though penal politics, public sensibilities and sentencing practices have all changed in various ways over the last 100 years, the problem of securing reductions in the

³ Most recently, Part One of the Criminal Justice (Scotland) Act 2004 concerns itself with 'Protection of the Public at Large' and includes measures to establish a Risk Management Authority and an Order for Lifelong Restriction.

financial and human costs associated with imprisonment endures. Probation's various changes of identity – from supervision to treatment to welfare to public protection – might be best understood primarily as a series of distinctive discursive constructs seeking to appeal to changing penal cultures and sentiments. This is not to say that these changing identities were or are mere artefacts; far from it, they represent shifting attempts to realise new and better penal practices in the interests of offenders, in the interests of communities and, ultimately, in the interests of justice. The changing arrangements for recruitment, selection and training; the changing means and methods of supervision; and the changing organisational arrangements for probation, all represent reinventions of the same core purposes around sponsoring constructive changes both in individual offenders and in the system of justice itself.

With respect to the current debate, one of the key lessons of the broad sweep of this historical account must be that, although the pursuit of penal reductionism remains as laudable and necessary as ever, the assumption that more credible alternatives will deliver reductions in the use of imprisonment is hopelessly flawed. The best efforts of generations of report writers, caseworkers, managers and policy makers, adapting and developing their arguments and practice in a variety of ways, have failed to produce the shifts in sentencing practice on which that endeavour depends. With the benefit of a century's hindsight, there is an obvious reason for this. Within the broader climate of public opinion and political pressure, sentencers think about more than rehabilitation and effective public protection in reaching their decisions; they think about issues of punishment, censure and denunciation as well. Thus sentencing is not based on the credibility or effectiveness of particular disposals in any straightforward way. The flaw in the logic of Scottish policy may have been to assume that it could or should be. That said, this is not intended as an argument for the futility of probation's

endeavours or of probation's history in Scotland. Rather it is intended as a means of encouraging a shift in the current debate from 'second order' questions around organisational arrangements to 'first order' questions around purposes and objectives. Perhaps the most pressing question to be addressed in the context of the changes outlined in 'Supporting Stronger, Safer Communities' (Scottish Executive 2004) is not whether criminal justice social work or probation can or should survive in Scotland, but rather whether the objectives that probation was established in Scotland to pursue – improving justice and helping offenders to change – can survive the rapid politicisation of criminal justice post-devolution.

Although the compromises represented in the Executive's new plan look likely to secure, for the time-being at least, the continuation of criminal justice social work within local authorities, the discursive shift towards 'offender management' may be more significant than any organisational change. In England and Wales, the establishment of the National Offender Management Service (NOMS) reflects a radical shift in thinking away from prison on the one hand and community sentences on the other, and towards 'seamless offender management'. If, as has been suggested here, penal reductionism has been a continuous aspiration throughout the last century of probation, then the danger of the language of offender management may be that in eliding the custody/community distinction, it finesses away penal reductionism, supplanting it with the objective of reducing re-offending. The question of how best to 'manage' offenders so as to reduce re-offending becomes merely technical and contingent. While the significance of the demotion of penal reductionism from being a core purpose of services may be masked for the moment by the empirical evidence that community programmes are, in many cases, the more cost effective means of achieving a reduction in re-offending, we should not let

such a morally necessary aspiration pass away so lightly. Though it may seem like mere nostalgia to some, improving justice and helping offenders to change – as opposed to merely managing them efficiently – need to remain at the heart of the business of criminal justice social work.

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Author

Fergus McNeill is a senior lecturer in Social Work at the School of Social Work (Glasgow and Strathclyde Universities).

More information about the author:

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Publication information

This work is based on a longer article entitled 'Remembering probation in Scotland' which will be published in the *Probation Journal* (vol. 52, no. 1) in March 2005 and is published with the kind permission of that journal's editor. The URL of the abridged version is http://www.cjScotland.org.uk/ee.php/articles/offender_management/