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# **CRIMINALISATION OF CHILDREN IN SCOTLAND 1840-1910**

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## ABSTRACT

This thesis draws on a wide range of primary sources in order to explore the criminalisation of children in nineteenth century Scotland. The analysis is set in the context of far-reaching changes in the administration of criminal justice including the expansion of urban policing, alterations in criminal procedure and legislative developments. Against this background the thesis examines the impact of pragmatic, religiously inspired philanthropy on reform of juvenile justice in Scotland and argues that Scottish reformers in the 1840s and 1850s achieved a remarkable degree of success in setting up a unique pre-statutory national experiment to deal with juvenile offenders. This innovative diversionary system was based upon the concept of the day industrial school, first set up by Sheriff William Watson in Aberdeen in the early 1840s. A genuine welfare initiative, the day industrial school was preventive in approach, aimed at rescuing vagrant, destitute children and juvenile offenders from a life of crime. Instead of being sent to prison children were sent by the courts to the schools where they received education, food and training in a trade. This system provided a model which was emulated in the reform of juvenile justice throughout the UK and was also of international influence. However, one of the key contentions of this thesis is that from 1854 onwards the pre-statutory Scottish system underwent a process of transformation as it adapted to changes associated with the advent of a statutory UK framework governing certified industrial and reformatory schools. Pressures for uniformity, in the shape of centralising influences and standardising UK wide legislation, combined to subvert the humane ethos of the Scottish pre-statutory system. To the dismay of the original advocates of reform in Scotland the statutory system evolved in a way that they had not anticipated: by the closing decades of the nineteenth century diversionary systems for young offenders had developed into a mechanism for channelling large numbers of children into prolonged detention in residential industrial and reformatory schools, establishments which were penal in character. This entailed criminalisation of children on an immense scale, impacting in a particularly dramatic way on Scottish children. However, despite the enormous gulf between the benign aspirations and high idealism of the early Scottish reformers and the eventual dismal outcome in practice, there was evidence of an abiding current of humanitarianism still flowing through the Scottish system. This left its mark on the Scottish approach which continued, in some respects, to reflect the humanitarian legacy.

## TABLE OF CONTENTS

<b>INTRODUCTION.....</b>	<b>10</b>
<b>CHAPTER 1:</b>	
<b>THE EMERGENCE OF CHILDREN AS A DISTINCT GROUP IN RELATION TO CRIMINALISATION.....</b>	<b>21</b>
<b>1.1 Introduction.....</b>	<b>21</b>
<b>1.2 Criminalisation.....</b>	<b>23</b>
<b>1.3 Reform movements in Scotland and England.....</b>	<b>28</b>
<b>1.4 Childhood in the nineteenth century.....</b>	<b>32</b>
<b>1.4.1 Changing ideas about childhood.....</b>	<b>33</b>
<b>1.4.2 Aries and Elias.....</b>	<b>34</b>
<b>1.4.2 (1) Elias.....</b>	<b>37</b>
<b>1.4.3 Ideas of the child in literature.....</b>	<b>44</b>
<b>1.4.3 (1) Locke and Rousseau.....</b>	<b>44</b>
<b>1.4.3 (2) The Romantics.....</b>	<b>46</b>
<b>1.4.4 Childhood and religion.....</b>	<b>48</b>
<b>1.4.4 (1) Evangelicals, juvenile justice reform and social control.....</b>	<b>53</b>
<b>1.4.5 Ideas in practice.....</b>	<b>55</b>
<b>1.5 The child in the criminal justice system.....</b>	<b>57</b>
<b>1.5.1 The young offender.....</b>	<b>57</b>
<b>1.5.2 Juvenile delinquency.....</b>	<b>61</b>
<b>1.6 Conclusion.....</b>	<b>64</b>

## **CHAPTER TWO:**

<b>CRIMINALISATION OF CHILDREN IN SCOTLAND 1840-1860.....</b>	<b>67</b>
<b>2.1Introduction.....</b>	<b>67</b>
<b>2.2The pre-statutory system: the Scottish system in the 1840s.....</b>	<b>73</b>
<b>2.3 New initiatives.....</b>	<b>80</b>
<b>2.3.1 The Glasgow system: the house of refuge.....</b>	<b>82</b>
<b>2.3.2 The Aberdeen system: the industrial school.....</b>	<b>86</b>
<b>2.3.3 The Edinburgh system: the ragged school.....</b>	<b>97</b>
<b>2.3.4 An overview of the pre-statutory schools.....</b>	<b>102</b>
<b>2.4 Legislative developments.....</b>	<b>104</b>
<b>2.4.1 Interaction with English campaigners.....</b>	<b>105</b>
<b>2.4.2 Scottish legislation: Dunlop's Act.....</b>	<b>107</b>
<b>2.4.3 U.K. legislation: the Youthful Offenders Act 1854.....</b>	<b>109</b>
<b>2.5 The early years of the statutory system in Scotland.....</b>	<b>110</b>
<b>2.5.1 <i>Hay and others v Linton</i> 2 Irv. 57.....</b>	<b>112</b>
<b>2.5.2 The development of the statutory system.....</b>	<b>115</b>
<b>2.6 Conclusion.....</b>	<b>121</b>

## **CHAPTER THREE**

<b>DEVELOPMENTS BETWEEN 1860 AND 1884.....</b>	<b>124</b>
<b>3.1 Introduction.....</b>	<b>124</b>

<b>3.2 Centralisation and the role of the inspectorate.....</b>	<b>130</b>
<b>3.3 Position of the schools in the Victorian criminal justice system.....</b>	<b>131</b>
<b>3.4 The system in the 1860s.....</b>	<b>133</b>
<b>3.4.1 Financial problems: funding cuts on voluntary admissions.....</b>	<b>134</b>
<b>3.4.2 Local variation in Aberdeen and Edinburgh in the early 1860s.....</b>	<b>136</b>
<b>3.5 Legislation in the 1860s.....</b>	<b>141</b>
<b>3.5.1 Legislation admitting young offenders to industrial schools.....</b>	<b>141</b>
<b>3.5.2 UK legislation on industrial schools.....</b>	<b>143</b>
<b>3.5.3 Consolidating reformatory legislation.....</b>	<b>146</b>
<b>3.6 Reformatories in the 1860s.....</b>	<b>146</b>
<b>3.7 The 1870s: a period of reclamation.....</b>	<b>151</b>
<b>3.8 The early 1880s: calls for reform.....</b>	<b>154</b>
<b>3.9 Conclusion.....</b>	<b>159</b>

#### **CHAPTER FOUR:**

<b>DEVELOPMENTS BETWEEN 1884 AND 1908.....</b>	<b>160</b>
<b>4.1 Introduction.....</b>	<b>160</b>
<b>4.2 Reappraisal of the system.....</b>	<b>164</b>
<b>4.2.1 Background to the 1896 Departmental Committee Report.....</b>	<b>164</b>
<b>4.2.2 Undercurrent of humanitarianism in Scotland.....</b>	<b>169</b>
<b>4.2.3 Recommendation to end prior imprisonment.....</b>	<b>171</b>
<b>4.2.4 The system in operation in Scotland.....</b>	<b>175</b>
<b>4.2.4 (1) Criticisms of procedure.....</b>	<b>175</b>

4.2.4 (2) Professional interests.....	176
4.2.4 (3) Truants.....	178
4.2.4 (4) Young children in reformatories.....	183
4.3 Quarrier's initiative.....	184
4.4 The Children Act 1908.....	186
4.4.1 Background to the Children Act 1908.....	186
4.4.2 Child imprisonment.....	187
4.4.3 The juvenile court.....	190
4.5 Evidence from the archives.....	198
4.5.1 Industrial school admissions.....	198
4.5.2 Reformatory admissions: Wellington cases.....	204
4.6 Cases in the High Court of Justiciary.....	208
4.7 Conclusion.....	212

## **CHAPTER FIVE**

### **CONCLUSION: THE ROAD TO KILBRANDON**

5.1 Introduction.....	214
5.2 The inter-war years.....	215
5.3 Kilbrandon.....	218
5.3.1 The road to Kilbrandon.....	218
5.3.2 The Kilbrandon Report.....	220
5.4 Key research conclusions.....	222

<b>5.4.1 The impact of diversionary systems.....</b>	<b>223</b>
<b>5.4.2 The child in the nineteenth century.....</b>	<b>224</b>
<b>5.4.3 Conflict and compromise.....</b>	<b>227</b>
<b>5.4.4 Challenges to existing thought.....</b>	<b>229</b>
<b>5.5 Criminalisation.....</b>	<b>232</b>
<b>5.6 Transjurisdictional issues.....</b>	<b>238</b>
<b>5.7 Conclusion.....</b>	<b>239</b>
<b>Table of cases.....</b>	<b>241</b>
<b>Table of statutes.....</b>	<b>242</b>
<b>Table of reports.....</b>	<b>244</b>
<b>Appendix.....</b>	<b>247</b>
<b>Glossary.....</b>	<b>251</b>
<b>References.....</b>	<b>253</b>



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My thesis is dedicated with all my love to Daniel, Louise, Paul, Michael, Jonathan, my mother, and all my family, with heartfelt thanks for being the best support network in the world!

**Declaration**

I declare that, except where explicit reference is made to the contribution of others, that this dissertation is the result of my own work and has not been submitted for any other degree at the University of Glasgow or any other institution.

Signature \_\_\_\_\_

Printed name \_\_\_\_\_

# CRIMINALISATION OF CHILDREN IN SCOTLAND, 1840-1910

## INTRODUCTION

Two hundred years after the birth of Charles Dickens in 1812 it is timely to note his very insightful, but generally unknown, observations on the criminalisation of children in nineteenth century Scotland. Writing in the popular journal *Household Words* in 1851 he described a radical experiment in Aberdeen and was full of admiration for a new diversionary approach to juvenile offenders:

‘The plan appears to have been strikingly successful; and what magic was there here? Why should the country shudder in a cowardly manner over details of horror-when a little money and a little courage will do so much? Aberdeen has done an act of real charity and good sense here, blessed itself and blessed these poor vagrants. The poor must be taught, somehow, if society means to exist.’<sup>1</sup>

Dickens was referring to the beginnings of the pre-statutory day industrial schools system in Scotland.<sup>2</sup> In singing the praises of this initiative he hoped that it offered a novel way of helping the many impoverished children roaming the city streets of mid nineteenth century Britain. The idea of day industrial schools was the brainchild of a remarkable Scottish philanthropist and judge, Sheriff William Watson of Aberdeen. The schools he set up in the 1840s were preventive in aim and welfare-based in approach, designed to rescue the most vulnerable children from a life of crime. Instead of being sent to prison, vagrant, destitute children and juvenile offenders were referred by the courts to the schools where they received food, education and training in a trade. Dickens was right to be impressed: Watson’s system was adopted in other towns and cities in Scotland and England; and it was of prime importance in influencing the development of juvenile justice throughout the UK and also internationally.<sup>3</sup>

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<sup>1</sup> Dickens, C. ‘Lambs to be Fed,’ *Household Words*, 3:75 (1851:Aug. 30) p.544.

<sup>2</sup> For ease of analysis the thesis adopts the terms ‘pre-statutory system’ to refer to the years prior to 1854, before the introduction of legislation on reformatory and industrial schools, and ‘statutory system’ to refer to the post legislative situation in 1854 and thereafter.

<sup>3</sup> See Ritter, L. ‘Inventing juvenile delinquency and determining its cure (or, how many discourses can you disguise as one construct?)’ in *Policing the Lucky Country* (2001), Mike Enders and Benoit Dupont (eds), Hawkins Press, Sydney. In 1866 New South Wales and South Australia adopted legislation on industrial and reformatory schools based on the UK model.

Unfortunately, the story does not end there. In many ways this thesis charts the course of a voyage ending in deep disappointment and disillusionment for juvenile justice reformers in Scotland. One of the main contentions of the thesis is that in the nineteenth century the combination of standardising UK wide legislation and centralising influences impacted negatively on the pre-statutory Scottish welfare based system of day industrial schools in such a way as to subvert its whole ethos. From 1854 onwards the original reformers saw their benign system undergo a transformation as it adapted both to the constraints of legislation ushering in the statutory UK framework governing certified industrial and reformatory schools and to the associated pressures for uniformity. The early reformers could not have foreseen that by the closing decades of the nineteenth century diversionary systems for young offenders would have evolved into a mechanism ushering large numbers of children into lengthy detention in residential reformatory and industrial schools which were penal in character. This was a process which entailed criminalisation of children on an immense scale, impacting excessively on Scottish children in particular. And yet, despite the huge disparity between the aspirations of the early reformers and the eventual outcome, there continued to be a residual current of the original humanitarian influence flowing through the Scottish system, one which was to leave its mark.

This makes a fascinating story of course: tales of self-sacrificing philanthropy, charismatic Scottish reformers, their exultation at the success of their early pioneering efforts and their despair as it all slowly transformed before their eyes. But it is a history which has been surprisingly neglected up to now. This thesis ventures into largely unexplored territory in many areas: in uncovering the details of the inception of the pre-statutory system in Aberdeen and its development in towns and cities throughout Scotland; in examining the role of the Scottish reformers and their relationship with those interested in reform in other jurisdictions, including England, mainland Europe and the US; in analysing the changes brought about by the demands for centralisation and conformity under the statutory framework; in attempting to unravel the complexities of this body of legislation; and in archival work looking at cases of children brought before the courts. All of this fuses together to offer an account of juvenile justice reform in nineteenth century Scotland which places pragmatic, religiously inspired, philanthropy at its centre: this was a primary catalyst for change which reacted to the impact of increasing industrialisation on the children of the urban poor, many of whom had a precarious hold on life. Cities were overcrowded and populations displaced. Children were subjected to relentless exploitation in the labour

market, often running away to escape slave-like conditions,<sup>4</sup> and the sight of children wandering about and begging on the streets was commonplace. These children were known as juvenile vagrants<sup>5</sup> and this status granted them instant admission to the realms of criminality: vagrancy was an offence punishable by imprisonment under local Police Acts. Apart from the trauma of imprisonment, the stigma associated with it presented an insurmountable obstacle to finding employment, condemning a child to a life of penury. This was the background which prompted religious philanthropists to press for reform and in Victorian society philanthropic dynamism was a force to be reckoned with.<sup>6</sup>

The interpretation offered in this thesis presents challenges to aspects of David Garland's account in *Punishment and Welfare*.<sup>7</sup> This highly influential book describes the period from 1895 to 1914 as transformative for the criminal justice system<sup>8</sup> involving a move from the uniform discipline of the Victorian penal system to a very different focus on individual reformation and specialised categorisation of offender types. This change in the penal landscape is explained in the context of far reaching social and political changes in the early twentieth century which formed the basis of the welfare state. In this world of 'penal-welfare'<sup>9</sup> Garland attributes great significance to the impact of new knowledges justifying extended intervention into the lives of offenders.<sup>10</sup> According to Garland, this 'modern penal complex'<sup>11</sup> was also associated with a departure from the concepts of classical jurisprudence and the legal criteria concerned with issues of criminal responsibility. His explanation has a Foucauldian influence<sup>12</sup> with an emphasis on discovering the 'underlying generative structure' and associated 'political conditions' of penalty.<sup>13</sup> However, Garland also challenges Foucault: whereas Garland sees the decades at the turn of the century as the beginning of modern penalty,<sup>14</sup> Foucault regards the 'birth' of the prison as the turning

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<sup>4</sup> Watson, W. *My Life, Volume I*, p.119 (unpublished handwritten manuscript).

<sup>5</sup> Watson, W. (1851) *The Juvenile Vagrant and the Industrial School*, Aberdeen.

<sup>6</sup> Follett, R. R. (2001) *Evangelicalism, Penal Theory and the Politics of Criminal Law Reform in England, 1808-1830*, Palgrave; Checkland, O. (1980) *Philanthropy in Victorian Scotland*, Bell & Bain; Prochaska, F. (1980) *Women and Philanthropy in nineteenth century England*, OUP.

<sup>7</sup> Garland, D. (1985) *Punishment and Welfare*. Aldershot, Gower.

<sup>8</sup> See too Martin Wiener's (1990) *Reconstructing the Criminal: Culture, Law and Policy in England, 1830-1914*, CUP. This book places more emphasis on the importance of cultural issues in shaping penal policy than Garland's politically focused account, but still offers a similar interpretation of transformation in the period from the 1890s to 1914.

<sup>9</sup> Garland, *supra*. P.5.

<sup>10</sup> *ibid.* p.28. This included knowledge of the 'psychological problems of adolescence.'

<sup>11</sup> *ibid.*, p.18.

<sup>12</sup> Foucault, M. (1977) *Discipline and Punish: The Birth of the Prison*, London, Allen Lane.

<sup>13</sup> Garland, *supra*, p.3.

<sup>14</sup> *ibid.*, ch.1.

point.<sup>15</sup> My thesis differs from Garland's in highlighting the importance of philanthropic activism as a vehicle for criminal justice reform.<sup>16</sup> And there are certain specific aspects of Garland's argument which are refuted in this thesis. One of these is his description of industrial and reformatory schools as private institutions on the fringes of the criminal justice system. I argue that Garland underestimated the importance of the public function of these schools as an arm of the criminal justice system. Though founded on the 'voluntary principle' they were statutorily certified establishments under Home Office direction, subject to statutory inspection and in receipt of public funding to which many thousands of children were sent to be detained by order of the courts. As such they were central to the operation of the criminal justice system. This re-evaluation of the centrality of the schools has significant implications. There is clear evidence that the ethos of the reformatory-industrial schools system in Britain from the mid 1850s was one where there was a focus on developing individual programmes of reformation adapted to suit the character of individual children. This challenges existing understandings, suggesting that ideas about reformation of individual offenders were widely accepted and put into practice far earlier than Garland allows – in the middle, rather than at the end, of the nineteenth century.

Another area where the thesis conflicts with Garland is on the impact of the juvenile court, first created on a statutory basis by the Children Act 1908.<sup>17</sup> Garland argues that the juvenile court formed a key part of a changing penal landscape where there was extended scope for intrusion and control over family life. However, the thesis presents evidence that in most respects the juvenile court was conducting business much as usual as far as children were concerned: the grounds of admission to the schools were not greatly extended by the Children Act and there was great continuity with existing legislation and practice. Although it is recognised that the juvenile court was an important advance, the emphasis here on the significant elements of underlying stability contrasts with Garland's assessment. And the thesis also challenges Garland's views on the significance of scientific discourse for the criminal justice system. Evidence is presented that the effect of scientific notions on the perception of the young offender was less influential than has been supposed: while there

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<sup>15</sup> Foucault, *supra*.

<sup>16</sup> Victor Bailey also questions Garland's interpretation of the period 1895-1914. He points to continuities with the classical Victorian penal order. He argues that Garland overestimates the significance of 'an emerging medicalism or positivism' (p.293) and places too much emphasis on statutory provisions setting out prisoner classifications. Instead Bailey points to a broader range of factors as a vehicle for penal change, including radical humanitarianism. Bailey, V. (1997) 'English Prisons, Penal Culture and the Abatement of Imprisonment', 1895-1922', *The Journal of British Studies*, Vol. 36, No 3.

<sup>17</sup> Children Act 1908, 8 Edw 7, c. 67.

was certainly awareness of new positivist ideas in some quarters, in practice it was pragmatic commonsense which ruled the day and there was strong resistance to arguments that the child who offended was in any sense different from other children or pre-disposed towards criminality for some hitherto unappreciated scientific reason.

### **The structure of the thesis**

The thesis sets out to examine the period 1840-1910. Setting the discussion in the wider context of changes in the administration of criminal justice in Scotland, this timeframe begins with the origins of the pre-statutory system in Aberdeen in the 1840s. It covers the changes over the remainder of nineteenth century as the statutory system became embedded and ends in time to allow consideration of the effect of the Children Act 1908. Although the focus is on the nineteenth century the concluding chapter contains an overview of twentieth century developments: this includes the background to the Kilbrandon Report and in pointing to the connections between the period studied in detail and later changes it highlights the parallels between Kilbrandon's vision and that which inspired William Watson more than a century before.

Chapter one sets the thesis in a cultural and theoretical context examining the background against which juvenile justice reform occurred. It explores the way changing conceptions of childhood were related to institutional and legal changes. This is done to help explain the emergence of child offenders as a distinct group in relation to criminalisation and to provide a fuller understanding of the processes of reform analysed in the subsequent chapters. The chapter first sets out a framework for understanding criminalisation, discussing how criminalisation of children will be analysed in the thesis. It then tries to uncover cultural understandings of childhood by looking at how the child was portrayed across the fields of literature and religion and how this affected the treatment of children in various institutional settings. Underpinning the analysis is the recognition that there were always contradictory and competing notions of the young offender: as vulnerable and in need of protection on the one hand and as a threat presenting challenges to order on the other. This underlying duality is an important theme throughout the whole period studied. To help give some theoretical insight into this conflict the chapter looks to Norbert Elias's theory of the civilising process<sup>18</sup> and the insights it can provide.

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<sup>18</sup> Elias, N. (1984) *The Civilising Process*, Oxford, Blackwell (original edition 1939).

In the second chapter the focus is on developments in Scotland in the period 1840-1860. The chapter examines the background to and origins of the pre-statutory system in Scotland including a diversionary system which was unique to Glasgow. It discusses the central role played by William Watson in setting up pioneering diversionary systems in Aberdeen in the 1840s, the pre-statutory day industrial schools. It looks at the adoption of day industrial schools in other Scottish towns and cities. It then analyses the pressure for legislation from Scottish reformers and their interaction with the reformatory movement campaigners in England before moving on to an analysis of the legislation and a consideration of the impact this had on the situation in Scotland.

The third chapter covers the period 1860-1884. It examines the transformation brought about in Scotland in the course of the 1860s by the combined impact of consolidating legislation, the influence of a national inspectorate and national policy decisions all of which created pressures for uniformity. It then looks at attempts by the original reformers to reclaim the central features of their original project in the 1870s. It concludes with analysis of the 1880s, a time when continued calls for reappraisal went largely unheeded. This final section of the chapter looks at Watson's last appearance on the public stage: now an elderly and disillusioned man in his twilight years he vehemently denounced the statutory system of residential industrial schools and called for a return to day industrial schools on the model he set up in Aberdeen in the 1840s.

The fourth chapter focuses on the period 1884-1908, analysing the situation in Scotland at the turn of the century. By this time the statutory system had evolved into a net widening diversionary mechanism under which thousands of children were subjected to prolonged detention in penal establishments. The chapter examines why this process of criminalisation impacted excessively on Scottish children and shows that, despite the extent to which the system had departed from its founding ethos, there was a residual current of humanitarianism operating within the approach taken by the Scottish courts. Another important aim of this chapter is to consider the impact of the legislative changes, particularly the Children Act 1908 and the creation of the juvenile court. The chapter concludes with analysis of cases involving children, revealing the way in which legislative changes regulating admission to the schools were dealt with by the courts.



The fifth and final chapter draws together the main themes discussed in the thesis. These include the need for reassessment of the significance of reformatory and industrial schools in the Victorian criminal justice system; the impact of diversionary systems; and the tensions, conflict and compromise always evident throughout the nineteenth century in the balancing of different interests and perspectives on juvenile justice. As already mentioned this chapter also gives a brief account of twentieth century developments including commentary on the relationship between the Kilbrandon Report<sup>19</sup> and the earlier history explored in the thesis. Crucially, the chapter also focuses on how this historical research has contributed to analysing criminalisation and highlights some of the recurrent themes and topics discussed in the thesis which are still highly relevant matters of debate and concern today.

### **Sources, appendix, glossary and terminology**

I have drawn on a wide range of primary sources. These included pamphlets, articles and books written by Scottish reformers including a handwritten manuscript of Watson's autobiography;<sup>20</sup> legislation and contemporaneous commentary on statutes; cases of children brought before the courts (both those reported in official law Reports and in archival records); newspapers; articles in Victorian journals such as the *Reformatory and Refuge Journal*; parliamentary papers such as Committee Reports and parliamentary debates.

The statutory material is complex: the relationship between the different pieces of legislation applying to Scotland and England in the early years of the statutory system is often confusing and difficult to understand. For this reason an appendix has been added in an attempt to clarify matters. The appendix gives details about the statutes and their main provisions as well as giving further information about the parliamentary papers referred to.

It has also been necessary to include a glossary of terminology in the appendix. Many of the terms which occur frequently in the sources are unfamiliar to the modern reader and, again to avoid confusion, some explanation has been provided in the glossary. It is important to note that not all of the terms which appear in the sources are used in a consistent way. For example, the term 'ragged school' is one to be approached with caution as it was sometimes

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<sup>19</sup> Report of the Kilbrandon Committee on Children and Young Persons, Scotland, Cmnd 2306 (1964).

<sup>20</sup> This is in the form of a diary; it was clearly used as a basis for the biography of Watson written by his granddaughter: Angus, Marion, (1913) *Sheriff Watson of Aberdeen : the story of his life and work for the young*, Aberdeen, D. Wyllie & Son.

used to describe Scottish industrial schools which were different from the English ragged schools, as is explained in the appendix.

With reference to the labels applied to institutions it is also important to be aware that often the terms defy attempts to offer a clear explanation because successive pieces of legislation altered the conditions under which children were admitted under court order to industrial schools and reformatories, whether on grounds of age or criminal conduct. Very often, in parliamentary debates, case Reports and even in one instance the title of an Act of Parliament, the labels are confused and used interchangeably.<sup>21</sup> This led to a blurring of categories which makes it difficult to give a general explanation. For an accurate picture it is necessary to consider the exact period and the legislation applying at that time. In the early years of the statutory system in Scotland the situation was complex, reflecting the adaptation of the pre-existing system to the changes imposed by legislation and the pressures from a national inspectorate for a uniform system throughout the UK. However, at the risk of great over simplification, by the time that the consolidating legislation appeared in the mid 1860s the statutory system was well embedded and the industrial schools had emerged as institutions to which vagrant, destitute children under fourteen and younger offenders (charged with but not convicted of an offence) under the age of twelve were admitted under court order as residential inmates; while the reformatories were residential institutions usually for older children who had been convicted of an offence.<sup>22</sup> Despite the creation of a statutory framework of two types of schools, one ostensibly preventive and the other reformatory in aim, they developed into very similar institutions: both had penal characteristics, as Sydney Turner, the first national inspector of statutory schools, recognised when he described industrial schools as ‘reformatories of a milder sort’ and in time the main distinction between them became one of age difference.<sup>23</sup> This contrasted with the pre-statutory system of Scottish industrial schools which was in many ways a genuinely crime preventive and social-welfare initiative.

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<sup>21</sup> The reference to the Act is the first Scottish Act under the statutory system The Reformatory Schools (Scotland) Act 1854 (17 & 18 Vict., c. 72-74).

<sup>22</sup> *Industrial Schools Act 1866* 29 & 30 Vict. c.118; *Reformatory Schools Act 1866* 29 & 30 Vict. c.117 – this stipulated that those under 10 should not be sent to a reformatory unless they were previous offenders.

<sup>23</sup> 13<sup>th</sup> Report of Inspector of Reformatory Schools 1870. The view expressed by a Departmental Committee Report into the schools in 1896 was that the only difference between the two schools was one of age. This harsh culture persisted despite the fact that industrial school children had not received a conviction.

## Relationship to other academic work

Most historians of juvenile justice have concentrated on the situation in England with little reference to the specifically Scottish perspective. Particularly in the early stages of my research it was essential to study the work which has already been done exploring developments in England which are very important for understanding changes in Scotland. The discussion in chapter one in particular draws on the work of English historians and indeed reference is frequently made throughout the thesis to work with an English focus.<sup>24</sup> As well as the work of historians interested in the English reformatory movement<sup>25</sup> there has also been valuable historical work from a sociological perspective.<sup>26</sup> Looking further afield to developments on the continent there has been interesting research on the influence of the Mettray experiment for young offenders in France, showing that this provided a role model for similar establishments in other countries.<sup>27</sup> But little attention has been paid to the Scottish dimension of juvenile justice history; and although there has been work on pre-statutory Scottish industrial schools written from the educationalist's viewpoint<sup>28</sup> and also very helpful historical work giving an overview of Scottish industrial and reformatory

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<sup>24</sup> For example: Emsley, C. (1987) *Crime and Society in England, 1750-1900*, London, Longman; Gillis, J.R. *Boys will be Boys: Discovery of Adolescence, 1870-1900*; Gillis, J.R. (1974) *Youth and History*, London; Hendrick, H. *Images of Youth: Age, Class and the Male Youth Problem 1880-1920*. Oxford: Clarendon Press.; King, P. (1998) 'The Rise of Juvenile Delinquency In England, 1780-1840' in 160' *Past and Present* ; Manton, J. (1976) *Mary Carpenter and the Children of the Streets*, Heinemann, London.; Margarey, S. (1978) 'The invention of juvenile justice in early nineteenth century England', *Labour History* (Canberra), vol 34.; May, M. (1973) 'Innocence and experience: the evolution of the concept of juvenile delinquency in the mid-nineteenth century' in *Victorian Studies*, vol 17; Pinchbeck, I. And Hewitt, M. (1973) *Children in English Society, Vol 2*, London, Routledge ; Radzinowicz, L. And Hood, R. (1986) *The Emergence of Penal Policy in Victorian and Edwardian England (A History of English Criminal Law, Vol 5)*, London, Steven & Sons.; Shore, H. (2002) 'Reforming the juvenile: Gender, justice and the child criminal in nineteenth century England' in J. Muncie, G. Hughes and E. McLaughlin (eds) *Youth Justice; Critical readings*; Wiener, M.J. (1990) *Reconstructing the Criminal: Culture, Law and Policy in England, 1830-1914*, CUP.

<sup>25</sup> Cale, Michelle (1992) 'Working for God? Staffing the Victorian reformatory and industrial school system', *History of Education*, 21: 2, 113-127; Cale, M. (1993), Girls and the Perception of Sexual Danger in the Victorian Reformatory System, *History*, Vol. 78: 253, 201-217; Eade, S. (1976) 'The Reclaimers: A Study of the Reformatory Movement in England and Wales, 1846-1893.' PhD thesis, Australian National University; Stack, John A. (1979) 'The Provision of Reformatory Schools, the Landed Class, and the Myth of the Superiority of Rural Life in Mid-Victorian England', *History of Education*, 8: 1, 33 - 43; Stack, John A. (1994) 'Reformatory and industrial schools and the decline of child imprisonment in mid-Victorian England and Wales', in *History of Education*, 23: 1, 59-73; Hurt, J. (1984) 'Reformatory and industrial schools before 1933' in , *History of Education*, 13: 1 45-58.

<sup>26</sup> Mahood, L. (1995) *Policing gender, class and family, 1850-1940*, University of Guelph.

<sup>27</sup> Driver, F. (1990) 'Discipline without Frontiers? Representations of the Mettray Reformatory Colony in Britain, 1840-1880' *Journal of Historical Sociology* No. 3; Dekker, J. (2001) *The Will to Change the Child: Re-education Homes for Children at Risk in Nineteenth Century Western Europe*, Lang, Frankfurt.

<sup>28</sup> Clark, E. A. G. (1977) 'The Superiority of the 'Scotch System': Scottish Ragged Schools and their Influence' *Scottish Educational Studies* 29.

schools<sup>29</sup> these authors do not address matters from the legal angle as my thesis sets out to do.

### **Aims of the thesis**

The main aim of my thesis is to explore the criminalisation of children historically. This involves analysing the different components which worked together to criminalise children which means looking at fundamental issues such as how they were policed, how they were subjected to criminal procedure, how they were affected by changes in legislation and how they were affected by sentencing decisions. All of these factors are, of course, set within the context of important changes in Scottish criminal administration,<sup>30</sup> matters such as the development of policing<sup>31</sup> and the extension of summary procedure as well as the impact of new criminal prohibitions designed to create order in the expanding urban communities. Looking at the way in which all these elements operated together makes it possible to build up a picture of the way children were criminalised in nineteenth century Scotland.

Fortunately, the main Scottish reformer Sheriff William Watson was a keen writer of pamphlets and articles recording his thoughts on the criminal justice system as it related to children and these offer a wonderful insight into the important legal issues of his time. One of the most exciting aspects of his writing is that it indicates that some of the important concerns which troubled lawyers in the mid nineteenth century continue to fuel debates on criminalisation today: issues such as overcriminalisation, what counts as harm and justifications for the creation of criminal offences and imposition of punishment.<sup>32</sup> Watson strongly believed that criminal law should have a moral foundation (which for him meant commonsense ideas of morality) and he was therefore perplexed by new criminal prohibitions which seemed to undermine the moral basis of criminal law. So there is much here that is of interest to contemporary scholars of criminalisation.<sup>33</sup>

This goes some way to explaining why the historical perspective on the criminalisation of children is so vital. It adds insight in showing that the way things developed is not

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<sup>29</sup> Ralston, A. (1988) 'The Development of Reformatory and Industrial Schools in Scotland, 1832-1872' 8 *Scottish and Economic Social History* 40.

<sup>30</sup> Farmer, L. (1997) *Criminal law, tradition and legal order: crime and the genius of Scots law*, Cambridge University Press, Cambridge; Farmer, L. (2011) 'Criminal Law' in *Ethnology*.

<sup>31</sup> Barrie, D., (2008) *Police in the Age of Improvement*, Devon, Willan.

<sup>32</sup> Watson, W. (1877) 'Pauperism, vagrancy, crime and industrial education in Aberdeenshire 1840-75', William Blackwood and sons, Edinburgh and London, Aberdeen John Smith.

<sup>33</sup> Duff, A., Farmer, L., Marshall, S., Renzo, M., Tadros, V., (eds.) (2010) *The Boundaries of the Criminal Law*, OUP.

necessarily as people think: for example, it reveals that a welfare based approach to juvenile offenders was flourishing in Scotland in the 1840s, more than a century before Kilbrandon. And what are often thought of as new issues may and do in fact turn out to have a long historical pedigree – as well as overcriminalisation<sup>34</sup> this applies also to transatlantic criminal justice policy transfer,<sup>35</sup> the inappropriateness of transjurisdictional youth justice policy convergence within the UK<sup>36</sup> and other themes and preoccupations which were contentious in Victorian times and are still very much a focus of concern today.

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<sup>34</sup> Husak, D.(2007) *Overcriminalization: the Limits of the Criminal Law*. New York. Oxford. OUP.

<sup>35</sup> See Garland, D. (2001) *The Culture of Control*, Oxford for an argument that there has been a convergence of criminal justice policy in the US and UK recently in the context of a late modern ‘punitive turn’; Jones, T. and Newburn, T., (2007) *Policy Transfer and Criminal Justice: Exploring US influence over British Crime Control Policy*. Maidenhead, Open University Press

<sup>36</sup> Muncie, J. (2011) ‘Illusions of Difference: Comparative Youth Justice in the Devolved United Kingdom’ *British Journal of Criminology* 51, 40-57

## CHAPTER ONE

### THE EMERGENCE OF CHILDREN AS A DISTINCT GROUP IN RELATION TO CRIMINALISATION IN THE NINETEENTH CENTURY

#### 1.1 INTRODUCTION

‘The concept of the young offender, with all that it implies for penal policy, is a Victorian creation. Until well into the nineteenth century there were no differentiations accorded to age in the method of bringing offenders to trial, in the form of trial itself, in the punishments that could be imposed, nor, generally, in the way in which they were enforced’.<sup>1</sup>

This observation by Radzinowicz and Hood identifies the Victorian era as the period in which the concept of the young offender emerged. This conceptualisation was translated in practical terms into legal and institutional change. At the beginning of the nineteenth century children were barely distinguished from other offenders in the criminal justice process. Although a lack of capacity in young children was recognised, most children were subject to the same procedures as adult offenders.<sup>2</sup> They were incarcerated along with adult prisoners and were subject to the same types of punishment. Yet by the end of the century the notion of the young offender as belonging to a distinct category in terms of criminalisation was sufficiently well established to allow for the creation of a court specially designated for the young, the juvenile court, and it was accepted that young offenders would be dealt with in separate institutions, the industrial and reformatory schools, rather than prison. How did this recognition of the special status of young offenders emerge in the course of the nineteenth century?

The main issue which is under consideration here is how the change in attitude occurred which for the first time saw children being significantly distinguished from adults in the processes of criminal justice. The purpose of this analysis is to provide a foundation for the

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<sup>1</sup> Radzinowicz, L. And Hood, R. (1986), p.133.

<sup>2</sup> In Scots Law infants under seven were, according to Alison’s *Practice of the Criminal Law of Scotland* (1832), ‘held to be incapable of crime’, a view supported by Hume; in English law a similar lack of criminal capacity in under sevens was recognised, and there was a rebuttable presumption (*doli incapax*) that children between the ages of seven and fourteen were unable to ‘discern between good and evil, unless the prosecution proved otherwise’- according to Blackstone’s *Commentaries on the Laws of England* (London, John Murray, 1857 ed).

following chapters on how children were criminalised within the nineteenth century Scottish criminal justice system (although little is actually said about Scotland in this chapter, for reasons which will be explained shortly.) The primary aim here is to begin to open up some of the areas of contention and interest which will be explored in detail in the course of the subsequent chapters on the situation in Scotland. With this in mind the chapter seeks to uncover the understandings of childhood which informed approaches to the young offender, considers how they changed over time and how this was reflected in the institutional and legal changes which occurred over the course of the nineteenth century. The analysis is approached in several stages. Section 1.2 of the chapter begins with a discussion of the reasons for studying criminalisation of children, setting out a framework for understanding criminalisation. In section 1.3 the contrasting background to juvenile justice reform in Scotland and England is explored. This section focuses on why Scotland was different from England. It also highlights the ways in which my interpretation of developments differs from that offered by others. Section 1.4 concentrates on childhood in the nineteenth century, beginning with the importance of changing conceptions of childhood and the changing position of children within different institutional settings (i.e. the family, the workplace and the school) with a view, ultimately, to forming an assessment of what all these changes meant for criminalisation. Section 1.5, the final substantive section, focuses on the child in the criminal justice system. As will become evident the story being told is far from straightforward and there are competing, contradictory elements and ambivalent attitudes in evidence which will be highlighted throughout the chapter particularly the conflict entailed in the dual perception of the young offender as a vulnerable child in need of protection on the one hand and yet in some senses as presenting a threat on the other. In approaching these contradictions the paper adapts the theory of the civilising process advanced by Norbert Elias, the relevance of which to criminalisation is discussed.<sup>3</sup> It should be noted that in discussing children in this chapter generally the age category being referred to is those under sixteen although when talking of historical conceptions of childhood it is the culturally contingent idea of the child rather than a particular age category which is being discussed.

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<sup>3</sup> Elias (1984).

## 1.2 CRIMINALISATION

Put simply, the main reason for considering criminalisation is to expose to the clear light of day the process by which individuals are brought within the ambit of the criminal justice system, a process which can have profound and deeply undesirable consequences for the lives of those subjected to it not least of which are potential loss of liberty and extreme social stigma. In contemporary terms the issue of criminalisation has troubled many commentators who have pointed in particular to the worrying proliferation of criminal offences in the statute books in recent years sometimes seemingly as a matter of political expediency, or even sometimes for symbolic effect, and with little regard for their impact on the overall coherence of the criminal law.<sup>4</sup> This highlights the need to investigate criminalisation and that means studying criminalisation in the past as well as the present. When commentators talk of ‘overcriminalisation’ is this describing a completely new phenomenon or are there parallels in the past; and how do the processes involved in criminalisation change?<sup>5</sup> For example, how do the actions of the agencies involved in criminal justice, like the police, impact on criminalisation and how does this vary under changing circumstances? The answer to these questions can only be given by examining criminalisation in historical terms.

There is a widespread perception nowadays that children have been exposed to a particularly virulent strain of criminalisation <sup>6</sup> exacerbated by a moral panic about the levels of offending by young people.<sup>7</sup> Public concern about youth misconduct has been the subject of

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<sup>4</sup>(i) Ashworth and Zedner (2008) ‘Defending the Criminal Law: Reflections on the Changing Character of Crime, Procedure and Sanctions’, *Criminal Law and Philosophy* 2:21.

(ii) On the symbolic point, see, for example s.37(4) of the Sexual Offences (Scotland) Act 2009 which criminalises consensual sexual conduct between older children. This approach was contrary to the recommendation of the Scottish Law Commission. As James Chalmers points out, the view taken by the Commission can be supported on the basis that ‘children are rarely if ever prosecuted for consensual sexual activity and legislatures should not pass laws which they are not prepared to enforce.’ Chalmers, J. *The New Law of Sexual Offences in Scotland*, Edinburgh: W. Green, 2010, page 12.

<sup>5</sup> Husak (2007). See too Ashworth, A. and Zedner, L. (2010) ‘Preventive orders: A Problem of Undercriminalisation’ in *The Boundaries of the Criminal Law*, OUP.

<sup>6</sup> Note the raft of recent innovations including anti social behaviour orders, powers to disperse groups of children in public, measures to tackle teenage binge drinking and knife carrying, parenting orders, acceptable behaviour contracts, curfews, tagging orders and intense measures of supervision attached to children’s hearing outcomes in Scotland. See Children’s Commissioner for Scotland website: [www.sccyp.org.uk](http://www.sccyp.org.uk) for Report to UN Committee on the Rights of the Child, 2008; See too article headlined ‘Government “criminalising young”’ at [www.bbc.co.uk/1/hi/uk/7580285.stm](http://www.bbc.co.uk/1/hi/uk/7580285.stm) referring to a Report by Rod Morgan, ‘Summary justice: fast –but fair?’ (2008, Centre for Crime and Justice Studies, King’s College, London).

<sup>7</sup> McAra, L. (2004) ‘The Cultural and Institutional Dynamics of Transformation: Youth Justice in Scotland, England and Wales’ *Cambrian Law Review* 35, 23; McAra, L. (2006) ‘Welfare in Crisis? Key Developments in Scottish Youth Justice’ in Muncie, J. and Goldson, B. (eds.) *Comparative Youth Justice*, Sage, London; McAra L. (2008) ‘Crime, Criminology and Criminal Justice in Scotland,’ *European Journal of Criminology*, 5:481-504.



much debate recently in the wake of the riots in London and other English cities in August 2011<sup>8</sup> with questions being raised about allegedly excessive sentences imposed by the courts on riot offenders.<sup>9</sup>

However, moral panics about the behaviour of young people are far from being without precedent – in fact they are a perennial feature of inter-generational relations, as was adeptly demonstrated by Pearson in his fascinating historical survey about perceptions of juvenile criminality.<sup>10</sup> This raises the question of whether the current headline-grabbing preoccupation with the criminalisation of the young truly is a justified commentary on an entirely new degree of criminalisation or whether it is more accurately to be seen as a case of *plus ça change, plus c'est la même chose*. To determine which is the more appropriate description it is necessary to uncover how children were criminalised historically and the nineteenth century is a good place to start looking, not least because it was during the course of the nineteenth century that children first came to be seen as raising distinct issues in relation to criminalisation.

Turning now to the reason for concentrating on how children were criminalised in nineteenth century Scotland, one of the primary reasons for the Scottish focus is that hitherto there has been a paucity of research on the history of specifically juvenile justice in the Scottish context. As noted in the introductory chapter, the scholarship which exists on this topic generally tends to focus on the situation in England and the Scottish dimension has been somewhat neglected. However, in highlighting the position in Scotland the present study is not intended to be an appeal to parochialism. It aims to recognise the unique features of the definitive legal institutions of Scotland and their history but to do so within the wider context of UK and beyond. In the present day Scotland differs from England in having a separate structure of juvenile justice, the children's hearing system, based on the

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<sup>8</sup> Note the media and journalistic comment on the possible reasons for the absence of riots in Scotland, including discussion about the relative cohesiveness of Scottish society. See Taylor, D.J. 'Scotland and the riots' in *Independent on Sunday*, 14<sup>th</sup> August 2011, page 99.

<sup>9</sup> See front page headline in 'The Guardian' on 18<sup>th</sup> August 2011, 'Senior legal figures attack riot sentences.' The article discusses the extremely tough sentences imposed on riot offenders, quoting the former head of the prosecution service in England and Wales, Lord Macdonald, as saying that the courts were in danger of overreacting in a 'collective loss of proportion' by giving sentences which lacked 'humanity or justice.' Also headline Guardian article on 19<sup>th</sup> August 2011, 'Revealed: the full picture of riot sentences – Guardian data confirms courts opt for tougher punishments.'

<sup>10</sup> Pearson, G. (1983) *Hooligan; a history of respectable fears*, London, Macmillan; Cohen, S. (2004) *Folk Devils and Moral Panics*, 3<sup>rd</sup> ed, London, Routledge; Garland, D. (2008) 'On the Concept of Moral Panic' in *Crime, Media, Culture*; Hall, S. et al (1978) *Policing the Crisis*, London, Macmillan; Young, J. (2009) 'Moral Panic: its origins in resistance, resentment and the translation of fantasy into reality' in *British Journal of Criminology*, 49(1), 4-16.

Kilbrandon philosophy of decriminalisation of children, a child-welfare based approach aimed at destigmatisation and non distinction between children who offend and those in need of care regarding both as victims of external social circumstances.<sup>11</sup> Ironically, since the advent of the Scottish Parliament which might have been expected to have the effect of enhancing the unique child-centred quality of the Scottish approach to juvenile justice, some commentators have noted an unwelcome infiltration of more punitive attitudes which they interpret as a threatened erosion of the principles upon which the children's hearings system was based.<sup>12</sup>

The point being underlined here is that Scotland has a rich tradition of its own in terms of law,<sup>13</sup> education, religious development and culture, all of which have shaped its attitude towards young offenders. The distinct route by which the Scottish system of juvenile justice has arrived at the forum of the children's hearings system needs to be mapped out. However, part of that journey was shared to some extent by young offenders throughout the rest of the UK. Throughout the nineteenth century and for most of the twentieth, until the appearance of the Scottish Parliament in 1999, the Westminster Parliament legislated for the whole of the UK although of course there were Scottish statutes. Many of the statutory provisions which affected the position of children within the system of criminal justice were much the same north and south of the border. In spite of the many differences between the jurisdictions, they did share a broad British and European cultural heritage which will be referred to in the course of looking at the development of ideas of childhood in the nineteenth century. Against this background it is very important to study the work which has already been done in tracking changes which occurred in England which are, of course, of great significance for understanding developments in Scotland and that body of work is therefore the starting point in this examination of the emergence of children as a distinct group in relation to criminalisation.

This raises the question of how we can assess the way in which children were criminalised. In other words what sort of framework or markers can be used to evaluate criminalisation as applied to this group? This interpretation approaches criminalisation in a different way from

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<sup>11</sup> Report of the Kilbrandon Committee (1964).

<sup>12</sup>McAra, L. (2004) 'The Cultural and Institutional Dynamics of Transformation: Youth Justice in Scotland, England and Wales', 35 *Cambrian Law Review* 23; McAra, L. (2006) 'Welfare in Crisis?';

<sup>13</sup> Farmer (1997).

those who focus on criminalisation as being about criminalising *something* (a practice or activity) rather than criminalising *someone*.<sup>14</sup> This investigation is very definitely about the criminalising of a category of people, which means examining how they were subjected to criminal process and potential punishment. However, the two ideas are not mutually exclusive: an integral part of looking at how this category of people, children, were criminalised is examining the kinds of conduct – in other words the *things*- children were involved in which were prohibited by the criminal law.

According to Lacey's helpful interpretation criminalisation is a concept which could be said to cover just about every aspect of criminal justice system.

‘On the face of it, the concept of criminalisation is hugely encompassing: it could swallow up almost every theoretically interesting question about criminal law, criminal responsibility, criminal justice and punishment’.<sup>15</sup>

She takes this to include criminal legislation, the political motivations behind such legislation, practices of policing, prosecution, criminal law in books, judicial practices, criminal procedure, sentencing, punishment and the operation of the penal system. Thus it is seen as incorporating formal criminalisation such as legislation and judicial decisions and substantive or operational criminalisation. Discussing criminalisation in its formal mode of criminal legislation backed up by the threat of state punishment, Ashworth describes the types of justification called for to legitimise this exercise of state power.<sup>16</sup> He notes that justification is supplied in terms of democratic principles and ‘sufficient reasons’<sup>17</sup> provided by reference to notions of wrongdoing, harm and culpability. Like Lacey, he points out that, while formal criminalisation may be the starting point, the impact of this legislative action is felt in the way it is enforced in practice by agencies within the criminal justice system, with sometimes unexpected results. Analysing the interplay between political factors and criminalisation Ashworth states that: ‘The contours of the criminal law are not given but politically contingent.’<sup>18</sup> This observation should be qualified by adding that the contours of the criminal law are also culturally contingent which means that the contours of the criminal

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<sup>14</sup> See, for example, the view of M. Dubber, ‘Criminal Law between Public and Private Law’ in Duff et al. (2010), p. 191: ‘To criminalize something (not someone, ordinarily) means to bring it within the scope of the criminal law’.

<sup>15</sup> Lacey, N. (2009) ‘Historicising Criminalisation: Conceptual and Empirical Issues’, *Modern Law Review* 72(6) 936-960, page 942.

<sup>16</sup> Ashworth, A. (2006) *Principles of Criminal Law* (6<sup>th</sup> ed.) Oxford. OUP.

<sup>17</sup> *ibid.* p.22

<sup>18</sup> *ibid.*

law and the way in which it is applied and subject to change are certainly influenced by prevailing societal attitudes, the product of a myriad of influences including, as will be discussed later, literary, religious, educational and scientific ideas. This exercise in following the trajectory of criminalisation in relation to children throughout the course of the nineteenth century will illustrate how the course and application of the criminal law is strongly and inevitably, even if somewhat imperceptibly, influenced by cultural changes and alterations in societal attitude.

Clearly, tracking the course of criminalisation involves looking at formal criminalisation in the sense of legislation as well as judicial decisions and also looking at the practical outcomes in terms of substantive practices. This entails studying the impact of practices of policing, prosecution, procedure and punishment as actually applied to children. By examining changes in such areas of practical criminalisation it is possible to trace systematically the route by which children came to be seen as raising distinct issues with respect to criminalisation. How children were policed is closely linked to the issue of which crimes were prosecuted and the numbers of children entering the criminal justice system. Once they were ushered into the system children were subject to legal procedure and it is important to consider the effects of this: for example, how did the use of summary procedure or the introduction of the juvenile court affect the prosecution of juveniles? How were they affected by legislative changes: for example, the body of legislation governing admission to reformatory and industrial schools or the many new criminal prohibitions created to try to maintain order in growing cities? The matter of punishment is central too and the most evocative issue of all. The effect of not distinguishing child from adult offenders in terms of the imposition and enforcement of punishment meant that children could be subjected to the whole spectrum of whipping, imprisonment in adult prisons (where they were prey to abuse), transportation and even, in some cases, execution.<sup>19</sup> It was not until the Children Act 1908 that penal servitude and judicial execution of juveniles were expressly prohibited.<sup>20</sup> Throughout the course of the nineteenth century and the opening years of the twentieth century changes took place which reflected the growing recognition of the distinctness of

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<sup>19</sup> Grovier, K. (2008) *The Gaol: The Story of Newgate, London's Most Notorious Prison*, London, Murray; Hendrick, H. (2006) 'Histories of Youth Crime and Justice' in B. Goldson and J. Muncie (eds) *Youth Crime and Justice*, London, Sage. By the early 1850s transportation was virtually abandoned : Emsley (2005); and judicial execution of juveniles did not occur in practice beyond 1831. Wilson, P. (1973) *Children who Kill*, Michael Joseph, London.

<sup>20</sup> Children Act 1908, 8 Edw 7, c. 67.

children in the realm of punishment, especially the development of separate institutions for juvenile offenders. This broad approach to criminalisation raises a multitude of questions. All of these matters need to be addressed to provide as full and rich an account as possible, and that account has to look beyond the treatment of perceived criminality of children to the question of how the changing attitudes towards children and the increasing awareness of their vulnerability led to changes in the realm of adult criminalisation too with the creation of offences designed to offer protection to children.

It is essential to have some strategy with which to begin to analyse these developments. The focus of attention is how the criminal justice system applied to children. To help in understanding the position of children in the criminal justice system in the nineteenth century it is necessary to uncover the cultural factors underpinning the changing constructions of childhood, to look at the role of children in society, how they were perceived, how changing ideas affected the motives and actions of those who were instrumental in pressing for change, how this mapped on to legal and institutional changes at a conceptual level, and how this change in attitude emerged in practice. This is not to suggest that there was necessarily a simplistic and straightforward causal connection between all these elements which inexorably led to the changes which occurred. The strategy being proposed here takes account of the vicissitudes involved in the analysis, aims to probe into and illuminate the interplay and exchanges between all of these factors and emphasises the critical importance of recognising the role of alterations in cultural attitude in the development of the criminal law as applied to children. But before analysing childhood in the nineteenth century, the next section discusses the background to the process of reform in Scotland and England.

### **1.3 REFORM MOVEMENTS IN SCOTLAND AND ENGLAND**

This section considers why the background to reform of juvenile justice in the nineteenth century was different in Scotland from that in England. It concludes with a discussion of how my interpretation of the pattern of reform relates to that offered by others.

It is very important to recognise that although the initial impetus for reform of juvenile justice in both Scotland and England arose primarily out of a shared philanthropic aspiration to improve the position of children caught up in the criminal justice system the two jurisdictions approached the problem from different angles. Whereas the main focus of

Scottish reformers was on preventive<sup>21</sup> action provided by the welfare-based day industrial school that in England was on reformation of the confirmed offender in the disciplined reformatory environment. This was a key difference of approach, one which had profound consequences for the development of the system in Scotland.

There were other very significant differences between the Scottish and English reform movements. While the Scottish pre-statutory system appealed to philanthropic support from local communities the English reformatory movement set out to recruit the support of the rich and powerful. Under the pre-statutory system reformers in Scotland relied on the support of local communities to fund day industrial schools by voluntary subscriptions. The extent to which the schools involved a community effort was shown in Aberdeen where the Child's Asylum Committee which regulated admission to the schools was made up of representatives from a range of local organisations.<sup>22</sup>

English reformers, on the other hand, sought out people of influence to advance their cause. The most prominent English reformer, the evangelical Mary Carpenter, may have been the modest and unworldly daughter of a Unitarian clergyman from Bristol but she came to be internationally acclaimed as an expert on juvenile offenders and had a coterie of aristocratic friends.<sup>23</sup> One of these was Lady Byron who provided funds for the first reformatory for girls, Red Lodge in Bristol, housed in an impressive Elizabethan mansion.<sup>24</sup> In the campaign for legislation Carpenter enlisted the help of the wealthy Tory M.P., Viscount Adderley, later Lord Norton. A fellow evangelical, he proved an invaluable ally, drafting the Bill for the Youthful Offenders Act 1854<sup>25</sup> on the advice of Carpenter among others.<sup>26</sup> The reformatory movement succeeded in appealing to other members of the landed gentry too<sup>27</sup> some of whom were keen to establish reformatories on their country estates. This provided landowners with a useful source of free agricultural labour but meant harsh discipline and

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<sup>21</sup> See Watson, W. (1851) *The Juvenile Vagrant and the Industrial School, or, Prevention Better than Cure* Aberdeen; Guthrie, T. (1847) *Plea for Ragged Schools, or, Prevention Better than Cure*, Edinburgh.

<sup>22</sup> See Chapter two. This chapter also discusses the funding of Houses of Refuge for young offenders in Glasgow in the early 1840s paid for by a levy on householders under a local Act.

<sup>23</sup> Steven Schlossman, writing on the situation in the US, notes that Carpenter's reform school for girls was acclaimed internationally. Schlossman, S. (1995) 'Delinquent children: the juvenile reform school' in Morris, N. and Rothman, D., eds *The Oxford History of the Prison*, (1995). Oxford.

<sup>24</sup> Manton, J. (1976) *Mary Carpenter and the Children of the Streets*.

<sup>25</sup> 17 & 18 Vict., c.86.

<sup>26</sup> Manton (1976). Carpenter was a guest at his mansion, Hams Hall, near Birmingham while he drafted the Bill.

<sup>27</sup> For example, Thomas Barwick Baker, who reassured other landowning squires that a reformatory 'need not be an objectionable looking building to have on one's estate.' (Quoted in Manton (1976), p.164.) He advocated strict treatment, hard work and meagre rations of food for reformatory boys.

arduous work for the reformatory boys.<sup>28</sup> So the reformatory movement in England can be seen as encompassing a broad range of interests: at one end of the scale was the idealistic, religious philanthropy of Mary Carpenter preaching the child's need for love in the idyllic surroundings of Red Lodge; at the other were the aristocrats exploiting the labour of reformatory boys. And, ultimately, it was those who advocated the efficacy of the disciplinary approach who ruled the day.

In Scotland the basis of the pre-statutory reform movement was different: it was far more egalitarian, inclusive and humane, appealing to a sense of civic responsibility and local cohesiveness for support. It stressed the importance of the child as part of the family unit, of maintaining the integrity of family bonds and endeavoured to raise the social conditions and moral outlook of whole families, not only children. In many ways the movement can be seen as a dynamic missionary effort, an attempt to improve the lot of the poorest and most excluded. The literature of reform is infused with this sense of mission the purpose of which was to evangelise the most degraded members of society in the mid-nineteenth century Scotland. This is a recurrent theme in the writings of Sheriff William Watson and also in those of his prominent fellow reformer, the Edinburgh Minister Rev. Thomas Guthrie.

In Scotland the prime movers in the campaign for change were often judges, especially Sheriffs, and other members of the legal profession. In England one of the most important reformers, Carpenter's fellow Unitarian Matthew Davenport Hill, was also a judge. His important influence as Recorder of Birmingham is discussed further in the next chapter. But the influence of the judiciary was more marked in Scotland. North of the border it was the Sheriffs who led the way, notably William Watson in Aberdeen and Sir Archibald Alison in Glasgow. Sheriff Hugh Barclay of Perth was also active in the reform movement, writing a book on juvenile delinquency<sup>29</sup> and helping to draft the first Scottish legislation on industrial schools.

In the early nineteenth century the recognisably modern role of Sheriff was relatively new. The administrative and legal arrangements put in place following the Jacobite rebellion of 1745 were designed to garner previously feudal jurisdictions into the control of the Crown

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<sup>28</sup> Stack, John A.(1979) 'The Provision of Reformatory Schools, the Landed Class, and the Myth of the Superiority of Rural Life in Mid-Victorian England.'

<sup>29</sup> Sheriff Barclay (1848) *Juvenile Delinquency; its Causes and Cure by a Country Magistrate*, Blackwood & Sons, Edinburgh and London.

through the medium of a hierarchy of Sheriff and Justiciary Courts.<sup>30</sup> Central to the operation of this system was the part played by local Sheriffs who were legally qualified judges with authority to oversee the lower courts. Sheriffs were required to reside in their Sherifffdoms for a minimum of four months every year and supervised the now professionalised administration of justice where crimes were prosecuted by public prosecutors. With Sheriffs and the Lord Advocate now at the heart of legal and also political power there was a real opportunity for those of a reforming mind to use their pre-eminent position to effect change within their local jurisdiction and to influence change on a wider front.<sup>31</sup> It was within this context that innovators such as William Watson and Archibald Alison were able to operate so effectively in a way that would not be possible for Sheriffs nowadays.

The important point here is that the Scottish reform movement contrasted with that in England in many respects: despite the fact that the initial pressure for reform in both countries was energised by evangelical, religious inspiration, they approached matters in very different ways. With the benefit of hindsight it is possible to see the momentous significance of the decision by Scottish reformers to join forces with English reformers in the quest for legislation. It proved to be the turning point for the Scottish pre-statutory system although this was not evident at the time. Insidiously, by stealth, over the course of little more than a decade, the development of the statutory system resulted in a body of legislation which, together with other centralising factors, sought to force the Scottish system into an English mould. As subsequent chapters will show, this completely undermined the holistic, welfare-based nature of the original Scottish system.

The interpretation offered in this thesis emphasises the centrality of religious philanthropy as a vehicle for penal change in the area of juvenile justice. As noted in the introductory chapter, it was the role of reformers resisting the effects of industrialisation on the children of the urban poor which was the primary catalyst for reform. In advancing this argument my thesis stresses the dynamic influence of human motivation.<sup>32</sup> This challenges influential, Foucauldian-inspired accounts such as Garland's which see penal policy as 'determined by

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<sup>30</sup>For further discussion see Farmer (2011); Farmer (1997).

<sup>31</sup> *ibid.*

<sup>32</sup> For an argument that radical humanitarianism was a potent factor in penal reform see Bailey, V. (1997) 'English Prisons, Penal Culture and the Abatement of Imprisonment', 1895-1922', *The Journal of British Studies*, Vol. 36, No 3.



unacknowledged, deep structures of power.’<sup>33</sup> Although my argument stresses the importance of philanthropic motivation, it also recognises the yawning chasm between humanitarian aspiration, reflected in the good intentions of the reformers, and the final dismal outcome of their reforms in practice. This approach strikes a chord with David Rothman’s analysis of American criminal justice history,<sup>34</sup> particularly his observations on reform schools for delinquents, which highlights a similar divergence between the original aims of reform and the operational pragmatism of those implementing the changes.<sup>35</sup> His explanation of the shortfall between idealism and practical reality in nineteenth century America shows parallels with the account given in this thesis. Another account which is highly relevant to my thesis is Susan Margarey’s analysis.<sup>36</sup> She argues that a combination of changes in legislation and the policing of the young acted together to criminalise children in early nineteenth century England. This is discussed more fully later in this and the next chapter where it is argued that this is also what happened in Scotland in the same period.

#### 1.4 CHILDHOOD IN THE NINETEENTH CENTURY

This section focuses on what it meant to be a child in the nineteenth century. It examines changing conceptions of childhood and how these were reflected culturally and on a practical level in different institutional contexts. To help understand ideas of childhood, the section draws on the insights of the French scholar, Philippe Aries, and also those of the German sociologist, Norbert Elias. As becomes evident in later chapters, their abstract ideas can be linked in some important respects to the development of diversionary systems for young offenders in Scotland. The section introduces the idea of childhood as a social construction, before considering the work of Aries and Elias; it then looks at how the idea of

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<sup>33</sup> Wiener, M.J. (1990) *Reconstructing the Criminal: Culture, Law and Policy in England, 1830-1914*, CUP, p.7. Here Wiener is referring to Foucault’s influence on Garland (in *Punishment and Welfare*) and also to his influence on Michael Ignatieff, (1978) *A just measure of pain: the penitentiary in the industrial revolution, 1750-1850*, New York, Pantheon.

<sup>34</sup> Rothman, D. (1971) *The Discovery of the Asylum: Social Order and Disorder in the New Republic* Boston, Little Brown; Rothman, D. (1980) *Conscience and Convenience: The Asylum and its Alternatives in Progressive America*, Boston, Little Brown.

<sup>35</sup> Writing about the failure of the reform school (or house of refuge) to live up to its original promise, Rothman states: ‘the refuge began as an attempt to eliminate delinquency, and ended up as a practical method for getting rid of delinquents.’ Rothman (1971), p. 261. He situates the failure of the reform school in the context of a similar pattern of failure in relation to a range of other institutions such as the penitentiary and the asylum.

<sup>36</sup> Margarey, S. (1978) ‘The invention of juvenile justice in early nineteenth century England’, *Labour History* (Canberra), vol 34.

the child was reflected in literature, religion and eventually in practice in the workplace, home and school.

#### **1.4.1 Changing ideas about childhood**

The essential point to register here is that childhood is a social construction. Children have always existed in human society but the way in which they have been perceived, the way in which they have been treated and the status accorded to them has undergone considerable changes throughout the course of history. The role of children in society has, of course, had implications for the way in which they were regarded within the systems of criminal justice and it is this relationship between changing cultural perception and changing institutional application in the realm of criminal justice and all the steps in between attitudinal and actual change which is especially fascinating to trace.

In today's world it is taken for granted that children are vulnerable, in need of protection and care, a special case, to whom special rules apply. Recent years have seen an international focus on children's rights with the advent of The United Nations Convention on the Rights of the Child which came into force in 1990 and has been almost universally ratified though in many countries it remains very much an aspirational ideal.<sup>37</sup> The Convention declares certain standards which it regards as essential asserting, for instance, under Article 12, that the child has a right to be consulted in matters affecting his or her welfare in accordance with the maturity of the child.<sup>38</sup> There is also much emphasis in current domestic family law legislation on the needs of the child being a prime consideration and the importance of the voice of the child being listened to. Section 11(7) of the Children (Scotland) Act 1995 provides that in proceedings concerning parental rights the welfare of the child is to be regarded as paramount.<sup>39</sup> Similarly, under s.2(1) of the Act it is made clear that parents only possess rights in respect of their children in order to be able to discharge their parental responsibilities.<sup>40</sup> There is enormous value placed on respecting the special position of children nowadays and it goes without saying that childhood is, at least in the western world, seen as a time free from the responsibilities of adulthood, a time of nurturing, learning and play. This view of children and childhood as a special category to whom special rules apply

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<sup>37</sup> A. Cleland and E. Sutherland, (2001) *Children's Rights in Scotland*, W. Green.

<sup>38</sup> This right to consultation has been enacted in s.11(7)(b) of the Children (Scotland) Act 1995. Although the Convention rights cannot be directly enforced in domestic courts, the UK is committed to adhering to the minimum standards contained in the Convention, and is expected to provide Reports to the UN on its degree of compliance with Convention rights. See L. Edwards and A. Griffiths (2006) *Family Law*, W. Green, p.90.

<sup>39</sup> J. Mair (2002) *Avizandum Statutes on Scots Family Law*, Avizandum, Edinburgh.

<sup>40</sup> Edwards and Griffiths (2006)

is reflected in criminal justice terms in the Scottish context in the choice of forum for young offenders under the age of sixteen, the child-welfare oriented setting of the children's hearings system which is based on the holistic principle of non discrimination between children referred on offending grounds and those referred because they are in need of care and protection.<sup>41</sup>

While modern ideas about childhood might seem self-evident, immutable and fixed, studies of the history of childhood indicate that ideas about the role of children are malleable and contingent. They have changed considerably over time throughout western society. What it means to be a child today is something different from what it meant to be a child in the nineteenth century. In order to be treated differently children had first to be recognised as different from adults in some significant way that merited a different kind of treatment. The ramifications of this proposition for the treatment of children in the criminal justice system form the practical subject matter of the study of criminalisation in relation to children.

One of the most influential commentaries on the history of childhood which illustrates how changes in ideas about children have evolved in western society has been that by Philippe Aries whose writing creates a very helpful bridge between childhood studies and criminalisation.

### 1.4.2 Aries and Elias

The field of childhood studies has one particularly exciting connection to offer the student of criminalisation. That is the link between work on the history of childhood by the French scholar, Philippe Aries, *Centuries of Childhood* (1962),<sup>42</sup> and that of the German sociologist, Norbert Elias on *The Civilising Process*<sup>43</sup> whose work has been widely applied to the relationship between violence and civilisation, and the history of punishment.<sup>44</sup> The

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<sup>41</sup> K. McK. Norrie (1997) *Children's Hearings in Scotland*, W. Green.

In terms of s12(3) of the Children (Scotland) Act 1995 a child is a person under the age of sixteen. See too Age of Legal Capacity (Scotland) Act 1991, s1(1)(b) which provides that sixteen is the age at which a young person has legal capacity to enter into transactions. In discussing children in this chapter generally the age category being referred to is those under sixteen, although when talking of historical conceptions of childhood it is the culturally contingent idea of the child rather than a particular age category which is being discussed.

<sup>42</sup> 1962; translated from the French version (1960) *L'Enfant et la vie familiale sous l'ancien regime*.

<sup>43</sup> N. Elias (1984).

<sup>44</sup> For example ; Z.Bauman,(1989)*Modernity and the Holocaust*, Polity; For a fascinating insight into the work of Elias- his *Reflections on a Life* (1994), Polity; J. Fletcher (1997) *Violence and Civilization*(Polity); D. Garland,(1990) *Punishment and Modern Society*; S .Mennell (1992) *Norbert Eliias*, Blackwell; J. Pratt (2005) 'Elias, punishment and civilisation'(in *The New Punitiveness: Trends, Theories and Perspectives*, Willan); P. Spierenburg (1984) *The Spectacle of Suffering: Executions and the evolution of repression*, CUP ;K.

connection is both interesting in itself and significant for understanding the emergence of children as a distinct group in relation to criminalisation.<sup>45</sup>

Both Aries and Elias are concerned with the picture being painted on the broad historical canvas, considering long term historical trends and identifying changes taking place over centuries. Aries studies developing ideas of childhood which were by the nineteenth century becoming widely accepted: his main concern is to establish how the change in perception occurred which saw the idea of the role of the child move from one of relative insignificance on the margins of collective life to the modern position, evident by the nineteenth century, occupying the pivotal position around which the world of the private family revolved.<sup>46</sup>

Investigating the timespan from the middle ages to the present within French society, Aries states that ‘there was no place for childhood in the medieval world’<sup>47</sup> and that the idea did not emerge until the seventeenth century. He defines the concept of childhood as being ‘awareness of the particular nature of childhood, that particular nature which distinguishes the child from the adult, even the young adult.’<sup>48</sup>

Aries contends that the idea of childhood developed as a consequence of increasing differentiation of children from adults, which is exactly what Elias argues happens in the course of the civilising process. Aries makes use of sources such as medieval art, children’s dress and games to develop his argument. He shows that in medieval art there was no realistic depiction of children’s bodies and they were presented as miniature adults, while from the seventeenth century there was a naturalistic representation of children and an interest in creating portraits of individual children. Similarly, in the area of dress it was not

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Watson,(2007) *Assaulting the Past, Violence and Civilisation in Historical Context* (Cambridge Scholars Publishing).

<sup>45</sup> *The Civilising Process* was published in German in 1939 but was largely unappreciated until the 1970s when it appeared in English and French translations (See S. Mennell(supra) at P.278 discussing Elias’s reputation in different countries). Interestingly, both Aries and Elias also wrote books about death: Aries wrote *The Hour of Our Death* (1981, again translated from French) and Elias wrote *The Loneliness of Dying* (1984).

<sup>46</sup> See too Cunningham, H. (1995) *Children and Childhood in Western Society Since 1500*, Longham, at P41 which states that, ‘By the middle of the nineteenth century an ideology of childhood had become a powerful force’.

<sup>47</sup> Aries (1962), p.31.

<sup>48</sup> *ibid.* p128 Aries’s arguments have been criticised for failing to take into account evidence that the medieval world accorded some recognition to a notion of childhood (Cunningham (1995), p40) in, for example, making distinctions between different ‘ages of life’ in medieval literature. Aries does not dispute this but points out that the medieval world lacked a clear, well defined concept of a separate world of childhood associated with the changing role of the child as the focus of the modern family and a recognised need to defer entry to adult world until the period of childhood had elapsed with the completion of education.

until the seventeenth century that children were dressed in special clothing for children.<sup>49</sup> The same trend is evident in his analysis of children's games and pastimes where he demonstrates the change from medieval times when many games which had been played by both adults and children alike in all classes of society were abandoned by upper class adults and became the province solely of the children of the upper classes as well as both adults and children in other sections of society. Aries argues that in the medieval world children were assimilated into the adult world as soon as they were no longer infants, about the age of seven, as was demonstrated by the notable absence of constraints on making inappropriate references in front of children or attempting to protect their innocence. He contends that the main reason for the change in the seventeenth century was the increasing focus on education of children which marked out childhood as a period of learning and preparation for adulthood. Children were no longer to be thrust out into the adult world from their cradles. This concern with education effectively, he argues, created childhood. However, Aries does not see education as necessarily a wholly benign development: in a passage reminiscent of Foucault, he sees it as a sinister move from a world where the child experienced relative freedom to one characterised by,

‘an increasingly severe disciplinary system, which culminated in the eighteenth and nineteenth centuries in the total claustration of the boarding school. The solicitude of family, Church, moralists and administrators deprived the child of the freedom he had hitherto enjoyed among adults. It inflicted on him the birch, the prison cell – in a word, the punishments usually reserved for convicts from the lowest strata of society.’<sup>50</sup>

The point in examining childhood for Aries is to uncover the origin of the modern idea of the private world of the family with the child at its centre. He is preoccupied with the modern centrality of the idea of the family and is seeking to show how the change occurred from the idea of the child as being peripheral and marginal to society, simply part of a collective whole, to becoming the focus of the private family unit behind the ‘wall of private

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<sup>49</sup> Up until that point children simply wore a smaller version of adult clothes, as is clear in the pictorial depiction of children in European art. See, for example, the famous painting of the Spanish royal family by Velazquez, *Las Meninas*, which depicts the royal children wearing the same type of dress as their parents.

<sup>50</sup> Aries(1962), 413.

life'.<sup>51</sup> This emphasis on the creation of the private domain and its relationship with societal relations is a concern shared with Elias.

On a practical level it is possible to see elements of Aries's ideas reflected in developments in nineteenth century juvenile justice reform. Firstly, in the disciplinary nature of reformatory education there are echoes of Aries's ideas on the relationship between residential education and discipline. Secondly, in the development of the pre-statutory system in Scotland in the 1840s and early 1850s it is possible to see parallels between Aries's idea of the central position of the child, as the focus of family life, and the ideas of the Scottish reformers, especially William Watson. One of Watson's main concerns was with protecting the integrity of the family unit and the child's position within it. He saw the role of the child as pivotal: by educating the vagrant or offending child, instilling him with Christian values and elevating him to the ranks of respectability through honest industry Watson hoped to create an example for the rest of the child's family to follow.<sup>52</sup>

#### *(1) Elias*

*Centuries of Childhood* has in fact been described as 'an extended gloss on Elias's perception'.<sup>53</sup> The empirical methodological approach adopted by Aries in his use of sources is similar to that employed by Elias. In his work Elias examines the history of manners from the middle ages by analysing books on etiquette and instruction and a range of other sources from literature, music and art. He illustrates how acceptable standards of behaviour and social mores change over time in accordance with what he terms a civilising process. For the purposes of the present discussion there are two particularly useful elements to be drawn from the interpretation Elias offers. The first is his demonstration of how in the course of the civilising process children are increasingly differentiated from adults – the theme echoed by Aries. The second contribution is his view on the nature of changing social sensibility which can be understood as societal reaction reflecting emotional responses.<sup>54</sup> Both of these aspects have direct bearing on the debate about the differentiation of children from adults in the nineteenth century criminal justice system and deserve to be explored further.

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<sup>51</sup> *ibid*, P.413

<sup>52</sup> See chapter two.

<sup>53</sup> Cunningham (1995) 5.

<sup>54</sup> As David Garland argues (D. Garland, (1990) *Punishment and Modern Society*, p. 229) it is difficult to evaluate the effect of emotional sentiments on a societal level: 'Arguments about motives and feelings are always inconclusive and difficult to substantiate, particularly in historical research, and in discussing sensibilities we are dealing with deep structures of affect and motivation which can only be known through their social effects.'

Elias argues that:

‘The distance in behaviour and the whole psychological structure between children and adults increases in the course of the civilising process’.<sup>55</sup>

Adeptly using extracts from books of manners, Elias is able to show how in earlier times certain instructions are intended to teach adults proper behaviour in a range of matters such as table manners, spitting and the subject of bodily functions. However in later editions the text assumes that adults have, over the course of time, adopted the recommended mode of conduct and therefore aims at instructing only children on these points of behaviour. He also uses his sources to demonstrate how, over time, the manners adopted by the social elites are gradually acquired by other sectors of society. Elias is convincing in highlighting the growing divergence between adults and children with the passage of time. Commenting on the eighteenth century habits with regard to nose blowing, he notes that ‘only children are allowed, at least in the middle classes, to behave as adults did in the Middle Ages.’<sup>56</sup>

Elias is, of course, addressing changes which occur over a very long period and, as is the case with Aries, the growing ‘distance in behaviour’ he identifies as emerging between adults and children is a divide which by the nineteenth century is becoming accepted as the norm. Elias’s explanation has obvious relevance for shedding light upon the change in attitude occurring in the course of the nineteenth century which saw children becoming more fully differentiated from adults in the processes of criminal justice. Was the growing recognition of the distinctness of children in criminal justice a reflection of the Eliasian idea of the civilising process? This is a compelling argument.

Certainly, the second aspect of the Elias argument which is concerned with the psychological dimension is extremely interesting. As David Garland points out in his discussion of Elias in *Punishment and Modern Society*, the empirical basis of Elias’s work is just the starting point for an analysis of the relationship between changing ‘psychical

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<sup>55</sup> Elias, N. (1994) p.141.

<sup>56</sup> This quotation is from *The Civilising Process* at p120. Elias (at p.121) includes an extract from a French book of etiquette from 1744 on the topic of decorous nose blowing:

‘Every voluntary movement of the nose, whether caused by the hand or otherwise, is impolite and puerile. To put your fingers into your nose is a revolting impropriety, and from touching it too often discomforts may arise which are felt for a long time. Children are sufficiently in the habit of committing this lapse; parents should correct them carefully.’

This resonates with Aries’s work where he shows how activities performed by both adults and children came to be associated only with children.

structures' and 'changing structures of social interaction'.<sup>57</sup> Elias develops his theme by discussing the transformation in societal structure through the ages from the aggressive knightly warrior societies to the more peaceful courtly societies of the sixteenth and seventeenth centuries, where the exercise of violence is vested in a central authority, and on to the market societies in the eighteenth and nineteenth centuries. He argues that as social relations generally became less aggressive there was an accompanying emphasis on the importance of refinement and cultural distinction amongst the social elites which over time, through the civilising process, was disseminated to other levels of society. The main hallmark of this concentration on cultural refinement was the necessity for self restraint and discipline in a kind of Freudian internalisation of social mores, described by Elias as 'the psychical process of civilisation'.<sup>58</sup> A central feature of this process is identified by Elias as an increasing sensibility to aspects of life considered unpleasant, distasteful and an affront to polite society. This, the argument goes, accounted for the removal to the private domain of scenes regarded as unsightly. It was no longer considered acceptable to present dinner guests with a whole animal to be carved at the table and the carving had to take place behind the scenes. Elias notes that the unpleasantness and violence did not disappear; it was simply moved away from centre stage.

Garland regards this analysis as having enormous relevance for the history of penal change. He interprets the general thrust of Elias's argument as having great explanatory potential for changes in 'punitive manners'<sup>59</sup> over the period discussed by Elias. He identifies parallels in Elias's account with the move behind the scenes of the punishment of offenders. Garland applies Elias's theory to the history of punishment to argue that his account could be read as explaining that as the sight of human suffering became an affront to sensibilities there was a gradual change of arena for punishment from the public displays of punishment to punishment behind the walls of prisons.<sup>60</sup> As sensitivities increased, so did the distaste for the infliction of violence on offenders and eventually the more brutal sanctions were replaced by the less offensive, less visible option of the prison. Garland qualifies his interpretation by noting that acceptance of this revised version depends on whether Elias's psychic theory on heightened conscience and sensibilities and concomitant privatisation is thought to be credible. He also notes that Elias's cultural explanation of civilisation is

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<sup>57</sup> Garland (1990), 217.

<sup>58</sup> Elias, N (1994), pxii.

<sup>59</sup> Garland (1990), p224

<sup>60</sup> See Pieter Spierenburg (1984) *The Spectacle of Suffering* on the role of intensifying sensibilities in the move away from public executions.



inextricably linked with other factors such as societal and structural organisation which means that the civilising process has nothing determined about it. It is in fact a delicate edifice which can be easily fractured by major alterations in societal structure and can collapse under the pressure of revolutionary changes.

Apart from its application to the history of punishment Elias's theory has also proved a fertile source for developing ideas about long term patterns of violent crime within society, with Eliasian concepts of 'relative pacification of ever broader groups of people' in the course of the civilising process being used to account for an overall decline in, for example, homicidal violence.<sup>61</sup> Similarly, his ideas about the significance of societal structure have been used to advance the notion of *violence-au-vol*, based on the idea that feudal society, with its emphasis on aggression as an integral element of satisfying codes of honour, was linked with high levels of violent crime, whereas the progression to bourgeois materialist industrial society was associated with a high level of property crime.<sup>62</sup> Elias's insights have fuelled debates on these matters in recent years, ever since his work was 'discovered' when it re-emerged in English translation in the 1970s after decades gathering dust in the wilderness. However, his writings have not gone uncriticised. Much of the criticism questions whether it is valid to formulate matters in terms of a 'process' and highlights the counter trends which seem to undermine his argument, whether the modern 'permissive society' which might seem to flout notions of civilised behaviour, or the existence of 'stateless civilisations' which exhibit civilised types of behaviour despite not conforming to the societal structures described by Elias. His work has also been criticised for an over-emphasis on aggression which pays insufficient attention to harm inflicted in other ways.<sup>63</sup> Critics have also pointed to deeply disturbing events in modern history which are the polar opposite of civilisation, such as the holocaust, a particularly poignant criticism, in view of

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<sup>61</sup> P. Spierenburg, (1996) 'Long-term trends in homicide; theoretical reflections and Dutch evidence, fifteenth to twentieth centuries' in E. Johnson and E. Monkkonen (eds) *The Civilization of Crime* (University of Illinois) at p.64

<sup>62</sup> The *violence-au-vol* (from violence to theft) idea refers to a decline in personal violence from feudal times continuing until the late nineteenth century, a pattern for which Elias's theory seems to offer an explanation. *ibid*, at P.64 ;and also B. Weinberger, 'Urban and rural crime rates and their genesis in late nineteenth and early twentieth century Britain' in *The Civilisation of Crime* (*supra*) at P.200.

<sup>63</sup> For example, David Nash, 'Blasphemy and the anti-civilising process' in *Assaulting the Past, Violence and Civilisation In Historical Context*, at p.630) argues that Elias's definition 'of violence has come to be increasingly unsatisfactory since it views the phenomenon as a crude physical expression of power. Whilst we need not fully accept the conflicting ideas of Foucault, his insights have at least persuaded us that the constitution and the exercise of power is more sophisticated than the model which concentrates solely upon its physicality. Hurt and harm can occur to individuals and whole societies without the resort to physical aggression described by Elias.'

the fact that Elias was a German Jew who had left Nazi Germany to live in England at the time when *The Civilising Process* was first published in German in 1939, and a man who had to endure the pain of knowing that his mother had died in the gas chambers of Auschwitz;<sup>64</sup> and it is a charge which is stoutly refuted by the argument that a better understanding of Elias reveals that his work actually complements writing such as Bauman's on the holocaust in deepening understanding of the reasons for the reversals of civilisation entailed in genocidal atrocity.<sup>65</sup> As John Pratt argues, 'it is evident that the qualities of the civilising process itself are no guarantee of a civilised end product (and that Elias's work is not based on some teleological notion of human and societal betterment, as has been a regular line of criticism).'<sup>66</sup>

Accepting Elias's account, in spite of its complexities, helps explain the growing recognition of the distinct position of children in the nineteenth century which was critical in the emergence of children as a special group in relation to criminalisation. It also helps explain the heightened sensitivity to the suffering of children of the impoverished classes. This manifested itself in a number of ways, from the increasing public disquiet about the exploitation of children in the labour market to the newly perceived unacceptability of incarcerating children in adult prisons. It also appeared in the increased sensitisation to the vulnerability of children which precipitated the development of their differential treatment in the processes of criminal justice. The cultural explanation is appealing because it offers an answer to the question of why there was for the first time such a general awakening of the public conscience.<sup>67</sup> Increasing public sensitivity responded not only to children but also to others suffering oppression, most notably those subjected to slavery. Indeed historians draw parallels between the anti slavery campaign and the pressure to liberate children from the chains of toil in the factories.<sup>68</sup> Elias's cultural account of civilisation is very plausible and

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<sup>64</sup> These criticisms are discussed in S. Mennell, (1992) *Norbert Elias*, Blackwell. See too, Z.Bauman, (1989) *Modernity and the Holocaust*, Polity.

<sup>65</sup> See Jonathan Fletcher(1997) *Violence and Civilisation*, Polity at p.166. See also Elias's essay written in 1996 entitled *The Germans* where he describes the holocaust as 'a throwback to barbarism and savagery of earlier ages'(p.302) and 'one of the deepest regressions (my emphasis) to barbarism of the twentieth century'(p.308).(quoted in Fletcher at P180).

<sup>66</sup> John Pratt in 'Elias, punishment and decivilisation' in J. Pratt et al (eds) (2005) *The New Punitiveness*, Willan.

<sup>67</sup> Randall McGowen's essay , 'Cruel Inflictions and the Claims of Humanity in Early Nineteenth Century England' ( in K. Watson's *Assaulting the Past* (supra)) discusses importance of the humanitarian movements in the nineteenth century, and refers to Thomas Laqueur's idea that the powerful currents of humanitarianism were more of a *narrative* than a process.

<sup>68</sup> H. Hendrick (1997) 'Constructions and reconstructions of British childhood: an interpretive survey, 1800 to the present' in J. Muncie et al (eds)*Youth Justice, Critical Readings*, Sage.

the significance of this for the changing position of children in the nineteenth century criminal justice system and for the argument that the course of criminal law is culturally contingent is clear.<sup>69</sup>

The idea of a civilising process is certainly appealing and sits comfortably with notions about the advancement of humanitarianism which undoubtedly was a potent element in nineteenth century reform of the criminal justice system, particularly in relation to children. This interpretation of the triumph of humanitarianism is attractive and has had its influential adherents. As Martin Wiener puts it:

‘For many years, the history of criminal policy in Britain had been almost universally constructed as a story of reform: a gradual advance out of a medieval world of disorder and cruelty to the twentieth century, in which serious crime had been largely conquered at the same time that the rights and needs of the criminal had been ever more fully respected.’<sup>70</sup>

However, the story is more complicated than that and reading Elias can assist in understanding the complexities. Elias’s theory can account for the civilising, humanitarian trend and can also provide insight into less savoury currents flowing in another direction. Some commentators have recently expanded on the concept of ‘decivilising processes’. For example, Dunning and Mennell contend that ‘what is likely to happen is that civilising and decivilising processes (will) occur simultaneously in particular societies, and not simply in the same or different societies at different points in time’, an idea adopted and expanded on by John Pratt in discussing the contemporary debate about ‘a punitive turn’ in criminal justice policy.<sup>71</sup> This is an idea which can be applied in the context of considering the processes of criminalisation as applied to children in the nineteenth century to explain the existence of progressive, enlightened narratives vying with contradictory forces pulling in a more reactionary direction. At the same time that there was a heightened sensibility towards the special position and vulnerability of children which emphasised, for example, the unacceptability of children being imprisoned along with adults, there were less benign influences in operation which regarded the children of the poor as a potential threat to social

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<sup>69</sup> Summarising the credibility of the idea of a civilising process, Mennell (in *Norbert Elias*, 1992, Blackwell at P32) argues that Elias was objective in his approach and ‘was led by his evidence to see a long term trend, a civilising process. And the existence of such a trend cannot be disproved by merely theoretical reasoning.’

<sup>70</sup> M. Wiener, (1990) *Reconstructing the Criminal*, Cambridge.

<sup>71</sup> E. Dunning and S. Mennell (1996) ‘Introduction’ in N. Elias, (1996) *The Germans*, Cambridge, Polity, 1-20; quoted in and expounded on by John Pratt (2005); D. Garland (2001) *The Culture Of Control*, Oxford, OUP.

stability to be tackled by oppressive criminal justice practices. For instance, as will be discussed later, it has been argued that there is evidence that methods of policing and prosecution as applied to children acted to bring increasing numbers of children within the ambit of the criminal justice system.<sup>72</sup> There has been evidence of this in the English context, and it will be demonstrated in later chapters that this is what happened in Scotland too. Acknowledging these competing civilising and decivilising narratives or trends is important in trying to understand how children were criminalised within the nineteenth century criminal justice system.

There are other ways in which Elias's work helps elucidate matters. In many respects the goal of the pre-statutory day industrial school movement was to elevate the children in their care to the ranks of respectability. This involved the transmission of values deemed necessary for the respectable citizen such as religious adherence, diligent work and cleanliness.<sup>73</sup> By adopting the manners and lifestyle of the respectable orders of society children could shake off the stigma of vagrancy and criminality and be reincarnated as valued members of society. This was definitely a civilising exercise. But, while the civilising effect was an integral part of Watson's mission, this was not simply about superficial aspects of respectability. Though great emphasis was placed matters such as tidy appearance this was not the main point. The primary goal was to impart moral, religious values. For example, Watson quoted with approval an observation from an Edinburgh minister on the benefits of day industrial schools:

‘Mothers have been shamed into attention to their children by having them sent back without breakfast because of the dirtiness of their persons or clothes. I think I might go farther and safely assert that not merely a civilising but a moral influence has emanated from the children to their parents. Hymns and psalms and Bible lessons and healthy reading preparatory for next day's school work are rarely altogether unprofitable.’<sup>74</sup>

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<sup>72</sup> S. Margarey, (1978) 'The invention of juvenile delinquency in early nineteenth century England', *Labour History*, 34. Similarly, at the end of the century it has been argued that practices of policing and prosecution combined to criminalise the perceived misbehaviour of young people acting boisterously on the streets. Gillis, J. R. (1975) 'The Evolution of Juvenile Delinquency in England 1890 -1914' in 67 *Past and Present*.

<sup>73</sup> The features of day industrial schools are discussed further in chapter two.

<sup>74</sup> Watson, William, Letter to day industrial school campaigners in Glasgow dated 16<sup>th</sup> October 1874, p.29.

This suggests that concern with outward matters such as appearance was an ancillary aspect of the ultimate aim of moral transformation.

As noted earlier, the work of Elias has often been applied in analysing the relationship between violence and civilization and has been used to account an overall decline in homicidal violence in the course of the civilising process. It is extremely interesting to see, then, that most of the cases of children from the nineteenth century discussed in this thesis do not involve violent conduct. They are generally concerned with minor thefts, vagrancy or low level disorder. This contrasts with the contemporary situation where there is much concern about violent offending by young people.<sup>75</sup> This suggests that the emphasis has shifted over time with the focus now on more aggressive conduct.<sup>76</sup> This theme will be discussed more fully in chapter five of the thesis.<sup>77</sup>

Next, what might be described as progressive trends influencing criminalisation in relation to children will be discussed, the influence of literary constructions of childhood and the impact of religious views of childhood all of which lined up squarely behind the civilising, humanitarian narrative in portraying the child as innocent, vulnerable and in need of protection.

### **1.4.3 Ideas of the child in literature**

#### *(1) Locke and Rousseau*

In trying to uncover the sources of cultural change in *The Civilising Process* Elias looked to written sources, including literary texts. For most historians of childhood literary and philosophical writings are an important indicator of changes in attitude towards children. There is a general view among scholars that the late seventeenth and the eighteenth centuries heralded a new, more sensitive, approach towards childhood<sup>78</sup> and the writings of John Locke and Rousseau have been regarded as particularly influential.

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<sup>75</sup> See Section 1.2, with reference to knife carrying.

<sup>76</sup> With reference to the focus of public concern, and criminal justice policy, being directed towards the issue of aggressive conduct by young people, see Section 1.2.

<sup>77</sup> Section 5.4.4.

<sup>78</sup> Hendrick, H (1997) 'Constructions and reconstructions in British childhood: an interpretive survey, 1800 to the present' in *Youth Justice, Critical Readings*, p23.

Published in 1693, Locke's *Some Thoughts Concerning Education* advanced some novel ideas about children. Predominantly secular in tone, which in itself marked a departure from the religiously inspired approach common at the time, Locke's work stressed the individuality of each child and the importance of upbringing in shaping the child who was represented as a *tabula rasa* or a blank slate, with regard to ideas but not personal qualities.<sup>79</sup> This more child-centred approach found a disciple in Rousseau, the author of the enormously popular *Emile* which appeared in 1762. Rousseau emphasised the natural goodness of children – a view which challenged ideas about the child as tainted by original sin and therefore requiring reformation and redemption. He advocated that children should be raised 'in the ways of nature'<sup>80</sup> which meant practical changes such as maternal breast-feeding instead of wet nursing and no swaddling and also allowing the child to discover the natural world by experience. The most ground-breaking philosophical insight that Rousseau had was that it was vital to recognise that the child had to be valued and recognised as a child and not just as a small adult:

'The wisest writers devote themselves to what a man ought to know, without asking what a child is capable of learning. They are always looking for the man in the child, without considering what he is before he becomes a man.'<sup>81</sup>

Along with this recognition came the idea that the child should be allowed to revel in the ephemeral happiness of childhood, a transient time which was to be enjoyed while it lasted:

'Love childhood.....Why rob these innocents of the joys which pass so quickly'.<sup>82</sup>

These notions of childhood made an impact, at least among the social elite where, Cunningham notes, there is evidence that Rousseau's ideas on child-rearing were followed, particularly the advice about maternal breast-feeding and swaddling. This new focus on maternal attention is credited with contributing to the increase by about a third in the infant survival rate for under-fives in the English upper classes in the late eighteenth century.<sup>83</sup>

While Rousseau's ideas of childhood emanated from an elite literary and philosophical source which was the province of the upper echelons of society, they helped foster a more

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<sup>79</sup> J. Locke, *Some Thoughts Concerning Education*, ed. J.W. & J.S. Yolton, *The Clarendon Edition of the Works of John Locke* (Oxford) p38 and p265; J.Locke , *An Essay Concerning Human Understanding*,ed P.H. Nidditch (Oxford) p85, 95 (Quoted in Cunningham, supra).

<sup>80</sup> J.J. Rousseau, (1762) *Emile*,.p1 (Quoted in Cunningham (1995) p.66).

<sup>81</sup> Ibid. pi (quoted in Cunningham (1995), p.65).

<sup>82</sup> Ibid. p.43 (quoted in Cunningham (1995), p.67).

<sup>83</sup> Cunningham (1995), p. 69.

widespread cultural shift – an Eliasian type of dissemination of cultural values- in the new perception of children as individual, unique and different from adults in a special way that would eventually see them, for the first time, regarded as meriting differential treatment from adults in the criminal justice system.

## (2) *The Romantics*

The new perception of children promoted by Rousseau was embellished by the portrait of the child figure in the literary flourishes of the Romantic poets, Blake, Coleridge and Wordsworth, writing in the late eighteenth and early nineteenth century, whose works combined forces to represent a highly sentimentalised version of childhood, a version that was to become very familiar to the readers of the great works of Victorian literature well into the mid nineteenth century. Blake's vision was of childhood as a perpetual source of innocence which ideally should sustain an adult throughout his life, while the view associated with Wordsworth, and the one which is generally thought of as embodying Romanticism, was of childhood as a golden, fleeting time of life which was to be treasured before it disappeared for ever with the onset of adult life. Wordsworth's idealised vision of childhood is encapsulated in lines from his *Ode on Intimations of Immortality from Recollections of Early childhood* written in 1807:

‘... trailing clouds of glory do we come  
From God who is our home:  
Heaven lies about us in our infancy’<sup>84</sup>

Here was the ultimate sanctification of childhood and it was an ideal which had immense impact throughout the nineteenth century. Its influence can be seen decades later in the sentimentalised portrayal of the child figure in major works of literature of the mid nineteenth century such as *Oliver Twist* and *David Copperfield* by Charles Dickens or the depiction of Eppie in *Silas Marner* by George Eliot. Similarly, George Eliot's portrayal of the idyllic childhood of Maggie and Tom Tulliver in *Mill on the Floss* has been described as epitomising ‘Wordsworth's world of innate childhood pleasures’.<sup>85</sup> But the major significance of the Romantic vision went well beyond its effect on literature. The Romantics may have been members of a literary elite addressing a select element in society, but they were part of a transformation in ways of thinking about the role of children in society. They

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<sup>84</sup> Cunningham (1995), 73.

<sup>85</sup> R.Pattinson (1978) *The Child Figure in English Literature* (Athens, University of Georgia Press) p.105.

contributed to a new cultural milieu which took root in the nineteenth century, one which began to regard children as vulnerable and in need of protection. Their influence was palpable in the passionate pleas of the factory reformers seeking to protect children from the brutalising effects of the workplace. Cunningham argues that the legacy of Romanticism added an emotional depth to the humanitarian campaigns of the reformers and notes that one such reformer writing a survey of factory conditions in 1836 included a quotation from Wordsworth's *Intimations of Immortality*.<sup>86</sup> This emotive quality associated with Romanticism can also be seen in a moving appeal by an advocate for reform from the 1830s; speaking of the exploitative use of small children as chimney sweeps, he wrote:

‘They are, of all human beings, the most lovely, the most engaging, the most of all others claiming protection, comfort and love. They are CHILDREN.’<sup>87</sup>

The plight of children used as chimney sweeps had been highlighted long before this time by the writings of Jonas Hanway in 1785 in *An Earnest Appeal for Mercy for the Children of the Poor* and their cause had been taken up in verse by Blake in *Songs of Innocence* in 1789. Robert Pattison, writing on the child figure in English literature and the legacy of the Romantics, argues that the notable humanitarian campaigner, Lord Shaftesbury, who is credited with being the driving force behind the 1875 legislation which finally, after years of campaigning, banned the practice of using children as chimney sweeps, had in effect been motivated by sentiments inspired by Blake's Romantic vision.<sup>88</sup> The Romantic vision of childhood was a central feature of the idea that children should not only be protected from the brutalising effects of work, but that there was no place for work at all in childhood, a central idea in paving the way for compulsory schooling.<sup>89</sup> This was part of a major cultural shift.

The Romantic conceptualisation of childhood made its presence felt in the language used by those campaigning for reform of juvenile justice who often appealed to a powerful combination of evangelical ideals and Romantic notions of childhood- such the importance of restoring child offenders to a condition where they received protection- which was seen

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<sup>86</sup> Cunningham (1995), 143.

<sup>87</sup> Quoted in Hendrick (1997), 28.

<sup>88</sup> Pattison (1978), 73.

<sup>89</sup> Cunningham (1995), 142.



as essential to the Romantic conceptualisation of childhood. This attitude was exemplified by the reformatory campaigner Matthew Davenport Hill when he commented in 1855:

‘The latter (the delinquent) is a little stunted man already – he knows much and a great deal too much of what is called life- he can take care of his own immediate interests. ....He has consequently much to unlearn – he has to be turned again into a child.’<sup>90</sup>

The effect of the Romantic idealisation of childhood is hard to overstate. The appeal to sentimentalism was an intrinsic element of Victorian culture. It became embedded in its literature and ways of thinking about children and it became a potent weapon in the hands of reformers seeking to improve the lives of children in the nineteenth century.<sup>91</sup>

#### **1.4.4 Childhood and religion**

It is clear by now that the ideas of Rousseau and the Romantics were of enormous importance in the conceptualisation of childhood. Religious ideas about the nature of childhood were also highly influential in the nineteenth century.<sup>92</sup> In most discussions concerning theology there are widely varying interpretations and this is all too evident in the contradictory religious views on the nature of children. Some commentators point to the evangelical revival of the nineteenth century as being associated with an emphasis on the child as tarnished with original sin, a fallen creature in need of training, discipline and redemption, a view espoused by the evangelical founder of the Sunday School Movement in the early nineteenth century, Hannah More. In direct opposition to the Romantic concept of the innate goodness of children, she insisted that it was a ‘fundamental error’ to regard children as ‘innocent beings whose little weaknesses, may, perhaps want some correction, rather than as beings who bring into the world a corrupt nature and evil dispositions, which it should be the great end of education to rectify’.<sup>93</sup> Within the evangelical tradition there is evidence of contradictory opinions on this crucial question. For instance, the evangelical reformatory campaigner, Mary Carpenter had no time for the idea of ‘inherent wickedness.’<sup>94</sup> Certainly the notion of the child as a fallen creature was not universal within

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<sup>90</sup> Quoted in May, M. (1973) ‘Innocence and Experience: The Evolution of the Concept of juvenile delinquency in the mid-nineteenth century’, *Victorian Studies*, 17, 1.

<sup>91</sup> Pattison (1978).

<sup>92</sup> K. Heasman (1962) *Evangelicals in Action*, Bles Ltd.; Checkland, (1980); L. Mahood (1995) *Policing gender, class and family, 1850-1940*, University of Guelph.

<sup>93</sup> Quoted in Hendrick (1997), 25.

<sup>94</sup> Radzinowicz, and Hood (1986), 165.

nineteenth century Christianity. Cunningham states that ‘Christians happily accepted’ the Romantic vision and he quotes the future Cardinal Newman in the 1830s as saying, with Wordsworthian fervour, that he believed that the child was a blessed creature who had come ‘out of the hands of God with all the lessons and thoughts of heaven freshly marked upon him.’<sup>95</sup>

Whatever their position was on the question of original sin, religiously motivated philanthropists of the nineteenth century, who were mainly from the evangelical tradition, were united in their desire to rescue children whether from the miseries of child labour, or the degradation and dangers of destitution, abandonment and criminality. It is evident from much of the rhetoric of the evangelical reformers that many of them adhered to a vision of childhood which combined elements of the ideas of Rousseau, the Romantics and Christian theology. Mary Carpenter, for example, was indebted to Rousseau’s ideas when she expressed her belief that ‘a child should be treated as a child’.<sup>96</sup> In an attitude similar to her fellow evangelist and reformatory campaigner Matthew Davenport Hill, she espoused the Romantic concept that the ideal childhood was one where the child was protected when she talked of the need to restore the child who had offended to ‘the true position of childhood’.<sup>97</sup> She added that, ‘He must be brought to a sense of dependence’ where he is ‘guided by wisdom and love; he must, in short, be placed in a *family*’.<sup>98</sup> This vision highlights the centrality of the Victorian emphasis on the sentimentalised domestic ideal of the family, which was so highly valued by evangelicals. Mary Carpenter summarised her aspiration as being to achieve ‘true reformatory action with the young’<sup>99</sup> with the aim of effecting ‘true and powerful action on the soul of the child, by those who have assumed the holy duties of a parent.’<sup>100</sup> This statement of her Christian mission is very clearly imbued with the legacy of Rousseau and the Romantics.

Mary Carpenter’s evangelical view of the child offender as a soul in need of salvation did not attach blame to the child, seeing the child as a victim of social circumstances or as lacking in moral guidance. Her view of children was a reflection of her Christian belief in forgiveness and redemption. Rejecting the conventional approach to the punishment of child

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<sup>95</sup> Cunningham (1995), 74.

<sup>96</sup> Quoted in Manton, J. (1976) *Mary Carpenter and the Children of the Streets*, page 109; H. Hendrick (1997), p. 29.

<sup>97</sup> Carpenter, M. (1853) *Juvenile Delinquents – their Conditions and Treatment*, W. & F. G. Cash, London, p. 298; Pinchbeck, I. and Hewitt, M. (1973) *Children in English Society*, Vol 2, London, Routledge, p. 474.

<sup>98</sup> *ibid.*

<sup>99</sup> *ibid.*

<sup>100</sup> *ibid.*

offenders, she advocated a period of corrective training which sought to rehabilitate the offender through, firstly, recognising the inherent dignity of children as ‘coheirs’ of ‘an eternal existence’<sup>101</sup> and, secondly, the realisation that ‘love must be the ruling sentiment’<sup>102</sup> because for children ‘it is an absolute necessity of their nature, and when it is denied them they become no longer children.’<sup>103</sup>

Formidably single-minded, Mary Carpenter was to become the most significant figure in the English reformatory movement. Her religious zeal was the driving force behind her philanthropic dynamism, something she had in common with William Watson. Indeed her writing shows that she was greatly inspired by Watson’s success in establishing the Scottish pre-statutory system.<sup>104</sup> Where she diverged from him was in her concentration on the child’s need for reformation. Far more pragmatic, Watson’s view was that children’s offences were usually ‘trifling’ matters.<sup>105</sup> As previously noted, the fundamental goal of reform for Watson and his supporters was prevention rather than reformation,<sup>106</sup> a major difference of approach which had significant implications for developments in Scotland.

In spite of the differences between jurisdictions religious philanthropists eagerly exchanged new ideas about juvenile justice reform. As well as being strongly influenced by developments in Scotland Carpenter looked to international developments for inspiration. As a Unitarian she had close links with religious groups in New England and was aware of new initiatives being tested there.<sup>107</sup> But the experiment which has been credited as exerting more influence than any other over the English reformatory movement was Mettray near Tours in France<sup>108</sup> and there is evidence that this was also a development of which Scottish reformers were aware.<sup>109</sup> Mettray was founded in 1840 by Frederic Auguste Demetz who

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<sup>101</sup> Carpenter, M.(1851) *Reformatory Schools: For the Children of the Perishing and Dangerous Classes and for Juvenile Offenders* , Gilpin, London. Pages 73 and 74.

<sup>102</sup> *ibid.*

<sup>103</sup> *ibid.*

<sup>104</sup> Carpenter, Mary (1851). Chapter IV of this book entitled ‘Industrial Feeding Schools’ describes Watson’s Aberdeen system in glowing terms. In her 1853 book *Juvenile Delinquents – their Conditions and Treatment* (p.42) she also quotes liberally from a work by another Scottish reformer and judge, Sheriff Barclay. (Barclay (1848)).

<sup>105</sup> See Watson’s evidence to 1884 Report of the Commissioners on Reformatories and Industrial Schools [C.3876] [C.3876-I], p. 413 discussed in chapter three of thesis.

<sup>106</sup> See Watson (1851); Guthrie (1847).

<sup>107</sup> Manton, J.(1976).

<sup>108</sup> Radzinowicz and Hood (1986),169.

<sup>109</sup> Thomson, A. (1852) ‘*Social Evils, Their causes and Cure*’,p. 112. This refers to the Code Penal, lib.ii c.1. sec.66 : ‘That if the accused be under sixteen years of age, and if it be decided that he has acted without discernment, he shall be acquitted; but he shall be, according to circumstances, either sent to his parents, or to a house of correction, to be there educated and detained during such number of years as the judge shall fix, and

himself had been on a fact finding mission to Quaker and Methodist run institutions for young offenders in the US four years before this<sup>110</sup> so it is clear that there were channels of influence flowing in many directions.

In stressing the importance of establishments based on a family type of structure in her proposals for dealing with children who had offended, Mary Carpenter was seeking to emulate the success of Mettray in France and similarly run institutions elsewhere in mainland Europe such as the Rauhe Haus near Hamburg. These were agricultural colonies run along family lines by religiously motivated philanthropists. These schools flourished in France, Germany, Belgium and the Netherlands, a European phenomenon fostered by a cross border network of philanthropy which focused on ideas for responding to problem children.<sup>111</sup>

In allying herself with the regime at Mettray Mary Carpenter was forging links with a wholly new concept of dealing with young offenders. In *Discipline and Punish* Foucault is unequivocal about the importance of Mettray:

‘.....it is the disciplinary form at its most extreme, the model in which are concentrated all the coercive technologies of behaviour. In it were to be found ‘cloister, prison, school, regiment.’<sup>112</sup>

The institution at Mettray was based on a highly disciplined and regulated model where the inmates were divided into family type groups which were structured in a hierarchical manner. Inmates were subjected to a regime of close inspection, education, and agricultural work, and motivated by a system of rewards and punishments and rigid order where the most minor offences were disciplined as a means of preventing more serious misconduct. The main form of punishment imposed was isolation in the inmate’s cell where the defining motto of the institution was written on the wall: ‘God sees you’.<sup>113</sup> This was designed to

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which shall in no case exceed the time when he shall have completed his twentieth year.’ Thomson states that this principle worked well at the *Colonie Agricole* at Mettray and other houses of correction in France and though not all aspects of the French system were suitable for Scotland or England the general idea should be adapted ‘in a way suited to our manners and institutions.’ (p. 113).

<sup>110</sup> See obituary of Demetz in *Reformatory and Refuge Journal* for January 1874, p.145: this explains that he had been influenced by the agricultural colonies in France and Belgium such as the Rauhe Haus and in 1836 had visited establishments in the US set up by Quakers and Methodists before returning to France to found Mettray. On the influence of Mettray in the US see Schlossman, (1995).

<sup>111</sup> Dekker, J. (2001) *The Will to Change the Child: Re-education Homes for Children at Risk in Nineteenth Century Western Europe*.

<sup>112</sup> Foucault (1977), 293.

<sup>113</sup> Ibid, p. 294.

encourage moral introspection and examination of conscience, a confessional approach and a powerful inducement to reform. Foucault saw Mettray as the precursor of the disciplinary technologies of the future.

Visits to Mettray by English philanthropists, including Matthew Davenport Hill, convinced them of the merits of the regime which claimed a spectacularly high rate of success in reforming its inmates.<sup>114</sup> In 1849 the Philanthropic Society established an institution modelled on Mettray on a farm at Red Hill, Surrey; young offenders were sent to Red Hill when they had received a pardon from the courts as a condition of which they were detained in the reformatory instead of being sent to prison.<sup>115</sup> The success claimed for the venture motivated the philanthropists to campaign for legislation to set up reformatories on a formal basis. This reflected a pattern occurring elsewhere in Europe as philanthropists in other countries pressed for legislation as a result of which state subsidised institutions for children were created.<sup>116</sup> According to Radzinowicz and Hood the English reformatory legislation ‘was a significant recognition that philanthropic initiative needed the backing of the criminal law.’<sup>117</sup> But for the Scottish reformers the backing of the criminal law came with a hefty price tag. In the next chapter we shall see that Scottish philanthropists seeking to set up the pre-statutory system of day industrial schools on a more secure footing campaigned for legislative action alongside those involved in the English reformatory movement. This was to have unforeseen consequences for the Scottish system where the welfare-based ethos was very far removed from that of Mettray’s disciplinary ideal: they could not have known that under the constraints imposed by a national framework of legislation Scotland would soon have a Mettray of its own only a stone’s throw from the Scottish capital.<sup>118</sup> As will be discussed further in chapter three Wellington Reformatory Farm School near Edinburgh was in many ways the Scottish incarnation of Mettray. The Inspector of reformatory and industrial schools, Sydney Turner, noted the resemblance to Red Hill in Surrey where he had been instrumental in creating the English adaptation of Mettray.<sup>119</sup> Like Red Hill, Wellington’s architecture was based on a number of pavilion type buildings each designed to house a small number of boys in family style units.

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<sup>114</sup> Driver, F. (1990) ‘Discipline without Frontiers? Representations of the Mettray Reformatory Colony in Britain, 1840-1880’; Dekker, J. (2001)

<sup>115</sup> See Hornby, F.V. (1897) *The Reformatory and Industrial Schools Acts*, Eyre and Spottiswoode, London, page iii.

<sup>116</sup> Dekker (2001).

<sup>117</sup> Radzinowicz and Hood (1986), 161.

<sup>118</sup> See chapter three for discussion of the Scottish Mettray, Wellington Reformatory Farm School, Leadburn, near Edinburgh.

<sup>119</sup> See Section 3.1 of thesis. Turner referred to Wellington as the ‘Scottish Red Hill.’

One of the most interesting aspects of this analysis of the religious view of childhood is that it has been possible to identify and isolate some of the essential components which fused together to create a definitive stage in the recognition of children as distinct from adults in the processes of criminal justice, the development of the reformatory system. Studying extracts from the writings of the evangelical philanthropists to uncover the constructions of childhood to which they adhered, has revealed a cluster of cultural assumptions. The reformers did not limit themselves to one narrow religious construction of childhood; unconsciously or otherwise, they subsumed ideas from Rousseau, the Romantics and the Bible as well as predominant cultural notions like the Victorian domestic ideal of childhood as part of the bourgeois family. Their visions of childhood attached themselves to the epitome of Foucauldian coercive technology and, with missionary zeal, English reformers sought to transplant a version of this new disciplinary ideal to native soil.<sup>120</sup> Of course it has to be said that Foucault's interpretation is not one that the evangelical reformers themselves would ever have remotely recognised as having any merit, guided as they were by their unwavering, well intentioned certainty in the power of their particularly active and muscular form of Christianity.<sup>121</sup> And it could well be the case that Foucault's argument overstated the coercive nature of Mettray.<sup>122</sup> But the important point to be emphasised here is that the formalisation of diversionary practices in legislation marked a critical turning point in the culture of criminal justice as applied to children. Despite the many problems that the legislative framework was to create for Scottish children in particular, on one level this was at least a positive acknowledgement of the wisdom of Rousseau's insight, enshrined parliamentarily, that a child was a child.

### *(1) Evangelicals, juvenile justice reform and social control*

So far this account has concentrated on a cultural perspective of events. Of course it has to be conceded that the perspective offered by Aries and Elias can be criticised for a cultural focus which pays insufficient attention to economic determinants and the demands of the

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<sup>120</sup> In *Discipline and Punish* (p.293) Foucault uses the phrase 'coercive technologies of behaviour' to describe oppressive, interventionist systems which use excessive and rigid regimes of surveillance and order to impose control and discipline. Such systems are to be found within what he terms the carceral continuum which extends across a range of institutional forms such as schools, hospitals, clinics, military organisations and of course penal institutions like juvenile detention centres or prisons.

<sup>121</sup> R. R. Follett (2001) *Evangelicalism, Penal Theory and the Politics of Criminal Law Reform in England, 1808-1830*, Palgrave.

<sup>122</sup> See Dekker, J. (2001). This book argues that Foucault's ideas on Mettray were too coloured by the account of Mettray given to Foucault by the author Jean Genet who described Mettray as he experienced it in the 1920s when it was beset by scandal, not as it was in its early days when it was a 'pedagogical mecca' where discipline was seen as having a positive role in education. (p. 62).

expanding capitalist economy. From the Marxist viewpoint seemingly benign, humanitarian, civilising advances promoting the welfare of children can be seen as masking a strategy of social control which, according to this understanding, provided universal education for the masses simply to produce docile and malleable citizens well imbued with a disciplinary work ethic which would further the needs of the growing economy.<sup>123</sup> Similar arguments about an insidious agenda of extending social control aimed at preserving social order and maintaining the dominant power of the ruling class have been made about the early nineteenth century humanitarian efforts to reform the criminal justice system.<sup>124</sup>

However, in a study of evangelicals and their influence on penal reform in the early nineteenth century Richard Follett points out that there was nothing covert about the aims of the humanitarian reformers.<sup>125</sup> Follett examines the role of the parliamentary evangelicals active in penal reform, particularly those associated with Wilberforce – known as ‘the Saints’- whose very active brand of optimistic faith led them to press for changes in the criminal justice system. He describes the role of Thomas Buxton who was inspired to campaign for penal reform after witnessing the plight of children incarcerated in Newgate Prison, some of whom were imprisoned for capital offences. As will be seen later, Buxton did much to highlight the problems of street children in pioneering a criminological investigation into juvenile criminality. Follett argues that these humanitarian, evangelical reformers were quite open about wishing to preserve the existing social hierarchy. They saw nothing wrong in that; they did not set out to overthrow what they regarded as the natural order in which they assumed a comfortable position themselves: they simply wished to make things better, and they did.<sup>126</sup> Follett puts it extremely well:

‘The accusation, vulgar or scholarly, that early nineteenth century humanitarianism was only a mask for social control would have been incomprehensible to Wilberforce, Romilly or Buxton. ....They believed in social order, and they believed that laws exist to protect that order; they also believed that some laws are better than others.’<sup>127</sup>

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<sup>123</sup> See Althusser, L. (1971) ‘Ideology and Ideological State Apparatuses’ in *Lenin and Philosophy*.

<sup>124</sup> See Ignatieff, M.(1978) *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850*. London, Penguin; Emsley, C. (2005).

<sup>125</sup> Follett (2001).

<sup>126</sup> *ibid.*

<sup>127</sup> *ibid.*, p. 108.

While not acceding to the Radzinowicz view of the steady progress of humanitarian reform and taking note of the counter arguments, Follett is struck by the potency, efficacy and genuine altruistic motivation of these parliamentary evangelical reformers. He cautions against the structuralist temptation to succumb to the 'politicisation of all relationships in society' and notes a revisiting of the social control debate by Michael Ignatieff in the light of the recognition that accounts too directed towards seeing penal reforms as the reproduction of power relations were missing an essential human component.<sup>128</sup> The point here is that while humanitarian reformers may, from an objective standpoint and with the benefit of Marxist insights, not have been entirely selfless, in that they could be regarded as having contributed to the reproduction of power relations by supporting the existing social order and to that extent endeavoured to keep everyone in their rightful place, that is certainly not how they would have seen it. As far as they were concerned they were simply seeking, as Buxton put it, 'to assist in checking and diminishing crime and its consequent misery.'<sup>129</sup>

#### **1.4.5 Ideas put into practice**

The civilising, humanitarian narrative with its emphasis on the need to protect the vulnerable, innocent child was a key element in underpinning the idea that the brutalising effects of work were incompatible with the new vision of childhood, and that children should be liberated from the burdens of the wage-earning. This represented a major change in perception. At the end of the eighteenth century and well into the nineteenth century there had been a cultural expectation that the children of the poor would help contribute to the family income. Indeed children were a significant element of the workforce and the rapidly expanding economy made full use of cheap child labour. The historian E.P. Thompson states that, 'there was a drastic increase in the intensity of exploitation of child labour between 1780 and 1840'.<sup>130</sup>

Children were employed from an early age in a variety of different areas such as mines, factories, domestic cottage industries and as chimney sweeps. They worked hard for long hours, often in dangerous conditions. The pillow lace industry employed children as young as three or four to handle bobbins. During the course of the nineteenth century a number of

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<sup>128</sup> See Ignatieff, M.(1978) 'State, Civil Society and Total Institutions: A Critique of Recent Social Histories of Punishment' in Cohen and Scull, *Social Control and the State*.

<sup>129</sup> Follett (2001), p.viii.

<sup>130</sup> Thompson, E.P. (1991) *The Making of the English Working Class*, Penguin p366.



commissions were set up to investigate the employment of children and gradually statutory restrictions were introduced. For example, under The Factory Act 1819 no child under the age of nine was to be employed in cotton mills and The Factory Act of 1833 extended the restrictions to other types of factories and imposed a requirement of a minimum of two hours schooling a day for children aged nine to thirteen. By the time of The Factory Act of 1878 the minimum age of employment was raised to fourteen. The changes did not meet with universal approval. They met with resentment not just from employers but from some parents too who saw nothing wrong with the existing practices and were anxious not to lose the income provided by the labour of their offspring. The cultural resistance to change was also bolstered by reluctance to interfere with the presumption that parents could determine for themselves how their children would be brought up. However, the growing recognition of the need for the statutory protection of children in the area of employment did reflect a gradual sensitising of public opinion to the rights of children accompanied by increasing awareness of the special vulnerability of children.

Hand in hand with the new statutory protection of children in the workplace came the development of the principle of education as a universal and compulsory requirement for all children. The introduction of mass compulsory education with the Education Acts of the 1870s set the seal on the new vision of childhood.<sup>131</sup> From then on the legal requirement to attend school imposed a new daily discipline and order on childhood, creating a wholly new idea of a 'national', regulated childhood for all which, at least conceptually, was envisaged as encompassing children throughout all of society, regardless of location or class.<sup>132</sup> This new conception of a dependent childhood which eschewed the concept of the child as wage earner was fostered by the Romantic vision.

However this vision of universal full time education was compromised for many children, especially in the textile manufacturing areas, by a practice known as the half-time system which continued to operate after the Education Acts of the 1870s. This led to some children entering half-time employment after the age of ten. They attended school for half the day and worked in mills for the other half, which was exhausting for the children concerned: as Brian Simon argues, 'on any human grounds the system was indefensible', and, as Simon

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<sup>131</sup> In Scotland compulsory education was introduced by the Education (Scotland) Act 1872, 35 & 36 Vict., c.62; the English equivalent was the Elementary Education Act (1870) 33 & 34 Vict., c.75.

<sup>132</sup> H. Hendrick (1997), p.31; B. Simon (1965) *Education and the Labour Movement*, Lawrence & Wishart, London; H. Hendrick, (2003) *Child Welfare*, Bristol, Policy Press; H. Hendrick (1997) *Children, Childhood and English Society*, CUP.

shows, it was a cause taken up by the growing socialist movement.<sup>133</sup> Clearly the new education system had its shortcomings. Idealised visions certainly did not translate into a new utopia for children, and as both Aries and Foucault emphasise, the regime of the school opened the way for a whole new world of disciplinary initiatives governing children's lives. Thus the undoubted progression represented by education had its inevitable downside - the civilising aspect and the less wholesome arguably, decivilising, aspect. Nevertheless the advent of mass compulsory education was one aspect of a seismic change of attitude which had its counterpart across the whole of children's lives, including how they were perceived within the criminal justice system.

And in the secluded domain of the home, according to Aries in his discussion of the changing ideas about childhood over the centuries, the child had become by the nineteenth century and up to the present time, the focus of the private world of the family.<sup>134</sup> The child had become clearly distinguished sartorially in terms of separate dress for children, and in terms of educational provision with the entry into the adult world now deferred until the proper period of education had been completed. There were now children's games and pastimes and a whole new literature specially catering for children.<sup>135</sup> The child was now a child.

This was a recognisably modern notion of childhood and it was sanctified by the bourgeois Victorian idealisation of the family. However, the idealisation did not reflect the reality of life for many children, especially the children of the urban poor who were the children most likely to come to the attention of the criminal justice system.

## **1.5 THE CHILD IN THE CRIMINAL JUSTICE SYSTEM**

### **1.5.1 The young offender**

As has become evident, the new more modern ideas of childhood were critical in forming the idea of the child as distinct from adults. Progressive, humanitarian trends emanating from the worlds of literature, evangelical action and politics combined forces to protect the

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<sup>133</sup> B. Simon (1965), p.139. Simon shows that the half time system originated from the Factory Acts and he argues that the even after the introduction of the Education Act 1870 both the Factory Acts and the education legislation operated together to create a level of confusion about requirements surrounding compulsory schooling. He describes how the Social Democratic Federation opposed the half-time system.

<sup>134</sup> Aries (1962).

<sup>135</sup> From the late eighteenth century books specially written for children began to appear. Before this time there was no concept of a secular literature for children: the only books written for children prior to this time were religious catechisms. See Cunningham (1995).

vulnerable and innocent child in the workplace and redefine the school as the proper locus for childhood. However, in this section it will be shown that at the same time as the civilising narrative was beginning to see the need in the criminal justice system for separate institutions for young offenders, decivilising impulses were operating perversely in another direction to mobilise the might of criminal justice agencies to deal oppressively with children of the urban poor who were perceived as young offenders posing a real threat to social order.

The growing cultural awareness of the distinctness of children generally and in the criminal justice system in particular was inextricably linked to the development of the concept of the young offender. With the institution of the reformatory system came official recognition that the young offender was a separate category of ‘criminal’, and that a different type of treatment was therefore called for. But what exactly was a young offender in nineteenth century terms and how did the young offender come to be recognised as a different sort of criminal? This raises the question of what was perceived as offending behaviour by children. It also raises some terminological issues about how offending children were referred to. The term *juvenile delinquent* was in use throughout the nineteenth century. Its use can be seen in the name of the early nineteenth century *Society for Investigating the Causes of the Alarming Increase of Juvenile Delinquency in the Metropolis* and was used in the society’s Report of 1816 into juvenile delinquency.<sup>136</sup> It was also used in the middle of the century by Mary Carpenter in her treatise of 1853, *Juvenile Delinquents – their Conditions and Treatment*.<sup>137</sup> Although the description was in common use throughout the nineteenth century, scholars point to the term having developed a different connotation by the late nineteenth and early twentieth century, a meaning which had more in common with some contemporary interpretations of delinquency.<sup>138</sup> For instance, Hendrick argues that before the 1880s juvenile delinquency was a concept that was understood to apply exclusively to children of the impoverished classes but new ideas about the psychology of adolescence towards the end of the century heralded a change in ideas about delinquency which came to

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<sup>136</sup> Pinchbeck and Hewitt (1973), 434.

<sup>137</sup> Section 1.4.4.

<sup>138</sup> King, P.(1998) ‘The Rise of Juvenile Delinquency In England, 1780-1840 in 160’*Past and Present*; Margarey, S. (1987) ‘*The invention of juvenile delinquency in early nineteenth century England*’; May, M.,(1973) ‘Innocence and Experience; the evolution of the concept of juvenile delinquency in the mid nineteenth century’ in *Victorian Studies*, Vol 17; Gillis, J. R.(1975) ‘The Evolution of Juvenile Delinquency in England 1890-1914 in 67 *Past and Present*.

be seen as being related to age and psychology rather than purely associated with economic and social factors.<sup>139</sup>

In this analysis the less censorious term *young offender* has been used to describe the children convicted of criminal activity in the nineteenth century.<sup>140</sup> This term is more appropriate than describing such children as juvenile delinquents, not just because this avoids any terminological confusion related to period, but because closer analysis of the kind of conduct that was considered ‘criminal’ activity by children reveals that the use of a term denoting censure is far from warranted: in the main the children regarded as criminals were destitute, abandoned street children whose ‘crimes’ represented a struggle to survive.

How did young offenders come to be regarded as an identifiable group? Growing awareness of young offenders as an identifiable and particularly troublesome social problem was evident from the second decade of the nineteenth century. Peter King states:

‘What was novel in the 1810s was the way that broader socio-political anxieties, reforming agendas, philanthropic energies and changing attitudes to childhood focused on, and helped to create, a new set of discourses about the ‘alarming increase’ of juvenile offenders in urban areas.’<sup>141</sup>

This interpretation points to changing social and economic factors in a period of intense industrialisation which led to large numbers of children being forced to live on the streets. King argues that there was a new ‘desire to discipline rather than ignore juvenile offenders’ which marked a change from the traditional diversionary practices with regard to offending children. He states that this was related to changes in criminal justice administration meaning that fewer capital sentences were carried out. The moves ‘towards indicting young offenders and then having them tried summarily....were both reacting to, and fuelling a new set of discourses.’<sup>142</sup>

This reactionary response to young offenders occurred at a time of intense sensitivity to the dangers posed by urban unrest in the aftermath of the French Revolution. In a classic example of competing narratives, this perception of the young offender as a threat was

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<sup>139</sup> The impact of new scientific knowledge is discussed in chapter four.

<sup>140</sup> Except where quoting from other writers, or discussing concepts of juvenile delinquency.

<sup>141</sup> See King, P.(1998) ‘The Rise of Juvenile Delinquency In England, 1780-1840’, p. 165.

<sup>142</sup> *ibid.*

countered to a degree by humanitarian, philanthropic attempts to help the vulnerable children of the streets and to attempt to understand what was causing them to offend. Motivated by the same brand of ‘active’, muscular religious passion as those instrumental in the reformatory campaign, evangelical philanthropists expressed their desire to assist these children by carrying out the first systematic attempt to analyse the cause of juvenile crime: in 1816 the Society for Investigating the Causes of the Alarming Increase of Juvenile Delinquency in the Metropolis, including Thomas Buxton, the brother in law of the prison reformer, Elizabeth Fry, and the Quaker Peter Bedford, who came to be known as the ‘Spitalfields Philanthropist’, conducted an innovative questionnaire-based inquiry into the extent and causes of juvenile criminality in London.<sup>143</sup> When this pioneering criminological study was completed, one of Bedford’s friends wrote:

‘The results of all these researches were truly awful to contemplate, and presented a record of temptation, ignorance and destitution sufficient to account for almost any extent of vice and crime, indeed far more than was actually committed, though this was a frightful amount.’<sup>144</sup>

The Report contained typical life stories of young offenders, speaking volumes about the problems faced by destitute and desperate children.<sup>145</sup> The descriptions given indicated that the problem of juvenile criminality was to a large degree associated with profound social problems of deprivation, abandonment and neglect which meant that ‘commission of crime’ was an integral part of a terrible struggle for survival for many children. The Report concluded that the most important causes of delinquency were parental neglect, lack of education, unemployment, gambling, irreverence, the inadequacy of policing – essentially corruption- and the severity of the criminal law.<sup>146</sup> The effect of the Report was to provide inspiration for humanitarian attempts to set up voluntary institutions aimed at the reformation, and not simply the punishment, of juvenile offenders, and also to encourage efforts to bring about legal change. This new focus on the ‘problem’ and causes of youthful offending and the appearance of new discourses about the subject, referred to by Peter King, brought recognition of young offenders as belonging to a distinct group, which was a

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<sup>143</sup>Follett (2001).

<sup>144</sup> William Tallack, *Peter Bedford, the Spitalfields Philanthropist*, 1816, quoted in Pinchbeck and Hewitt (1973), p. 434.

<sup>145</sup> *Report of the Committee of the Society for Investigating the Causes of the Alarming Increase of Juvenile Delinquency in the Metropolis*. See Pinchbeck and Hewitt, supra.

<sup>146</sup> Pinchbeck and Hewitt (1973), 435.

necessary precursor to the differentiation of children from adults in the criminal justice system.

Contributions by other scholars discuss the continuing development of the recognition of the young offender as a specific category throughout the first half of the nineteenth century.<sup>147</sup> For instance, May notes the importance of the confused use made of statistics about purported rises in juvenile crime and the outcomes of a number of unofficial investigations into the causes of juvenile crime in the 1830s and 1840s. These factors highlighted the awareness of the young offender as a distinct group. She comments that the middle class investigators like lawyers and ministers who conducted the inquiries into the conditions of juvenile crime were shocked by their discoveries which ‘violated their images of childhood’.<sup>148</sup> The evidence was mounting that a new cultural configuration was taking place in which constructions of the child as innocent and vulnerable were disturbingly at odds with the reality of life for impoverished street children.

### **1.5.2 Juvenile delinquency**

One of the most interesting interpretations of the perception of the young offender is offered by Susan Margarey in her article entitled ‘The Invention of Juvenile Delinquency in Early Nineteenth Century England’<sup>149</sup> which presents an argument that can be interpreted as illustrating a clear example of the decivilising impact of criminal justice practices in criminalising children. As the title suggests, she argues that the ‘problem’ of the young offender was constructed in the early nineteenth century by a combination of changes in legislation and the policing of the young which acted together to criminalise children.<sup>150</sup> She cites as important instances of legislative change two measures introduced during Peel’s reforming era as part of a scheme to modernise the criminal justice system. The Vagrancy

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<sup>147</sup> Shore, H. (2002) ‘Reforming the juvenile: Gender, justice and the child criminal in nineteenth century England.’

<sup>148</sup> May, M. (1973) *Innocence and Experience; the evolution of the concept of juvenile delinquency in the mid nineteenth century* p.104.

<sup>149</sup> Margarey (1978).

<sup>150</sup> For an American take on the notion that the problem of juvenile crime was fabricated into existence see Platt, A. (2002) ‘The triumph of benevolence: the origins of the juvenile justice system in the United States’ in J. Muncie, G. Hughes and E. McLaughlin (eds) *Youth Justice; Critical Readings* (originally published in R. Quinney(ed) *Criminal Justice in America*, Boston, Little Brown & Co 1974); see too Platt, A. (1977) *The Child Savers: The Invention of Delinquency*, Chicago University Press.

Act of 1824 created the offence of being ‘a suspected person or reputed thief’<sup>151</sup> and designated as ‘rogues and vagabonds’<sup>152</sup> those found betting in the street. Susan Margarey points out that this may have been directed at particular problems caused by identifiable groups causing a nuisance such as ‘Bouncers and Besters’<sup>153</sup> but the effect it had in practice was to extend the boundaries of what was recognised as criminal conduct to include innocent games of marbles or pitch and toss by children playing in the street for small amounts of money, or even just buttons.<sup>154</sup> The Malicious Trespass Act of 1827 also operated to criminalise children: the Act amended existing legislation so as to remove the harsh penalty of possible transportation for entering an orchard or garden and stealing produce like trees and plants, but it also made it an offence to damage fruit growing in a garden or orchard. This meant that children picking apples from a tree overhanging a garden wall were criminalised.<sup>155</sup> In these early nineteenth century examples the criminalisation of children turned out to be almost an incidental feature of the legislation. The statutory provisions were not concerned with children in particular but their implementation by the agencies of criminal justice impacted heavily on children in criminalising behaviour by them which was perceived to be a nuisance.

Margarey also notes the effect of the introduction of the ‘new police’<sup>156</sup> on the increase in the number of children being arrested:

‘Both of the Metropolitan Police Acts made a wholesale onslaught on the leisure occupations of the poor and labouring classes. They also made London street children particularly susceptible to arrest.’<sup>157</sup>

She comments that the methods adopted by the police also acted to the disadvantage of children: there is evidence that policing of children was carried out particularly vigorously because police presenting cases in court could incur costs if there was no conviction and they were more likely to succeed against children. Margarey’s argument suggests that the concept of the young offender was effectively created by the unintended consequences of legislative action which were then compounded by the practices of the new police. As will

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<sup>151</sup> Margarey (1978).

<sup>152</sup> *ibid.*

<sup>153</sup> *ibid.*

<sup>154</sup> *ibid.*

<sup>155</sup> *ibid.*

<sup>156</sup> *ibid.*

<sup>157</sup> *ibid.*, p.118.

be seen in the next chapter Margarey's interpretation has striking parallels with developments taking place in Scotland in the same period: the combination of the development of urban policing, the expansion of summary procedure and the impact of new criminal prohibitions on children's activities on the streets all operated together to criminalise Scottish children in a blend of factors which strongly resonated with the situation in Metropolitan London described by Margarey.<sup>158</sup>

By the latter part of the nineteenth century, it is commonly argued, the idea of the young offender altered with the advancement of yet another conceptualisation of childhood, the scientific construction which was born with the advent of new psychological understandings of the nature of adolescence.<sup>159</sup> According to Gillis this meant that,

‘A stage of life, adolescence, had replaced station in life, class, as the perceived cause of misbehaviour.’<sup>160</sup>

Gillis talks of the ‘discovery’ and ‘invention’ of adolescence as this stage of life became subject to closer scrutiny.<sup>161</sup> However, it is important to point out that, while it is true that new scientific ideas about young offenders were widely circulated, there was also considerable resistance to certain strands of new scientific thought about the causes of juvenile criminality, as will be discussed in chapter four. But despite this, the late nineteenth century scientific focus on the child was certainly influential. This concentration on childhood was accentuated by the introduction of mass compulsory schooling. Education for all made childhood a matter of regulation and discipline for all. Childhood was investigated as never before. Hendrick notes that the medical profession, along with social scientists and voluntary workers, seized on the school population as an object of study; he argues that by the 1890s ‘the child’ had been discovered’, a discovery which encompassed both physical

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<sup>158</sup> See chapter two.

<sup>159</sup> Wiener, M.J. (1990) *Reconstructing the Criminal*.

<sup>160</sup> Gillis, J.R. (1975) *The Evolution of Juvenile Delinquency in England, 1890-1914, Past and Present*, 67, at p.96.

<sup>161</sup> Gillis, J.R. *Boys will be Boys: Discovery of Adolescence, 1870-1900*, p95; Blanch, M. (2007) ‘Imperialism, Nationalism and Organised Youth’ in J. Clarke et al *Working Class Culture; Studies in History and Theory*, London, Routledge; The Gladstone Report described offenders under the age of twenty one as ‘plastic’ and particularly amenable to external influences. In their view young offenders in their late teens were in danger of becoming habitual criminals if not subjected to reformatory treatment. The 1890s also saw the development of child psychology which defined adolescence as an ‘almost autonomous stage of life.’ Wiener, M. (1990) *Reconstructing the Criminal*.



and psychological understandings.<sup>162</sup> This scientific dimension offered a new level of awareness, a new perspective on notions of childhood; this complemented the already recognisably modern concept of childhood which was described by Aries, and which had emerged in the course of the civilising process. This had been invested with a new emotional intensity by a powerful blend of cultural influences including literature and religion. All in all there was no longer any room for doubt that ‘a child was a child’ and it was only a matter of time before this undisputed recognition became embodied in criminal justice terms in the shape of a court designated specially for the young, the juvenile court.<sup>163</sup>

## 1.6 CONCLUSION

The question posed at the beginning of the chapter was how the fuller recognition of the special status of young offenders emerged in the course of the nineteenth century. By the end of the century children were dealt with in separate institutions, the reformatory and industrial schools, and the new juvenile court had been established. As has become apparent, the new modern ideas of childhood were seminal. They created the image of the child as a distinct being, different from adults and not just a smaller version of adults: the child was innocent, vulnerable and in need of protection. This image was fostered by a new cultural configuration across the fields of literature, religion and political action inspired by civilising, humanitarian impulses which culminated in a new awakening of the public conscience. There was a heightened sensitivity to the special position of children which emphasised the wrongness of children being imprisoned with adults. It stressed the need to expedite their passage through the criminal justice process. In line with the new appreciation of the child’s vulnerability and impressionability there were moves to extend the use of summary procedure for young offenders in order to process their cases quickly and avoid periods of remand where they were likely to be contaminated by contact with adult prisoners.<sup>164</sup> On the other hand, there were more *regressive* (to borrow Elias’s terminology) impulses in evidence which viewed children of the streets as a threat to social stability which had to be dealt with by means of oppressive criminal justice practices, thus effectively

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<sup>162</sup> Hendrick, H. (2003), *Child Welfare*, p.23 Hendrick; H. (1994) *Child Welfare: England 1872-1989*. London. Routledge; Garland (1985); Gillis, J.R. (1974) *Youth and History*.

<sup>163</sup> Introduced by The Children Act 1908.

<sup>164</sup> Shore, H. (2002) ‘Reforming the juvenile: Gender, justice and the child criminal in nineteenth century England.’ Shore notes the effect of the Juvenile Offenders Act 1847 in extending the use of summary procedure for young offenders, arguing that summary procedure was widely used in relation to young offenders long before this. See chapter two of thesis for discussion of effect of summary procedure in Scotland.

criminalising large numbers of children.<sup>165</sup> This tension between differing perspectives is one which is evident throughout the nineteenth century.

A significant conclusion to be drawn from this chapter is the importance of a framework for analysing criminalisation of children. As will become clear in subsequent chapters there were certain key elements consistently operating in criminalisation, including the role played by criminal justice actors such as the police or the judiciary. This point is underlined by Lacey's and Ashworth's recognition that while formal legislation may be the first stage, the practical impact of formal criminalisation is felt in its enforcement by criminal justice agencies.<sup>166</sup> How children were policed is one of the key elements in studying criminalisation. It was the way in which legislative change was implemented by vigorous policing practices which led to large numbers of children being ushered into the criminal justice process in early nineteenth century London and also in Scotland, as will be seen in the next chapter.<sup>167</sup> This was at a time, as today, when there was a 'moral panic' about juvenile crime.<sup>168</sup> A similar pattern of over enthusiastic policing in response to public concern about offending has also been detected in the closing decades of the nineteenth century, when it has been argued there was more robust policing of boisterous behaviour on the streets, and a move away from dealing informally with minor misconduct to prosecution.<sup>169</sup> And this is a pattern which has contemporary parallels too.<sup>170</sup> As will become clear in the following chapters, many issues which are a focus of concern for present day juvenile justice have well established historical antecedents.

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<sup>165</sup> See Jonathan Fletcher (1997) *Violence and Civilisation*, Polity, p.166. See also Elias's essay written in 1996 entitled 'The Germans' where he describes the holocaust as 'a throwback to barbarism and savagery of earlier ages'(p.302) and 'one of the deepest regressions (my emphasis) to barbarism of the twentieth century'(p.308).(Quoted in Fletcher at p.180).

<sup>166</sup> See Section 1.2.

<sup>167</sup> Margarey (1978).

<sup>168</sup> Shore (2002).

<sup>169</sup> Gillis (1975).

<sup>170</sup> 'Government "criminalising young"' at [www.bbc.co.uk/1/hi/uk/7580285.stm](http://www.bbc.co.uk/1/hi/uk/7580285.stm), referring to a Report by Rod Morgan, 'Summary justice: fast –but fair?'(2008, Centre for Crime and Justice Studies, King's College, London). This argued that, 'there is too ready criminalisation of children and young people for minor offences.' See also front page article of *The Times* on 9<sup>th</sup> June 2008 entitled 'Law creates underclass of child criminals'. The piece commented on the Report of the four UK Children's Commissioners to the UN ([www.sccyp.org.uk](http://www.sccyp.org.uk)) which criticised the 'vilification of teenagers as yobs.' It quoted evidence from the Report that despite a fall in the number of crimes committed by children between 2002 and 2006 convictions increased by twenty six per cent: it said that 'in the past misdemeanours were dealt with by cautions; the trend is now for the police to bring charges.'

Analysing the part played by the judiciary is vital too. This involves considering not only the traditional role of judges in sentencing and the imposition of punishment; it also entails examining their activities on a political level in bringing about change in ways of dealing with young offenders. Policing and judicial activity have to be considered in conjunction with other crucial issues such as how children were subjected to criminal procedure. Another key factor to examine is how they were affected by changes in legislation, particularly the legislation on industrial and reformatory schools, or the new criminal prohibitions designed to maintain order in expanding towns and cities. These key elements in the criminalisation of children in nineteenth century Scotland are explored in the following chapters.

## CHAPTER TWO

### CRIMINALISATION OF CHILDREN IN SCOTLAND 1840-1860

#### 2.1 INTRODUCTION

The aim of this chapter is to examine the criminalisation of children in Scotland in the period 1840 – 1860. In the course of these decades there were some remarkable developments in approaches to juvenile offending which were to have far-reaching consequences for children throughout the course of the nineteenth century. If one year out of these twenty were to be selected as the most significant, the one which in many senses marked a watershed, it would be 1854. This was the year that saw the introduction of two important statutes which represented the foundation of a whole body of legislation governing certified reformatory and industrial and schools in Scotland.<sup>1</sup> This was the statutory framework defining the parliamentary response to ‘criminal and destitute children’.<sup>2</sup> For ease of analysis this discussion will adopt the terms ‘pre-statutory system’ to refer to the years prior to 1854, before the introduction of the legislation, and ‘statutory system’ to refer to the post legislative situation in 1854 and thereafter. The chapter explores the various strands of the pre-statutory system. It then tracks developments through to the early stages of the statutory system.

It is important to recognise that new approaches to juvenile crime occurred in the wider context of seminal changes taking place in the administration of justice in Scotland, such as the development of policing and the expanding use of summary process in the courts. These changes were accompanied by a major increase in the criminalisation of children. There is evidence that with the introduction of regular urban police in Scottish cities there was more vigorous policing which brought more children within the ambit of the criminal justice system and that the availability of summary processes then accelerated their progress

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<sup>1</sup> The Reformatory Schools (Scotland) Act 1854 (17 & 18 Vict., c.72-74) also known as Dunlop’s Act; The Youthful Offenders Act 1854 (17 & 18 Vict., c.86).

<sup>2</sup> 1852 Report from the Select Committee on Criminal and Destitute Juveniles (Paper 515, Volume V11); 1852-53 Report from the Select Committee on Criminal and Destitute Children, (Paper 674, Volume XX111).

through it, drawing them deeper into the criminal justice net.<sup>3</sup> These issues are discussed in section 2.2, the first substantive section of this chapter, which looks at the background to reform in Scotland of the 1840s.

Still in the pre- statutory period, section 2.3 considers the effect of new schemes being adopted in Scottish cities to try a fresh approach to the problems posed by juvenile crime, looking in particular at the systems operating in the 1840s in Glasgow, Aberdeen and Edinburgh. These systems emerged as a result of local, philanthropically inspired initiatives, the most notable example of which was a scheme of industrial schools set up by Sheriff William Watson in Aberdeen. His vision was particularly influential in inspiring reform initiatives throughout Scotland and indeed across the whole of the UK, but other Scottish cities had their own unique ways of responding to the pressures of coping with the problems of nineteenth century urban youth.

By the early 1850s there was a growing demand for legislative action to put industrial schools on a statutory footing and to empower magistrates to have the legal authority to compel children to attend industrial schools under court order. This campaign for legislation occurred within the context of an impetus for reform on the issue of juvenile offenders gathering momentum south of the border, and against a wider backdrop of parallel developments occurring in other jurisdictions.<sup>4</sup> Section 2.4 of the chapter examines the impetus for reform which ushered in the statutory system. It considers the role of the Scottish reformers William Watson, Alexander Thomson and Thomas Guthrie and their interaction with reformers in England such as Mary Carpenter; and it looks at the emergence of the legislation. The final section of the chapter examines the early years of the statutory system. This incorporates a case study of a test case under the new legislation, the first High Court case in Scotland under the Reformatory Schools Scotland Act of 1854 with a discussion of its significance.

As the argument unfolds it will be seen that much of the history of criminalisation of children in nineteenth century Scotland is a story of diversionary tactics, of new methods

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<sup>3</sup> In relation to policing, see the comments of Sheriff William Watson recorded in his autobiography, discussed at p. 30 of this chapter. (Watson, W., *My Life*, Volume II, Chapter entitled 1830-40 of a handwritten, unpublished manuscript. This is in the form of a journal written over a number of years and is kept in Aberdeen City Library.)

<sup>4</sup> Rothman (1971); Rothman (1980); Fletcher, Joseph (1852) 'Statistics of the Farm School System of the Continent, and of Its Applicability to the Preventive and Reformatory Education of Pauper and Criminal Children in England', *Journal of the Statistical Society of London*, Vol. 15, No. 1.

deflecting children to some degree from the arena of criminal justice processes applied to adults. For example, in Glasgow in the 1840s a system of pre-trial diversion for juveniles was developed in which a child charged with an offence could opt to become an inmate of a House of Refuge rather than proceed to trial. The same period also saw Scottish magistrates sending children appearing before them directly to the emerging network of industrial schools instead of to prison. In some cases magistrates simply dismissed children appearing before the courts on a first offence to the care of parents or guardians with a caution. For many magistrates there was growing feeling of dissatisfaction with the use of imprisonment in dealing with juvenile offenders. Not only did it expose children to adverse influences, it was a hopeless deterrent and a spell in prison branded a child for life, making it difficult to secure employment in the future. Many magistrates were also well aware of the absurdity of imprisoning young children for minor offences like begging or trivial theft when they were utterly destitute and the commission of these offences was their only means of survival.

As fuller recognition of the special status and vulnerability of young offenders emerged in the course of the century diversionary methods were used to create systems consistent with the new awareness of the special position of children. There were moves to extend the use of summary procedure for young offenders in order to process their cases quickly and avoid periods of remand where they were likely to be contaminated by contact with adult prisoners. This was a reflection of the new appreciation of the child's vulnerability and impressionability. As argued in the previous chapter, this heightened sensitivity to the plight of children incarcerated along with adults was inspired to a large extent by civilising, humanitarian impulses, all part of a new awakening of the public conscience. This fostered the recognition of the special position of children in the criminal justice process as well as other areas of life, highlighting their vulnerability to the excesses of exploitation in the labour market and also the need to introduce measures to protect them from the relentless demands of economic expansion.

Unfortunately, this diversionary route in the sphere of criminal justice led to an unexpected destination. The argument being advanced here is that diversion may have seemed to be a benign, civilising child-friendly approach but this approach had unintended, arguably decivilising, consequences which saw more and more children drawn into the criminal justice net.<sup>5</sup> This is what happened with the development of summary procedure. This is also

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<sup>5</sup> The allusion to the civilising/decivilising debate refers to the argument developed in the previous chapter. See Elias (1994).

what ultimately happened with the creation of the statutory system certifying separate establishments for young offenders and those regarded as in danger of becoming offenders, as large numbers of children came to be detained in reformatory and industrial schools, institutions which were penal in nature.<sup>6</sup> In many ways this can be seen as a tale of good intentions turning out badly at the end of the day. Reading the original ideas of those who were the architects of reform leaves little room for doubt that they were motivated by the highest of humanitarian principles, and there was without doubt much to admire in the Scottish pre-statutory system they developed. William Watson in particular laboured tirelessly to improve the position of the most disadvantaged of children, those destitute and vagrant children who were the ones most likely to find themselves before the courts. Sadly, to a large degree the statutory system which evolved from 1854 onwards departed significantly from the ideals of the reformers, creating a framework which was often oppressive for the children it was designed to help.<sup>7</sup> The change in the character of the system did not happen overnight. It was not even fully evident by 1860, the end point of the present chapter, for reasons which will be discussed. However, as subsequent chapters will reveal, over the course of time there was a marked change in ethos.

Setting the analysis in context, it is important to note that much of the chapter concerns responses to minor offences committed by children. In general most of the crime committed by children was of a fairly trivial nature, often petty thefts. Of course there were instances of more serious offending by children. The first part of the chapter refers to some cases in the 1840s involving more grave offences coming before the High Court of Justiciary for which the penalty of transportation was imposed. By the early 1850s transportation had more or less been abandoned as a punishment and even in the most serious cases judicial execution of juveniles was not in practice carried out.<sup>8</sup> However imprisonment of children was

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<sup>6</sup> Linda Mahood in her book on the history of prostitution (*The Magdalenes* (1990), London, Routledge) identifies a similar expansion in the nineteenth century female penitentiary movement. She argues that this is similar to the expansion discussed by Stanley Cohen in *Visions of Social Control* ( (1985), Cambridge, Polity) which analysed the widening reach of the criminal justice system in the 1970s when paradoxically the 'community control movement' sought to decrease the role of 'formal deviancy control systems'. (p.159) See too Cohen and Scull, (eds.) (1983) *Social Control and the State*, Oxford, Blackwell.

<sup>7</sup> For an analysis of the gulf between the idealism of social reformers and the practical outcomes of their efforts see Rothman (1971) and Rothman (1980).

<sup>8</sup> With regard to transportation Clive Emsley's (2005) *Crime and Society in England, 1750-1900* (Pearson Longman) states that there was a 'virtual end' to transportation in the early 1850s, and that it was abolished as a judicial sentence in 1857 (p.280). The last recorded case of a juvenile offender being executed in Britain was that of a boy of fourteen executed at Maidstone on 1<sup>st</sup> August 1831. See Wilson, P. (1973) *Children who Kill*, London, Michael Joseph. However it was not until s101 of The Children Act 1908, 8 Edw. 7 c. 67 that penal servitude and the death sentence in relation to children and young people were finally abolished by statute.

commonplace and continued to be used as a punishment throughout the century. When certified reformatory schools for convicted juvenile offenders came into being, the legislation required that admission to the schools be preceded by a minimum period of prior imprisonment, initially of fourteen days (although this was not the case for industrial schools, as will be explained later).<sup>9</sup> The legislation empowered judges to send convicted children to the reformatories, but sentences solely involving imprisonment remained an option for judges and continued to be used as did other forms of punishment such as whipping or the imposition of fines.

In most cases children who came to the attention of the criminal justice system did so because of minor misconduct and following the introduction of the statutory system very many of these children found themselves detained in institutions. But, although it is true that nearly all of the children in reformatories were there for fairly minor matters, it would be a mistake to assume that the statutory reformatory system was only reserved for minor offenders. In Scotland there were cases where children who had committed theft by housebreaking, regarded as a serious crime, were sentenced to five years in a reformatory.<sup>10</sup> (Five years was the standard period of committal to reformatories, even for trivial thefts.<sup>11</sup>) And in England in 1861 two young children found guilty of manslaughter were sentenced to a month's imprisonment followed by five years in a reformatory school. This was the case of two eight year olds, Peter Barratt and James Bradley where a two year old boy, George Burgess, was killed.<sup>12</sup>

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<sup>9</sup> Under the pre-statutory system in Scottish industrial schools the destitute and the offending children had been mixed. This continued to be the case in the first two years of the statutory system in Scotland after which a dichotomy emerged between the industrial school for the vagrant, destitute children who were not charged with an offence and the reformatory for the convicted juvenile offender. This is explained fully in the course of the chapter.

<sup>10</sup> *HMA v Beattie & Kelly* (1868) 1 Coup 1- the case of a thirteen year old boy, James Kelly, convicted of theft by housebreaking and opening lockfast places who was sentenced to five years in a reformatory. Under the pre statutory system in the 1840s children who committed this offence were sometimes transported. See *HMA v Mary Ann O'Brien, Agnes Wallace and Janet McNaught*, Brown's Justiciary Reports 2 1844-45, 499.

<sup>11</sup> See the records relating to Wellington Reformatory Farm School at Leadburn, near Edinburgh from 1860 onwards (Edinburgh City Archives).

<sup>12</sup> Commentators have noted strong parallels between this case and the modern case of the killing of James Bulger. See McDiarmid, Claire (2007) *Childhood and Crime*, Dundee University Press at p37. Rowbotham, J. et al (2003) 'Children of Misfortune: Parallels in the Cases of Child Murderers Thompson and Venables, Barratt and Bradley', *The Howard Journal* Vol 42 No 2. Barratt and Bradley were tried for murder at Chester Assizes. According to Wilson's book (1973) it took the jury only fifteen minutes to find both guilty of manslaughter. Sentencing the boys the judge said: 'You will be sent to a reformatory where you will be taken care of. You will thus be removed from your bad companions in Stockport. You will be taught better things



Much of the material in the later section of the chapter on the statutory system involves discussion of the initial pieces of legislation relating to reformatory and industrial schools in Scotland. There is remarkably little previous work on this legislation and that which exists does not address the subject from a legal point of view.<sup>13</sup> This has presented many challenges. This is complicated by the fact that one of the first major pieces of legislation introduced in Scotland in 1854 applied only to Scotland, while the other 1854 Act applied across the UK, meaning that in Scotland both Acts applied but in England only one of the Acts applied.<sup>14</sup> There were teething problems with the setting up of the statutory system, and later amending legislation applying across the UK was introduced, followed by an Act applying to England only.<sup>15</sup> All this is immensely complex to map out, absorb and then explain. It is further complicated by the fact that although some of the legislation applied across the UK, there were considerable differences in the pre-statutory situation in Scotland and England. Scotland had a pre-existing network of well established day industrial feeding schools which was not the case in England, yet a national inspectorate was set up to oversee both Scotland and England, resulting in pressure to fit the operations in both countries into the same mould. In essence Scotland and England were approaching the problem from

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and have a chance of becoming better boys. If you behave yourselves there, the government might dismiss you before the full period of the sentence I am about to pass expires.’ (p.80).

In Wilson’s book (1973) there are accounts based on journalistic reporting of a number of cases where children are accused of killing. There are no Scottish cases recorded in this book but it does give details of a handful of English cases in the mid to late nineteenth century including the Barratt and Bradley case. Most of these resulted in acquittal with one or two exceptions. In 1850 fourteen year old Alfred Dancy was found guilty of manslaughter and sentenced to ten years transportation. One from 1855 concerned two nine year olds found guilty of manslaughter of a seven year old boy. They were given a twelve month prison sentence. There is also a case from 1881 which resulted in conviction, that of fourteen year old Margaret Messenger who was found guilty of the murder of a six month old baby. This was a capital offence but her sentence was commuted to penal servitude for life. Wilson states that she was probably the last person under sixteen to receive a capital sentence in Britain. (p.90).

<sup>13</sup>See Ralston, A. (1988) ‘The Development of Reformatory and Industrial Schools in Scotland, 1832-1872’ 8 *Scottish and Economic Social History* 40.) This fairly short article gives an overview of the system from the viewpoint of the historian without detailed reference to the statutory provisions and no reference to their application by the courts. There is also an article by Clark (Clark, E. A. G. (1977) “The Superiority of the ‘Scotch System’: Scottish Ragged Schools and their Influence 9 *Scottish Educational Studies* 29 ). This discusses some aspects of the pre-statutory schools from the educationalist’s point of view.

<sup>14</sup> The Reformatory Schools (Scotland) Act 1854, Dunlop’s Act applied to Scotland only; The Youthful Offenders Act 1854 was applicable across the UK.

<sup>15</sup> The 1856 statute, ‘An Act to amend the mode of committing Criminal and Vagrant Children to Reformatory and Industrial Schools’(19 & 20 Vict., c.109), applied throughout the U.K.; The Industrial Schools Act 1857 (20 & 21 Vict., c. 48) applied only to England.

different starting positions and this caused considerable confusion which was reflected in a legislative morass. As was explained in the introduction, the appendix to the thesis attempts to clarify the main provisions of the early statutes, and there is also a glossary of terms which are unfamiliar to the modern reader.

## **2.2 THE PRE- STATUTORY SYSTEM: THE SCOTTISH SYSTEM IN THE 1840s**

According to one historian 'life in Scotland in the 1840s was competitive, unprotected, brutal and, for many, vile.'<sup>16</sup> Faced with the problems associated with rapid industrialisation and population growth, Scottish cities were an inhospitable and dangerous environment for the children of the urban poor. New building required for industrial development had displaced many families, forcing them to move from areas formerly lived in by the poor to already overcrowded areas where conditions were often appalling. A contemporary source commented on the situation in Glasgow in 1848:

'Take, for instance, Glasgow, the second city of the Empire; in the alleys of which leading out of the High Street, the houses of the Calton, the closes and wynds which lie between Trongate and Bridgegate, and the Saltmarket, there will be found a motley population which derives its entire subsistence from plunder or prostitution. In every variety of form misery, crime, disease and filth exist here. In the houses dirt, damp, and decay reign triumphant.'<sup>17</sup>

Apart from the squalor and disease, the writer also recorded the plight of many children who were orphaned, abandoned or driven from homes where they were unwanted. Such children were forced by poverty to beg or steal to survive. The situation in Edinburgh was similar. Testifying to a whole range of social problems facing the poor, Thomas Guthrie said that many children were encouraged to steal by their parents and that the sight of children begging on the streets was common.<sup>18</sup> Vagrancy was an immense problem both in cities and in rural areas. Giving evidence to a parliamentary committee on the subject of Criminal and Destitute Children, Guthrie described the transient population of juvenile vagrants as 'the waifs' who in his view formed the basis of the 'large mass of criminals'<sup>19</sup>. Sheriff Watson in

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<sup>16</sup> Smout, T. C. (1997) *A Century of the Scottish People 1830-1950*, Fontana Press, London. P31.

<sup>17</sup> Article entitled 'Juvenile Criminal' (1848) *North British Review* 10 p.6.

<sup>18</sup> Guthrie, T. (1847) *Plea for ragged schools, or, prevention better than cure*.

<sup>19</sup> 1852-53 Report from the Select Committee on Criminal and Destitute Children, p.31. Guthrie also added that the social problems were exacerbated by the large increase in population caused by the influx of destitute Irish immigrants.

Aberdeen also had much to say on the subject of juvenile vagrancy which he too saw as the avenue to a life of crime.<sup>20</sup> With problems of this magnitude it is not surprising that many children came to the attention of the courts.

We can gain a very good impression of how the courts dealt with juvenile offenders by examining evidence provided to the 1847 *Select Committee of the House of Lords to inquire into the execution of the criminal law especially respecting juvenile offenders and transportation*.<sup>21</sup> This is a very significant source of information containing evidence from a number of Scottish judges including the two most senior Senators of the College of Justice, the Lord Justice General, Lord Boyle, the Lord Justice Clerk, Lord Hope, several other High Court judges and a Sheriff from Perth with details of their perception of the criminal justice system as applied to young offenders. The initial part of the chapter draws on this Report as one important source for examining the position of children within the criminal justice system in Scotland in the 1840s. The accounts provided by the judges are particularly interesting in their references to the new system in operation in Glasgow which is described in more detail later in the chapter, but their references to the Glasgow initiative were set within the context of more general responses to questions posed about the effectiveness of the Scottish courts in dealing with young offenders.

Answering a question about instances of ‘boys of fifteen and under’ appearing before the High Court either in Edinburgh or on circuit, the judges said that these cases usually concerned children who had repeatedly appeared before the inferior courts and had a long record of previous convictions.<sup>22</sup> They indicated that cases before the High Court involving first offences were rare, only occurring where the young person had been acting with older people or where the offence was of an ‘aggravated nature.’<sup>23</sup> The Lord Justice Clerk explained the significance of the role of the public prosecutor in Scotland in deciding the appropriate forum for trial.

‘Juvenile offenders are seldom brought before the High Court for a first offence, very rarely indeed. The system of a Public Prosecutor secures the appropriate

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<sup>20</sup> Watson states that vagrancy was a huge problem and rural police were established in almost all counties to ‘repress bands of vagrants.’ Watson, William *Chapters on Ragged and Industrial Schools* (Edinburgh and London, 1872), p.8.

<sup>21</sup> Parliamentary Papers (Paper 447, Volume V11). The evidence of the Scottish judges appears in the Appendix to Minutes of Evidence.

<sup>22</sup> Although the question refers to boys, the individual responses given by judges refer to girls too.

<sup>23</sup> Lord Moncrieff at p.104. Lord Mackenzie gave as examples of aggravated offences those involving stabbing.

selection of the proper tribunal. Hence, except in some rare cases where the Lord Advocate or his Deputies have had sufficient ground for such a decision the juvenile offenders are all tried in the first instance *summarily*, either in a Police Court or before the Sheriff, without juries, the greatest length of imprisonment being sixty days, and then are directed to be tried on after offences before the Sheriff and a jury when longer imprisonments are pronounced.<sup>24</sup>

In those cases where young offenders were convicted before the High Court he explained that they were normally sentenced to long periods of imprisonment, noting that transportation was reserved for ‘a very bad case.’<sup>25</sup> He argued that the system of imprisonment had ‘wholly failed’ to ‘reclaim’ young offenders:

‘The *short* imprisonment to which such offenders are subjected on summary convictions in police courts or before the Sheriffs generally produce no other effect than to *render them utterly indifferent to that punishment*, especially as the separate system in many places cannot be acted upon in regard to them.’<sup>26</sup> We have seen cases of lads of sixteen or seventeen who from the age of ten or twelve or upwards have been six, eight or ten times convicted, sometimes tried before the Sheriff and a jury, and sentenced to long imprisonments in which the separate system was acted upon; but returning *undeterred and unreformed*. But I ascribe the failure as to boys very much as to the evils of association with bad companions during the short imprisonments to which they are at first subjected, and to the impossibility of making any impression on them during, say, forty or sixty days.’<sup>27</sup> (All emphasis in original text).

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<sup>24</sup> At page 66.

<sup>25</sup> He quoted the example of a recent case of a fourteen year old boy sentenced by the High Court of Justiciary to transportation. The boy had been imprisoned for a ‘bad theft’ for eighteen months ‘and ‘yet after liberation was again found making use of younger boys and committing a theft from a shop with great cunning’. Page 63. Lord Mackenzie (p.85) talked of sentences of imprisonment imposed by the High Court as always being accompanied by labour and says that sentences of transportation are usually for seven years.

<sup>26</sup> The separate system of imprisonment involved keeping prisoners apart in individual cells. This method of detention was being promoted as the ideal by the Lord Justice Clerk and he said that it was widely used in Scotland for those serving long sentences where prison facilities were large enough to allow this, though this was less likely to be the case for those serving short sentences. See Cameron, J. (1983) *Prisons and Punishment in Scotland*, Canongate, Edinburgh; *The Oxford History of the Prison*, (1995).eds Morris, N. and Rothman, D., Oxford.

<sup>27</sup> Page 65.

He recommended a programme of prison expansion in the larger cities to enable the separate system of detention to be fully implemented so that young offenders would be detained in individual cells thereby removing them from contamination and giving them the opportunity to take advantage of 'admirable instruction, strict discipline and useful labour.'<sup>28</sup> He praised the governor of Aberdeen gaol for having effected the separate system in his prison even for short sentences.

Reviewing the changes which had occurred over his career which had included spells as an Advocate Depute and as Solicitor General, he alluded to a very significant statute also discussed by some of the other judges, an Act introduced by a Lord Advocate named Sir William Rae in 1828.<sup>29</sup> This Act allowed Sheriffs to try summarily, subject to review by the High Court, any cases which the public prosecutor did not consider suitable for the High Court. He attributed to this statute a decrease in the numbers of boys and girls appearing before the High Court. However, he complained about young offenders being 'tried too often in that summary form,' resulting in them becoming hardened by repeated short prison sentences and ending up as 'incorrigible' by the time they came to be sentenced to long periods of imprisonment.<sup>30</sup> He also noted that since 1830 the numbers of young offenders under the age of fifteen had greatly increased throughout the country, even becoming common in small towns which were never before troubled by juvenile crime.

This perception of rising levels of juvenile crime is indicative of the less than salutary outcome in practice of a measure which in theory should have ameliorated the position of children in the criminal justice system. The use of summary jurisdiction for young offenders

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<sup>28</sup> Page 65.

<sup>29</sup> 9 Geo. IV cap.29. The Act also applied to lower courts such as burgh and JP courts and after 1833 became applicable to some police courts. See chapter three of Farmer, L. (1997) *Criminal law, tradition and legal order: crime and the genius of Scots law*, p.76 which quotes s.19 of the Act allowing inferior courts "to try offences 'in the easiest and most expeditious manner' where the libel concluded for punishment not exceeding £10 or sixty days imprisonment. The libel was to be in the form of a short complaint (Schedule C), procedure was greatly simplified and requirements for the written recording of evidence were relaxed in order to speed up the procedure.' P.76.

<sup>30</sup> Page 64. Similarly, the Lord Justice General spoke of summary powers 'connected with the establishment and practice of police courts under local acts in which summary convictions are authorised for offences which are commonly visited with short imprisonments and generally limited to a period not exceeding sixty days.' (Page 57). Chapter three of Farmer 1997 discusses the development of summary process under a number of Police Acts. In practice the various forms of summary process were similar and under an Act of 1833 (3 and 4 Wm. IV c. 46 ss. 134, 136) police courts could use the forms of the 1828 Act. By later general Police Acts of 1850 (13 and 14 Vict. c.33) and 1862 (25 and 26 Vict. c.101) all cases before police courts were to use summary process which meant cases were presented on complaint without written pleadings and with such rules of procedure as deemed appropriate and on the approval of senior judges (p.77).

was intended to deal swiftly with their cases thus eliminating the contaminating effect of spending long periods in prison awaiting trial. However here we see that while children were processed more quickly, the effect was like that of a revolving door where they were repeatedly being given short prison sentences, acquiring a long record of previous convictions and then appearing in a higher court under solemn procedure to be given long sentences or sometimes even transported to a convict colony. The extension of summary procedure churned young offenders through at a faster rate producing seasoned child convicts more efficiently than ever before. It is likely too that under summary procedure there was more readiness to prosecute trivial matters: while the scarcity of records means that it is difficult to substantiate this proposition with statistical evidence the likelihood of a trend in this direction is supported by research carried out on parallel developments in England. The work of Peter King in relation to summary procedure in early nineteenth century England demonstrates that the availability of a quicker form of process was associated with increased willingness to prosecute minor offences.<sup>31</sup> Clive Emsley makes a similar point with regard to a perceived increase in criminal statistics for convictions in some English courts after legislation widening the use of summary processes there. He argues that: 'This seems best understood not as an increase in crime *per se*, but as an increase in prosecutions before summary courts which were greatly facilitated by the legislation.'<sup>32</sup> In Scotland there is clear evidence to show that children appeared before the courts much more frequently than before. This created the illusion of an increase in juvenile crime. For example, the 1843 Report by the Governor of Aberdeen prison discussed the causes of an increase in commitments of boys under the age of twelve and was unequivocal about the impact of the extensive use of summary procedure.

'Many causes may be assigned for this increase of juvenile delinquency, as the dissipation of parents, the want of proper guardians, fondness for theatrical exhibitions; but I fear there is another cause operating gradually, surely, in extending the evil and that is the repeatedly trying of young persons for offences before the

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<sup>31</sup> King (1998), 165 talks of this development being responsible for 'reacting to, and fuelling a new set of discourses' about offending by young people.

<sup>32</sup> Emsley (2005), 29. The legislation referred to here is the Juvenile Offenders Act 1847, Juvenile Offenders Act 1855 and the 1855 Criminal Justice Act.

inferior courts, where the magistrates cannot sentence to a longer imprisonment than 60 days.’<sup>33</sup>

However, the judiciary were strongly convinced of the advantages of summary procedure and presented it as a model to be emulated in less well developed jurisdictions - by which they meant England. Like the Lord Justice Clerk, the other Scottish judges were able to answer a general question posed on the role of summary procedure for juveniles by responding that it was a well established feature of practice in Scotland. Clearly of the opinion that Scottish criminal procedure was far in advance of English practice in this respect, Lord Cockburn commented:

‘Our Scotch Magistrates possess and constantly exercise a power of summary convictions; Sheriffs in particular are quite familiar with it; and the jurisdiction is so useful that we can scarcely comprehend a system where it does not exist.’<sup>34</sup>

The Scottish judges were keen to promote the virtues of Scots Law and this was not the only example of barbed comments being made at the expense of the English. For instance on the question of the type of labour carried out by prisoners, the Lord Justice Clerk pointedly commented that in Scottish prisons there was no time for the notion of ‘*hard* labour’: on the contrary, only ‘*useful* labour’ was permitted in Scottish prisons.<sup>35</sup> This rather scathing attitude toward the English system seems to have been current in Scottish legal circles.<sup>36</sup> In

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<sup>33</sup> Watson (1877), 37. ‘The Governor recorded: ‘It will be seen that three fifths of the increase of male commitments occurred amongst boys not exceeding twelve years of age, - a period of life when very few are permitted to be employed....The effect of these sentences is not to reform the prisoner ( for that system of discipline would indeed be excellent which would make a moral change in ten, twenty or sixty days), but to familiarise them to imprisonment and render a long sentence, when it did overtake them , of little avail.’ Watson also quoted the prison Governor on the case of a boy of eleven who between 24<sup>th</sup> April 1840 and 18<sup>th</sup> Sept 1843 was ‘five times in prison for theft-the last for fourteen days and once for vagrancy for twenty days.’ P37.

<sup>34</sup> Page 94.

<sup>35</sup> Page 75. Emphasis in original text. Hard labour involved pointless and soul destroying practices such as the crank and the treadmill.(See Sean McConville’s essay on ‘The Victorian Prison’ in *The Oxford History of the Prison*, Page 132)

The Lord Justice Clerk said: ‘*Hard* labour, as different from *useful* employment we have not and cannot, by statute, have in Scotland. We have *useful* labour carried on to a great extent.’ This, he said, was productive work carried out ‘with great success’ in Scotland which defrayed the cost of keeping prisoners but still allowed time for ‘*much valuable* instruction’ (emphasis in original text). Note his stress on ‘valuable,’ no doubt highlighting the contrast with the futile activities conducted in English prisons. Despite this assertion by the Lord Justice Clerk other sources indicate that hard labour was not unknown in Scottish prisons: see comments by William Watson, section 2.3.2.

<sup>36</sup> See Farmer (1997). Chapter Two explains the context in which the claims of the superiority of Scots law occur. Scottish lawyers were concerned to underline the differentiation from English law especially in criminal matters. This was done to protect the self contained nature of Scottish criminal law, one of the key areas in

his writings, the Sheriff of Lanark, Archibald Alison, was also very concerned to convey the superior nature of Scottish legal administration.<sup>37</sup>

The Select Committee also asked if it was advisable to give powers to dismiss cases ‘with or without whipping’. In response to this most of the Scottish judges cautioned against the dangers of whipping.<sup>38</sup> Lord Cockburn remarked that it could be accompanied by ‘undetected cruelty’ or could have the effect of ‘making the culprit a greater blackguard than he was.’<sup>39</sup> On a similar note the Lord Justice Clerk remarked that whipping was not practised or recommended in Scotland.<sup>40</sup>

The evidence of Scottish judges on the usefulness of summary procedure was extremely influential in the extension of summary procedure south of the border later the same year under the 1847 *Act for the more speedy Trial and Punishment of Juvenile Offenders*.<sup>41</sup> Some commentators have argued that this Act and the later amendments of it were instrumental in the creation of a massive rise in the number of prosecutions of young people in England to the extent that there appeared to be a ‘youth crime wave’.<sup>42</sup> Arguably this theory on the

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which Scotland retained an element of national identity as well as self deliberation after the 1707 Treaty of Union.

<sup>37</sup> See Michie, M. (1997) *An enlightenment Tory in Victorian Scotland: the career of Sir Archibald Alison* (East Linton, Tuckwell Press) at page 48 where reference is made to Alison’s comments on the superiority of having a system of public prosecutors in Scotland allowing a fairer method of administering justice in his view. Alison had himself served as an Advocate Depute.

<sup>38</sup> There was some dissent on this point: the Lord Justice General, for example, thought it could be useful as a deterrence if administered with appropriate safeguards to prevent excessive cruelty. Similarly Lord Wood thought that whipping was a better punishment for juveniles than short periods of imprisonment which inevitably in his opinion had a contaminating effect and did little to reform.

<sup>39</sup> Page 94.

<sup>40</sup> At page 66 he says: ‘Whipping is not now resorted to in Scotland. To whip and dismiss the boys I believe would be utterly useless. He would be immediately surrounded by his associates, consoled with drink, and only hardened and confirmed.’

<sup>41</sup> 10 and 11 Vict., Cap. 82. Andrew Ralston states that the evidence of Scottish witnesses was ‘instrumental’ in this respect. Ralston (1988).

It should be noted too that the English Act of 1847 was to be seen in the context of a wider process of reform of already existing complicated and somewhat irregular arrangements regarding summary process. In 1848 three Acts (named after their sponsor Sir John Jervis) were introduced, (1848) 11 and 12 Vict. c. 42, 43, 44. Farmer, 1997, notes that these represented an important reform of ‘criminal process for justices acting out of sessions by attempting to collect together existing provisions on committal for trial, summons, adjudication and conviction, as well as protecting justices against litigation for acts carried out in the course of their duties.’ (at p. 78). See too Emsley (2005).

<sup>42</sup> As already noted, this statute represented an extension of summary jurisdiction rather than a complete introduction of the procedure: summary procedure had been commonly used in the prosecution of juvenile offenders in London charged with certain offences under the Metropolitan Police Acts. Heather Shore (2002) makes this point. She says that under the 1847 Act two magistrates could try summarily children up to fourteen years of age charged with ‘simple larceny’. In 1850 this use of summary procedure was further extended to apply to those under sixteen, and under The Criminal Justice Act of 1855 all ‘simple larcenies’ involving sums of up to 5s became subject to summary procedure. Barry Godfrey and Paul Lawrence also comment on the



impact of summary jurisdiction could be applied to parallel developments in Scotland from 1828 onwards as the widespread use of summary procedure ushered large numbers of children quickly through the courts and subjected them to the conveyor belt of repeated short term sentences of imprisonment. As has been noted, the Lord Justice Clerk complained of the ‘greatly increased’ numbers of juvenile offenders since 1830, which was shortly after the introduction of summary procedure under Sir William Rae’s Act in 1828. Unfortunately he did not supply statistics to support this assertion but this perception of a growth in juvenile offending appears to have been widespread.<sup>43</sup>

We can gain a clear impression of the extent of concern about the impact of summary process on young offenders from reading the letter written by William Brebner the Governor of the Glasgow Bridewell to the Lord Provost of Glasgow in 1829 advocating the setting up of an institution for young offenders, a House of Refuge, in which he complained about the pattern of repeated convictions (some for a tenth offence) for which children were committed for short periods, typically of fourteen, twenty, thirty or sixty days.<sup>44</sup> As will be discussed, the efforts to establish a House of Refuge were successful and one of its main architects was the distinguished writer on criminal law, the Sheriff of Lanark, Archibald Alison. Not long after Sir William Rae’s Act Alison wrote in 1832 in his important text *Principles and Practice of the Criminal Law of Scotland* about a ‘vast increase in juvenile delinquency.’<sup>45</sup> The establishment of summary procedure played a crucial role in the formation of this perception.

## 2.3 NEW INITIATIVES

In this section three new diversionary initiatives operating in Scottish cities in the 1840s will be discussed: the Glasgow, Aberdeen and Edinburgh systems.

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effect of the 1847 Act, noting that it resulted in ‘a huge rise in prosecutions of juveniles - a phenomenon often mistaken for evidence of a rise in juvenile crime’ and suggesting that the 1850 Act increasing the age to cover those up to sixteen exacerbated matters to the extent that there appeared to be a ‘youth crime wave.’ (Godfrey, B. and Lawrence, P. (2005) *Crime and Justice 1750-1950*, Willan Publishing, Devon at page 130).

<sup>43</sup> See too the comments by Archibald Alison referred to shortly with reference to 1832, as well as the later account given by the Governor of Aberdeen prison (section 2.3.2). The difficulty in obtaining statistics showing the exact numbers of children convicted before and after the 1828 Act is demonstrated by examining the records of prison returns in Scotland in 1830. Firstly, no distinction was made between juvenile and adult offenders; and secondly many of the Reports stated that they have not included figures for those convicted under summary process. See, for example the Report relating to the county of Elgin where the Sheriff Substitute stated that those tried and convicted summarily ‘as in a Police Court’ were excluded in the return where ‘the imprisonments rarely, if ever, exceed forty eight hours’. Prison Returns for Scotland, 1830 (Paper 459, Volume XXIV, p.25).

<sup>44</sup> Letter by William Brebner to Lord Provost of Glasgow, John Smith & Son, Glasgow, 1829. P.4.

<sup>45</sup> At Page 663.

The trend towards diversion in dealing with juvenile offenders was one which was recognised by the 1847 Select Committee: one of the questions posed to judicial witnesses was whether they had ever ‘dismissed the younger prisoners, on conviction to the care of their parents, guardians or masters on their undertaking for their good management.’<sup>46</sup> English witnesses gave evidence on new methods being tried south of the border. For example, Matthew Davenport Hill, who was prominent in the reformatory movement, spoke of his experience of using diversionary methods in his position as a judge in Birmingham where he was a Recorder. He described an experiment he had been involved in which he considered very successful. This scheme was a pioneering form of probation in which young offenders were released immediately after sentence to the care of a ‘respectable’ person, either a relative, or, more usually, the young person’s employer. The person assuming responsibility had his name entered in a register and guaranteed to supervise the young offender. A crucial part of the system was the continued involvement of the police who would carry out unannounced spot checks on the progress of the child. Asked what would happen if a child under supervision reoffended, Davenport Hill said he felt that he had to impose a very severe sentence in these cases and so he always imposed a sentence of transportation in cases of relapse. He said this system had been ongoing for six years in Birmingham, since 1841.<sup>47</sup>

Scottish witnesses also spoke of diversionary methods being tried out. For example, an Edinburgh magistrate, James Ogilvie Mack stated that in dealing with the ‘very young’ first offender in minor cases of theft ‘if the value of the goods stolen is trifling’ his practice was to ‘dismiss him with an admonition’. On the question of whether he ever dismissed children to the care of parents and guardians with a caution, he replied:

‘Yes; I ask them if they will take the children back, and I find generally the Masters are inclined to be lenient to the boys.

And thereby you avoid for those young persons the contamination of a gaol?

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<sup>46</sup> See, for example, page 57 of the Appendix to Minutes of Evidence 1847 Report.

<sup>47</sup> Page 21 of the 1847 Report. See too Radzinowicz and Hood (1986): they observe that Davenport Hill’s system has been recognised in England as an early form of probation.

Yes; I hold it to be almost ruin to send them to gaol.’<sup>48</sup>

### **2.3.1 The Glasgow system: The House of Refuge**

In responding to the same question on releasing children to the care of relatives or employers many of the Scottish High Court judges referred in their evidence to the new system being operated in Glasgow. As previously noted, the Glasgow system was an innovative development the origins of which can be traced to William Brebner’s letter to the city’s Provost in 1829.<sup>49</sup> Brebner argued that the cycle of young offenders being repeatedly admitted to the Bridewell (prison) for petty offences could be broken if there were a House of Refuge for young offenders to go to after release from prison so that they could acquire some useful skills and be helped to find a position instead of being released back onto the streets to fall into the clutches of criminal associates.<sup>50</sup> The appendix to the letter contained statements by others supporting the plea for a refuge, one of which recorded that on a recent visit to the prison the writer observed thirty four children serving sentences of imprisonment ‘for short terms mostly for petty thefts some of them very interesting and might become useful and valuable members of society if a proper place of refuge was provided.....where they would be taken care of, be well educated and taught a regular trade.’<sup>51</sup>

A House of Refuge for boys was set up in 1838 supported initially by voluntary contributions, followed by a House of Refuge for girls in 1840 which was created by building an extension to the existing Magdalene Asylum for prostitutes. The whole scheme was put on a more secure foundation in 1841 by a local Act of Parliament setting up a Board of Commissioners headed by the Sheriff of Lanark, Archibald Alison, to oversee the system; local residents were charged one penny in a pound on all rents over a certain value to raise funds to support these institutions for ‘repressing juvenile delinquency in the City of Glasgow’.<sup>52</sup> Accounts of the operation of the institutions were given in collections of annual

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<sup>48</sup> Page 382 of the 1847 Report.

<sup>49</sup> Referred to previously, p. 80 of thesis. The letter contained an appendix of letters from supporters including one from William Watson.

<sup>50</sup> Letter by William Brebner to Lord Provost of Glasgow, 1829. P.4.

<sup>51</sup> *ibid.* Letter by James Mackenzie in Appendix. P.38

<sup>52</sup> Act of 1841 for repressing juvenile delinquency in the City of Glasgow, 4 & 5 Vict., c.36.

Reports produced by the managers.<sup>53</sup> The 1841 Act set out conditions for admission to the Houses of Refuge. Section 19 provided for voluntary admission on the basis of a request made in the presence of a judicial officer such as a magistrate; and under s.20 children under the age of 12 being brought for trial could ‘with the concurrence of the Board previous to conviction’ ask to be admitted and the judge could discharge proceedings on condition that the child became an inmate for a specified period.<sup>54</sup>

In general the judges spoke approvingly of the Glasgow initiative. However, the Lord Justice Clerk described the system as being in his view ill- advised:

‘There is under a local Act for Glasgow, incautiously passed, a power to send boys, without trial to a sort of Asylum; but as the detention is not compulsory (I believe) I have never acted upon it and do not approve of the system.’<sup>55</sup>

However, the other judges who mentioned it were very enthusiastic about it, one describing it as an excellent innovation and referring to two cases in which he had applied the system. Lord Mackenzie said:

‘There is a local Act for repressing juvenile delinquency in the City of Glasgow (4<sup>th</sup> and 5<sup>th</sup> Victoriae, c.36) under which Lord Medwyn and I, on the West Circuit at Glasgow, 3<sup>rd</sup> October 1846, instead of Trial, sent upon their own prayer to the House of Refuge there three boys, one of them for three years , two others for five years. The like had been done by Lords Moncrieff and Cockburn, 26<sup>th</sup> September 1845. See Report in Brown’s Report of Cases before the High Court and Circuit Courts of Justiciary in Scotland, Vol 2<sup>nd</sup>, p499 where the Statute is fully quoted.’<sup>56</sup>

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<sup>53</sup> *The Glasgow Girls’ Reformatory or Juvenile Department of the Females’ House of Refuge from 1840-1860*, printed at the reformatory institution, Duke Street, 1860; House of Refuge for females, Parliamentary Road Glasgow (1840) John Graham, Glasgow; *Glasgow Boys’ House of Refuge Reports, 1854-60*, Glasgow.

<sup>54</sup> See Appendix for details of the provisions. It should be noted s.19 dealing with voluntary requests for admission by a child did not specify any age requirement. This section would have applied where a young person was being released from the Glasgow prison or bridewell and then sought admission to the House of Refuge. Section 20 referred to children in a pre-trial situation and only applied to children under 12.

<sup>55</sup> Select Committee Report at p. 67.

<sup>56</sup> Report at page 85. In a similar vein Lord Medwyn said that ,‘there is a local statute for juvenile offenders in Glasgow on which I have acted twice instead of trying very young boys.’ (p. 99).

Similarly, Lord Moncrieff responded to the question as to whether he had ever ‘dismissed the younger prisoners, on conviction to the care of their parents, guardians or masters on their undertaking for their good management’ by saying:

‘If the public prosecutor insist for judgment we can scarcely dispense with it. In some instances of very young offenders, of which I have a note, the Advocate Depute has declined to move for sentence, and then the prisoner has been discharged, and committed to his parents or guardians. But it is to be observed that in a great proportion of such cases the child has either *no* parents or parents of such depraved characters that no good can be expected to him from them. In *several* cases noted by me in 1843 and 1845, the court, sitting at Glasgow, did, in virtue of a statute, with the consent of the prosecutor and the prisoner by his counsel, and with the concurrence of one of the directors of the institution, instead of making any conviction or sentence, pronounce an Order for his reception into the Glasgow House of Refuge, which we know to be an excellent and successful institution.’<sup>57</sup>

The 1845 case of *HMA v Mary Ann O’Brien, Agnes Wallace and Janet McNaught* referred to by Lord Mackenzie illustrated this system in operation.<sup>58</sup> It concerned three young girls charged with breaking into a house at Sauchiehall Street owned by a book-keeper, Andrew Carrick, and stealing various items of jewellery belonging to his wife, a gold mounted item set with pearls and a pair of gold ear-rings, as well as a gold breast pin, a large knife and a razor owned by Carrick. One of the girls, Mary Ann O’Brien, had a previous conviction for theft. All three girls pled not guilty. The Report records that proof was led and that once the Advocate Depute had closed his proof ‘by reading the declaration of the pannels, and having restricted the pains of the law to an arbitrary punishment’, Agnes and Janet ‘by their counsel and with the concurrence of the Board of Commissioners, severally prayed, in respect of their youth to be admitted inmates into the House of Refuge for females in the City of Glasgow, instead of abiding the issue of their trial.’ Under the Act of 1841 the proceedings were discharged against Agnes and Janet on condition that Agnes became an inmate of the House of refuge for three years and that Janet became an inmate for five years. Mary Ann

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<sup>57</sup> Emphasis in original text. Report at p. 105

<sup>58</sup> Brown’s Justiciary Reports 2 1844-45, 499.

was less fortunate. Lord Cockburn summed up the evidence and the jury found her guilty as libelled. She was sentenced to transportation for a period of ten years.

In the Select Committee Report Lord Moncrieff was the judge who had most to say in praise of the House of Refuge, referring to its capacity for reforming young offenders. Discussing a decline in numbers of young offenders under the age of fifteen appearing before him on his High Court circuits in different regions in recent years, he noted that in part this was due to Sheriffs giving long sentences to previous offenders, meaning that they were beyond fifteen when they came to appear before the High Court for further offences. However he commented that he believed the principal reason for the decline in numbers appearing before the High Court in Glasgow was the existence of the House of Refuge ‘which drew a great many of those liberated from the Bridewell’.<sup>59</sup>

In the operation of this Glasgow system there was a clear articulation of formalised diversion. The system was based on a legislative foundation, a local Act of Parliament. It was for the most part endorsed by the judiciary at the highest level. It was seen as an excellent development with reformatory potential. However it could only proceed with the concurrence of the prosecutor. As Lord Moncrieff pointed out, if the prosecutor moved for sentence, the judges were compelled to deliver it.<sup>60</sup> There is a sense here that some judges would have opted in more cases for alternatives to traditional punishment if they had the freedom to do so. This feeling of being hamstrung by judicial process occurs in other writings about the views of judges of the period. For instance, discussing the development of the system in Aberdeen, Alexander Thomson talked about the magistrates often feeling despondent about having to deal with young children appearing before them and this being the motivation for their support for the experiment being tried in Aberdeen. He talked about cases which caused judges ‘extreme pain’ where mere ‘infants, were brought up on criminal

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<sup>59</sup> Report at p103. Lord Moncrieff recorded his experience as a High Court judge on circuit since 1829. He stated that in his earlier years on circuit the numbers aged under fifteen appearing before the High Court were ‘very considerable, especially at Glasgow’. He had kept a record of numbers in later years and noted that in the early 1840s the numbers were still relatively high: he said that in the Spring circuit of 1842 the number of juvenile offenders under fifteen before the High Court at Aberdeen and Perth (including Dundee) was fifteen out of one hundred and four prisoners; and in Autumn 1843 the number for Glasgow was fifteen out of one hundred and two prisoners one of whom was ‘with his own consent sent to the Glasgow House of Refuge without any verdict or sentence.’ He contrasted this figure with that for the whole eight circuits since September 1843 which he said ‘could not exceed twenty five’.

<sup>60</sup> It is worth noting that at this period the role of Advocate Depute was very elite and prominent. In fact there were only three Advocate Deputes in Scotland dealing with prosecutions in the High Court (according to Michie (1997), 45 with reference to the 1820s).

charges- the charges against them were incontestably proved – and yet, in a moral sense they could scarcely be held *guilty*’ (emphasis in original text).<sup>61</sup> In the development of new diversionary initiatives judges, especially Sheriffs, had a prominent role to play. In Glasgow Sheriff Archibald Alison was at the forefront of the moves to establish the Houses of Refuge.<sup>62</sup> In Aberdeen Sheriff William Watson was at the helm; and in the pressure to establish similar institutions in Edinburgh the names of many Sheriffs appeared in the campaign literature.<sup>63</sup>

The Houses of Refuge were Glasgow’s unique contribution to the pre- statutory system: this was the only scheme backed by local legislation and it was the only one of the new developments to deal solely with children already being processed by the criminal justice system. It was also unique in being a residential institution. In this respect and also because it dealt only with young offenders it was like the reformatories to be set up under the later statutory system. However in addition to the Houses of Refuge, Glasgow also employed another strategy in approaching children in trouble: like other Scottish towns, Glasgow also developed pre-statutory industrial schools in the 1840s which were run along the lines of William Watson’s schools in Aberdeen. As will be discussed next, these schools were primarily preventive in ethos, and were designed to stop vulnerable children becoming criminal but they also embraced children who had already offended.

### **2.3.2 The Aberdeen system: the Industrial School**

Of all the Scottish cities the one which led the way along the road to diversion was Aberdeen. Powered by the visionary religious zeal of Sheriff William Watson, the experiment establishing industrial schools came to be lauded throughout Britain as a completely novel and successful enterprise. It was viewed by reformers as a model to be adopted in other cities. When Mary Carpenter gave her evidence to the 1852 Select Committee on Criminal and Destitute Juveniles she had all the facts and figures about the success of the Aberdeen scheme at her fingertips to show what could be done to transform

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<sup>61</sup> Alexander Thomson (1852) *Social Evils, Their Causes and Cure*, J. Nisbet & Co., p.111.

<sup>62</sup> As Michael Michie’s book reveals, Alison had an interesting career as a lawyer and historian. As well as being the author of texts on criminal law he also wrote a history of the French Revolution. Although he was a High Tory and reactionary in many senses ( for example in repressing working class political demonstrations in his judicial role) he also had enlightened notions about civic duty to relieve the poor (but not to give them the vote) and the need to reform criminals. He approved of transportation and emigration as means of achieving this reform. The annual Reports of the Houses of Refuge speak of the success of their former inmates in the colonies.

<sup>63</sup> Guthrie (1847).

the lives and prospects of vagrant and destitute children either on the path to or actively engaged in crime.<sup>64</sup> Notable figures recorded as having visited the school included the author and prospective parliamentary candidate William Thackeray. He was said to have been moved to tears by the sight of the most desperately destitute of children being rescued from a life of petty pilfering and begging on the streets, and instead being fed, educated and taught a trade.<sup>65</sup> Lord Cockburn too paid a visit to the schools while on circuit in Aberdeen.<sup>66</sup> Even Charles Dickens was an ardent admirer.<sup>67</sup>

Attempting to explain the originality of the industrial school system, Watson's friend and co-reformer Alexander Thomson of Banchory said that the unique success of Watson's vision could be accounted for by the winning combination of factors which were involved in its operation.<sup>68</sup> Thomson claimed that while many other schemes had been tried elsewhere which had some of the features of the industrial school, none had possessed all of the

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<sup>64</sup> 1852 Select Committee on Criminal and Destitute Juveniles. She quoted from Watson saying: 'Perhaps I had better read it because it will sound incredible otherwise. "In 1841 there were 328 vagrants and 61 juvenile delinquents in the county of Aberdeen; in 1844 there were 345 vagrants, a larger number although the feeding school had been in operation. The compulsory action began in May 1845; in that year the number of vagrants fell from 345 to 105 and in the next year the number the number of vagrants fell from 105 to 14; in the year 1850 only two could be found throughout the country.'" Now that is proof which cannot be disputed.' (1852 Report at p.99). For more detail on the fall in the numbers of juvenile offenders committed to prison in Aberdeen see the evidence of Alexander Thomson to the same select committee at p.292 where he records the decrease from 61 children aged 12 and under committed to prison in Aberdeen in 1841 to five in 1851 (the eleventh year of operation of the schools).

<sup>65</sup> Angus, M. (1913) *Sheriff Watson of Aberdeen: the story of his life and work for the young*, Aberdeen, a biography of William Watson by his granddaughter Marion Angus.

<sup>66</sup> *ibid.* Marion Angus also mentions a visit by the publisher William Chambers in 1845. He subsequently wrote a widely disseminated article on his visit praising the success of the schools in 'extinguishing juvenile mendicancy' and preventing crime and recommending the widespread adoption of the idea in other towns. He argued that the schools were of such value to society as 'crime-preventive institutions' that they should not be dependent on charitable contributions but should be financially supported by a 'public board, drawing its revenue alike from all, and armed with legal powers'. In his view it made economic sense for society to support crime prevention efforts such as these schools but it was not purely a question of economy. There was a compelling humanitarian case to be made for the schools too. Describing the school created in the former soup kitchen, he commented: 'One could not contemplate the scene presented by the well-filled apartment without emotion. Nearly fifty human beings rescued from a life of mendicancy and crime – the town rid of a perplexing nuisance – private and public property spared – and the duties of courts of justice reduced almost to a sinecure!' See 'Visit to the Aberdeen Schools of Industry' in *Chamber's Journal* (1845) Vol. 38, 305.

<sup>67</sup> Dickens (1851), 544. See Introduction to thesis.

<sup>68</sup> Alexander Thomson (1847) *Industrial Schools: their origin, rise and progress in Aberdeen*, Aberdeen; Alexander Thomson (1852) *'Social Evils, Their causes and Cure'*, J. Nisbet & co. Thomson was a wealthy local philanthropist in Aberdeen, a magistrate and also chairman of Aberdeen county prisons board.



ingredients needed for the plan to work.<sup>69</sup> Watson himself defined the industrial school model in Aberdeen in the following way:

‘It is the place where children assemble at 7 o clock in the morning, get breakfast, dinner and supper, three hours instruction in reading, writing, arithmetic and geography and are employed five hours in useful industry, each returning to his own home at night.’<sup>70</sup>

This described the key elements of the daily routine of the schools which Watson set up with the goal of rescuing vagrant and destitute children from a life of crime. Both children who were victims of neglect and destitution and those convicted of petty offences were admissible to the schools.<sup>71</sup> The aim was to provide the children with moral, spiritual and physical sustenance, turning them into useful citizens who would be able to earn their own living. The industrial training was considered to be vital both in training the children to become industrious workers and in inducing self esteem as well as that most essential of Victorian virtues, respectability.<sup>72</sup> Providing children with respectable credentials was essential to enable them gain employment later on. Watson stressed this point in his writings, commenting that children who had been in prison were tainted by this for life and found it difficult to find work. He argued that industrial school training was a passport to social acceptance and good citizenship.<sup>73</sup> Children were employed in tasks that could be put

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<sup>69</sup> Writing in his *Chapters on Ragged and Industrial Schools* (1872), Watson (p. 6) quotes from Thomson, A. (1857) *Punishment and Prevention*, London: ‘The system of the Aberdeen schools is absolutely new. There is no one feature of the Aberdeen school which is not to be found in some other school, or poor house or hospital; but there is no other institution where the different parts are so combined into one whole. And here lies the essence of the discovery.’

<sup>70</sup> Watson (1872), 6.

<sup>71</sup> In his evidence to the 1852 Select Committee on Criminal and Destitute Juveniles, Thomson stated that the proponents of the schools did not see any distinction between the two classes of children, the convicted and the destitute, seeing them as members of the same class with the same types of problems. Thomson stated that having a criminal record was no reason not to admit a child: ‘There is no condition whatever but poverty and destitution, and neglect on the part of the parent. Criminality is no bar to admission; that is to say, having committed a petty offence, or even being known to the police as being in the habit of committing petty offences, is no bar to admission’ (p289). Thomson made clear that the primary aim was prevention, to reach the children young and stop them on the ‘highway of becoming criminals.’

<sup>72</sup> Gertrude Himmelfarb has some interesting insights into Victorians and their obsession with ‘character’/virtues/respectability. Essentially she regards ‘character’ as being a notion of particular concern to the poor for whom loss of character could mean unemployability and the spectre of poverty. Himmelfarb, G., (1995) *The De-moralization of Society: from Victorian Virtues to Modern Values*, London, IEA Health and Welfare Unit; (1984) *The Idea of Poverty*, London, Faber.

<sup>73</sup> See Watson (1872), 7 commenting on the graduate of the industrial school: ‘Look at him when he leaves the school. Healthful, active and vigorous. The food, the intellectual instruction, and industrial training have

to good effect in later life such as tailoring and shoemaking, as well as other activities such as making salmon nets for the fishermen of Aberdeen and 'picking hair for upholsterers.'<sup>74</sup>

Watson was most concerned that the children should not see themselves as the objects of charity. He wanted them to feel that they had earned the food they received by dint of their honest labour. Other essential ingredients were the values of godliness and cleanliness. Children would receive scriptural instruction and church attendance on Sunday was expected. The importance of being turned out looking as clean and tidy as resources would permit was highly stressed.<sup>75</sup> Watson's vision was fired by the idea that improving the outlook of the children and raising their hopes, expectations and values would have a highly beneficial effect on their whole families.<sup>76</sup> He strongly advocated supporting the family unit and totally disapproved of later developments under the statutory system which saw children being forcibly separated from their parents.<sup>77</sup>

Watson had been a Sheriff Substitute in Aberdeen since 1829 and had been much troubled by the 'cruel' and 'absurd' plight of young children appearing before the local courts, many of whom were aged only eight to eleven years of age but who were repeatedly being imprisoned for minor offences such as begging, breach of the peace or trivial thefts. He found this especially disturbing because 'it is known that unless by begging or stealing ninety nine in a hundred have no way of subsisting.'<sup>78</sup> Watson attributed the increasing numbers of children coming before the courts to a number of factors. One of these has been

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produced their natural results. He is strong and energetic, intelligent and truthful, diligent and skilful at work, and bearing a high premium in the labour market.'

<sup>74</sup> Thomson's evidence to the 1852 Select Committee on Criminal and Destitute Juveniles at p.289.

<sup>75</sup> In Letter to day industrial school campaigners in Glasgow dated 16<sup>th</sup> October 1874 he advised them as follows: 'The utmost care must be taken to make all the children come scrupulously clean to school - their hands and faces, and- if without shoes and stockings- their feet well washed, and their hair *bone*-combed and properly dressed. All this must be done at home, and to effect this parents should be visited and told that if they send their children to school with unwashed hands, feet or faces or uncombed hair they will be sent back to have the omission repaired. It has a good effect to invite the parents now and then to a tea party in the school to show them how their children enjoy and benefit by their school instruction.'(P.4)

<sup>76</sup>See section 1.4.2 (1) with reference to Watson quoting letter from Edinburgh minister describing the beneficial influence on poor families in Edinburgh that the industrial schools had achieved.

<sup>77</sup> Giving evidence on the system to the 1852 Select Committee on Criminal and Destitute Juveniles, Thomson (at p. 292) stated that as a matter of principle children were not lodged at the schools. Occasionally in exceptional circumstances children were lodged out with respectable local people, but not at the schools. This policy was designed both to strengthen family ties and to enable the children to cope better in later years with their natural station in life. Thomson argued that a system which removed children from their families was one where children were 'nurtured like plants in a hotbed and thereby, as I firmly believe, made quite unfit for the struggle which they often have to maintain in life.'

<sup>78</sup> Comment made in a letter to Thomson. (Quoted in biography by Marion Angus at p.59).

discussed at some length in the earlier section of the chapter: the effect of repeatedly trying juvenile offenders in inferior courts and repeatedly imposing short sentences which created an ever escalating momentum in the volume of juvenile offenders.<sup>79</sup>

The other cause he discussed was the criminalising effect of a local Police Act of 1829. This Act sanctioned the formation of a regular police force in the town of Aberdeen. It also created a number of new minor offences designed to regulate urban life and control behaviour in public spaces. This Act was a local response to the perceived need for order and civic improvement in Aberdeen which was a centre of growing population.<sup>80</sup> Watson was concerned about the creation of new offences under this legislation and the way it impacted on the poor, especially the children of the poor. His writing on this subject resonates with work done in England by Susan Margarey on the criminalising effect on the young of offences created in London under the Metropolitan Police Acts of the same era.<sup>81</sup> As noted in the previous chapter, Margarey attributes much of the blame for the ‘invention of delinquency’ to the combined effect of criminalising legislation and summary processes. Arguably this was a potent combination of factors in the criminalisation of children in Scotland too.<sup>82</sup>

Watson stated that the new offences under the local Police Act of 1829 were of a kind ‘hitherto unnoticed.’ In his view more vigorous policing by ‘the greatly increased number of policemen’ appointed under the Act contributed to many ‘men, women and children’ being brought before the courts for breach of these new prohibitions: they were then sentenced by burgh magistrates to short periods of imprisonment, filling the prisons with offenders of all ages.<sup>83</sup> He noted that the impact of this was to ‘taint the character without reforming the morals’, making it difficult to secure employment.<sup>84</sup> Amplifying on the types of offences he found objectionable, Watson commented:

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<sup>79</sup> See Watson (1877), 37, quoting from the 1843 Report by the late Governor of Aberdeen prison. Section 2.2.

<sup>80</sup> This local legislation should be seen in the context of similar legislation in other Scottish cities. David Barrie’s account of policing history in Scotland notes that ‘police legislation resulted in stricter regulation and tighter control over street behaviour and the built environment.’ He records that in Dundee in the late 1820s this included prohibitions on behaviour such as ‘leaving obstructions’ in public places, including an unattended horse and cart. See Barrie, D., (2008) *Police in the Age of Improvement*, Devon, Willan p.197.

<sup>81</sup> See Margarey (1978).

<sup>82</sup> See 1.5.2.

<sup>83</sup> See Watson’s *My Life, Volume II*, Chapter 1830-40 (unnumbered page of manuscript).

<sup>84</sup> Angus (1913), 23.

‘We call those acts injurious which are wilfully injurious to person or property. Flying a kite, throwing a snowball or sliding on the ice for which children by local police acts or provisional orders may be sent to prison, though abundantly annoying, can hardly be called crimes, and children rarely commit assault unless in fair schoolboy fight when a blue eye or bleeding nose is not reckoned of great account. The crime they are guilty of is theft, and of thefts by far the greater number are committed by juveniles either on their own account or on behalf of adults.’<sup>85</sup>

Here Watson was indicating that in his view a crime like theft committed by children might be worthy of censure; but punishing children for the breach of trivial offences created under police acts or provisional orders was unjustifiable. The extension of the criminal law in this way was a topic with which Watson was much preoccupied. In his work entitled ‘Pauperism, vagrancy, crime and industrial education in Aberdeenshire 1840-75’ he stated:

‘If it were thought desirable to pauperise and demoralise the poor, and increase the number of delinquents, no way would be more effectual than multiplying local Police Acts and Provisional Orders, raising harmless acts to penal offences punishable by fine and imprisonment.’<sup>86</sup>

While it may be stretching the point to suggest that Watson’s views indicate that he would have agreed with Margarey’s perspective on the invention of delinquency, his choice of the words here is certainly consistent with the idea that to some extent a consequence of the creation of such offences was the manufacturing of an ‘increase in the number of delinquents.’ In a passage which resonates strongly with contemporary concerns about the proliferation of criminal offences he strongly criticised the creation of a stream of seemingly arbitrary offences.<sup>87</sup> In addition to the provisions prohibiting kite flying, snowball throwing, and making or using a slide he also referred to a ban on throwing orange peel on the pavement.<sup>88</sup> All of these offences related to activities normally carried on by children as a matter of course as they played outdoors. Under this legislation the offences carried a penalty of a fine of a few shillings or a few days’ imprisonment. He noted the unfairness of these activities being ‘magnified into crimes’, commenting that often the poor and ‘ignorant’ were not aware that these offences existed until they were hauled up in front of a

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<sup>85</sup> Watson (1872), 8.

<sup>86</sup> Watson (1877), 40.

<sup>87</sup> For discussion of the current debate see Section 1.2.

<sup>88</sup> He also talks about the offence of beating a carpet after eight o’ clock in the morning – not one so obviously applicable to children!

magistrate.<sup>89</sup> He contrasted these offences with crimes like stealing, wife beating or assault, arguing that people generally had an innate awareness of the wrongfulness of these actions and were aware that they were crimes, unlike the offences created by the Police Acts and Provisional Orders which he deemed ‘an immense annoyance.’<sup>90</sup> This injustice was compounded in Watson’s view by the inconsistencies in sentencing in the justice of the peace and police courts, which he attributed to the judges in these courts not having any legal training.<sup>91</sup> This meant that offenders could face considerable penalties for infringing these new prohibitions.

Watson’s concerns about the plight of poor children impelled him to action and by 1841 he was ready to launch his scheme to attempt to allay the problems faced by the vagrant and destitute children on the streets of Aberdeen. He recorded that economic circumstances were particularly difficult for the poor in the early 1840s: in 1840 the city police had reported that two hundred and eighty children were known to them who had no means of subsistence other than begging or stealing, and the governor of the prison had noted that the yearly total of children admitted to prison had been seventy seven.<sup>92</sup> Determined to improve matters for the poorest of poor children for whom attendance at the common day school was not possible,<sup>93</sup> Watson introduced the concept of the industrial school. The scheme was initiated against the background of a range of important changes occurring during the period 1840-45 including the establishment of a prison board, a rural police force and poor law boards.<sup>94</sup>

Set up on a shoestring and entirely supported by voluntary contributions from local people, the school for boys was started on the 1st of October 1841 in a school room obtained ‘gratis

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<sup>89</sup> Watson (1877), 40.

<sup>90</sup> He says ‘most people have an instinctive or acquired knowledge’ of the ‘unlawfulness’ of crimes like stealing, wife beating and assault. (also at p40).

<sup>91</sup> Watson noted that while one judge might impose a fine of half a crown or five days imprisonment another might for the same offence impose a fine of twenty shillings or twenty days with or without hard labour. He recommended the appointment of stipendiary magistrates who were legally trained in order to achieve some certainty of outcome. Watson (1872), 40.

<sup>92</sup> Watson (1877).

<sup>93</sup> Watson records that the vagrant and destitute children were often refused admittance to the schools attended by poor children of a more respectable class because of their ragged appearance: Watson (1872). This is similar to the comment made by Charles Dickens on the origin of a special type of school, the ragged school, in England to cater for the most impoverished children: ‘They grew out of a very natural necessity. There being a large portion of the poor boys of the town so ragged and dirty, that they constituted a distinct class. Sunday and Day Schools of the humblest class were “too respectable” apparently for these youngsters, who had a raggedness and dirtiness which defied classification, and demanded an establishment of their own.’ (Dickens (1851), 544).

<sup>94</sup> An urban police force was already operating in Aberdeen but up till this point the rural areas were served only by a few Sheriffs Officers. Watson (1872), 8. See Section 2.2.

in the loft of an old house in Chrinule Lane with 5 boys brought in by police'.<sup>95</sup> This was followed by one for girls in 1843. Despite the attraction of free food it proved difficult to retain the attendance of pupils on a voluntary basis. Writings by Alexander Thomson reveal that this difficulty was overcome by an ingenious arrangement known as the Child's Asylum which he described as a 'channel of admission' to the schools.<sup>96</sup> This key component of the experiment bolstered up the weaknesses in the voluntary aspect of the enterprise considerably. The crux of this development was a committee set up to evaluate children's needs in a police-backed, community-based local crime-prevention and welfare-based initiative in which assessments of the needs of individual children were carried out by representatives of local organisations, to all intents and purposes a remarkably innovative and progressive approach.

Explaining this development, Alexander Thomson recorded that in May 1845 it was decided to use an existing local Act aimed at preventing vagrancy to extend the project to attempt to reach those children who were still begging on the streets and had not so far been enticed to attend the school with the offer of free food.<sup>97</sup> Under the authority of this Act and at the direction of magistrates the police rounded up all children found begging on the streets of Aberdeen on 19<sup>th</sup> May 1845 - 75 in all - and brought them to a soup kitchen which was to be the premises for a new school.<sup>98</sup> Thomson stated that the police were so enthusiastic about the plan that they undertook to pay the teachers' salaries for the new school for a trial

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<sup>95</sup> Watson (1877), 43.

<sup>96</sup> Alexander Thomson (1852), 111. Explaining the system to the 1852 Select Committee on Criminal and Destitute Juveniles (p288) Thomson stated that the asylum was housed in two rooms which were part of a House of Refuge. This was the venue where, as will be discussed, children picked up by the police for vagrancy or other problematic behaviour were temporarily sheltered and then had their situation considered by a committee composed of representatives from the management body of the industrial schools (many of whom were magistrates), along with town councillors, police representatives and poor law officials.

<sup>97</sup> The sources do not provide a specific reference for this Act. Thomson in his evidence to the 1852 select committee (paper 515) refers to a 'local Police Act' for 'the town of Aberdeen' under which begging was an offence.

<sup>98</sup> Thomson recorded that local judges were fully in support of Watson's ideas as they shared his disquiet about the plight of young children appearing in court. In his autobiography *My Life, Volume III* (p13) Watson noted that this new school in the former soup kitchen was set up on little more than his faith that subscriptions would be forthcoming, noting that 'the morrow will provide for itself.' He recorded the details of the first day at the school. The reluctant new arrivals were bathed and fed, and parents demanding the return of their children were told to come back to the school in the evening to collect them after supper. Despite the trials of the day, the difficulty in maintaining order with the 'wild, unruly' new recruits and the feeling that the day was 'the longest some of us had known, Watson said that he felt his 'victory complete' when next morning there was a queue of children waiting for admission.

period.<sup>99</sup> He noted that most of these children returned voluntarily to the school after the initial swoop: he explained that they were directed that they were under no compulsion to return but that under no circumstances would further instances of begging be tolerated by the police. Despite this threat it proved difficult to secure the continued attendance of all the children in the absence of official powers of compulsion.

To tackle this, in December 1846 the Child's Asylum was set up which comprised of two rooms adjoining the House of Refuge providing temporary accommodation for children picked up by the police for begging or delinquent conduct, and also a venue where their circumstances could be assessed by a Committee convened on a daily basis. The role of the Committee was to determine the appropriate course of action for each individual child. In most cases children would be considered admissible to the schools. There was, however, a concern to ensure that the charitable enterprise was not being abused and that only deserving cases were admitted. In some cases it was found on investigation into the circumstances of the children that their parents were deemed to have sufficient means to support the children properly but simply ignored their responsibilities. In these cases the children were not in the first instance admissible to the schools which were regarded as being reserved for the genuinely destitute. Instead parents were summoned and advised to discharge their duty. However, where a parent persisted in failing to care for the child and the child was again found on the streets, the welfare of the child was deemed more important than the abuse of charity and the child was admitted to one of the schools.<sup>100</sup>

The essence of the system was that police brought any children either found in a destitute condition on the streets or involved in some criminal conduct to the Child's Asylum where the Committee carried out an ad hoc appraisal. The Committee reserved the right to refer any matter involving serious misconduct to the procurator fiscal. Having decided that a child was to be admitted to one of the schools the Committee was still faced with the problem of ensuring attendance. Although there was no legal compulsion on any child to attend the industrial school it was made clear to children that failure to attend could result in their case

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<sup>99</sup> William Chambers recorded in his article on the schools that the police 'pay a male and female police officer who act as teachers' in the 'soup-kitchen school.' See 'Visit to the Aberdeen Schools of Industry' in *Chamber's Journal* (1845) Vol. 38, 306.

<sup>100</sup> Alexander Thomson (1847) *Industrial Schools: their origin, rise and progress in Aberdeen*. See too his evidence to the 1852 Select Committee on Criminal and Destitute Juveniles, Thomson (at p 305) of the 1852 Report recorded that where a parent had the means to support and educate a child but was failing in his duty to the extent that his child was found leading an 'idle and vagabond life' on the streets and brought before magistrates for this, the parent would be called for and questioned about this (although he noted that this was done 'by no process of law'.) He said this frequently awakened the parent to a sense of responsibility.

being referred to the fiscal whether on the grounds of vagrancy or any other conduct they had been involved in which constituted an offence. In summary, this approach was a form of local community initiative which evaluated children's needs and supported them with continued supervision in the shape of industrial school attendance backed up by the possible threat of criminal justice action being initiated.

Reviewing this system in 1851, Thomson said that after the first two years of successful operation of the scheme the numbers of children being referred by the police declined as there were fewer vagrant children, but the committee still continued to meet weekly to inquire into any police referred cases and also cases of destitute children on whose behalf parents applied for admission to the industrial schools. He noted that the committee was made up of three representatives from each of the following: the town council, the commissioners of police, the parochial board of St Nicholas, the parochial board of Old Machar, the House of Refuge and the joint management committee of the industrial Schools, many of whom were magistrates.<sup>101</sup>

The approach taken by Watson was enterprising, pioneering and in many respects quite audacious. In fact some of his tactics were even of doubtful legality. There was a substantial questionmark surrounding his use of the old Police Act to round up candidates for his schools. In his autobiography Watson recorded that he overcame the initial misgivings of the magistrates about the legality of the proposed procedure. He boldly answered the magistrates' question, 'Can we legally do that?'<sup>102</sup> with the confident assertion:

'Yes, there is a warrant under an Act of Parliament to apprehend beggars and I will take the responsibility of putting it into force.'<sup>103</sup>

When giving evidence to the 1852 select committee Thomson was candid in his admission that he had been asked many times about the dubious legality of this practice. He had no doubt that the steps taken in 1845 by magistrates directing the police to gather up children found on the streets were incompetent in terms of the statute they purported to derive their authority from, but in his view this did not seem to matter as it was an effective strategy. The possible illegality was overlooked by the magistrates many of whom were in fact

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<sup>101</sup> Parochial boards were responsible for administering the poor law.

<sup>102</sup> Watson, W., *My Life, Volume III*, p.13.

<sup>103</sup> *ibid.*



members of the committee of management of the industrial schools. Discussing the strategy Thomson said:

‘It is an Act for the town of Aberdeen; orders were given to the police to lay hold at once of every little begging boy and girl in the town, and upon a certain day they were all seized; they were carried to a place which had been prepared for them as a school, I may say, forcibly established; 75 were captured.

Was this done by the authority of the magistrates?:- Why, it would be difficult to say, because the question has often been put to me whether I had any doubt about the legality of the proceedings. I have not the slightest doubt that the proceeding was highly illegal, but at the same time it was highly expedient, and it has done a great deal of good; but several of the magistrates of the town gave their consent and concurrence, and , in fact, were managers of the school.’<sup>104</sup>

Clearly Watson’s position as a local Sheriff, his influence with the local judiciary and the involvement of magistrates in the administering the schools were sufficient to overcome any qualms about strict legal niceties, allowing a generous discretion to be exercised in favour of Watson’s scheme.

Watson claimed great success for his venture, crediting it with virtually eliminating juvenile vagrancy in Aberdeen.<sup>105</sup> The figures spoke for themselves, particularly after the process had tightened up after the introduction of the Child’s Asylum and its local community Committee. Describing himself as ‘The Apostle of the industrial school’ with a ‘mission to plant one in every large town,’ he sought to spread the gospel of his ideas by becoming involved in advising other towns and cities about the value of the system.<sup>106</sup> He spoke at public meetings and his expertise was called upon in practical matters. Thomson recorded the introduction of industrial schools in other Scottish towns in the course of the 1840s.<sup>107</sup>

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<sup>104</sup> 1852 Report from the Select Committee on Criminal and Destitute Juveniles, p.288.

<sup>105</sup> Watson (1851); Watson (1850); Watson (1872) Watson, W. Letter to *Glasgow Herald* dated 3<sup>rd</sup> October 1874 and also Letter to day industrial school campaigners in Glasgow dated 16<sup>th</sup> October 1874; Watson (1877); Watson, W., *My Life*.

<sup>106</sup> Watson, W., *My Life*, Volume III ( The passage from which this quote is taken is without page numbers).

<sup>107</sup> Some English towns too adopted elements of the system. Thomson (1852) talked about schools being introduced which combined food with training and teaching in the mid to late 1840s and very early 50s in Newcastle, York, Manchester, Bristol, Birmingham and London. However the provision of schools designed to

Dundee was first to adopt the idea of the industrial school. Thomson related the success of the initiative there to the 1852 Select Committee, saying that following the introduction of the schools in Dundee the levels of recorded juvenile offending had fallen from 212 in 1846 to 75 in 1850.<sup>108</sup> Other towns followed Watson's lead including Glasgow, Greenock, Inverness, Falkirk, Rothesay, Ayr, Stranraer and Dumfries.<sup>109</sup> Edinburgh too had adopted the idea of industrial schools in 1847 but it had proved a tough nut to crack.<sup>110</sup> It was not won over to the concept until Rev. Thomas Guthrie instigated a campaign of persuasion with his successful publication *A Plea for Ragged Schools or Prevention Better than Cure*.<sup>111</sup>

### 2.3.3 The Edinburgh system: the Ragged School

Guthrie used his position and powers of rhetoric cultivated as a minister to put forth a very persuasive and successful argument for the desperate need for such schools in Edinburgh. His campaign achieved its objective with the first school, the Edinburgh Original Ragged School, being established in 1847. He made his appeal primarily on grounds of compassion and humanity, but also argued on a pragmatic level, pointing to the ultimate cost effectiveness and economic benefits to society if criminal careers could be nipped in the bud. He marshalled evidence – contained in appendices- provided by supporters of his cause such as the prison governor of Edinburgh prison who testified to the large number of young children being detained in prison.<sup>112</sup> There was also evidence from Guthrie himself and others testifying to the deplorable levels of destitution amongst the young in Edinburgh. Most compellingly of all there was evidence from Aberdeen of the success claimed for the industrial schools there with detailed notes on the practice of the schools:

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help the most destitute of children in England at this time was rather patchy. Most did not feed children and were 'evening teaching schools ... though distinguished by the name *Ragged*' (emphasis in original text), as Thomson put it (p.140). These often saw themselves as gospel machines, less concerned with general education than that children were able to read the bible. Thomson also recorded that of the 102 schools operating in London under the auspices of the Ragged School Union in 1852, only a small number were industrial feeding schools(P.145).

<sup>108</sup> 1852 Report from the Select Committee on Criminal and Destitute Juveniles, p. 295.

<sup>109</sup> Angus (1913). Alexander Thomson also mentions Stirling and Perth. (1852, p139). See too Clark (1977) .

<sup>110</sup> Marion Angus (supra) records that in 1844 'the sheriffs of Edinburgh did not see their way to take any immediate steps in the desired direction and he (Watson) left them in disappointment'. (p.72) After Guthrie's campaign in 1847 Edinburgh did adopt the plan.

<sup>111</sup> Guthrie (1847); Mathieson, P. (1997) *Thomas Guthrie and the Ragged Schools*, published by the Friends of the Kirk of the Greyfriars – a short pamphlet; *Short account of the work done in the Edinburgh Original Ragged Industrial Schools founded in 1847 by Rev Dr Guthrie*, Edinburgh, 1897.(A supplement to 50th annual Report of Edinburgh Original Ragged Industrial Schools, Liberton and Brunswick Rd, Leith Walk);

<sup>112</sup> 740 under 14 in the previous 3 years of whom 250 were under the age of 10.

‘It appears both from the police and prison returns that since the opening of these schools a marked diminution has taken place in the numbers of juvenile delinquents, although very many still remain.... The peculiar feature of the industrial schools is the combination of instruction in useful employment with education and food. The children have three substantial meals a day; three hours of lessons, and five hours of work suited to their ages. All of the boys (and girls) return to their homes every evening. On Sundays they receive their food as on other days, and attend public worship, and they have also religious instruction in school.’<sup>113</sup>

Sheriff Watson himself proudly remarked in a letter of support that begging among children had been virtually eliminated in Aberdeen. Pointing to this success, Guthrie insisted that the provision of food was an essential element in the scheme. Otherwise, he said, children could not be expected to attend for long. Guthrie continued his appeal for compassion with the argument that children found guilty in the courts of petty theft acted out of sheer necessity, often at the instigation of their parents:

‘in the case of these unhappy children who are suffering from the crimes of their parents and neglect of society, with what truth might this verdict be returned, proven, but not guilty?’<sup>114</sup>

This plea resonates strongly with the indignation of Mary Carpenter when she gave evidence to the House of Commons Select Committee in 1852 appointed to inquire into Criminal and Destitute Children.<sup>115</sup> Commenting on what she saw as the complete uselessness of prison as a method for dealing with children in trouble, she delivered her vehemently held opinion that ‘we ought in the first place to consider the position of these children in regard to society. I consider society owes retribution to them, just as much as they owe it to society or in fact more....If society leaves them knowingly in the state of utter degradation in which they are, I think it absolutely owes them reparation, far more than they can be said to owe reparation to it.’<sup>116</sup>

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<sup>113</sup> P.93.

<sup>114</sup> P.29.

<sup>115</sup> 1852 Report from the Select Committee on Criminal and Destitute Juveniles.

<sup>116</sup> Mary Carpenter’s evidence to the 1852 Select Committee at p. 97.

Guthrie also gave evidence to a parliamentary Committee.<sup>117</sup> His responses to the Committee's questions provide a very useful guide to the operation of the system in Edinburgh. By 1852 over six hundred children aged between six and fourteen attended the four industrial schools which had been set up in the city in 1847. Unlike Watson, Guthrie was happy to adopt the term 'ragged school' to describe his version of the industrial school. Many of the schools set up on the industrial model in other towns were also named 'ragged' schools. Watson disapproved of this description: he was always concerned to maintain the dignity of the children he set out to help and considered this term demeaning, pointing out that the children in his schools soon had their rags replaced by more respectable clothing.<sup>118</sup> In most other respects Guthrie adhered to the system adopted by the Aberdeen schools. As in the Aberdeen industrial schools children were educated in both secular and scriptural matters, provided with meals and given industrial training. In Edinburgh children were taught trades such as tailoring, shoemaking and carpentry which would allow them to gain apprenticeships; younger children were occupied with 'teasing hair for cabinet makers.'<sup>119</sup> Training was gender specific with girls being trained in sewing, knitting and laundry, skills which would be useful in domestic service for which many were destined.<sup>120</sup> The typical school day began at seven in the morning and ran until seven in the evening.<sup>121</sup> Guthrie shared Watson's views on the importance of the principle of day attendance in maintaining the family bond with children returning home to their families at the end of the school day. However, while Aberdeen strictly adhered to this policy, Guthrie's school did provide

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<sup>117</sup> 1852-53 Report from the Select Committee on Criminal and Destitute Children, (Paper 674, Volume XX111). Guthrie described the system in operation at his school, the first industrial school in Edinburgh. There were also two other schools run on similar lines in Edinburgh by this time.

<sup>118</sup> 'Ragged' was a term associated with the very different ragged schools common in England which were often simply evening schools not providing food or industrial training. See Ralston's article (p.54) quoting a letter from 1861 where Watson wrote: 'The term Ragged should be disjoined from the industrial school as being in no sense applicable; for although the children may have been ragged when they entered, the rags soon disappear.' Ralston (1988).

Despite his distaste for the term ( and probably because the term was so widely used) Watson did discuss at length in *Chapters* (1872) the various understandings of the term ragged school, ranging from the evening school providing very basic education run by unpaid teachers, to the Aberdeen model inspired by him. See Chapter one of *Chapters*. His description of the Aberdeen model is the one I referred to earlier.

<sup>119</sup> 1852-53 Report from the Select Committee on Criminal and Destitute Children, p. 36.

<sup>120</sup> The schools kept a check on the progress of former pupils. He reported that out of 52 children who had gone 'through the curriculum of our school' in one year only 5 had relapsed in to crime (p36). Employment destinations of children were recorded, the girls usually becoming servants and the boys becoming apprentices. Some of the apprentices still came to the school for their evening meal. (1852-53 Report.)

<sup>121</sup> Guthrie recorded that on arrival at school children would have to shower or bathe before changing from their ragged clothing into school dress provided for them. They were not allowed to take the school clothes home because it was thought that the parents would sell the clothes for whisky ( 1852-53 Report at p. 32).

dormitory accommodation for children whose circumstances were considered to merit it.<sup>122</sup>

Like Watson, Guthrie was convinced of the effectiveness of the schools in reducing juvenile begging and also juvenile crime. He declared that the schools had ‘almost cleared Edinburgh of juvenile mendicants’, a huge achievement in a city which had so many children begging on the streets before the introduction of the schools.<sup>123</sup> He was also able to provide the Committee with statistics from the governors of a number of prisons in towns where industrial schools had been set up giving ‘a very satisfactory Report’ on the decline in juvenile admissions to prisons.<sup>124</sup>

However on closer questioning by the Committee it became evident that the relationship between the falling prison admissions of juveniles and the existence of the schools was not necessarily an indication that less juvenile crime had occurred, but rather that the response to it was different. Asked if Edinburgh had a local Police Act like Aberdeen which was used to direct children to the schools, Guthrie replied that unfortunately it did not, but that nonetheless the magistrates had adopted the practice of sending children appearing before them for petty offences straight to the schools rather than impose another punishment such as imprisonment, a fine or whipping. It was suggested that perhaps this meant that the fall in prison numbers did not then mean that less juvenile crime had occurred but rather that children were being sent to the schools instead of prison. Guthrie replied that since the founding of the school in 1847 about 200 children had been sent by the magistrates, and out of the ‘200 children 150 would have led criminal lives but for our ragged school’ so the school was effectively acting to diminish future crime.<sup>125</sup> In his view there were two factors in operation: a real diminution in crime attributable to an improvement in the children’s conduct for which the schools could take the credit, as well as the diversionary practices of

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<sup>122</sup> Guthrie’s evidence at p.33. Dormitory accommodation was provided only for girls and very young boys of eight and under. There was accommodation for forty children out of a total of three hundred. Boys requiring accommodation were lodged with respectable local families. Accommodation was only given for cases of ‘indispensable necessity.’(P34). Lodging out in this way also happened in Aberdeen in cases of exceptional need.

<sup>123</sup> P.40 of Guthrie’s evidence.

<sup>124</sup> *ibid.* In Edinburgh the proportion of the prison admissions relating to children under 14 was given as 5% in 1847, the year the school was established and was said to have fallen to less than 1% by 1852; ‘that is to say as the schools extended in Edinburgh the juvenile commitments diminished.’ Similarly in Dundee since the introduction of the schools the proportion of juveniles in gaol was said to have halved to 4.5% by 1852.

<sup>125</sup> 1852-53 Report, p.42. At p41 Guthrie noted that 52 out of 297 presently in his school had been sent by the magistrates. He also noted that prior to the existence of the schools when children committed petty offences they were not necessarily imprisoned but instead punished by fines or whipping.

magistrates which also accounted for a reduction in the prison numbers:

‘our ragged schools are the places to which our magistrates (I do not know that they have any law for it) now send our juvenile delinquents who have been guilty of some petty crime instead of prison.’<sup>126</sup>

On the question of whether magistrates adopted this policy in other towns too, Guthrie replied that they did in Aberdeen and to some extent in Dundee and though he was unable to comment on the practice elsewhere, he regarded this strategy as very important and one which should be adopted generally.<sup>127</sup> In his opinion the system of ‘ragged’ schools was at its most efficient in Edinburgh and Aberdeen, although there was a desperate need for more schools in Edinburgh and most other towns. This was a need which could only be met by the state subsidies which would accompany legislative recognition of the schools. To this end there had been an organised effort by managers of industrial schools throughout Scotland to co-operate on proposals for a draft Bill which had been drawn up by Sheriff Barclay of Perth<sup>128</sup> with the assistance of a number of Edinburgh advocates.<sup>129</sup> The Bill sought to place the existing schools on a statutory footing, supplementing voluntary subscriptions with state funding, and to give magistrates the legally unequivocal power to send children to industrial schools.<sup>130</sup> Attendance for children sent under court order would become compulsory. However, it is clear from Guthrie’s responses that he did not envisage that compulsory attendance would necessarily mean that children would be separated from their parents: he argued that the question of whether children under court order would have to be accommodated at the schools would be at the discretion of the school managers. The committee members doubted that this was a practicable option. Under the legislation which eventually came into being detention of children under court order was a central feature.<sup>131</sup>

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<sup>126</sup> 1852-53 Report, p41.

<sup>127</sup> *ibid.*

<sup>128</sup> Referred to in Chapter One as the author of *Juvenile Delinquency; its Causes and Cure by a Country Magistrate*, extracts from which were quoted by Mary Carpenter in her 1853 book.

<sup>129</sup> *ibid* at p53. Guthrie’s evidence contained a draft of the proposed Bill. See too the evidence of Alexander Thomson to the 1852 Select Committee on Criminal and Destitute Juveniles which also contained a draft of the Bill and discussed its origins.

<sup>130</sup> According to this draft Bill magistrates could send to an industrial school children who appeared before them for criminal offences and also children who were brought before them for being ‘idle or vagrant’ though not charged with any offence.

<sup>131</sup> The legislation which came into effect differed from the draft in some respects.

#### 2.3.4 An overview of the pre statutory schools

By the early 1850s most large Scottish towns had industrial feeding schools based on the Aberdeen model. There was some local variation. Some were named industrial schools, others described themselves as ragged schools. The schools were primarily day schools but some provided lodging for those who had no home, while others arranged for homeless children to be accommodated with local families. The purpose of the schools was to rescue children from a life of destitution and crime. The schools were supported by voluntary subscriptions and their managers were anxious to prevent charity being abused. For this reason stringent measures were adopted to vet those applying for voluntary admission to the schools to ensure that they were deserving cases in genuine need. The admissions procedure was designed to weed out those who had parents with sufficient means to support them and who could afford to attend the ordinary schools where payment of a small fee was required; and also to filter out those with a valid claim on parish funds under the poor law. The children of paupers were entitled to parish relief and could attend pauper schools in the charity workhouse instead of being a drain on the scarce resources of the industrial schools.<sup>132</sup> As Guthrie explained:

‘We take up all those that have no claim on any parish, what we call in Scotland “the waifs”, the wandering part of the population that float here and there and either have no claim on any parish or refuse to take parish relief when it is offered in the shape of admission to the workhouse.....These are the children with whom our school is principally filled: and I believe it is from this class that the large mass of the criminals of the country spring.’<sup>133</sup>

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<sup>132</sup> 1852-53 Report from the Select Committee on Criminal and Destitute Children, p.31. Guthrie had much to say on this subject in relation to the schools being overwhelmed by applications from very poor Irish immigrants who had not been resident in Scotland long enough to claim poor relief.(Five year residence was required for entitlement to parish relief.) He claimed that destitute Irish people were enticed to Edinburgh by Reports that their children would be fed and educated for free at the schools. In order to prevent the schools being ‘overflowed’ by ‘the amazing floods of Irish people’ the schools had to impose a requirement that children had been resident in Edinburgh for twelve months, and later raised this requirement to eighteen months.p.30.

He also complained about Glasgow industrial schools not adopting a stringent enough policy by allowing children who were entitled to go to the charity workhouse to attend their schools, thus diverting resources from those who had no claim to any relief. In Aberdeen the managers of the schools tried to come to an arrangement with the parochial boards (administering poor relief) to recover some contribution for pauper children attending the schools. However the Child’s Asylum Committee resolved to admit any cases of true destitution whether money was forthcoming or not. See Carpenter (1851), 240.

<sup>133</sup> 1852-53 Report, p.31.

As well as those applying for voluntary admission to the industrial schools, children were admitted who had appeared before magistrates and were sent by the court. In these cases the magistrates sometimes availed themselves of local legislation to authorise the child's direction to the school; in other instances there appears to have been no pretext of a legislative basis for sending the children to the schools, but the magistrates did it anyway.<sup>134</sup> One of the main reasons for the pressure for legislation was to clarify this issue and give magistrates uncontested statutory powers to order children to attend industrial schools.<sup>135</sup>

As has been discussed, individual cities made their own contributions in developing new responses to juvenile mendicancy and crime. Glasgow's unique contribution was the setting up of the Houses of Refuge under local acts of parliament. This differed from the industrial schools in that the Houses of Refuge were residential establishments solely for children already caught up in the criminal justice process: either they were convicted children who applied for admission on release from the Glasgow prison, or they were children appearing before a court who with the concurrence of the prosecutor applied for admission to one of the Houses rather than proceed to trial. For this reason they can properly be regarded as the first purely reformatory institutions in Scotland. On the other hand the industrial schools were mainly preventive in philosophy, designed either to rescue destitute children before they descended into crime or to prevent them from falling further into criminal habits if they had already succumbed to temptation. Although Glasgow was the first to develop a reformatory institution, it joined other Scottish towns in also developing industrial schools run along the lines of the Aberdeen schools.

Of course, as we have seen, Aberdeen's contribution was seminal. Although it provided the model for schools in other towns it probably remained unique in some respects, particularly in having in place its well developed community based arrangement, the Child's Asylum Committee. The particular circumstances prevailing in Aberdeen, the size of the city, Watson's charisma and powers of persuasion and perhaps a developed sense of civic responsibility and accountability all combined to make such a system work there. In other towns there were certainly committees regulating the admission process to the schools. In relation to Edinburgh, for example, Guthrie spoke about the committees of the schools

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<sup>134</sup> 1852-53 Report, p.41.

<sup>135</sup> *ibid.* p.53. See too the evidence of Alexander Thomson to the 1852 Select Committee on Criminal and Destitute Juveniles.



having an extensive application form for applicants to complete. This formed the basis on which the committees decided on their eligibility. It included questions about family circumstances, length of residence in Scotland and details of previous convictions. However, it is not clear whether these committees of Edinburgh industrial schools were representative of a broad range of local organisations as was the case in Aberdeen or whether they exercised the same range of functions.

## **2.4 LEGISLATIVE DEVELOPMENTS**

The extent of the success claimed for the Aberdeen system in largely removing the problem of juvenile vagrancy from the streets of the city seems to have hinged on the supportive/coercive nature of the Child's Asylum Committee system in dealing with recalcitrant backsliders. Watson appears to have recognised a higher degree of compulsion beginning to take root in his scheme when he spoke about the forceful measures adopted on 19<sup>th</sup> May 1845 to gather up all the vagrant children on the streets as being like a 'pressing invitation to dinner and to spend the day'.<sup>136</sup>

By the early 1850s strenuous efforts were being made to make the invitation one that could not be refused. Pressure was mounting for the introduction of legislation to put the industrial schools on a statutory footing and to empower magistrates to have the legal authority to compel children to attend industrial schools under court order. As the statements made by Guthrie in his evidence to the 1852-53 Select Committee reveal, the managers of the schools were active in promoting a push for legislative action. Those prominent in the campaign like Guthrie and Thomson argued that state support was required to secure the future of the schools which until then had been funded purely by voluntary subscriptions, by no means a guaranteed source of income and certainly not sufficient to meet the demand for expansion.<sup>137</sup> Guthrie's evidence revealed the strong feeling of resentment that those involved in the schools felt towards those parents regarded as profligate and dissolute who persisted in squandering their earnings on drink rather than support their families, forcing their children to beg on the streets. There was considered to be a real need to be able to compel such children to attend industrial schools where they would be fed and educated and

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<sup>136</sup> Watson (1851), 15.

<sup>137</sup> Thomson (1852) has an appendix with a draft of the Bill.

also to have the legal power to recover the costs of child support from the parents.<sup>138</sup> The sentiment which often recurred in the discussions on this topic was that the state should act ‘in loco parentis’: the state should effectively take the place of the parent to meet the child’s need where the parent refused to accept his responsibilities and then force the parent to pay for child support.<sup>139</sup>

#### **2.4.1 Interaction with English campaigners**

The pressure for legislative intervention was part of a wider initiative taking place across the UK. On 10<sup>th</sup> December 1851, a Conference met at Birmingham to discuss proposals to campaign for legislation on ‘preventive and reformatory schools’. Appearing on the list of those connected with the Conference were the names of a number of Scots including William Watson, Alexander Thomson and Thomas Guthrie.<sup>140</sup> Also involved were the seasoned English reformatory campaigners Mary Carpenter and Matthew Davenport Hill.

The final resolution of the Conference bore all the hallmarks of Mary Carpenter’s vision.<sup>141</sup> It called for legislation to introduce a state system composed of three types of schools: ragged, industrial and reformatory. The ragged schools were to be free day schools for the most deprived children; the industrial schools were to be based completely on Watson’s model of day feeding schools, where vagrant and begging children would be sent under court order to be educated and do industrial work;<sup>142</sup> the third class of schools were the reformatories to which children who had been convicted would be sent in order to be reformed. A committee formed by the Conference presented a draft of the proposed legislation to the Home Secretary, Viscount Palmerston, who promised a Parliamentary

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<sup>138</sup> Guthrie’s evidence to 1852-53 Report from the Select Committee on Criminal and Destitute Children, p.34. He also spoke of cases where arrangements were made between the schools and the employers of parents who could but would not pay for their children to recover some of the wages directly, effectively arresting a portion of the parent’s earnings. He said this happened in Dundee too.

<sup>139</sup> Thomson (1852); also Guthrie’s evidence p50.

<sup>140</sup> Thomson was present in his capacity as chairman of Aberdeen county prisons board. Other Scots included John More professor of Scots Law from Edinburgh University as well as a director of prisons, the governor of Edinburgh Gaol and the honorary secretary of Glasgow industrial schools. Watson did not attend in person but his name was on the list of those supporting the event. *Ragged School Union Magazine*, 4:37 (1852:Jan.) p.15. The Conference on Juvenile Delinquency became an annual event. Manton (1976).

<sup>141</sup> In her biography of Mary Carpenter, Jo Manton states that the terms of the resolution were clearly drawn up by Mary. It set out the scheme she had expounded on in her widely disseminated book on reformatory schools.

<sup>142</sup> The Scottish model was much admired by Mary Carpenter and she based much of her scheme set out in *Reformatory Schools: For the Children of the Perishing and Dangerous Classes and for Juvenile Offenders* (1851) on Watson’s model.

Committee of Inquiry which took evidence from the reformers, including, as has been discussed, the Scottish reformers Thomson and Guthrie.<sup>143</sup>

Carpenter's design was not to be implemented in full. The first element to which her scheme referred, the English ragged schools, were not typical in Scotland which of course had a well established network of industrial schools (confusingly also sometimes called ragged schools) to cater for the most destitute. These English ragged schools were considered unfit to receive government aid as they did not meet required minimum educational standards. For this reason there was to be no legislation or state funding for the English variety of ragged schools.<sup>144</sup> However the other two aspects of her plan fared better and in the course of the 1850s Mary Carpenter had the satisfaction of seeing legislation brought into force on the subject of industrial and reformatory schools. By 1857 both Scotland and England had a statutory framework in place governing these schools.

Carpenter's system of classification appeared to present a rational well thought out design. She laid particular emphasis on distinguishing between the categories of children who would be eligible for admission to industrial schools and reformatory schools. She stipulated that the industrial schools were to be reserved for the 'perishing' classes, children who were in danger by virtue of their circumstances of becoming criminal; reformatory schools, on the other hand, were to reform the 'dangerous' classes, children who had already been convicted of crime. However, as she was probably well aware, there were certain illogicalities in her approach. For example when questioned before the 1852 Select Committee about the non criminal ('perishing', as she put it, or pre- criminal) status of the category of children to be admitted to industrial schools she had to concede that vagrancy was indeed a criminal

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<sup>143</sup> 1852 Select Committee on Criminal and Destitute Juveniles; 1852-53 Report from the Select Committee on Criminal and Destitute Children.

<sup>144</sup> It is clear from Carpenter's evidence to the 1852 Select Committee on Criminal and Destitute Juveniles that she considered it very unfair that the English ragged schools did not qualify for adequate government aid. They did receive small grants but were excluded from the more generous capitation grants (allowances per head) given to other voluntary schools in 1856, and in 1862 a Revised Code on education only allowed 'payment by results' linking the payment of an annual grant to schools to satisfactory assessments of children's attainments. This made the situation even worse for ragged schools as it threatened to remove even the minimal support given to the schools: Mary Carpenter argued the educational standards the schools were required to achieve under the Code were impossible for children from this background. She stressed that success with these children should be measured on a different scale. In her view it was an achievement simply to teach them to sit quietly, let alone instil the 3Rs. In due course, with the advent of the universal compulsory education in the 1870s, all children were eligible to receive a state funded education, including the most ragged. See Manton (1976), 162.

offence under the Police Acts: therefore the children destined for industrial schools were in the category of children who were subject to conviction too.<sup>145</sup> In effect the children eligible to be admitted to industrial schools and also reformatory schools could all be seen as having already fallen into crime. Though this clearly undermined what she saw as the preventive pretensions of the industrial school she was reluctant to admit it and dodged the question. This classificatory confusion in her scheme also led to considerable disquiet when the proposed legislation for industrial schools in England was being considered in Parliament in 1857, with many MPs not being able to see why the Bill was said by its proponents to be non-penal.<sup>146</sup> The Scottish approach exemplified by Watson was much more pragmatic, less concerned with classification and the separation of children into the different categories which so preoccupied Mary Carpenter.<sup>147</sup> This was to become apparent in the approach adopted by the first Act dealing with industrial schools in Scotland.

#### **2.4.2 The Scottish legislation- (Dunlop's Act)**

The Scottish campaigners saw their efforts bear fruit with the *The Reformatory Schools (Scotland) Act 1854 (17 & 18 Vict., c.72-74) (Dunlop's Act)* which applied only to Scotland and was later to become known as the Scottish Industrial Schools Act.<sup>148</sup> This was an Act relating to destitute children who had not been charged with any offence. Section one empowered a sheriff or magistrate to send vagrant children who appeared to be under fourteen to 'any reformatory school, industrial school or other similar institution within Scotland' (unless security was found for their good behaviour) whether established by Parochial Board or association of individuals sanctioned by the Secretary of State for the purposes of the Act. The children were not to be detained beyond fifteen without consent and due regard was to be given to the religious belief of the child or parents. The reason for this provision was that there had been considerable controversy in the parliamentary debates on the legislation about the lack of special educational provision for Roman Catholic children in the existing pre-statutory Scottish industrial schools. The influx of impoverished Irish immigrants referred to by Guthrie had resulted in many destitute Irish Catholic children being admitted to industrial schools which adhered to Protestant doctrine. Guthrie's school

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<sup>145</sup> 1852 Report from the Select Committee on Criminal and Destitute Juveniles.

<sup>146</sup> Parliamentary debates on 8<sup>th</sup> July 1857 (p.1148) relating to the English measure, the Industrial Schools Act 1857 20 & 21 Vict. c.48.

<sup>147</sup> Himmelfarb (1984) discusses Mary Carpenter's classifications. She describes Carpenter as being a very familiar type of nineteenth century philanthropist, both religious and utilitarian. She adds that while Bentham would have hated her allusions to God and love, he would have completely approved of her idea of separate schools for separate classes.

<sup>148</sup> It was named Dunlop's Act after its author the Liberal MP for Greenock Alexander Murray Dunlop.

came in for particular criticism for proselytising i.e. attempting to convert Catholic children to Protestantism. There were strong objections to this on behalf of the Catholic community and this provision ensured that separate provision would be made for Catholic children.<sup>149</sup>

The definition of a vagrant given in the statute was where a child was found begging and 'wandering' with no home or 'settled place of abode or proper guardianship', and 'no lawful or visible means of subsistence.' In these circumstances the Act stated that 'though not charged with any actual offence,' the child 'shall be brought by any constable or police officer before any sheriff or magistrate.' There were ancillary offences within the statute: section two provided that where a child had wilfully left the school a procedure under summary complaint initiated by an officer of the school could result in the young person being punished by whipping or imprisonment for up to twenty days before being returned to the school; section three provided for imposition of a penalty of up to five pounds for wilfully withdrawing a child from the school, failing payment of which imprisonment of up to sixty days; section four dealt with the question of expenses of supporting the child while in the school.<sup>150</sup> According to this section the school was entitled to recover the cost of upkeep from parents or anyone else responsible for his support. Failure by the parent to pay the required amount could result in prosecution.

Essentially this Act related to the group of children whom Mary Carpenter would have described as the 'perishing' classes, vulnerable, destitute children found in a 'vagrant' condition who were thought by virtue of their circumstances to be in danger of becoming criminal. The reference to children not being charged with 'any actual offence' meant that the children covered by this piece of legislation were non criminal.<sup>151</sup> Even though vagrancy was an offence under the Police Acts, children coming under this Act were not charged with vagrancy: in effect this was a measure decriminalising juvenile vagrancy. The main

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<sup>149</sup> The parliamentary debates on the parallel English measure on industrial schools in 1857 were also marked by heated exchanges but not on religious grounds. The English MPs objected to the criminalising capacity of the Bill. Many MPs were concerned about the lack of procedural protections and were not convinced by the argument that welfare considerations were the paramount issue when the question of a child's liberty was at stake: their view was that, although a child detained under the proposed measure was neither charged nor convicted of an offence, he would still be undergoing a form of imprisonment. There were also objections about the new ancillary offences created relating to financial obligations imposed on parents. One MP criticised 'the multiplication of offences.' (Mr. Stapelton MP. Parliamentary debate on 8<sup>th</sup> July 1857 (p.1148))

<sup>150</sup> Under section five where no payment was forthcoming from the parents the cost was to be met by the Parochial Board of the Parish on which the child would have been chargeable if a pauper.

<sup>151</sup> The criticisms of English MPs (referred to supra) resulted in the English Industrial Schools Act 1857 requiring a conviction for vagrancy before a child could be admitted to an industrial school under court order (s.6) which was not the case under the Scottish legislation. But by amending legislation in 1861, the condition of conviction was dispensed with, putting the legislation in this respect on the same footing as that in Scotland (Industrial Schools Act 1861( 24 & 25 Vict., c.113)).

objectives of the Scottish campaigners, to empower magistrates to have the legal authority to compel children in need to attend an industrial school under court order, and to force parents who had the means to do so to pay for their child's support in the schools were now enshrined in this piece of legislation. The Act was a specifically Scottish measure designed to cater for the Scottish situation where there was an existing network of pre-statutory schools which sought extra powers to compel attendance. Under the pre-statutory system the schools had adhered to the principle of day attendance except in cases of extreme need, but under the new statutory system children being sent to industrial schools under court order had to reside at the schools. As the Lord Advocate, Lord Moncrieff put it, 'attendance as mere day scholars would not carry out the objects of the Act.'<sup>152</sup> However, in the initial years of the statutory system many children still continued to attend the schools on a voluntary basis and these children were day pupils.<sup>153</sup>

#### **2.4.3 The UK legislation - The Youthful Offenders Act 1854 (17 & 18 Vict., c.86)**

This Act applied throughout the UK. For England this Act heralded the setting up of a network of certified reformatory schools with state funding. In Scotland Dunlop's Act remained in force operating alongside this new Act. While Dunlop's Act dealt with vagrant and destitute children who had not been charged with an offence, *The Youthful Offenders Act* was aimed at children who had been convicted. It empowered courts to send 'any person under the age of sixteen years' convicted of an offence to a reformatory school. The detention in the reformatory was to be preceded by a minimum period of imprisonment of fourteen days. Children were to remain in the reformatory school for a 'period not less than two years and not exceeding five years'.<sup>154</sup> The cost of maintaining the children was to be partly recovered from parents where possible up to the value of five shillings per week with the Treasury making up the remainder of the cost.<sup>155</sup> Like Dunlop's Act this statute created a number of offences: for example parents were subject to penalties if they failed to pay maintenance and could be fined or imprisoned; and under section four children who absconded or were regarded as guilty of 'refractory conduct' could be imprisoned 'with or without hard labour' for up to three months.

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<sup>152</sup> *Edinburgh Evening Courant*, 16 January 1856. Quoted in Ralston (1988), 48.

<sup>153</sup> This was to change in later stages of the system as in the 1860s the schools began to accept only those sent under court order and the schools became residential in character. See chapter three.

<sup>154</sup> Under s2.

<sup>155</sup> s3 and s5.

The emergence of this statute was by no means simple and straightforward. The debate surrounding the legislation revealed widely differing approaches, even among those campaigning for reform. Mary Carpenter argued against the ‘vindictive principle of punishment’ in dealing with children but she had an uphill struggle trying to convince others of this, even those who would have identified as her supporters and co-reformers. She was totally opposed to children being imprisoned, and according to Jo Manton, Mary Carpenter’s biographer, she was distraught that this initial legislation on reformatory schools imposed the condition that children had to serve at least fourteen days in prison before admission to a reformatory. As Manton observed, ‘Mary Carpenter’s tragedy was that her whole life was devoted to the creation of a system, which in eventual practice by others ran counter to her true beliefs’.<sup>156</sup> Scottish reformers were also disillusioned by the period of prior imprisonment before admission to a reformatory. Speaking about the practice some years into the statutory system when the period of imprisonment had been reduced from fourteen to ten days, Watson commented:

‘It can hardly be supposed that the imprisonment of boys and girls for the short period of ten days before being sent to a reformatory school can have any beneficial effect and it may have an injurious one. Can there be any good reason, therefore, for continuing a practice which, to say the best of it, is altogether useless?’<sup>157</sup>

## **2.5 THE EARLY YEARS OF THE STATUTORY SYSTEM IN SCOTLAND**

With the arrival of the two pieces of legislation in 1854 Scotland had a statutory regime in place with two Acts, each relating to a separate group of children: Dunlop’s Act for destitute non offenders, and the Youthful Offenders Act for children convicted of an offence who were to be sent to a reformatory. However, while this framework seemed to reflect a desire to impose a form of classification on children, this was not what happened in Scotland initially. The terms of Dunlop’s Act stated that vagrant children could be admitted to an industrial or reformatory school. The pragmatic Scottish approach referred to above was evident in the full title of Dunlop’s 1854 Act, ‘An Act to render Reformatory and Industrial Schools in Scotland more available for the benefit of vagrant children.’ Clearly from the

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<sup>156</sup> Manton (1976), 106.

<sup>157</sup> Watson (1877), 37. Under legislation in 1866 the period of prior imprisonment was reduced to ten days.

Scottish standpoint at the outset of the statutory system there was no obvious need to separate children into different institutions: Dunlop's Act envisaged a mixing of children sent by the courts on offending and non offending grounds, the approach taken by the pre-statutory schools. Indeed, some Scottish institutions sought official certification as both industrial and reformatory schools and in the early years of the statutory system children sent to Scottish institutions by the courts continued to be mixed. However under growing pressure for a uniform UK wide approach this state of affairs was not allowed to continue: the practice of mixing non offenders (sent by the courts under Dunlop's Act) with convicted children (sentenced under The Youthful Offenders Act) was disapproved of by the new national inspectorate set up to oversee the statutory system. In 1856 a statute came into effect which meant that schools could not now be certified as both reformatories and industrial schools.<sup>158</sup>

This growing trend towards uniformity north and south of the border was accentuated by a system of compulsory inspection of reformatory and industrial schools by the national inspectorate. One outcome of this process was the need to establish designated reformatories solely for convicted juvenile offenders in Scotland like those in England. The late 1850s saw the founding of Oldmill Reformatory in Aberdeen in 1857 and Wellington Reformatory Farm School near Edinburgh in 1859.<sup>159</sup> Glasgow, of course, already had established reformatories, the male and female Houses of Refuge.

The arrival of the dual system of separate reformatories for convicted children and industrial schools for the destitute non offenders marked a significant departure from the pre-statutory Scottish system where there was not seen to be any need to distinguish between children on offending and non offending grounds by separating them into different institutions and subjecting them to different treatment. The regimes in the newly established reformatories were under the scrutiny of a national inspectorate which had been responsible for overseeing the development of a network of reformatory schools in England set up after the Youthful Offenders Act of 1854. These institutions were on the whole harsh and penal in nature, requiring that children undertake very arduous work. The setting up of a chain of reformatory schools run on the English principle imported a degree of austerity to the

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<sup>158</sup> The '*Act to amend the mode of committing Criminal and Vagrant Children to Reformatory and Industrial Schools*' (19 & 20 Vict., c.109). This Act applied across the UK. The statute also provided that the schools to which young offenders were committed need not be named in the sentence.

<sup>159</sup> The Wellington reformatory intake records show many boys being sent to Wellington from courts in Edinburgh, Glasgow and the Borders from the early 1860s onwards, nearly all for trifling thefts. The standard sentence imposed on them was fourteen days imprisonment followed by five years in the reformatory.



Scottish system which was alien to the ethos of the benign social welfare experiment set up by the pre-statutory Scottish industrial schools. They were very different from the experiment founded by Watson in Aberdeen which was an initiative founded on humane, compassionate principles that clearly benefited children.

In the next section the very first High Court case in Scotland under the statutory system will be discussed, the case of *Hay and others v Linton* on 15<sup>th</sup> December 1855.<sup>160</sup>

### **2.5.1 *Hay and others v Linton***

The case was brought by a poor law inspector, John Hay, together with the mother of a seven year old girl named Susan Guy who had been apprehended by the police for begging in the Grassmarket in Edinburgh. The action challenged the decision of a magistrate in the police court who had ordered Susan to be sent to the Original Ragged School, Edinburgh until the age of fifteen under section one of the new legislation, *The Reformatory Schools (Scotland) Act 1854 (Dunlop's Act)*. Those bringing the case sought a bill of suspension of the magistrate's decision, on the grounds, firstly, that Susan's apprehension and incarceration in a police cell had been incompetent under the Act; and, secondly that the magistrate should have accepted the security offered by a poor law inspector to prevent her being sent to the school. The court suspended the order and Susan was released.

The details of the case were that when Susan had appeared before the magistrate he decided to proceed under Dunlop's Act and continued the diet till the next day to allow intimation to Susan's mother and the Inspector of the Poor. A warrant was granted to detain Susan in the police cells overnight despite the fact that she had a home to go to. The following day the magistrate set security at the value of £4 for Susan's good behaviour for twelve months, again continued the diet until the following day to allow the security to be found and granted a warrant for Susan's continued incarceration. The family were recipients of poor relief and the security was offered by the Poor Law Inspector as an interested party to obtain her release. The inspector took an interest in the action because under the Act the poor law authorities were responsible for paying for pauper children admitted to industrial schools and he wished to avoid being burdened with this cost. Had this security been accepted then in terms of the Act Susan would not have been sent to the industrial school. The offer was rejected by the magistrate on the grounds that the inspector was not a parent and therefore

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<sup>160</sup> 2 Irv.57. In the case Report the statute is described as The Reformatory Schools Act and also The Reformatory and Industrial Schools Act.

had no interest recognised under the statute. Susan was then ordered to be detained in the Original Ragged School in Edinburgh until the age of fifteen years.

Suspending the magistrate's order, the High Court accepted that the inspector could offer security and also stated that the warrants granted in the case were irregular. Susan was then released. According to a local newspaper editorial this was seen as a test case which would affect the fate of a number of other Edinburgh children in a similar position:

‘In our sheet of today we Report a debate and decision of considerable interest under this Act (The Reformatory Schools Act) respecting principally the validity of caution tendered by parochial officers. Besides the case founded on there had occurred other thirty two similar cases in the city parish at the time the action was raised, and the number has been augmented since. There were six cases in the Canongate parish also awaiting the result of the case tried on Saturday, and likewise a number in St. Cuthbert's parish. The decision will also we believe be important in regulating the operation of the Reformatory Schools Act throughout Scotland generally.’<sup>161</sup>

An important consequence of this case was that following this decision magistrates in Scotland in similar cases (involving children whose parents were in receipt of poor relief ) accepted security offered by Poor Law Inspectors meaning that the children involved were not sent to industrial schools under the Act. To some extent this thwarted the intention of Dunlop's Act because it meant that the statute was implemented by the courts in a way which failed to achieve the objective of compelling the attendance of all destitute and begging children at industrial schools under court order. This was certainly the position in 1857 when Sydney Turner, the first national inspector of the statutory schools reported on the situation in Scottish industrial schools:

‘Scarcely any of the children in them are committed under the Act, the clause enabling parochial boards to withdraw such children on giving security for their better protection having almost neutralized the direct operation of the statute altogether.’<sup>162</sup>

Had it not been for this decision more children would have been admitted under court order in the late 1850s. The next chapter reveals that the practice of Poor Law Inspectors offering security for children under Dunlop's Act was particularly prevalent in Edinburgh, but did

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<sup>161</sup> *The Edinburgh Courier*, Monday 17<sup>th</sup> December 1855.

<sup>162</sup> 1st Report of the inspector of Reformatory Schools, 1857-58 at p.17.

not happen in towns where the parochial authorities could not provide alternative education in a poor law school, such as Aberdeen. However, in the next chapter it also emerges that the ability of either Poor Law Inspectors or parents to circumvent the Act in this way was soon to be curtailed by the new Industrial Schools (Scotland) Act 1861 which did not re-enact the section allowing security to be offered.<sup>163</sup> In subsequent chapters it becomes clear that as the statutory system evolved very many destitute children were admitted by court order to industrial schools.

It is interesting to read some of the arguments advanced in the Hay case on behalf of the Crown. It was argued that begging was an offence under the Police Acts and that had matters proceeded under this legislation rather than the new Reformatory Schools (Scotland) Act (Dunlop's Act) then imprisonment would not have been open to challenge.<sup>164</sup> According to this view begging children were in reality criminals and belonged to a category of offenders which it was reasonable to incarcerate. On behalf of the Crown it was argued in relation to the detention in the police cells:

‘In her detention she suffered no unnecessary hardship. It would have been a legal thing for the judge to have punished her under the Police Act by sending her to prison, but instead she was detained so that something might be done for her benefit. Having, therefore, punishment in his option, the judge was entitled to detain her by incarceration.’

Dunlop's Act was designed to target vagrant children under the age of fourteen and only applied to Scotland.<sup>165</sup> As already noted, there was no equivalent legislation in England until the Industrial Schools Act of 1857. The proclaimed purpose of this new legislation, and the later 1857 Act was, as stated by the judges here, the protection of neglected and destitute children. In s1 Dunlop's Act refers to the vagrant child ‘found wandering *and though not*

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<sup>163</sup> 24 & 25 Vict., c.132. See page vi of F.V. Hornby's (1897) *The Reformatory and Industrial Schools Acts*.

<sup>164</sup> The Reformatory Schools (Scotland) Act 1854, or Dunlop's Act, applied only to Scotland. As discussed earlier, according to this legislation, magistrates in Scotland were empowered to send vagrant children to ‘any reformatory or industrial school or other similar institution.’ Under legislation passed two years later, in 1856, it was no longer possible for schools to be certified as both reformatories and industrial schools, and vagrant children admitted under magistrates' orders were only sent to certified industrial schools.

<sup>165</sup> As noted above, at this point the statute which applied throughout the UK was the The Youthful Offenders Act 1854. The Act defined its remit as promoting the ‘better care and reformation of youthful offenders in Great Britain.’ Introduced following the 1852-53 Select Committee on Criminal and Destitute Juveniles, the Act applied throughout Great Britain. The Act empowered courts to send ‘any person under the age of sixteen years’ convicted of an offence to a reformatory school. The detention in the reformatory was to be preceded by a minimum period of imprisonment of fourteen days. Children were to remain in the reformatory school for a ‘period not less than two years and not exceeding five years.’

*charged with any actual offence*’ being ‘brought by any constable or police officer before and Sheriff or magistrate’. The statute was framed in diversionary terms. As was argued in the parliamentary debates, this was not intended to be a penal measure.<sup>166</sup> But the children admitted to institutions under this statute would hardly have known this because in practice they were treated as criminals, as this case all too clearly demonstrates.

This case shows that from the very outset of the statutory system children targeted under this Act (ostensibly one which decriminalised juvenile vagrancy) were being *prima facie* cast in a criminal light. Susan Guy was apprehended by the police, brought before a magistrate, detained for two days in police cells, and ordered to be detained in an institution for eight years despite the fact that she had a mother willing to look after her and vouch for her behaviour. Challenges to oppressive criminal justice practices like this were only possible if resources could be found to fund legal action. Although in this case a saviour did appear in the form of the Inspector of the Poor, his actions were less motivated by pure altruism than by the desire to relieve the parish funds of the burden of having to pay for Susan’s maintenance in the industrial school for years on end. Oppressive practices were to be a continuing feature of the system.<sup>167</sup>

### **2.5.2 The development of the statutory system**

The crystallisation of the industrial school system in legislative form was in time to alter substantially the character of the schools from essentially schools at which attendance was in theory voluntary and on a daily basis to residential institutions where children were detained under court order with severe penalties attached for absconding or helping children to abscond. The penal character was noted by Sydney Turner, the Inspector of Schools, who wrote in 1870 that the certified industrial schools were ‘reformatories of a milder sort’,<sup>168</sup> a

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<sup>166</sup> The Lord Justice General commented that, ‘We all regard this case as one of great importance. It is the first case that has come before the court in reference to the construction and application of this very important statute- a statute obviously passed with a view to benefit, in respect of education, children that are in a destitute or neglected condition, and are found under certain circumstances.’

<sup>167</sup> Further evidence of the way that children admitted to industrial schools were in practice treated as criminal is supplied by the terminology adopted in court proceedings. Often the term ‘guilty’ is used in relation to the condition of the child even though he has not been charged with committing a crime. The court records from Edinburgh burgh and police courts in the 1870s show the procedure under which the boys were admitted, usually on grounds amounting to destitution or on the basis that their parents were alleging they were beyond control. In many of these cases the term ‘guilty’ is used although no criminal charge is involved. Take, for example, a case presented on 13<sup>th</sup> August 1874 by a police sergeant, James Christie. The petition concerned 12 year old James Robertson who was found ‘wandering and not having any home or settled place of abode or proper guardianship or visible means of subsistence’. The record states that James appeared before the magistrate ‘and the complaint having been read over to him he answers that he is **guilty**.’ Under s14 of the 1866 Act James was sent to the industrial school training ship Mars berthed at Dundee till the age of 16.

<sup>168</sup> 13<sup>th</sup> Report of Inspector of Reformatory Schools 1870, p.16.

view similar to that of the Departmental Committee Report of 1896, which regarded the only distinction between the two types of institution as one of age difference.<sup>169</sup>

Watson and Guthrie were disillusioned by the departure from their original vision which had placed great stress on maintaining the family bond, seeing this as an opportunity to effectively evangelise whole families, as children returning home from school newly imbued with scriptural values imparted the Gospel to their parents. Writing in 1872, Watson spoke about the stigma which attached to children admitted to industrial schools by a magistrate's order rather than attending voluntarily.<sup>170</sup> Watson commented on the change in the character of the schools:

Great changes have however, been made on the character of the original industrial schools by the operation of these Acts. The children sent to them cease to be free agents. They are under legal restraint, and may be detained for five years and punished for desertion.'<sup>171</sup>

Critical of the development of residential schools, on the basis that they broke up families, he added:

'It loosens all family ties, prevents the growth of domestic affections and makes the object of its care a mere cosmopolite without love of home or of country',<sup>172</sup>

As well as being separated from their children under the statutory system parents were liable to pay for their child's upkeep in the school and were subject to fine or imprisonment for failing to pay. As already noted, if a child was from a family in receipt of poor relief then the Parochial Board was liable. This led to problems as legal disputes sometimes arose as to which parish was liable. Just as the Poor Law represents the 'forgotten past' of the welfare system, and formed a whole body of legal rights and duties which were endlessly argued over in the courts, so the legislation setting out the conditions under which children could be detained in institutions under court order is a sadly forgotten area of legal history; and both the poor law and this area of child law are inextricably entwined together in a complex morass.<sup>173</sup> It is hardly possible to understand many of the cases concerning the detention of

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<sup>169</sup> Report of the Departmental Committee on Reformatory and Industrial Schools. Vol.I. Report and Appendices. 1896 [C.8204].

<sup>170</sup> He speaks about this in his *Chapters* pamphlet. Watson (1872).

<sup>171</sup> *ibid.*, p.20.

<sup>172</sup> *ibid.*, p.17.

<sup>173</sup> Reading through volumes of Scottish nineteenth century civil case reports will reveal many cases about the operation of the Scottish poor law and some of them concerned issues of liability for children detained in

children in industrial/ reformatory institutions without having a rudimentary understanding of the intricacies of the poor law as was demonstrated in *Hay and others v Linton*.<sup>174</sup>

The inspector's interest in the case of *Hay and others v Linton* was to ensure that the parish funds would not be burdened for many years with the liability for Susan's upkeep in the Original Ragged School. This was a taste of things to come. Financial considerations were a huge factor in many ways in the operation of the system, encompassing questions about the extent of state liability for maintenance of children in institutions and the determination to recover contributions from parents to prevent them offloading their responsibilities<sup>175</sup> which led to parents being prosecuted, fined and imprisoned for up to ten days for non payment.<sup>176</sup> However at least in the early years of the statutory system there appears to have been less of an appetite to pursue parents in this way in Scotland, to the annoyance of the inspectorate.

In addition to the many court battles between rival inspectors of the poor disputing financial liability for detained children there was also a lot of discussion about the desirability of offsetting the costs of institutions (ideally to the level of institutional self sufficiency according to some) by industrial education. Watson's original conception of industrial education<sup>177</sup> was that it would instil in children the habits of honest work which would make them into respectable citizens and would also have the effect of raising their self esteem so that they would feel that they had earned their bread and were not regarded as charity cases. He wished to avoid at all costs the stigmatising effect of children becoming aware of what he called the 'eleemosynary character' of the schools.<sup>178</sup> Unfortunately, his benign intentions, which envisaged work such as net making for fishermen, were later translated by others into far more arduous demands being placed on children.

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institutions. In her book *Welfare's forgotten past: a socio-legal history of the poor law* Lorie Charlesworth discusses the legal roots of the poor law in England. She does not discuss the issue of the effect of the poor law on children in institutions. (2010, Abingdon, Routledge.)

<sup>174</sup> The crucial starting point in determining which parish was liable for a pauper was determining where the pauper had a right of settlement. Everyone had a settlement somewhere and this could be the birth place of the pauper or it could be a settlement acquired by residence somewhere for a period of five years. Watson commented that following the success of his experiment in Aberdeen many poor people were attracted to the city. This meant, he said, that his scheme pleased everyone except the Parochial authorities who became liable for the maintenance of new paupers who had been resident in Aberdeen for five years.

<sup>175</sup> In 1857 the first Report by the inspectorate noted the difficulties in recovering contributions from parents and talked of some having been imprisoned for 10 days for failure to pay contributions. The inspector also noted the lax attitude towards recovering the contributions in Scotland, something he was still complaining about in the second Report.

<sup>176</sup> This was stated by Sydney Turner in his second inspector's Report in 1859.

<sup>177</sup> Watson (1877).

<sup>178</sup> This is the phrase he uses in *Chapters*. Watson (1872).

The industrial work undertaken in the Scottish industrial schools set up on Watson's model of Aberdeen schools was usually simple work intended to teach children a trade like shoemaking and carpentry or domestic skills. In the early years of the statutory system in Scotland the industrial schools were not markedly different from the pre-statutory schools with many children continuing to attend as day pupils on a voluntary basis. Up until the practice was banned in 1856 some schools sought certification as both industrial and reformatory schools, so both offending and non offending children continued to be mixed. After 1856 and the setting up of a national inspectorate for all statutory schools throughout the UK, children who had been convicted of an offence were directed to separate designated reformatory schools. The effect of this was that these reformatory schools were set up in Scotland under the auspices of the national inspectorate which attempted to impose a more uniform system. In consequence the Scottish reformatories followed the lead of the already established system of English reformatory schools. Just as many of the English reformatories were reformatory farm schools, inspired by the farm schools of the continent, including Foucault's prime example of a disciplinary establishment, Mettray in France, so this model was adopted in the development up of the Scottish reformatory network which meant that the inmates were expected to perform similar types of farm work to the work carried out in English institutions.<sup>179</sup>

The industrial tasks allocated to the inmates of the reformatory schools in England (set up after The Youthful Offenders Act 1854) often involved very demanding work. As the inspectors' Reports were to show, the industrial work expected of children varied considerably from mundane and harmless activities in some institutions to profitable but hazardous outdoor work such as brickmaking which was injurious to children's health; and the desire to maximise profit by some managers led to a reluctance to release early on licence the older boys who had a greater capacity for work.<sup>180</sup> For instance, in the first Report by the inspectorate in 1857, Sydney Turner made it clear there was no fear that reformatories would be viewed as a soft option by the inmates, something that was a source of public concern.

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<sup>179</sup> See for instance Wellington reformatory farm school near Edinburgh. See chapter three explaining why this was the Scottish Mettray. For further discussion on Mettray see my first chapter.

<sup>180</sup> As Julius Carlebach notes in *Caring for children in trouble* (1970, London, Routledge & Kegan Paul) the system in practice did not meet the expectation of the early reformers who had anticipated that reformatories under voluntary management would be free to develop individual 'systems of reformation' resourced by public funds but under government certification and inspection to show that children were being reformed: in fact, he argues, the inspectors often ended up in the position of 'first and foremost of protecting children and of trying to alleviate the worst hardships they were often subjected to'. (P. 70).

‘They work about eight hours and are in school for mental instruction about three hours per day. The field work and other labour, though not always carried on as methodically and skilfully as I could wish, is usually real and entails a full amount of hard practical exertion on the boys engaged in it, and (to town bred lads peculiarly) a considerable degree of self denial and endurance. Many boys have said to me,- “I would rather be in prison than there; I should have more to eat and less to do.”’<sup>181</sup>

He described how boys were expected to work extremely hard:

‘digging, trenching, brickmaking and stockkeeping, in all weathers, at all seasons, with the scripture regulation in full force - If a man will not work, neither should he eat.’

Conditions within reformatories were deliberately kept to a basic level in order to allay public concerns that ‘undeserving’ children would be treated more advantageously than the children of the respectable poor at a time when there was no compulsory education available for all. Turner was keen to dispel any notion of a comfortable berth, pointing to the frequent attempts to abscond from the reformatories. His reason for doing this was probably because he was one of the architects of the legislation and therefore wished to deflect criticisms of the new system.<sup>182</sup>

Most of Turner’s attention in his first Report of 1857 was directed at certified reformatory schools in England, but there was a section on Scottish certified schools.<sup>183</sup> At this point there were few dedicated reformatory schools specifically for convicted children in Scotland and Turner referred to the ones in Glasgow, and also reformatories struggling with difficulties of ‘first commencement’ in Aberdeen and Montrose.<sup>184</sup> All of these were certified reformatories under The Youthful Offenders Act.

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<sup>181</sup> 1857 Report at page 7. Turner’s comments here are made on reformatory schools just set up in England under the Youthful Offenders Act 1854.

<sup>182</sup> Turner was a former chaplain to the Philanthropic Society School. Carlebach describes him as ‘one of the most important figures in the English Reformatory Schools Movement.’ (P.15) In 1857 he was appointed as the first Inspector of Reformatory Schools.

<sup>183</sup> He notes there are forty certified reformatory schools in England in 1857. P.17.

<sup>184</sup> By the end of the decade the Wellington Reformatory Farm School near Edinburgh was also up and running. The Wellington reformatory intake records show many boys being sent to Wellington from courts in Edinburgh, Glasgow and the Borders from the early 1860s onwards, nearly all for trifling thefts. The standard sentence imposed on them was fourteen days imprisonment followed by five years in the reformatory.

With regard to the preliminary period of prison detention of fourteen days prior to admission to a reformatory the annual records of the Girls’ House of Refuge in Glasgow note that they regret that this condition has been



The next category he discussed were schools having dual certification under both Dunlop's Act and The Youthful Offenders Act. Four schools fell into this group, being certified as both industrial and reformatory schools which meant that they could receive from the courts both vagrant children and children who had been convicted. Turner was critical of these institutions for mixing their intake in this way:

‘Convicted children are mixed with paupers and day-school scholars, a practice which I cannot think defensible or safe.’<sup>185</sup>

Thirdly, he described the fourteen schools certified as industrial schools only, under Dunlop's Act, as being ‘industrial feeding schools of a superior description’. In trying to assess the impact of the legislation on Scotland in the initial stages of the statutory scheme Turner's comments are very important. They reveal that, at least in the first few years after the introduction of the legislation, most of the children attending schools certified under Dunlop's Act were still there on a ‘voluntary’ daily basis rather than resident inmates detained under court order. This of course was to change in later years as the residential system, strongly criticised by Watson and Guthrie, became the norm.

In 1857, though, it appeared that the industrial schools were still composed mainly of voluntary pupils. Turner stated that the practice by magistrates of accepting security offered by parochial officers when poor, vagrant and begging children appeared in court had undermined the operation of Dunlop's Act. It will be remembered that this was the issue under consideration in *Hay and others v Linton*. As previously noted, Turner's comments suggested that the decision in that case affected the practice of magistrates in a way that limited the numbers of children being admitted as inmates to be detained as residents compulsorily under court order. But, as the next chapter reveals, the practice of offering security was to be curtailed by legislation in 1861.

Turner also observed that the,

‘indirect operation of the law appears to be considerable and very advantageous; large numbers of children coming voluntarily or being sent by their parents – from the knowledge that if found idling and begging in the streets they can and will be sentenced to the school and compelled to attend it. I think the value of these certified

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imposed, but try to ameliorate it by visiting children in prison in the fourteen day period and sometimes securing their early release to the reformatory.

<sup>185</sup> 1st Report of the Inspector of Reformatory Schools, 1857. P17

industrial schools in Scotland can scarcely be exaggerated. They seem to offer the cheapest and most effective means for preventing the evil which the reformatory can only cure.<sup>186</sup>

He commended especially the work done in Aberdeen, noting that unlike other towns and cities its streets were free from neglected children who were instead busy being educated at the city's industrial schools.

## 2.6 CONCLUSION

What has emerged very strongly from this analysis is the criminalising impact of net widening diversionary approaches to juvenile misconduct in the nineteenth century. The examination of the pre-statutory system of institutions in Scotland has revealed that diversionary approaches were not inherently problematic and could have good results. This was certainly the case when the magistrates in Aberdeen and Edinburgh directed children appearing in front of them to the type of schools set up by Watson and Guthrie in the 1840s. These were, in most respects, admirable establishments which helped a great many children and, according to the accounts of the original reformers, brought about an impressive reduction in juvenile mendicancy and offending. However, although it was not completely evident by 1860, as the statutory system developed, so the gap between the aspirations of the reformers and the practical operation of the system widened, and the ethos of the system changed character.

As the statutory system became embedded, considerable numbers of children came to be detained in the reformatory and industrial schools, residential establishments which were penal in character, often demanding that children undertake arduous work: this harsh ethos prevailed in both the reformatories for convicted offenders and also in industrial schools where the majority of children had not been convicted of any offence and were detained on grounds such as vagrancy or destitution. It is important to emphasise that the designation of these institutions as schools is more than a little misleading. They were very much part and parcel of the criminal justice system. They were regarded by those incarcerated in them and also by the public as nothing less than a form of imprisonment.<sup>187</sup> Thus children were

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<sup>186</sup> Report at p18.

<sup>187</sup> See London Police Courts', *Blackwood's Edinburgh Magazine*, October 1875, Volume CXV111, p.382 for an English case where a father appeared in court for failing to pay maintenance for his son detained in an industrial school for being in a destitute condition. The father's comments illustrate that the school was regarded as a form of prison;

subjected to an insidious process of disguised criminalisation in which many were drawn into the system by the net widening effect of the diversionary strategy, and, once there, were subjected to a penal regime.

Ironically, despite her admirable philanthropic concern for children, there are clear indications that most ardent proponent of the reformatory movement in England, Mary Carpenter, was aware that children would probably be more likely to be convicted under the system she proposed. Like all of those involved in the reformatory campaign, she was anxious to repel any suggestion that the legislation would in any way lead to young offenders having an easy ride or being treated in any way more favourably than the children of the deserving poor. When she gave her evidence on the subject of reformatory schools to the 1852 Select Committee<sup>188</sup> she was anxious to show that the system she proposed was not a “bonus on crime”<sup>189</sup> but would entail real punishment with reformatory effect. In this context she expressed her belief that under a statutory system of reformatory schools the courts would be much more likely to convict children than was the case before. She argued that, if criminal justice officials were aware that convicted children would be sent somewhere where they would be reformed, rather than face the futile alternative of prison, then, instead of pursuing a policy of simple non-prosecution of minor offences, it was much more likely that children would be convicted.

This chapter has revealed there were certain key components involved in the criminalisation of children. Watson’s writings on Aberdeen in the 1840s help distinguish the variables of criminalisation, the factors which operated together to criminalise children: policing practices, the effect of new criminal prohibitions, procedural changes and sentencing decisions. Firstly, the development of urban policing in Aberdeen created a situation where children’s offences would be more likely to be dealt with in criminal justice terms. Secondly, new criminal prohibitions designed to maintain order in the expanding town impacted adversely on children’s street activities, bringing them to the attention of the police. Thirdly, the effect of summary procedure was important too and meant that, although children’s cases were quickly processed by the new police and justice of the peace courts, there was an ever escalating volume of children appearing in court. And, fourthly, there was

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See too *McKenzie v McPhee*, High Court of Justiciary, 1889 Vol 2 ,189. Reported comments by the girl’s mother show that industrial schools were regarded with dread.

<sup>188</sup> 1852 Report from the Select Committee on Criminal and Destitute Juveniles; together with the proceedings of the committee, minutes of evidence, appendix and index at page 98.

<sup>189</sup> *ibid.*

the problem of sentencing inconsistencies by legally unqualified magistrates which resulted in many children being sentenced to imprisonment for contravening the new prohibitions criminalising minor misconduct. It is important to recognise that this process of criminalisation was one occurring in other towns and cities too as local Police Acts across the country created similar offences.<sup>190</sup> As noted in Chapter One, the situation in Aberdeen resonates strongly with the developments in Metropolitan London discussed by Susan Margarey.<sup>191</sup>

But, perhaps most interesting of all, Watson's observations on the injustice of people being subjected to criminal sanctions for offences which had no clear moral component underlines his belief that there was an indissoluble connection between criminal law and morality. And, for him, criminal law had to be linked with commonsense notions of morality, things which people had an innate sense were wrong such as theft, wife beating and assault. He strongly objected to the criminalisation of harmless activities, such as flying a kite, and commented that criminal law should be about matters which were 'wilfully injurious to person or property.' His writing shows that in the mid nineteenth century Scottish lawyers were addressing key issues about the nature of criminal law: issues such as what constitutes harm and the justification for creation of criminal offences.

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<sup>190</sup> Barrie (2008).

<sup>191</sup> Margarey (1978).

## CHAPTER THREE

### DEVELOPMENTS BETWEEN 1860 AND 1884

#### 3.1 INTRODUCTION

The period between 1860 and the 1884 witnessed the entrenchment of the statutory system in Scotland. In 1866 there was consolidating legislation regulating certified industrial and reformatory schools across the UK.<sup>1</sup> Although amended in certain respects by subsequent legislation, the 1866 Acts on industrial and reformatory schools 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. With the national inspectorate for certified industrial and reformatory schools continuing throughout the latter half of the century to exert pressure for uniformity of approach in Scotland and England it appeared that both jurisdictions were adopting a common approach to criminal and destitute children. However, despite the constraints imposed by the overarching UK statutory system and the powerful accompanying trend towards convergence both at a practical level and in terms of ethos, the Scottish approach to juvenile offenders and destitute children remained distinctive in important ways. The focus of this chapter is the way in which the Scottish system adapted to and evolved within the statutory framework between 1860 and 1884, when a Royal Commission set up to investigate industrial and reformatory schools reported its findings.<sup>2</sup>

In a sense each decade from the 1860s until the 1880s had its own tale to tell. The theme of the 1860s was one of consolidation as the statutory system became thoroughly embedded. The development of the system was well recorded in the pages of the Reformatory and Refuge Journal. The Journal covered all significant matters related to industrial and reformatory schools. It discussed legislative developments and had notes on visits to institutions all over Britain. It also provided commentary on official Reports by the inspectorate and reported on papers delivered at conferences by important figures in the reform movement such as Thomas Guthrie from Scotland and the pre-eminent English

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<sup>1</sup> Reformatory Schools Act 1866 (29 & 30 Vict. cap.117); Industrial Schools Act 1866 (29 & 30 Vict. cap. 19).

<sup>2</sup> 1884 Report of the Commissioners on Reformatories and Industrial Schools [C.3876] [C.3876-I].

reformer Mary Carpenter.<sup>3</sup> Much space was devoted to details of debates at meetings such as the Social Science Congress where the latest ideas were exchanged. The overall impression which the Journal sought to convey in the 1860s was a sense of energetic and excited purpose reflecting a desire to create a flourishing framework of schools linked not just by common legislation but to some extent by shared aims and co-operation between institutions, even across borders. For example, at a meeting of managers of Scottish and English institutions in 1862 the possibility was discussed of supplying a reformatory in Yorkshire which had surplus places with reformatory boys from two Scottish counties.<sup>4</sup>

The project definitely had grand ideas, keeping an eye on the international scene and looking towards developments in the United States and the continent for inspiration.<sup>5</sup> But drawing on ideas from other jurisdictions was nothing new for those involved in the English reformatory movement, particularly Mary Carpenter. As a Unitarian, she looked to New England as her spiritual homeland and was well informed about reformatory institutions developed there, as well as those established on the continental mainland, especially the renowned Mettray in France. And of course she was also hugely influenced in her endeavours to establish the statutory system by the success of pre-statutory initiatives in Scotland, particularly the Aberdeen system.<sup>6</sup> Developments in Scotland should be seen in the context of this dynamic of changing responses to juvenile offending on an international scale. This concern with international links was to have implications on a practical level as those involved in the management of institutions developed programmes of emigration, particularly to Canada, for some children leaving institutions.<sup>7</sup> The chapter examines the

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<sup>3</sup> *Reformatory and Refuge Journal* (1861), Vol. 1, p.55. Reported an address by Guthrie on the Edinburgh schools at a convention in London exhibiting examples of work carried out by pupils at fifteen institutions: sample work included 'turning, printing, tailoring, shoemaking, brushmaking, bag and envelope making, rag-cutting, wood-chopping, shoe-blackening, straw-work, needlework etc.' See too a paper by Mary Carpenter on day industrial schools in 1872, Vol. LV, p269.

<sup>4</sup> *Reformatory and Refuge Journal*, 1862, p.87

<sup>5</sup> For example an article on 'The Industrial School at Signa, Tuscany' in *Reformatory and Refuge Journal*, 1870, Vol. XLVI. P.305.

<sup>6</sup> William Watson wrote about Mary Carpenter in *My Life*, saying that he had 'long corresponded' with her. He spoke of her 'energy' and said she was 'held in great respect by all philanthropists.' (Chapter 1850-60, unnumbered pages.)

<sup>7</sup> The journal Reported on the progress of emigration schemes. See 1861 Vol.1. page 102 which discussed the opportunities for 'abundant employment' awaiting emigrants to Canada, commenting 'It will be their own fault if any of those who have gone out do not succeed.' By the 1870s the Reports were becoming less glowing and the pitfalls and failures of child emigration were apparent. See the comments of Inspector Sydney Turner in his Eighteenth Report in 1875. He noted that more than 2000 children had been sent to the colonies from UK institutions and while many had been successful he also referred to significant problems with children being sent out in large numbers at once without a proper system in place to either supervise them on the journey or to

way in which, throughout the 1860s, Scottish institutions responded to external pressures emanating from legislative developments and the growing dynamism of the reformatory-industrial movement across the UK.

The contrast between the beginning of the decade and the end was marked. In many ways the 1860s began optimistically for the Scottish reformers. After all they appeared to have succeeded in securing a major goal by achieving a legislative framework. At this stage it was not entirely apparent that the statutory system they had striven so hard to achieve would eventually subvert their original vision of reform. As in the pre-statutory system there was still scope for local variation and in the course of the chapter evidence emerges that some towns, notably Aberdeen and Edinburgh, managed in the early 1860s to some extent to retain the ethos of the original pre-statutory system.

Ten years later the picture across Scotland as a whole had significantly altered. By the 1870s the original vision espoused by the Scottish reformers was severely compromised, and the main theme which emerged from this decade was one of attempted restoration of the essential elements and core humanity of the original project. The reformers had witnessed the statutory system taking on a momentum of its own as it flourished and developed in directions they had not anticipated. Residential institutions had become the norm, and the period saw the expansion of the industrial school system. The main architects of the original reforms were becoming advanced in years and they watched with concern as the routine institutionalisation of children under the statutory system undermined their long held objective to help children in trouble. For example, following the introduction of universal compulsory education in Scotland in 1872, the industrial-reformatory legislation was used to detain children simply found truanting. Developments of this sort were alien to the ideals of the reformers who placed high value on maintaining the integrity of the family bond. Anxious to preserve the legacy of benign reform, William Watson was determined to redress matters. The key to the success of the original pre- statutory enterprise had, of course, been the day industrial school and it was to this idea that Watson returned. For this reason he became active in promoting a campaign for day industrial schools to be run on the lines of

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ensure that they were placed in the hands of trustworthy people when they arrived. The types of problems Turner was alluding to occurred, for example, where children were hired out to work for farmers without pay on the pretext that they were being 'adopted.' See account of a girl of 16 or 17 emigrated to Canada (in the *Reformatory and Refuge Journal* 1875, LXVI, p.363) who said that, " Adoption, Sir, is when folks gets a girl to work without wages."

the early schools in Aberdeen. The outcome of this final major public intervention by the early campaigners is analysed in the course of the chapter.

If the hallmark of the 1870s was one of attempted restoration of the original vision, the early 1880s were marked by ambivalence and inertia in the face of calls for reform of the system. It was clear to many commentators that the system had developed multiple shortcomings and yet little was done to tackle the problems. A Report on the state of the law relating to juvenile offenders in 1881 revealed judicial disquiet.<sup>8</sup> Calls for reform came from other quarters too including Lord Norton in England, who as Viscount Adderley had been one of the prime sponsors in parliament of the original reformatory legislation. Despite this there appeared to be no official willingness to address the difficulties with root and branch reform.<sup>9</sup> The Royal Commission on reformatory and industrial schools which reported in 1884 acknowledged the criticisms.<sup>10</sup> It heard the evidence of the veteran campaigner William Watson, who was still arguing lucidly at the age of eighty eight that the residential industrial school system should be dismantled and replaced by day industrial schools. Watson was emphatic that it was wrong to separate children from their families and also wrong to pursue impoverished parents through the courts for financial contributions.<sup>11</sup> However the Report of the Royal Commission did little more than outline a list of recommendations with the aim of improving the existing system. Radical reappraisal had to wait for another twelve years and the outcome of the Departmental Committee on reformatory and industrial schools in 1896 which exposed and addressed many of the flaws and abuses of the system.<sup>12</sup>

Although it is true that at the level of policy the statutory system resolutely occupied a central position in the official response to children in trouble which remained virtually unassailable until the findings of the 1896 Committee, this did not mean that the system was immune to challenges through the courts. There were several reported cases where recourse to the High Court of Justiciary resulted in the liberation of children sentenced to detention in institutions.<sup>13</sup> In these cases the High Court dealt with bills of suspension and liberation

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<sup>8</sup> Reports to the Secretary of State for the Home Department on the state of the law relating to the treatment and punishment of juvenile offenders. 1881 [C.2808]

<sup>9</sup> See Norton, C. 'Schools as prisons and prisons as schools' (1887) *Nineteenth Century* Vol 21, p. 119. where he argued that the schools should be about education primarily and not be viewed as prisons.

<sup>10</sup> 1884 Report of the Commissioners on Reformatories and Industrial Schools.

<sup>11</sup> *ibid* at p. 412.

<sup>12</sup> See Section 4.2 of thesis.

<sup>13</sup> See *Maguire v Fairbairn* 1881 4 Couper, 536; *Wilson v Stirling* 1884 2 Couper 518.



seeking to overturn decisions by lower courts to send children to industrial or reformatory schools. The court's important role in addressing some of the inequities of the system, especially in remedying what it deemed to be abuse of procedure in the practice of the lower courts, is analysed in the course of the present and the following chapter.

At the other end of the court hierarchy were the police and burgh courts which dealt with most of the committals of children to the institutions. While official case reports exist of some children's cases referred to the High Court of Justiciary, information about cases finally determined by lower courts is less accessible. One important source which sheds light on the practices of the lower courts in dealing with young offenders is the archive of records relating to boys sent by courts in Edinburgh, Glasgow and the Borders to Wellington Reformatory Farm School. These were cases of boys convicted of an offence, most commonly petty theft, and sentenced to a period of imprisonment, followed by detention for five years in the reformatory under the Reformatory Schools Act.<sup>14</sup> It is particularly fortunate that these records remain as Wellington was a very significant reformatory: according to the Inspector Sydney Turner it held the singular distinction of being 'the Scottish Red Hill.'<sup>15</sup> For Turner this was no mean praise as Red Hill was his own creation. Set up under the auspices of the Philanthropic Society, the reformatory at Red Hill in Surrey was the first experimental attempt to transplant to England a farm school based on the system set up by Demetz at Mettray in France, the system which Foucault identified as the pinnacle of the disciplinary ideal.<sup>16</sup> Like the reformatories in Mettray and Red Hill,

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<sup>14</sup> Each record of admission is accompanied by an extract of conviction giving details of the offence, place of conviction, previous record and sentence imposed. It also gives detailed information about the child including an assessment of the 'character' of the parents.

<sup>15</sup> Nineteenth Report in 1876 at page 14. Red Hill farm school was opened in Surrey in 1849 by the Philanthropic Society which was a prime mover in the English reformatory movement. Turner was a chaplain to the school and instrumental in its development having been commissioned by the society along with Thomas Paynter, a London magistrate, to visit Mettray and Report on its suitability for adoption in England. Turner approved of Mettray and recommended experimenting with a school on a similar design in England based on small units of no more than twenty five boys each. Prior to the 1854 Youthful Offenders Act the basis on which boys were admitted to Red Hill was on recommendation of a magistrate after conviction. See Carlebach, ch.1. See too Nineteenth Report, 1876, p5 where Turner describes how Mettray principles were adapted in Red Hill. He comments that he had tried to 'interest the English public in the provision of the French Penal Code by which offenders under 16 years of age are held to have acted "sans discernement" i.e. without sufficient knowledge of right and wrong, and to require correctional training rather than penal treatment.'

<sup>16</sup> See Foucault (1977).

In the 1876 Report at page 14 Turner states that the Mettray idea of small family units had been adopted in full in Wellington and two other reformatories, Calder Farm (Yorkshire) and North-Eastern, Netherton (Northumberland) while the Middlesex Industrial School at Feltham containing 700 boys was 'arranged on the plan of separate departmental division.' Turner comments that while practical problems associated with the expense of building, upkeep and staffing had meant that most institutions had been unable to implement this

Wellington adopted a system of housing boys in small units or pavilions rather than in one large building. Turner clearly approved of this kind of architecture, believing that the smaller family type unit would facilitate more effective reformation and avoid difficulties associated with some of the large soulless reformatories where many boys were housed under one roof.<sup>17</sup> Economic considerations prevented most reformatories from implementing the Mettray layout but, according to Turner, efforts were nonetheless made by many reformatories to adapt the ‘domestic principle’ by striving to create a homely environment. With the establishment of Wellington the disciplinary model took firm root on Scottish soil in a way which faithfully reflected the original French conception.<sup>18</sup>

For an insight into cases resulting in admission into industrial schools from the 1870s the Edinburgh Industrial Schools Complaints Books containing details of the burgh court process relating to each child has proved an equally useful source.<sup>19</sup> Both of these sources help to flesh out a clearer picture of the statutory system in operation with fascinating detail about the circumstances of the children involved. While these sources are concerned with individual cases, an overview of the whole system in practice is given by reading the annual reports of the Inspector of Reformatory and Industrial Schools. The significance of the inspectorate is covered in the next section of the chapter.

The remainder of this chapter proceeds as follows. Section 3.2 considers the issue of centralisation and the role of the inspectorate. This is followed, in section 3.3, by a discussion of the position of the reformatory and industrial schools within the Victorian criminal justice system. The chapter then moves on to consider developments in each of the decades in turn.

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idea efforts had usually been made to adapt the ‘domestic principle’: ‘The number of inmates has been limited to such a figure as will allow of personal association between the superintendents and those under their charge, and ensure a knowledge of each inmate’s character and disposition. The results have answered fairly to the efforts to realise this aim, and the general tone and spirit of the schools are natural and home like’(page 15). On his own efforts at Red Hill Turner records that he tried to develop a version of Mettray which was in tune with English culture, in ‘the new attempt to reconcile detention with freedom, and to enlist the offenders’ self interest and voluntary action on the side of obedience, order and industry and to utilize the chief characteristics of the Mettray system’ (page 14 of 1876 Report).

<sup>17</sup> See Section 3.3 in relation to the Glasgow House of Refuge and its failure to divide boys into ‘smaller family divisions.’

<sup>18</sup> However it should be noted that although I am referring here to the original French idea, there was a great deal of cross pollination of ideas going on at this time. As noted in the first chapter Demetz in turn had been influenced in developing Mettray by agricultural schools in Belgium and Holland and the US.

<sup>19</sup> Edinburgh City Archives.

### 3.2 CENTRALISATION AND THE ROLE OF THE INSPECTORATE

The inspectorate played a crucial part in creating uniformity within the system. But examining the role of the inspectorate reveals the difficulties involved in centralisation when there were inadequate resources to implement it in practice. Compiling annual reports was clearly an immense task. It involved visiting all the certified institutions and producing a report, albeit usually a brief one, on the progress of each one.<sup>20</sup> The preface to the reports contained a lengthy general statement with an assessment of how the system was developing as a whole and also contained a large section devoted to statistical analysis. There were pages of tables recording numbers of admissions and discharges along with information about previous convictions of inmates, recidivism rates, notes on the finances of institutions and details of the destinations of children leaving the schools, if known.<sup>21</sup> Whether these reports accurately reflected the true nature of the establishments under inspection has been questioned by some commentators. For instance one former inmate of an industrial school described the vigorous scrubbing and polishing in the days leading up to inspections and he doubted whether any inspector ever witnessed anything which the managers of the institutions did not wish him to see.<sup>22</sup> Nevertheless the reports were far from uncritical. For example in one report Sydney Turner accused a Scottish reformatory at Parkhead, Glasgow of forcing young boys to undertake the arduous task of brickmaking which he described as degrading employment unsuitable for children.<sup>23</sup> In another Report he dealt unflinchingly with a child sexual abuse scandal which occurred in the Glasgow House of Refuge for boys in 1867. Far from sweeping the matter under the carpet, the Report discussed the ‘shock to public confidence caused by the discovery of such corrupting practices’:

‘The only important exception to the general good order and satisfactory progress of the schools has occurred in the case of the Glasgow Boys’ House of Refuge, into the

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<sup>20</sup> The Reports on institutions give the date of the annual inspection.

<sup>21</sup> The Inspector, Sydney Turner, was scathing about those schools which did not know what had become of those discharged. See Twelfth Report, p21.

<sup>22</sup> Briggs, I. *Reformatory Reform*, London, 1924 pp 85-86. Quoted in Carlebach (1970), 123.

<sup>23</sup> See Thirteenth Report, 1870, at p76. The Report is critical of the reformatory - one with 211 boys - for admitting boys who were ‘very young in my opinion much more fit for an industrial school than a reformatory.’ Of the brickmaking the Report says that it might be profitable but it is very dirty and ‘has a lowering rather than an elevating effect upon the mind. There seemed to be a want of cheerful and ready obedience such as one is made familiar with in many of our good schools and of a thoroughly kindly influence working in and among the boys.’ The boys were said to be ‘rough and dirty’ in appearance and ‘much in want of care and attention.’ Their beds were said to be in an unsatisfactory state and in dormitories which were not well ventilated.

moral condition and the results of which it has been necessary to institute a very searching and painful inquiry.’<sup>24</sup>

Following the inquiry Mr McCallam, the Superintendent of the Refuge, resigned and the reformatory’s activities were suspended to allow the directors to place ‘the institution on a healthier footing.’<sup>25</sup> In a subsequent report when the reformatory had resumed its operations Turner was critical that so many of the former staff had been retained and was not surprised that there had been several cases of absconding by boys.<sup>26</sup> The approach taken by the inspectorate in these and other cases lends weight to the view that the inspectorate adopted the role of attempting to protect children from the worst aspects of the system.<sup>27</sup> It has been argued that Turner may have been ineffective in confronting mistreatment of children,<sup>28</sup> but it has to be remembered that the office of the inspectorate was surprisingly small in terms of manpower. Based in an office in London the chief inspector was supported only by an assistant inspector and a number of clerks.<sup>29</sup> With its constrained resources and extensive responsibilities for inspecting schools throughout the UK, the scope the inspectorate had for exerting much influence over the day to day running of establishments must have been limited, so its capacity for regulating the system should not be over emphasised. However it did at least provide a very significant external check on the activities of the institutions.

### **3.3 THE SCHOOLS IN THE VICTORIAN CRIMINAL JUSTICE SYSTEM**

While the network of certified reformatory and industrial schools embraced a variety of different types of institutions varying, for example, in size, grounds of admission, gender intake, location and types of industrial work carried out, what they all had in common was

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<sup>24</sup> See Tenth Report, 1867 at page 7.

<sup>25</sup> See Tenth Report, 1867 at page 7. The situation came to light when a disgruntled former employee wrote to the Home Office exposing the abuse. According to Turner the inquiry found it established that a culture of ‘immoral and indecent practices had prevailed long and largely among the boys, especially the oldest and more trusted ones and that in spite of two or three cases which had occurred and notwithstanding more than one warning from myself, these evils had been most unfortunately underrated and their existence comparatively ignored by Mr McCallum and the officers in whom he placed most confidence.’

<sup>26</sup> See Twelfth Report, p.7. Turner was especially critical of the institution for having large numbers of boys kept almost until they were adults in an enclosed institution with no attempt to create smaller ‘family divisions’ and employing exclusively male officers and servants.

<sup>27</sup> See Carlebach (1970), 127. In Carlebach’s view Turner was widely respected by managers of schools and although he was intent on reducing abuses, ultimately he was unwilling to challenge inappropriate management and ineffectual in controlling schools which treated children badly.

<sup>28</sup> *ibid.*

<sup>29</sup> See Nineteenth Report, 1876, p.36. There were also regional officers operating in some large cities including Glasgow to assist in recovering contributions from parents.

that they were run on the ‘voluntary principle.’<sup>30</sup> Some schools were partially reliant on voluntary subscriptions and all were run by independent managers who exercised a considerable degree of autonomy. In some senses the schools occupied uncharted territory as private organisations which were an integral part of the criminal justice system. They were not state prisons but as statutorily certified establishments under Home Office direction to which many children were sent to be detained by order of the courts they were central to the operation of the criminal justice system.<sup>31</sup> The ambiguous role of the schools was widely recognised and was the subject of debate in parliament in 1866 when the consolidating legislation was being discussed. One contributor to the discussion succinctly explained the position of the schools which he described as ‘public institutions’:

‘These schools were originally founded upon the voluntary principle, but they had become in some degree state institutions, and were partly maintained by public money.’<sup>32</sup>

Clearly, although the school managers enjoyed a degree of independence in terms of internal organisation, and were subject to only infrequent outside inspection, the consensus was that they served a public function and were part and parcel of the fabric of criminal justice, a perception reinforced when prison authorities were authorised by statute to contribute to, build and maintain schools.<sup>33</sup> The importance of the schools’ public function as an arm of the criminal justice system has been underestimated by commentators such as David Garland, who describes them as ‘private institutions, dealing with children and not with citizens, kept formally distinct from the state system of dealing with deviants.’<sup>34</sup> Admittedly

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<sup>30</sup> See Sydney Turner’s comment in his final Report in 1876 when he was reviewing the history of the schools: ‘The third distinguishing feature of the English system, which I regard as one of the keystones of its success, has been that while assisted and superintended by the State, the schools are essentially conducted and controlled by voluntary management and have throughout retained an independent and partially charitable character.’ The reference to the ‘English’ system applies equally to the Scottish. Nineteenth Report, p.10. (In making these comments Turner is discussing the differences between the reformatory system in Britain and the similar systems in America and France which he says it emulated. The remaining two distinguishing features of the British system were enforcement of parental contributions for maintenance of children in the schools and the period of imprisonment imposed on young offenders before admission to a reformatory, essential in his view for purposes of adequate punishment and general discouragement of crime.)

<sup>31</sup> Under section twelve of Reformatory Schools Act 1866, the Home Secretary was required to produce rules regulating reformatories.

<sup>32</sup> Comment of Mr Stephen Cave M.P, HC 27<sup>th</sup> July 1866, Hansard Vol. 184 cc 1606-13.

<sup>33</sup> In 1874 ( 37 & 38 Vict. c. 74, s.2) prison authorities were authorised to borrow to meet capital expenses of reformatories and the Prison Act 1877 (40 & 41 Vict. c.53. s.67) transferring local prisons to the state reserved the power of prison authorities to contribute to reformatories. Hornby, F. V. (1897) *The Reformatory and Industrial Schools Acts*, London.

<sup>34</sup> Garland (1985), 8.

he does acknowledge the significance of the schools as being an influential model of institutionalised reformation in Victorian Britain:

‘We should note that these institutions meant that the practice of reformation (albeit in an educational and often evangelical form) had a definite foothold in the system.....they formed a reformatory example on the margins of the system and one which would be referred to again and again as a precedent for a much wider (and somewhat different) practice of reform.’<sup>35</sup>

However, his judgment of the schools as being marginal fails to recognise the centrality of their role in providing the courts with an alternative to imprisonment for thousands of young offenders. Locating the schools at the centre rather than on the fringes of approaches towards offenders in mid-nineteenth century Britain suggests that ideas about reformation of individual offenders were widely accepted and put into practice far earlier than the Garland thesis allows.<sup>36</sup> This is an argument which is developed more fully in the next chapter in discussing the background to the juvenile court system. For the moment the more relevant point is that as the statutory system became ever more entrenched in the period 1860-1884, it played a far from marginal role in the way the courts responded to criminal and destitute children.

### **3.4 THE SYSTEM IN THE 1860S**

Consolidation was the central theme in the 1860s. Pressures to establish a common approach both north and south of the border came from a number of sources. As we have seen, the influence exerted by the inspectorate was important. Another vital factor was the consolidating legislation of the mid 1860s which will be discussed shortly. But first I will look at a less obvious but also very influential factor in the way the system developed: the effect of funding cuts on voluntary admissions to the industrial schools. I will also look at the issue of variation within the system, focusing on the early 1860s when there continued to be considerable scope for local differences in the way Scottish towns operated. This section

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<sup>35</sup> Ibid. page 8. Here Garland is alluding to wider changes which he claims occurred in attitudes towards reformation of criminals in the early twentieth century.

<sup>36</sup> According to Sydney Turner in his 1876 Report the reformatory schools aimed to 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.’ Nineteenth Report, page 11. Compare this with Garland’s assertion that in the Victorian criminal justice system “each individual was treated ‘exactly alike’, with no reference being made to his or her criminal type or individual character.” (Garland (1985),14.)

reveals that in the early years of the statutory system in many respects the industrial schools in Aberdeen and Edinburgh were not very different in 1861 from the way they had been in the pre-statutory system. However this was to change. The period following the consolidating legislation of the mid 1860s marked a time of transition for the industrial schools as the process of adaptation to the constraints of the statutory system took effect. A new legislative focus on the criminality of industrial school admissions meant that they were now regarded by the inspectorate as a form of junior reformatory which had important consequences for the treatment of children. The final part of this section looks at the role of the reformatories in the 1860s.

### **3.4.1 Financial problems: funding cuts on voluntary admissions**

The 1861 Select Committee Report on Education of Destitute Children addressed the vexed issue of funding. Scottish industrial schools had been affected by a reduction in the levels of state funding for pupils attending the schools as voluntary cases, a policy designed to decrease the number of voluntary attendees and promote industrial schools as establishments reserved for cases committed by the courts.<sup>37</sup> The 1861 Committee recommended preserving the existing levels of funding which set allowances per pupil far higher for committed cases than voluntary cases and also stipulated that grants for general costs were to be restricted to those schools which were statutorily certified.<sup>38</sup> Those involved in the schools complained bitterly about the loss of the educational grants and inadequate support for voluntary cases, arguing that their role in preventing children from resorting to crime was being undervalued. Such a departure from the pre-statutory conception of industrial schools as primarily preventive institutions met with resistance from the original campaigners, especially Guthrie and Watson.<sup>39</sup> This concern was voiced by Scottish witnesses to the 1861 Select Committee.

In his evidence William Watson stressed the value of the schools as an ‘immense boon’ to society which had transformed the face of Aberdeen:

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<sup>37</sup> Ralston (1988), 49. In 1857 grants announced the previous year were removed for uncertified industrial schools leaving them reliant on charitable donations and in both certified and uncertified schools allowances of fifty shillings a year for every child were replaced by allowances of 5s for voluntary cases while committed cases received £5.

<sup>38</sup> *ibid.* p50. Not all schools opted for certified status: see Section 3.4.2.

<sup>39</sup> *Reformatory and Refuge Journal* (1861), Vol. 1, p.55. Guthrie pointed to the reduction in juvenile crime in Edinburgh (from a figure of five per cent children under 14 when the schools first started to the level of half of one percent) and protested that despite this impressive achievement the government gave only 5s a year for children in industrial schools (as voluntary admissions) while they lavished 6s a week on every child convicted of an offence and taken into a reformatory. He argued that the role of industrial schools in preventing crime was more valuable than that of reformatory schools and that industrial schools should therefore be better supported by government.

‘In the town there were 280 children reported by the police in 1840 as living by begging and stealing; there is not a child in Aberdeen living by begging or stealing now.’<sup>40</sup>

Arguing that the government should at least support the schools to the extent of meeting the cost of the educational element of the institutions he pointed to the widespread recognition of the value of the schools in the community which allowed the schools to rely on regular voluntary subscriptions from local people to meet the costs of food and clothing for the children. Watson was well aware of the risk posed by seeking public funding: there was a fear that receiving public money would undermine the capacity of the schools to raise the voluntary subscriptions on which they depended. However he felt that in view of the proven capacity of the schools to prevent children at risk from descending into a life of crime it was fair to expect the government to assist in shouldering part of the burden by paying for the salaries of the teachers, leaving other costs to be met by charitable donations. He stressed that the schools were so successful in producing useful members of society that local businesses were clamouring to employ the children emerging from industrial schools.<sup>41</sup> But despite Watson’s very robust plea on behalf of the schools he did not succeed in improving the level of funding.

Part of the reason for this appeal for increased assistance falling on deaf ears was that the arguments advanced on behalf of Scottish industrial schools with their mixed intake of voluntary and committed cases were undermined by the position adopted by some of the English ragged schools, notably the London ragged schools under the patronage of Lord Shaftesbury. Under Shaftesbury’s considerable influence these schools for the destitute children of London spurned the notion of government aid, preferring to rely entirely on charitable donations for fear that their independence would be threatened and their evangelical, missionary focus compromised by accepting public money.<sup>42</sup> This approach

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<sup>40</sup> 1861 Report at page 144 and at page 136.

<sup>41</sup> Watson stated: ‘The demand is so great that I can scarcely keep a child above twelve years of age; they go, almost all of them, out into the world at twelve, or before thirteen.’ 1861 Report at page 136. His testimony about the efficacy of the schools in producing worthwhile citizens was backed up by a witness from the Edinburgh United Industrial School, Charles Ferguson. Ferguson produced the results of a survey of employers of 950 children who had left the schools and Reported that 900 children had been found to have done well.

<sup>42</sup> However others involved with English ragged schools, especially Mary Carpenter argued vigorously for proper public funding. She commented that there were considerable differences between the schools in the provinces and those in London which had the financial support and influence of Lord Shaftesbury on which to depend. See evidence of Mary Carpenter to the 1861 Committee at page 98.



was in perfect keeping with the 1861 Committee's evident preoccupation with discouraging 'pauperism' at public expense.<sup>43</sup> However, in the face of hostile questioning Watson strongly refuted the notion that the schools undermined the self reliance of the poor, arguing that the experience of Aberdeen had shown they had completely the opposite effect.<sup>44</sup>

Ultimately this governmental financial policy favouring committed cases at the expense of voluntary admissions had a profound impact. Over the course of the 1860s the number of industrial schools in Scotland with a mixed intake of voluntary day pupils and compulsory cases declined in favour of residential institutions, usually single sex, reserved mainly for pupils detained under court order.<sup>45</sup> The change in character in the certified industrial schools course of the 1860s was clearly expressed by Sydney Turner in 1868:

"The Certified Industrial Schools are of two classes. The one for both sexes, in which a certain number of the children attending are day scholars, who receive instruction but are only partially fed; the other for either boys or girls exclusively, in which the children are entirely lodged and boarded, and the majority detained under magistrate's warrant. The Scotch schools were generally of the former description, but are now mostly of the latter."<sup>46</sup>

### **3.4.2 Local variation in Aberdeen and Edinburgh in the early 1860s**

The most remarkable aspect of Watson's evidence was that under his influence the industrial schools in Aberdeen in 1861 seemed to be operating very much as they did in the pre-statutory era. Of the four schools involved in Watson's project only two were statutorily certified and out of a total of four hundred and ninety pupils attending the schools only forty were committed by magistrates under Dunlop's Act, the remainder being voluntary

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<sup>43</sup> The Committee stressed that government policy on funding for schools was to assist those who assisted themselves, and on this principle appeals for further aid to the schools should be refused, but Watson replied that the destitute children in his schools had parents who could not help themselves. He also pointed to the huge efforts made by private individuals like himself and the others involved in the schools to provide assistance to the destitute. They were not seeking preferential treatment, only help with educational expenses which the government already gave to other types of schools. 1861 Report, page 140.

<sup>44</sup> He stated: 'I do not see that what we do does encourage pauperism; it reduces pauperism; we have reduced pauperism more in Aberdeen than in any other part of the world.' 1861 Report at page 140.

<sup>45</sup> See Twelfth Report, 1868, p.18.

<sup>46</sup> Ibid. See too Ralston (1988), 51.

admissions.<sup>47</sup> Entirely in keeping with Watson's views on the importance of children remaining in a family environment, children committed statutorily were accommodated with respectable local families, not in an institutional setting: clearly, even though the statute required that children under court order should not remain at home, the managers of the schools in Aberdeen interpreted the statute to allow children to continue to live in a family home so far as possible.<sup>48</sup>

It is not clear why only two of the four industrial schools sought statutory certification under Dunlop's Act, but the answer may lie in a desire to retain independence and also in the relatively low number of committed cases: there was obviously no need for more than two schools capable of receiving statutory admissions.<sup>49</sup> As Watson commented, the mere existence of the Act and the knowledge that repeated occurrences of vagrancy would result in a court order forcing attendance and removal of a child from home was enough in itself to keep juvenile vagrancy to a minimum.<sup>50</sup> There had only been five or six committed cases the previous year and in Watson's view the Act had been successful in reaching the children it was intended for. That did not mean, however, that the legislation could not be improved. Watson approved of proposed legislation extending the category of children who could be committed to industrial schools to children who 'associated with thieves.'<sup>51</sup> The existing categories of children eligible to attend the certified industrial schools were destitute and vagrant children. Under the amending legislation about to come into effect the category of

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<sup>47</sup> Report of 1861 Committee at page 132. Neither of the two girls' schools was certified, while the school for boys and the mixed school for boys and girls were both certified.

<sup>48</sup> Under section eleven of the Industrial Schools (Scotland) Act 1861 (not in force at the time of the Committee hearings) power was given to school managers to permit a child committed under the Act to lodge with its parent or any respectable person, but clearly Watson had adopted this policy anyway. Of the children falling under Dunlop's Act Watson said they received 'lodging because a parent sending its child out to beg is held to a very bad parent, and we are bound to take the child from the parent, because we are bound under the certificate to find night accommodation for the children, and therefore we pay 1s a week to a person to take them; we do not keep them in the school, but we get respectable parties to take charge of them.', page 135 of 1861 Report.

<sup>49</sup> The *Reformatory and Refuge Journal* (1861-1863, page 82) records the manager of an English institution who gave his reasons for not seeking statutory certification as concern that certification would result in private support being withheld; he also felt that uncertified status allowed the organisation more freedom to discharge when they saw fit.

<sup>50</sup> 1861 Report at page 139. This was also the view of the Inspector Sydney Turner; see 5<sup>th</sup> Inspector's Report, 1862, page 22.

<sup>51</sup> *ibid*, page 142. Watson was referring here to the Industrial Schools (Scotland) Act 1861, 24 & 25 Vict., c.132. He argued that children exposed to the company of thieves were in moral danger and needed to be provided with a substitute family: 'We endeavour to find out women to act as mothers.' Page 142. Another important aspect of the 1861 Act was that it extended the category of children admissible under court order to a certified industrial school to include children under twelve charged with an offence, and refractory children under fourteen. (See section on legislation).

children admissible under court order to the certified schools would be extended to include children under twelve charged with an offence and 'refractory' children under fourteen, as well as those associating with thieves. With this mixing of children from destitute and offending backgrounds the intake of the schools was in legislative terms restored to the pre-statutory position. However in practice there is evidence that the Scottish courts had continued to send young children appearing before them for trivial first offences to industrial schools anyway just as they had done in the pre-statutory system.<sup>52</sup>

In answer to detailed questioning on the position of children who had been committed under Dunlop's Act, Watson explained that in some such cases children had security for good behaviour offered on their behalf by their parents in order to 'bail out' the children so that the parents would avoid being pursued in court by the Poor Law Board for recovery of the costs of child support.<sup>53</sup> Unlike Edinburgh, there were no cases in Aberdeen of Poor Law Boards offering security; this was only permitted in towns where the Board could offer a child a place at a Poor Law school none of which existed in Aberdeen.<sup>54</sup>

The Poor Law Inspectors of Edinburgh were far more active: according to Charles Ferguson, the Superintendent of the United Industrial School, the policy of Poor Law Inspectors in Edinburgh was invariably to offer security rather than meet the cost of supporting children committed statutorily to the industrial school. This was done on the basis that the child would be offered alternative support by the Board, either in the poorhouse or by lodging the child out with respectable parties. However Ferguson reported that in one case a child removed by the Inspector was not offered education in a poorhouse school but instead sent to work in a colliery in Falkirk.<sup>55</sup> Even when children were provided with education in the poorhouse this was likely to have been of a very inferior quality compared to what was available at the industrial school.<sup>56</sup> The effect of this cost cutting policy being adopted by

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<sup>52</sup> See the case of James Eagle referred to in Section 3.6. On receiving a first conviction for assault in 1858 nine year old James was admonished and sent to the Original Ragged School at Castle Hill, Edinburgh. When he appeared before the court again three years later in 1861, this time for theft, he was convicted and sentenced to fourteen days imprisonment prior to being sent to Wellington Reformatory Farm School for five years.

<sup>53</sup> Watson said that he had sat as Sheriff in the Small Debt Court in three actions brought by the Poor Law Board where the Board had been successful in obtaining decree against the parents but in general the Board did not bother to pursue the parents because they knew that they did not have the means to pay, p134-135.

<sup>54</sup> See previous chapter for the case of *Hay and Others v Linton* 2 Irv.<sup>57</sup> where an Edinburgh Poor Law Inspector succeeded in offering security under the Act to obtain the release of a seven year old girl.

<sup>55</sup> See evidence of Charles Ferguson to 1861 Committee at page 150.

<sup>56</sup> See Watson's evidence at pages 136 and 141. Watson described teachers in poorhouse schools as providing 'very inefficient' education, which was given only for a few months when children were taken into the poorhouse. He was scathing about the detrimental effect on children of being separated from parents within

Inspectors of the Poor was that there was only one child in the Edinburgh United Industrial School committed under Dunlop's Act.<sup>57</sup> However, the ability of either Poor Law Inspectors or parents to circumvent the Act in this way was soon to be curtailed by the new Industrial Schools (Scotland) Act 1861 which did not re-enact the section allowing security to be offered.<sup>58</sup>

What emerges clearly from the evidence provided by both Watson from Aberdeen and Ferguson from Edinburgh is that in the early 1860s there continued to be scope for local variation in the way different Scottish towns operated. In many ways the industrial schools in these towns were very similar in 1861 to the way they had been in the pre-statutory system. The main objective of Dunlop's Act, to provide powers to compel attendance at industrial schools in cases where it was deemed necessary, appeared to have operated so well in Aberdeen that Watson could say that the work of the Act had been almost accomplished.<sup>59</sup> In both Aberdeen and Edinburgh the main work of the schools in providing industrial education for destitute children continued as in the pre-statutory system; the primary focus was still on exercising a preventive role in rescuing vulnerable children from descending into a life of crime. As before, there was a great demand for places in the schools and stringent admissions procedures were adopted to ensure only deserving cases were admitted, with parents of prospective applicants having to complete an admission schedule, followed by a visit inquiring into the home circumstances of the family.<sup>60</sup> However, the activities of Poor Law Inspectors in Edinburgh in offering security for children being committed under Dunlop's Act circumvented the operation of the Act so that few children who had been brought before a magistrate for vagrancy were retained by the schools as compulsory attendees. This practice was curtailed by the legislation in 1861, as noted in the previous section.

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the poorhouse. An alternative and equally inferior form of education offered by parochial authorities for destitute children was when children were sent 'to a common day school, taught by a female up a stair, or something of that kind.' (page 136).

<sup>57</sup> 1861 Report at page 146. Asked if he 'found any difficulty in getting cases sent under the Act', Ferguson replied; 'We have found no difficulty in getting them sent to us, but great difficulty in getting them kept. As soon as the parochial authorities of the parish on which the child is chargeable get notice of its being sent to our school they become security for the child, and take it away to their own school.'

<sup>58</sup> See page vi of F.V. Hornby's (1897) *The Reformatory and Industrial Schools Acts*.

<sup>59</sup> 1861 Report at page 142. However, as noted earlier he also supported proposed modifications to the legislation.

<sup>60</sup> This included asking neighbours about the family background. 1861 Report page 141.

Over the course of the 1860s, as we have seen, the predominance of this kind of day industrial school gave way in Scotland to a different type of institution, the residential and usually single sex industrial school where most of children were detained under court order. As we have seen one of the main reasons for the decline in voluntary attendees was the policy changing the way schools were funded. Sydney Turner offered some additional insight into the reasons for the change in the schools in his 1870 report. The main reason he gave for the change was the impact of 1860s legislation on industrial schools. In extending the categories of admission to include criminal conduct by young children and defining the grounds of admission to include ‘refractory’ conduct and children whose ‘parents or associates shall be criminal’<sup>61</sup> as well as those who were vagrant or begging, the emphasis had been placed on the criminality of industrial school admissions. He said this had changed the character of the schools so that they had altered from being primarily concerned with the education of the ‘ragged and neglected class’ to ‘houses of detention for the young vagabond and petty misdemeanant.’<sup>62</sup> He added:

‘The position of certified industrial schools has thus completely changed, and though still called schools they are in fact reformatories of a milder sort....In accordance with this change in character in their objects their locality and their mode of operation have been changing too. Originally they were designed and used as day schools and the majority of the children found in them were day scholars. They were, therefore established in the poorer and more populous districts of the towns in which they were situated. But for some years past from considerations of health and the necessity of more careful custody and more varied and especially of out-door employment, many of the schools have been moved into the suburbs of the town or country surrounding it; a change which has rendered the attendance of day scholars in most cases impossible or very inconvenient and has confined the inmates almost entirely to children regularly committed by magistrates for detention.’<sup>63</sup>

In keeping with this change two industrial school training ships were established for the first time in Scotland in 1869. One berthed on the Clyde and the other on the Tay, they received boys from various towns and cities with a view to training them in nautical skills.<sup>64</sup> This pattern of relocation of children far from their homes was to continue, with, for example,

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<sup>61</sup> 1870 Inspector’s Report, page 16.

<sup>62</sup> *ibid.*

<sup>63</sup> *ibid.*

<sup>64</sup> See Section 3.7.

many cases of Edinburgh girls being committed to Nazareth House<sup>65</sup> Industrial School in Aberdeen from the late 1870s onwards, as will be discussed later. However it should be recognised that despite the overarching pressures towards conformity of approach, there still continued to be evidence of diversity within the system in the late 1860s. By this point most children in Scottish industrial schools were under court order but in some towns, such as Edinburgh, some detainees were lodged out rather accommodated in the schools<sup>66</sup>; there continued to be a number of mixed sex schools, although over the next decade they were to become increasingly substituted by single sex schools<sup>67</sup>; and similarly although the Inspector's Report<sup>68</sup> records that in 1869 some day scholars were attending industrial schools, for example in Edinburgh and Aberdeen, several years later this was no longer the case.<sup>69</sup> The transformation taking place in the 1860s was a process continuing into the 1870s. The part that major pieces of consolidating legislation had to play in this change in the certified industrial schools will be explored more fully in the next section.

### **3.5 LEGISLATION IN THE 1860S**

#### **3.5.1 Legislation admitting young offenders to industrial schools**

The 1860s were characterised by consolidating legislation. As we have seen, when Watson gave evidence to the 1861 Committee he was anticipating the introduction of new legislation on industrial schools, the Industrial Schools (Scotland) Act 1861.<sup>70</sup> This consolidating Act repealed Dunlop's Act and the Act of 1856.<sup>71</sup> The Act extended the category of children admissible under court order to industrial schools to include not only vagrant and destitute children but children under twelve charged with an offence, children who were associating with thieves and also 'refractory' (uncontrollable) children under the age of fourteen but not any who had previously been imprisoned for more than thirty days. If a parent applied to have a 'refractory' child admitted then the parent could be ordered to make the maximum parental contribution of 5s. a week; this was intended to discourage parents from offloading their responsibilities. By admitting children under twelve who had offended to industrial schools the Act allowed very young offenders to be dealt with under the industrial schools

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<sup>65</sup> Aberdeen Industrial School for Roman Catholic girls.

<sup>66</sup> Inspector's Report for 1870, referring to 1869.

<sup>67</sup> See Inspector's Report for 1878.

<sup>68</sup> Inspector's Report for 1870, referring to 1869.

<sup>69</sup> See Inspector's Report for 1878, although there were a small number of voluntary cases recorded.

<sup>70</sup> See Section 3.5.1 of thesis.

<sup>71</sup> The 1856 Act referred to was the 'Act to amend the mode of committing Criminal and Vagrant Children to Reformatory and Industrial Schools.'

legislation rather than that applying to reformatories which meant that they were no longer required to endure a period of prior imprisonment. As discussed earlier this also meant that there was legislative authority for both destitute and offending children to be admitted under court order in certified institutions, and there is some support for the view that this reflected existing practice in schools.

Significantly for localities such as Edinburgh where Poor Law Inspectors had undermined the operation of Dunlop's Act by offering security for good behaviour of children, the power to offer security was not re-enacted. The Act also empowered managers of schools to lodge out children under detention with their parents or respectable parties, although as we have seen this was in practice what happened in Aberdeen already.<sup>72</sup> The 1861 Act in similar terms to the Scottish one applying to England was greeted with enthusiasm by Sydney Turner:

'We cannot have a better model for our English Industrial Schools than those of Scotland, and especially those in Aberdeen, whose success laid the foundation of the system which the Industrial Schools' Acts recognise. There the buildings of the school, the dress and treatment of the children are singularly inexpensive and brought as near the level of the children's natural condition and circumstances as possible so as to offer but little temptation to either child or parent. The school is carefully planted in the locality in which its agency is most wanted.'<sup>73</sup>

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<sup>72</sup> In 1861 an English Act on industrial schools in similar terms was passed, 24 & 25 Vict., c.113. This Act provided a clearer definition of vagrancy than existed in the English Act of 1857, defining it in the terms originally expressed in Dunlop's Act and repeated in the new Scottish legislation: begging, wandering, being without visible means of subsistence. For this reason Turner described this as the 'first effective Industrial Schools Act' for England. (Eighteenth Report, 1875, page 4). Ralston argues that at this point industrial schools became more widespread in England. On this point see too Clark (1977).

Like the Scottish Act this English Act transferred supervision from the Committee of Education to the Home Office and extended the class of children admissible under court order to include those charged with an offence, those associating with thieves and refractory children, but not those with previous convictions. The condition under the 1857 Act which required a conviction for vagrancy prior to admission was not re-enacted. (This had never been a condition in Scottish legislation.) Additionally, while the Act of 1857 had placed a lower age limit of seven on admission to industrial schools there was no such restriction in the new Act. In this respect the Act was brought into line with Scottish legislation which had never had a lower age limit. The absence of a specified minimum age was sometimes used to admit very young children, a practice criticised by the Inspector in the Sixth Report in 1863 with reference to three children under four years old having been admitted (page 14) and later in the Eighteenth Report in 1875 for further similar cases, one involving a child of eighteen months. Turner condemned this as most inappropriate, saying these small children were being harmed by detention in the schools and that they were 'fitter for the nursery than for a field or workshop' (page 5); for discussion of legislation see Hornby (1897).

<sup>73</sup> He also went on to comment that parents were encouraged to send their children voluntarily by the 'indirect compulsion' effected by the existence of the legislation. Fifth Report, 1862, page 22.

### 3.5.2 UK legislation on industrial schools

The Industrial Schools Act 1866<sup>74</sup> consolidated the Scottish and English legislation, placing the certified industrial schools of both countries within the same statutory framework. According to Turner, the Act gave ‘an increased stability and fresh impulse to the most useful movement which it is designed to strengthen and direct.’<sup>75</sup> The statute set out the categories of children who could be sent under court order to an industrial school when brought by ‘any person’ before a magistrate in Scotland or two justices in England.<sup>76</sup> The Act provided that children under fourteen found begging could be sent to an industrial school: children included here were those ‘found begging or receiving alms (whether actually or under the pretext of selling or offering for sale any things) or being in any street or public place for the purpose of so begging or receiving alms.’ This definition was interpreted by the courts to apply to children selling objects such as matches or bunches of heather on the street.<sup>77</sup> The Act also applied to children ‘found destitute, either being an orphan or having a surviving parent who is undergoing penal servitude or imprisonment.’ As before children were eligible to be admitted to a certified industrial school if ‘found wandering and not having any home or settled place of abode or proper guardianship or visible means of subsistence’ and, also as in the earlier legislation it included children thought to ‘frequent the company of reputed thieves.’<sup>78</sup> As in the 1861 legislation the managers retained the discretion to lodge children out of school either with parents or any ‘trustworthy and respectable person.’<sup>79</sup> Under section twenty seven managers of a certified school were given power to grant a licence to a child after not less than eighteen months detention.<sup>80</sup>

The Act retained the provision that children under twelve charged with an offence could be sent to an industrial school provided that they did not have a previous conviction.<sup>81</sup> It also

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<sup>74</sup> 29 & 30 Vict., c.118.

<sup>75</sup> Tenth Inspector’s Report, 1867, page 24.

<sup>76</sup> The categories are set out in section fourteen. As in the earlier legislation magistrate included ‘sheriff, sheriff substitute, justice of the peace of a county, judge in a police court, and provost or baillie of a city or burgh’ (section four).

<sup>77</sup> See cases referred to in Edinburgh Industrial School Complaints Book.

<sup>78</sup> Section 14 of the Act.

<sup>79</sup> Section 26.

<sup>80</sup> The licence could permit the child to live with any ‘trustworthy and respectable person.’

<sup>81</sup> Section fifteen stated: ‘Where a child apparently under the age of twelve years is charged before two justices or a magistrate with an offence punishable by imprisonment, or a less punishment, but has not been in England convicted of felony, or Scotland of theft, and the child ought in the opinion of the justices or magistrate (regard



re-enacted the section providing that parents or guardians ‘unable to control’ refractory children under the age of fourteen could apply to have them admitted.<sup>82</sup> A further section related to children in a poorhouse brought before a magistrate by managers of the institution: where they were either found to be refractory or had a parent convicted of a crime punishable by penal servitude or imprisonment the court could ‘if it satisfied that it is expedient’ order the child to be sent to a certified industrial school.<sup>83</sup>

There was also an important section in the Act concerning liability for upkeep of children in industrial schools. Section 38 applied only to Scotland and its effect was that if a child was in receipt of parochial relief within three months of being brought before magistrates then the local authority would have to repay the Treasury for the cost of his upkeep while in the school. This section re-enacted section 21 of Dunlop’s Act so it had been part of the Scottish legislation from the outset of the statutory system. Sydney Turner saw this as a ‘most valuable provision’ and regretted that it had not been extended to England: in his view many of the children eligible to attend industrial schools under court order should not be maintained at the expense of the general tax payer because they belonged to ‘the half-destitute and ill-trained classes for whom the local authorities should justly and naturally be responsible.’<sup>84</sup> However, this section was the source of much conflict in Scotland between the Treasury and parish authorities about which body was responsible for maintenance.<sup>85</sup>

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being had to his age and to the circumstances of the case), to be dealt with under this Act, the justices or magistrate may order him to be sent to a certified industrial school.

<sup>82</sup> Section sixteen. This provision was a widely used ground of admission: see Edinburgh Industrial Schools Complaints Books.

<sup>83</sup> Section seventeen. In England this applied to children in a workhouse. The categories of children admissible to industrial schools was further extended in 1871 by section fourteen of The Prevention of Crime Act, 43 & 35 Vict., c.112, to include children under fourteen of a woman twice convicted of ‘crime’; and again in 1880 by Industrial Schools Amendment Act, 43 & 44 Vict., c.15, under section one of which children found lodging, living or residing in a house with common or reputed prostitutes could be sent to an industrial school. Legislation in the 1870s relating to day industrial schools is discussed later in the chapter.

<sup>84</sup> Nineteenth Report, 1876, page 13.

<sup>85</sup> Disputes over liability were a cause of much conflict with many court battles between Inspectors of the Poor and the Inspector of Industrial Schools (on behalf of the Treasury) about who was to pay for a child’s upkeep. See, for example, *Lord Advocate v Brown* 1875 3 Rettie 188 : a boy of 11 was sent under s14 to an industrial school in Dundee till the age of 15. His mother was a pauper in receipt of poor relief and therefore the parish was liable for upkeep but his expenses were met by the Treasury. Almost at the end of his detention when he was allowed out to work the Treasury tried to recover the money from the parish Inspector of Poor who claimed he should have been informed of the original detention and that the detention was irregular on several grounds. The court did not accept this argument and the parish had to pay up to the day when the boy started to earn wages; see also *Deas v Stewart* 1885 5 Couper 638: a complicated dispute about who was liable to pay for upkeep of three children for whom a magistrate had granted orders of detention in an industrial school. The Inspector of Industrial Schools claimed the cost of their upkeep from the Inspector of the Poor of the parish in which they were said to be chargeable as paupers. The Inspector of the Poor then brought a Bill for suspension of the orders claiming irregularity and incompetency. The Bill was refused as the children had never been chargeable to his parish as paupers and section thirty eight did not apply.

The ramifications of this section were seen throughout the whole period in which the Act applied. For example in the later decades of the century when the Royal Scottish Society for the Prevention of Cruelty to Children<sup>86</sup> was active in rounding up destitute, vagrant children from the streets of Scottish cities, they often gave children refuge in shelters prior to appearing before a magistrate to be sent to an industrial school. The ostensible reason given for the retention might be to have time to complete inquiries or to negotiate with the authorities of a school for their admission. However, this was not the whole story. The 1896 Report on Reformatory and Industrial Schools heard evidence that when children were detained in the shelters the true reason for such detentions was to keep the child for the period of time required to ensure that the child would be admitted to the industrial school without the obstacle of a reluctant local authority being encumbered with the responsibility of having to pay towards the child's upkeep while in the school.<sup>87</sup>

To summarise the main differences between this and the previous Scottish legislation: apart from the section allowing licensing out of children after a minimum of eighteen months, the chief difference was the extension of the categories of admission to include children with a parent in prison, and children guilty of refractory conduct in a poorhouse. This emphasis on bad conduct and criminal parentage, combined with the fact that young child offenders and those associating with thieves were already candidates for admission, added to the changing perception and position of the industrial school in Scotland over the 1860s. As noted earlier, Turner now regarded industrial schools as the preserve of the 'young vagabond and petty misdemeanant,' or a 'milder' sort of reformatory for younger children.<sup>88</sup> It is clear that this consolidating legislation had important consequences for the criminalisation of children in Scotland: from being a place of refuge for the poor and destitute, the industrial school was in the process of becoming a place of detention for the budding criminal.

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<sup>86</sup> In the remainder of the thesis the abbreviation RSSPCC is used.

<sup>87</sup> 1896 Report, page 143.

<sup>88</sup> Section 3.4.2.

### 3.5.3 Consolidating Reformatory Legislation

Like the Industrial Schools Act 1866,<sup>89</sup> the Reformatory Schools Act 1866 repealed previous Acts and placed the legislation in both Scotland and England on the same statutory footing. There were two important changes with respect to both countries. First, the Act provided that young offenders under the age of sixteen could be sent to a reformatory after serving a prison sentence of ten days, again for not less than two and not more than five years. This meant that the Act reduced the period of prior imprisonment from fourteen to ten days. The second main change introduced by the Act was that children under the age of ten were not to be sent to reformatory unless they were previous offenders.<sup>90</sup> Sydney Turner summarised the ‘chief improvements’ of the Act as:

‘a power of apprenticing their inmates after being out on licence was given to the managers as a check on the interference of unworthy parents; that the managers were empowered to detain such offenders as were committed for absconding or insubordination to prison for an additional period corresponding to the time during which they had been absent from the school; that the process of enforcing the payments of parents was made simpler and more direct, especially in Scotland; and that on this as on the other points of licence and apprenticeship the law was made uniform for both Scotch (sic) and English schools. The minimum age at which children should be received into reformatories was fixed at ten years, except in cases of second conviction or of sentence by a superior court. The consolidated Act appears to have given general satisfaction.’<sup>91</sup>

### 3.6 REFORMATORIES IN THE 1860S

For the Scottish reformers the primary focus had always been on prevention of crime. For Watson and Guthrie the reformatory was the last resort, almost an admission of failure to rescue a child.<sup>92</sup> As discussed in the previous chapter, the notion of the residential reformatory for the convicted young offender was not part of the original Scottish vision.<sup>93</sup>

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<sup>89</sup> See Section 3.5.2.

<sup>90</sup> Under section 14.

<sup>91</sup> Tenth Inspector’s Report, 1867, page 19.

<sup>92</sup> See Guthrie’s comments in *Reformatory and Refuge Journal* (1861), Vol. 1, p.55 on the supreme importance of prevention. See too Guthrie’s comment (quoted in Ralston at page 50) comparing giving more money to reformatories to giving a man money to buy a wooden leg having refused him money to save his leg.

<sup>93</sup> Writing in his autobiography about the introduction of the reformatory to Aberdeen, Watson was clear about the primary importance of the industrial school as the way to prevent juvenile crime and stated that

The Scottish reformers had been motivated by a far more holistic, welfare-focused approach which embraced both destitute and offending children in a project based on the day industrial school. In some respects the 1861 amending statute on industrial schools which made children under twelve charged with an offence eligible to be sent by court order to a certified industrial school represented a legislative concession to the idea of combining both types of children in one institution, although there is some evidence that this was happening in practice in Scottish industrial schools anyway.<sup>94</sup>

By the early 1860s reformatories were well established within the system. Watson was asked by the 1861 Committee about the reformatory in Aberdeen, Oldmill. He explained the circumstances under which a child could be admitted to the reformatory:

‘If a child has become delinquent and has committed a theft, he is brought before a magistrate; the magistrate finds that the child has been living a vicious life and has no proper person to take care of him, he is then sent to prison with a view to him being taken into a reformatory for a period of five years. Almost all children now sent to prison are sent to prison for the purpose of being sent to a reformatory.’<sup>95</sup>

In giving this answer Watson was remaining diplomatically silent about his own personal opinion on the prior period of imprisonment required before admission to a reformatory; elsewhere, he was scathing about the practice of imprisoning children at all.<sup>96</sup> Watson’s response here demonstrates his perception that in Scotland imprisonment for children was by 1861 regarded chiefly as a prelude to detention in a reformatory. However this may be an overstatement by Watson of the effect of reformatories: according to the Inspector’s Reports there were still a considerable proportion of children undergoing sentences of imprisonment alone.<sup>97</sup>

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reformatories were ‘auxiliary’ to industrial schools and did not ‘supercede’ them. *My Life*, Volume 3 (unnumbered page).

<sup>94</sup> See the case of James Eagle, Sections 3.4.2 and 3.6.

<sup>95</sup> 1861 Report, page 138. Watson also said that to be sent to a reformatory the child must have committed a ‘delict’, using this word rather than crime.

<sup>96</sup> See Section 2.4.3 of thesis where Watson refers to the practice as one that ‘to say the best of it, is altogether useless.’

<sup>97</sup> See Section 3.6, note 100. Watson may have been discounting those cases where children were sentenced to short periods in prison, perhaps a day or two.

Some indication of the types of cases which resulted in children being sent to a reformatory is given by the Wellington Reformatory Farm School records.<sup>98</sup> The Superintendent of the reformatory, Mr Craster, spoke at a meeting of reformatory school managers in 1861 and his description of the basis on which the school operated was recorded in the *Reformatory and Refuge Journal*:

‘The managers refused to admit any boy for less than five years; nor would they admit any boy committed without first investigating his previous character. If they found it was his first offence they did not regard him as a criminal and advised his being sent to Dr Guthrie’s Industrial School. They did not keep all the full term, but before leaving the boy has to pass various examinations; one by the directors to see he can read his bible, write his own letters, and do a little arithmetic, so as to make his way in life; then, as to his industrial requirements, whether he can plough, harrow, take care of horses and do other work on the farm, so as to earn his own bread; or, if learning a trade, whether he is equally advanced in tailoring, shoemaking or carpentering. He believed if more care were taken when boys were admitted and when they leave there would not be so many afterwards relapse.’<sup>99</sup>

The admission records of the schools indicate that in almost all cases the boys sent to Wellington had previous convictions, normally for petty theft, and were being sent to Wellington for a further act of theft. However, where a boy had committed an offence which was regarded as serious, he could be admitted to the reformatory even if he had no previous

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<sup>98</sup> The admission records of Wellington indicate that inmates should have attained the age of twelve and that it was not their policy to admit first offenders under the age of twelve ‘as such can be committed to an industrial school’ (in accordance with the Industrial Schools Act of 1861). However this policy was not strictly adhered to by other reformatories: there are frequent references in the Inspector’s Reports to younger children being inmates in reformatories. For example, see Thirteenth Report, 1870, at p76.

<sup>99</sup> *Reformatory and Refuge Journal*, 1861-1863, page 87. The Wellington admission records indicate that the requirement that the detention was to be five years in all cases was said to be for the sake of uniformity, but it added that boys were usually sent out on licence ‘after one half or two thirds of the period.’

With reference to the trades being taught the range of trades taught seemed rather limited compared with those on offer at Glasgow’s House of Refuge for boys which in addition to tailoring, shoemaking and carpentry also taught baking, printing, bookbinding and coopering. The House of Refuge tailors were kept busy supplying uniforms for organisations such as the police and also uniforms for railway workers. The House of Refuge also acquired a large farm at Riddrie in 1861, no doubt following the example of reformatories on the English model such as Wellington with their focus on farm work. (*Reformatory and Refuge Journal*, 1861-1863, page 8.) By 1862 the House of refuge had been operating for twenty four years and it claimed that it had ‘restored to society with improved characters’ 1000 out of about 1200 or 1300 boys. *Reformatory and Refuge Journal*, 1861-1863, page 61.

convictions.<sup>100</sup> The age restriction of twelve was adhered to in most cases but there were some exceptions, where, for example, young boys aged eleven were already detained in an industrial school on offence grounds and received a conviction for committing a further offence in the school; in this case the superintendent of the industrial school requested that they should be sent to the reformatory despite being under twelve.<sup>101</sup>

Twelve year old James Eagle was a typical admission to Wellington. His case was heard at the Police Court in Edinburgh in March 1861 before Magistrate John Boyd. James was convicted of the theft of two bottles of ale from a shop at Market Street, Edinburgh. He had one previous conviction for assault when aged nine for which he was admonished and sent to the ragged school at Castle Hill. James was sentenced under the Youthful Offenders Act 1854 to fourteen days at the prison in Edinburgh to be followed by detention for a period of five years in Wellington Reformatory. In accordance with the policy of inquiring into details of a child's background, the admission records of the school provide information about James's circumstances, recording that he was one of five children, that his parents were both of 'intemperate habits' and that his father, a cap maker, had convictions for theft and assault.<sup>102</sup>

In a later case dealt with under the consolidating statute, the Reformatory Schools Act 1866, which reduced the period of prior imprisonment from fourteen days to ten days, thirteen year old Thomas Collins was convicted of theft committed along with his brother and two other

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<sup>100</sup> See *HMA v Beattie and Kelly* Couper's Reports, 1868-1870, Vol I,1. (see next page). Although the policy of not admitting first offenders was a matter of principle at Wellington other reformatories were not so scrupulous. According to the 1862 Inspector's Report reformatories in Scotland were being overused, with the proportion of children committed to reformatories compared to those sentenced to prison alone being far higher in Scotland than England (one in four compared to one in seven). The Report was critical of Scottish reformatories for too readily admitting first offenders for trivial offences, often offences against parents: 'When children are sent for three, four or five years to reformatory schools for stealing from their parents or relatives (often a very trifling amount), as for such offences as pulling up a mill dam or pushing off the coping of a wall, we cannot wonder that the temptation to get the child well trained and clothed and fed at the public expense should be found more powerful than a parent's natural instinct to avoid the disgrace or pain of the child's conviction and separation from him' (page 10). The proportion of first offenders committed to a reformatory that year in Scotland was two thirds of the whole number (219 out of 306). The Report suggested that this would be less likely to happen if parental obligations to contribute were enforced in Scotland as only a tiny amount was being recovered (£74 9s that year.)

<sup>101</sup> See cases of eleven year old Thomas Mitchell and Alex Walsh convicted at the Police Court in Edinburgh on 28th February 1874 for stealing sheets from the dormitory of the Original Ragged School in Edinburgh. Both boys had been detained in the ragged school under court order for five years after a previous act of theft. They were sentenced to a period of ten days in prison followed by five years in Wellington.

<sup>102</sup> The Wellington cases referred to are held in an archive of admission records for the school in Edinburgh City Archives. James Eagle's case was heard at Edinburgh Police Court on the eighteenth of March, 1861.

boys.<sup>103</sup> He was sentenced at Musselburgh Police Court in June 1867 to ten days in Musselburgh prison to be followed by three years at Wellington.

For an insight into the judiciary's view of the role of Wellington Reformatory, we can look to the reported case of *HMA v Beattie and Kelly*.<sup>104</sup> James Kelly was a thirteen year old boy convicted of theft of carpenter's tools by housebreaking and opening lockfast places and sentenced by the High Court of Justiciary to ten days imprisonment followed by five years in Wellington. He had acted along with an older boy of sixteen who was sentenced to penal servitude for seven years. James had no previous convictions and his counsel produced a letter commending his good character from the headmaster of James's school, New Greyfriars' School in Edinburgh. The Lord Justice General pronounced on the gravity of the offence which he said would normally merit 'a serious sentence' but in view of James's plea of guilty, his youth and previous good character he stated:

'A consideration of these circumstances, and that you may yet become a better boy, and a hope that you may still lead an honest and industrious life, has led the court to consider what sentence should be pronounced against you. After consideration, they have come to the conclusion that these objects would best be secured by your being subjected to a confinement in a reformatory school during a lengthened period of years, previous to which it is necessary that we pronounce sentence of imprisonment for a short period.'<sup>105</sup>

James's case was unusual in that most boys who were admitted to Wellington had appeared before lower courts, most commonly the police or burgh courts or sometimes the sheriff court for fairly minor thefts. Theft by housebreaking, however, was regarded as a serious crime, as seen by the severe sentence imposed on James's co-accused who was not eligible to sent to a reformatory as he had attained the age of sixteen. The comments addressed to James by the Lord Justice General suggest a new interest in securing the best means of reforming the individual young offender, turning him into 'a better boy.'<sup>106</sup> Clearly it was no longer simply a matter of judges administering punishment; there was now a focus on the

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<sup>103</sup> Like James Eagle, Thomas had a previous conviction. Case heard on eighth June 1867.

The Reformatory Schools Act 1866, 29 & 30 Vict., c. 117

<sup>104</sup> Couper's Reports, 1868-1870, Vol I,1. This case was dealt with under the Reformatory Schools Act 1866.

<sup>105</sup> *ibid*, page 3.

<sup>106</sup> The language used here is similar to that used by the English judge sentencing the boys found guilty of manslaughter in the famous 1861 case of *Barratt and Bradley* referred to in Section 2.1: 'You will be sent to a reformatory where you will be taken care of. You will thus be removed from your bad companions in Stockport. You will be taught better things and have a chance of becoming better boys.'

best way of ensuring that young offenders would become ‘honest and industrious.’ The influence of Mary Carpenter, the guiding spirit of the reformatory movement, was palpable in this new judicial attitude. It appears that a decade after the Youthful Offenders Act the rhetoric of the reformatory campaigners had thoroughly permeated even the highest echelons of the Scottish judiciary.

### **3.7 THE 1870S: A PERIOD OF RECLAMATION**

In the 1870s it was abundantly clear that the statutory system in practice was diverging significantly from the original conception of the Scottish reformers. The pre-statutory system had been based on the success of day industrial schools, first in Aberdeen and then in other Scottish towns. However as the statutory system had evolved the predominance of industrial schools containing a mix of boys and girls and both day pupils attending on a voluntary basis and pupils under court order, whether residential inmates or lodged out, had been eclipsed. By the 1870s most Scottish industrial schools were single sex residential boarding establishments where the majority were detained under court order.<sup>107</sup>

As the schools were residential there was no perceived necessity to locate schools near children’s families and the system expanded to include a new form of industrial school, industrial training ships for boys sent under court warrant: the Mars on the Tay and the Cumberland on the Clyde. The Edinburgh Industrial Schools Complaints Books record very many cases of boys being sent to Mars from the early 1870s onwards.<sup>108</sup> The frequency of committals from Edinburgh certainly lends weight to the view expressed by the Inspector’s Report that admissions to Mars were ‘much too rapid.’<sup>109</sup> He had a similar comment to make about Cumberland training ship.<sup>110</sup>

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<sup>107</sup> See Twelfth Report, 1868, p.18. See too Ralston (1988), 51.

<sup>108</sup> In many of these cases petitions were presented by parents alleging that children were beyond control, that they were keeping bad company such as the company of thieves and that the parents were concerned about them falling into crime. A typical case is that of John McQueen Cameron on 28<sup>th</sup> July 1874. The petitioner was John’s mother who said that he was unruly, that he was not attending school and that he was in danger of falling into crime. The magistrate considered the petition, examined the mother and also made inquiry into statements of another woman said to be ‘interested in John Cameron’s welfare.’ The magistrate made an order under section 16 of the Industrial Schools Act 1866 sending John to Mars until the age of sixteen.

<sup>109</sup> Page 121 of Thirteenth Report in 1870.

<sup>110</sup> See too the *Reformatory and Refuge Journal* Report on the unorthodox methods employed by the Cumberland to enlist new recruits: ‘Meantime in Glasgow it is understood that the training ship Cumberland, lying in the Clyde, has agents at the law courts ready to seize on every boy they can get and this accounts for the empty state of the Glasgow reformatory. This conduct is certainly not of a kind to be encouraged or



The Inspector's Reports of the early 1870s were the last written by Sydney Turner. They make interesting reading. As one of the most significant figures in the English reformatory movement and Chaplain of Red Hill he had devoted many years to overseeing the development of the statutory system. In these final Reports he was clearly keen to offer his evaluation of how the system had evolved and to suggest improvements for the future. With the retirement of Sydney Turner in 1876 and the death of Mary Carpenter the following year there was a definite sense of handing the baton on and trying to ensure that the legacy of reform was left in good order.<sup>111</sup>

The Report of 1875 is particularly interesting in its review of the development of the system over the years. Commenting on the UK system as a whole Turner noted that in the period since 1864 the number of reformatory schools had not increased and the number detained in them had not increased significantly, from four thousand three hundred in 1864 to five thousand in 1874. This contrasted with the expansion of industrial schools over the same period, both in terms of number and size. He noted that in 1861 when 'the first effective Industrial Schools Act was passed for England' there were thirty eight schools, mainly in Scotland, containing four hundred and eighty eight children, while at the end of 1874 there were one hundred and four schools throughout the UK with eleven thousand four hundred children. He attributed this increase to the schools being used 'as asylums for children who should naturally have been placed under the care of parish authorities or as a means of relief and charitable assistance for those whom the poverty or carelessness of their parents left without adequate protection or support.'<sup>112</sup> He added that 'so long, indeed, as children can be freely sent at any age under fourteen for six or seven or more years detention in these schools as being orphans or 'without proper guardianship', that is practically because their parents are too poor or too indifferent to maintain and control them properly, new schools will be required and existing schools will be pressed to enlarge their accommodation to an almost unlimited extent.'<sup>113</sup> In his view the schools had achieved a great deal in reducing juvenile crime and juvenile vagrancy but they had been overused and should have been reserved for 'the vagrant, the vicious and the half criminal.'<sup>114</sup> This attitude was far less

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approved. The boys only who wish to become sailors, it humbly seems to me, should be taken to such ships.' Volume 1872-1875, page 383.

<sup>111</sup> Mary Carpenter died in 1877, at the age of seventy. Watson died in 1887, at the age of ninety one.

<sup>112</sup> Eighteenth Report, 1875, page 4.

<sup>113</sup> *ibid.*, page 4.

<sup>114</sup> *ibid.*, page 4. In relation to reformatories he considered that the 'old idea' that boys sent to reformatories were 'in any real sense a criminal or especially vicious or depraved' was far from being accurate: most boys in

inclusive than that of the original Scottish reformers: when they had established the first industrial schools they were happy to embrace all genuinely destitute children although of course their vision was centred on the idea of the day industrial school, not residential institutions.

By the mid 1870s the original reformers were ready to attempt to reclaim their central vision of the day industrial school. Watson recorded in his autobiography that he attended a conference in Edinburgh of managers of industrial and reformatory schools in May 1875 where he spoke on a subject close to his heart, that of the importance of ‘powers of parents to custody of their own children.’<sup>115</sup> He also noted that he discussed with Baroness Burdett Coutts the issue of day industrial schools:

‘She entirely agreed with my view on day industrial feeding schools as it was impossible by the Certified Board and lodging schools to undertake the class of children for whom the industrial school was originally intended.’<sup>116</sup>

Spurred on by such support Watson engaged enthusiastically in a campaign to introduce day industrial schools to Glasgow. Despite his advanced age he put in a valiant effort in writing to newspapers, publishing papers and supporting campaigners. He also rallied support for a parallel campaign in England run by the elderly but still indomitable reformer, Mary Carpenter.<sup>117</sup> Glasgow responded to the call for reform by recourse to local legislation, as it had in the 1840s when the Houses of Refuge were set up. In 1878 local legislation was used to provide a statutory basis for day industrial schools much like the original schools set up in Aberdeen, Glasgow and other Scottish towns in the 1840s, a significant development for the city and one which set Glasgow apart from other Scottish cities in some respects.<sup>118</sup> This was another successful appeal to the Glasgow ethic of local civic responsibility and

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reformatories were there for ‘trifling offences, more the result of circumstances than depraved intention’. In more than half the cases the boys had no previous conviction and were sent to remove them from bad influences likely to lead them ‘into criminal habits’ (page 14).

<sup>115</sup>By this he meant that children should be able to remain at home with their parents rather than being sent to residential establishments.

<sup>116</sup> Watson, W., *My Life*, Volume 4. Baroness Angela Burdett Coutts was an extremely wealthy English philanthropist.

<sup>117</sup> In England this campaign had a successful outcome resulting in an amendment to the Elementary Education Act 1876 (39 & 40 Vict., cap.79) to make provision for day industrial schools. This was a final triumph for Mary Carpenter.

<sup>118</sup> Glasgow Juvenile Delinquency Prevention and Repression Act 1878 (41 & 42 Vict., cap. cxxi). Under s.30 of the Act of 1878 certified day feeding schools were introduced in Glasgow.

accountability. It took a further fifteen years for Scotland to implement national legislation providing for day industrial schools.<sup>119</sup>

### 3.8 THE EARLY 1880s: CALLS FOR REFORM

Calls for reform came in the early 1880s from a number of sources. Even the architect of the original reformatory legislation, Lord Norton, formerly Viscount Adderley, questioned the role of reformatory and industrial schools: in 1881 he was advocating that they should be replaced by ‘schools for neglected and destitute children.’<sup>120</sup>

A Report in 1881 on the state of the law relating to juvenile offenders revealed that sheriffs had concerns. In particular they were critical of the statutory provision requiring prior imprisonment of juvenile offenders before admission to a reformatory.<sup>121</sup> This concern was said in the Report to be shared by Scottish reformatory managers and more generally by ‘enlightened public opinion’ which ‘condemned’ the provision contained in section 14 of the Reformatory Schools Act 1866 requiring a period of ten days prior imprisonment.<sup>122</sup> Objections were also raised that in some cases children were sentenced to detention in reformatories after being convicted of very minor offences which were not even offences under general statutes or common law, but simply trivial transgressions under local statutes, such as stone throwing or vagrancy. Questions were raised as to the competence of this procedure under section 14.<sup>123</sup> This issue was subsequently dealt with in the case of *Maguire v Fairbairn* where the High Court of Justiciary held that section 14 was not applicable to cases where children had committed police offences.<sup>124</sup> This case was discussed by Sheriff Substitute Spens of Lanarkshire.<sup>125</sup> He recounted the number of children who had been sent to reformatories in Scotland for police offences in the years leading up to this decision: 72 in 1879 for vagrancy; 8 in 1880 for breach of the peace, and 51 for vagrancy; in 1881 57 were sent for vagrancy and 2 children were sent for sleeping in

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<sup>119</sup> Day Industrial Schools (Scotland) Act 1893( 56 Vict., cap.12)

<sup>120</sup> See Carlebach (1970), 75; See also an article entitled ‘Schools as prisons and prisons as schools’ in which Norton argued that the schools should be primarily about education and they should be viewed in that way and not as prisons *Nineteenth Century* ( 1887) Vol 21, p. 119.

<sup>121</sup> Reports to the Secretary of State for the Home Department on the state of the law relating to the treatment and punishment of juvenile offenders. 1881, p.210

<sup>122</sup> *ibid.*

<sup>123</sup> *ibid* at p.212. A Glasgow Sheriff questioned whether the 14<sup>th</sup> section of the Reformatory Act 1866 on prior imprisonment to a reformatory was intended to apply to offences under local statutes

<sup>124</sup> See *Maguire v Fairbairn* 1881 4 Couper 536; For an example where the High Court of Justiciary limited the operation of the Industrial Schools Act 1866 see *Wilson v Stirling* 1884 2 Couper 518. These cases are discussed further in Section 4.6.

<sup>125</sup> In evidence to the Royal Commission in 1884, page 432.

a close. The *Maguire* case involved a fifteen year old boy who was sentenced to ten days imprisonment followed by five years in a reformatory for breach of the peace. The High Court passed a bill of suspension and liberation, suspending the order to send him to the reformatory and granting liberation. The Lord Justice Clerk said: 'I do not think that clause fourteen was ever intended to apply to the minor grades of crime, but only to those of graver complexion, such as theft or similar offences.'<sup>126</sup>

In 1882 a Royal Commission was issued to investigate all aspects of the operation and management of reformatory and industrial schools.<sup>127</sup> Taking two years to amass and consider evidence the Commission reported in 1884. For critics of the system the report was disappointing. Although it recommended an end to the practice of imprisonment prior to admission to a reformatory, the alternatives it suggested were harsh. It recommended that instead magistrates should be empowered to order that boys should be whipped.<sup>128</sup> For girls it recommended the alternative of solitary confinement, the length of which was to vary according to age: a maximum of seven days for under those under twelve and not more than fourteen days for older girls. Its suggestions to improve education were more enlightened: for example that the prospects of teachers at the schools should be placed on an equal footing with teachers in public elementary schools. In relation to inspections it recommended that the educational aspect of the schools should be inspected by the Education Department but that all other aspects should remain under Home Office direction. It advised that children should not be detained beyond the age of sixteen and proposed that licensing out for children should be used more often.<sup>129</sup> However the Commission singularly failed to address fundamental questions about the nature of the system. This was despite hearing evidence extremely critical of the system from, for example, William Watson.

Giving remarkably lucid evidence even in his late eighties, William Watson was characteristically forthright. He strongly advocated returning to the original principle upon which his early schools in Aberdeen had been founded, that of the day industrial school. Questioned about the potentially adverse influence that parents could have on children, he responded that this was of small concern when children were returning home at seven o' clock in the evening tired out after being occupied all day at the day industrial school. In his

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<sup>126</sup> See *Maguire v Fairbairn* 1881 4 Couper 536, page 541

<sup>127</sup> 1884 Report of the Commissioners on Reformatories and Industrial Schools.

<sup>128</sup> *ibid* at page lxiv for summary of recommendations.

<sup>129</sup> Other recommendations included proposals to limit punishment in reformatories and to establish new institutions to cater for 'refractory cases.' Carlebach (1970), 77.

view there was little opportunity for parents to exercise a bad influence in these circumstances and he had come across many cases where the children had been able to exert ‘a great change in the character of the parents’ as a result of the good influence of the school. He vehemently denounced the residential industrial schools for destroying familial affection, leaving children with no home to return to when they were eventually discharged from the schools:

‘they must have a home, and that is the great objection to those sleeping places where children are kept all night. You break up at once the tie between parent and child. The parent sometimes is very glad to get quit of it; but at the same time when a child is kept for two or three or four or five years locked up in an industrial school it loses all natural affection, and his parent forgets it, and does not care about it, and the consequence is that when it comes out it really has no home to go to. Therefore, I think that these day and night schools ought to be utterly abolished. I never found that any evil whatever resulted from children going to their parents’ home.’<sup>130</sup>

Referring to the period when Dunlop’s Act came into effect Watson explained that in Aberdeen there was discussion about whether committed cases should be kept overnight but the schools adhered to their principle of day attendance for both voluntary and committed cases. In cases where children had no homes they usually had no difficulty in finding homes for them, particularly for the girls, though there were sometimes problems finding people willing to take the boys in; it was this he believed that led some institutions to house homeless boys overnight but he deplored the fact that ‘now they all sleep there, I believe in many schools.’<sup>131</sup> Watson advocated that all certified industrial schools should be converted into day schools, and that government aid should be withdrawn from those that refused to comply. He also argued that managers of schools should be given discretion to discharge pupils when they considered they were ready rather than be restricted by a definite period of detention; this would mean that the children leaving the schools could take advantage of employment opportunities when they arose.

Asked if his opinion that the existing industrial schools system should be abolished also applied to reformatories, Watson replied that reformatories were a different matter. He was of the view that they should be retained for older children who had become ‘delinquent’ and

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<sup>130</sup> *ibid.*, page 442.

<sup>131</sup> *ibid.*, page 413.

were beyond the age when they could be sent to an industrial school, for those beyond thirteen or fourteen. There was a need for them in such cases as otherwise magistrates would not know what to do with the children but he argued that prior imprisonment should be abolished as it was 'a great mistake.'<sup>132</sup> For Watson the central focus was not on the reformatories, which he viewed as an adjunct to the main enterprise of prevention to be carried on in the day industrial schools.

Watson was pressed on his views about the clause in the Industrial Schools Act 1866 'which deals with children who might be convicted of crime but against whom no conviction is made or recorded in order that they may be sent to an industrial school.'<sup>133</sup> Asked if he regarded a day industrial school as appropriate for these children who had offended, he replied that children's offences were usually very minor matters and that the day industrial school should include children brought before the court on offending grounds. In answer to a further question on the issue of whether all children under twelve should be excluded from reformatories, Watson commented on his practice as a Sheriff dealing with children's cases and also on the impression that his many visits to institutions had made upon him:

'Yes, I think that every child under twelve might be sent to an industrial school, and that reformatories might in general be found for the delinquent children. I look upon children's offences in general as comparatively trifling. I never had a case in which I thought it necessary to send a child to reformatory, or at least very few instances, as far as I recollect, but my recollection is not quite as good as it was some years ago. I visited the schools over and over again and was very much interested with what I saw in most of them; but I was very sorry to see a child taken away from its parents, and kept in a certified industrial school, and who perhaps for three years never saw its parents. I think it was very cruel, and I was very unwilling to break up the family connection.'<sup>134</sup>

This passage clearly conveys Watson's distress and disappointment with the way the industrial schools system had departed from his original project. From the very outset he had been motivated by the best of humanitarian ideals and had devoted much of his life to the cause of assisting children in trouble. As the passage suggests, he spent much time visiting

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<sup>132</sup> *ibid.* page 413.

<sup>133</sup> Section 15. *ibid.*, page 413.

<sup>134</sup> *ibid.*

institutions, always interested in how they were developing. He also attended many conferences of the Social Science Congress, the sounding board of those interested in reform in this area, often delivering papers expounding his ideas. A key element of his philosophy had always been supporting not just the children but also trying to improve the lot of whole families: by elevating the condition of children he sought to use them to raise the values and expectations of parents too. This core idea had been undermined by the development of a system removing children from their homes, breaking up family ties to such an extent that children leaving institutions after several years separation from their families were effectively estranged with no real homes to return to. From Watson's viewpoint this was a completed reversal of what he had set out to do.

This appearance at the Royal Commission was to be his last major contribution in the public arena. Even in the very twilight of his life he was fighting the corner for the destitute and disadvantaged, promoting the value of compassion. He was clearly bewildered by the continuing concentration on pursuing parental contributions for the upkeep of children. Responding to a question on this issue he commented that he had never found any parents he thought were in a position to pay. He also stressed the point which seemed to have long been lost sight of by everyone else in the endless arguments over funding, that the children attending these schools applied themselves diligently to industrial work which was of economic benefit and their efforts should be appreciated and valued:

'I always understood that in an industrial school the children paid for their education, and that the parents did not require to pay for them. I knew very well that they did not, but at the same time I was anxious to impress upon the minds of the children that they paid for what they got. They gave five hours to labour very willingly, and in many cases their earnings amounted to a considerable sum.'<sup>135</sup>

This was an important point of principle for Watson, that the dignity of children should be respected by ensuring that they were not made to feel like charity cases. Unfortunately this core idea was far from uppermost in the minds of those running the schools in the 1880s.

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<sup>135</sup> *ibid.* page 413

### 3.9 CONCLUSION

By the early 1880s the statutory system had followed an interesting trajectory which in many respects had veered in a quite different direction from the original route planned by the early reformers. In the early 1860s there was still considerable scope for local variation in the operation of industrial schools. The later years of the decade witnessed the consolidation of the statutory system as the influence of a national inspectorate, consolidating legislation and national policy decisions regarding funding created pressures for increasing uniformity within the system. Although there was still evidence of some diversity in the late 1860s the next few years saw the demise of the day scholar. The transformation taking place in the 1860s continued, and in the 1870s most Scottish industrial schools were single sex residential boarding establishments where the majority were detained under court order. The main theme which emerged from the 1870s was one of reclamation as the original reformers attempted to restore the essential elements of the original project with a campaign proclaiming the centrality of day industrial schools. Calls for reappraisal and re-evaluation continued into the 1880s and were met with no more than token changes and lack of official willingness to address fundamental issues. Radical re-assessment had to wait for the next decade.



## CHAPTER FOUR

### DEVELOPMENTS BETWEEN 1884 AND 1908

#### 4.1 INTRODUCTION

Watson's appeal to the 1884 Royal Commission to abolish all residential industrial schools fell on deaf ears.<sup>1</sup> He made clear then that his ideal system would have been a flourishing national network of local day industrial schools on the model established in Aberdeen and other towns in the pre-statutory period. The one Scottish town which came close to achieving what he had striven for was Glasgow with its locally funded day industrial schools. As we have seen these were set up under local legislation as a result of the successful campaign sponsored by Watson in the 1870s.<sup>2</sup> These were the exception. By the end of the century the statutory system had evolved into a net widening diversionary mechanism under which thousands of children were subjected to prolonged detention in penal establishments. As will be discussed in this chapter this entailed criminalisation of children, particularly Scottish children, on an immense scale. However it will also be argued that despite the undeniable extent to which the statutory system departed from the original holistic principles on which Watson had based his scheme, there continued to be a residual element of humanitarianism evident in the approach adopted by the Scottish courts. As we have seen, the distinguishing feature of the pre-statutory system was a pragmatic approach based on religious philanthropic principles. This legacy of humanitarianism left its hallmark on the Scottish system, surviving in the abhorrence of child imprisonment demonstrated by many Scottish judges. It also survived in the tendency of judges to view the schools as a refuge for children in need, particularly industrial schools where there was no period of prior imprisonment. There was a degree of ambivalence in this approach by the judges as they were well aware of the penal nature of the schools under the statutory system but in many cases they took the view that the lack of alternative welfare provision for these children left them with little alternative.<sup>3</sup> These underlying tensions are revealed in the 1896 Report of the Departmental Committee on Reformatory and Industrial Schools which is discussed fully in the first section of this chapter.<sup>4</sup> The Report presented a radical appraisal of the

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<sup>1</sup> 1884 Report of the Commissioners on Reformatories and Industrial Schools.

<sup>2</sup> Section 3.7.

<sup>3</sup> See *Wilson v Stirling* 1884 2 Couper 518.

<sup>4</sup> Report of the Departmental Committee on Reformatory and Industrial Schools, 1896.

reformatory-industrial school system and in doing so produced an extensively detailed and critical account of the way it operated in Scotland. There is no doubt that Watson would have been disillusioned that, despite the criticisms contained in the 1896 Report, the statutory system continued much as before with large numbers of children being admitted to residential schools.

To understand the background against which this high level of admissions continued it is important to be aware of the alternative provision available for children in need. For this reason the second part of this chapter looks at the initiative for destitute children established by the Scottish philanthropist William Quarrier at Bridge of Weir. In many ways Quarrier resembled William Watson. Like him, he exhibited missionary zeal in his campaign to help impoverished children. His work provides a very interesting comparator with the industrial-reformatory schools system at the turn of the century, particularly since Quarrier's work was completely funded by private philanthropy and unhampered by a statutory regime.

Another important aim of this chapter is to consider the impact of the legislative changes which occurred in the period marking the transition from the closing decades of the nineteenth to the early twentieth century. According to one influential school of thought this period was transformative for the criminal justice system.<sup>5</sup> The question addressed here is what this meant for children and for the legacy of the original Scottish reformers. On one reading of the evidence there was an unstoppable momentum for change at the turn of the century. For children the most important statute was the Children Act 1908.<sup>6</sup> Against a background of Liberal welfare initiatives and new concern for the health and well being of children, the Children Act, also known as the Children's Charter, created the statutory basis for juvenile courts and removed children from prisons in all but exceptional circumstances. Both of these developments were entirely in keeping with the humanitarian legacy of the original Scottish reformers, who were primarily concerned with recognising the special position of children within the criminal justice system. However, despite the promise encapsulated in the creation of juvenile courts, a great advance on one level, in practical terms the courts failed to deliver much that was of benefit to children. The 1908 Act has been regarded as laying the foundation for juvenile justice in pre-Kilbrandon Scotland,<sup>7</sup> but,

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<sup>5</sup> Garland (1985). See Introduction to thesis.

<sup>6</sup> Children Act 1908, 8 Edw 7, c. 67. Further examples of the impetus for change at legislative level included the Probation of First Offenders Act 1887, 50 & 51 Vict. c.25; Reformatory Schools Act 1899, 62 & 63 Vict. c.12.; Youthful Offenders Act 1901, 1 Edw 7, c. 20.; Probation of Offenders Act 1907, 7 Edw. 7, c.17.

<sup>7</sup> Report of the Kilbrandon Committee on Children and Young Persons, Scotland, Cmnd 2306 (1964), page 16.

in spite of its significance in many ways, the Act was not the decisive break with the past that has been supposed. This argument is developed further in the third part of the chapter.

In pointing to the ongoing continuities, particularly the fact that the Act did not greatly extend the grounds on which a court could intervene, the chapter challenges Garland's assertion that the juvenile court was a significant element of a new penal landscape.<sup>8</sup> It was argued in the previous chapter that there is a need to reassess the importance of industrial and reformatory schools within the Victorian criminal justice system, recognising them as an integral part of the criminal justice system. Children were sent to the schools under court order. Although run on the 'voluntary principle' they were regulated by statute, subject to statutory inspection, in receipt of public funding and under Home Office direction. This challenged Garland's view of the schools as being marginal, private institutions.<sup>9</sup> As also argued in chapter three, a central part of the ethos of the schools from the 1850s onwards was adapting programmes of reformation to suit individual offenders.<sup>10</sup> Re-evaluating the significance of the schools within the criminal justice system suggests that ideas about reformation of individual offenders were widely accepted in the mid-nineteenth century rather than at the turn of the century as Garland argues. The present chapter continues to question aspects of Garland's argument, particularly his views on the juvenile court.<sup>11</sup>

Earlier chapters of this thesis have identified pragmatic, organised and religiously inspired philanthropy backed up by civic support as the primary force for change in juvenile justice in mid-nineteenth century Scotland. Although later decades of the century witnessed a transformation of the original project, there was always an abiding current of humanitarianism in the approach adopted by the Scottish courts. Humanitarianism was also the driving force at a grass roots level. As will become clear from the cases discussed in this chapter it was this that motivated the RSSPCC and bible missionaries in Scottish cities in facilitating the admission of large numbers of destitute children to industrial schools. At the level of policy change, humanitarianism was a potent factor in removing children from prison and developing juvenile courts. It was a consistent element, always present to some degree, and an important catalyst in the reform of juvenile justice throughout the nineteenth

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<sup>8</sup> Garland (1985). See too Wiener (1990): this book places more emphasis on the importance of cultural issues in shaping penal policy than Garland's politically focused account, but still offers a similar interpretation of transformation in the period from the 1890s to 1914.

<sup>9</sup> Garland (1985), 8.

<sup>10</sup> Nineteenth Report on reformatory and industrial schools, 1876, page 11.

<sup>11</sup> Garland (1985), 222.

and early twentieth century. This emphasis on humanitarianism poses a challenge to the Garland argument, which accords great significance to positivist scientific discourses in describing a move from the uniform discipline of the Victorian penal system to a different focus on individual reformation and specialised categorisation of offender types.<sup>12</sup> However, as Victor Bailey points out, this period at the turn of the nineteenth century is ‘simply not intelligible in terms solely of an emerging positivism or medicalism.’<sup>13</sup> Instead, Bailey makes a case for other factors contributing to penal change, including radical humanitarianism.<sup>14</sup> The history of the development of juvenile justice in nineteenth century Scotland supports this position: it indicates that a plausible and convincing case can be made for radical humanitarianism as one of the main motors for change in the Scottish criminal justice system. This chapter also presents evidence that the influence of scientific discourse has been overstated: the first section of the chapter questions the argument that a late nineteenth century scientific, positivist focus on understanding the child together with a new recognition of the psychology of adolescence significantly altered responses to the young offender in practice.<sup>15</sup> In Scotland a far more pragmatic approach was taken.

To summarise the layout of this chapter: the first section considers the 1896 Report; the second section looks at Quarrier’s initiative; the third section examines legislative developments and in particular the 1908 Children Act and the juvenile court. The fourth and final section of the chapter examines some cases of children brought before the courts. This analysis of court practice is conducted on two levels: firstly by considering cases of children sent by police and burgh courts to industrial schools and to Wellington Reformatory, and secondly by considering the role of the other end of the court hierarchy, the High Court of Justiciary in dealing with bills of suspension and liberation relating to children sent to the institutions. The examination of the cases provides a very useful insight into how the courts dealt with children at the turn of the century, giving some indication of how changes in legislation regulating admission to the schools were implemented in practice.

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<sup>12</sup> See Report from the Departmental Committee on Prisons, 1895, C.7702, set up under the chairmanship of Herbert Gladstone, a future Home Secretary. This Report, though sceptical about new continental ideas of criminal anthropology, was peppered with allusions to individual reformation, and paved the way for novel ideas about ways of treating different types of offenders. See too Departmental committee on habitual offenders, vagrants, beggars, inebriates, and juvenile delinquents (Scotland). 1895 [C.7753] [C.7753-I].

<sup>13</sup> Bailey (1997), 293.

<sup>14</sup> Bailey points instead to continuities with the Victorian penal order. He argues that Garland lays too much emphasis on the effect of statutory provisions setting out prisoner classifications. For Bailey the most significant feature of the turn of the nineteenth century, in criminal justice terms, was the decline in imprisonment. Bailey (1997), 293.

<sup>15</sup> See Section 1.5.2.

## **4.2 REAPPRAISAL OF THE SYSTEM**

### **4.2.1 Background to the 1896 Departmental Committee Report**

This section examines the 1896 Report in some depth. The reason becomes clear later in the chapter: much of the discussion of the 1896 Report relates to the situation in Scotland and the way the industrial-reformatory legislation was applied there. The Report described a number of abuses which had occurred and it is important to examine these issues. In the final part of the chapter, where the case material is analysed, reference is made to the points raised in the discussion of the 1896 Report and it is possible to see the system in operation and to offer some explanation for the patterns which emerged.

At one level, the 1896 Report was a radical reappraisal of the system. It pointed out long practised abuses, underlined the detrimental effect on children of lengthened periods of detention in residential industrial and reformatory schools, and argued that such detention should not occur as a matter of course, but should be reserved for extreme circumstances. Watson had died nine years before this Report and, though he was no longer around to comment, it is likely that he would have found it disappointing. Admittedly, there were aspects of the Report which were in line with his approach, such as the Report's emphasis on preserving the integrity of the family, and the expressions of compassion for children detained in institutions. However, by not embracing the ideal of the pre-eminence of the day industrial school, the 1896 Report diverged from Watson's vision. In failing to focus on day industrial schools, the Report ignored the issue which, for the original Scottish reformers, was the main one. This was, after all, essentially a pre-statutory Scottish ideal.<sup>16</sup> And it only came to partial fruition in the statutory period thanks to Glasgow's sense of civic responsibility, as will be discussed next.

Three years before the 1896 Report, a general statute had provided for the setting up of day industrial schools in Scotland, giving the capacity to extend this provision beyond Glasgow where, as we have seen, there were day industrial schools funded under local legislation.<sup>17</sup> In practice, though, this Act made little difference: Glasgow continued to be the only centre for

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<sup>16</sup> See the Elementary Education Act 1876 39 & 40 Vict., c.79. This Act authorised the setting up of certified day industrial schools in England providing elementary education, industrial training and one or more meals a day but not lodging. Any child coming within the terms of the industrial schools legislation could be sent to a day industrial school if there was one within two miles of his home instead of being committed to a residential one. But the idea of day industrial schools never really caught on and according to the 1908 Inspector's Report there were only 16 in England.

<sup>17</sup> The Day Industrial Schools (Scotland) Act 1893, 56 Vict., c.12.

day industrial schools in Scotland until Edinburgh established one in 1898 and by 1908 there were still only five day industrial schools operating in Scotland, four in Glasgow and one in Edinburgh. While financial constraints may have hindered the development of day industrial schools in other parts of Scotland this was not the case in Glasgow, which was able to use the fund raising provisions of local legislation to support its day industrial schools.<sup>18</sup> The Glasgow Juvenile Delinquency Board was empowered under the local legislation in 1878 to levy a rate of a penny in the pound to fund the schools and did not receive assistance from the school board rates. Following the 1878 Act, certified day industrial schools were opened in Green Street in 1879, certified for 250 children; in Rottenrow in 1882, certified for 250 children; in Rose Street in 1889, certified for 250 children; and in William Street in 1902, certified for 100 children. This enterprise was said in the 1908 Report to be ‘managed with warm hearted enthusiasm worthy of all praise’ and despite the need for the Glasgow schools to exercise strict economy they were described as ‘most useful and interesting schools.’<sup>19</sup> This was a very limited realisation in Scotland of Watson’s ideal of a network of day industrial schools; for most of Scotland there was to be no return to the holistic idealism of the humane pre-statutory day industrial schools.

For most children diversion to industrial schools meant residential detention. It is important to appreciate the excessive impact that diversion to the residential reformatory and industrial schools had upon Scottish children by the end of the nineteenth century. In 1894 the daily average population of the Scottish reformatory and industrial schools was double that of the entire Scottish adult prison population. This compared unfavourably with England, where the 1894 figures show the number detained in the schools was slightly less than the adult prison population.<sup>20</sup> In the closing decade of the century there were about 24,000 children

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<sup>18</sup>Glasgow Juvenile Delinquency Prevention and Repression Act 1878. See section 4.2.4 (3) on financial considerations.

<sup>19</sup>For information on the schools see *Calendar, 1910, of Institutions under the Glasgow Juvenile Delinquency Prevention and Repression Acts* ( Glasgow, David Clark) This booklet provides detailed information about the organisation, administration and regulations applying to industrial and reformatory institutions in Glasgow in 1910, including roll numbers, school timetables and dietary provision.

<sup>20</sup> The average daily prison population in England and Wales in 1893-4 is given in the Gladstone Report as 18,233. (Report from the Departmental Committee on Prisons, 1895 p. 3.) The average number of children who were inmates in English reformatory and ordinary residential industrial schools in the same year stood at 17,526. See Report of the Departmental Committee on Reformatory and Industrial Schools, 1896, page 132. For Scotland the average daily prison population in 1893-4 – a figure of 2,686 - appears in the Sixteenth Annual Report of the Prison Commissioners for Scotland 1894 [C.7470] page 5. The average number of children who were inmates in Scottish reformatories and residential industrial schools in the same year was 5,476. See Report of the Departmental Committee on Reformatory and Industrial Schools, 1896, page 132.

under detention in the 141 industrial schools and 50 reformatories across Britain, with around 5,500 of these detained in 43 Scottish institutions.<sup>21</sup> This entailed criminalisation of children, particularly Scottish children, on a vast scale.

As will be discussed shortly, the 1896 Report offered some insight into the reasons for the extremely high volume of committals in Scotland. The analysis provided by the Report revealed that the situation in Scotland was complex and that Scottish judges faced with difficult choices were often motivated partly by humanitarian considerations in dealing with children. Underlying this response was the legacy of the pre-statutory reformers which meant that the schools were still regarded as a refuge for children in need, even though judges were aware that the regime in the schools was penal in nature.

Set up to examine the reformatory-industrial school system throughout the UK, the membership of the 1896 Committee spanned a spectrum of opinion with some members viewing the reformatory-industrial schools system as inherently flawed and others generally supportive but still critical of aspects of the system. This conflict was reflected in the nine memoranda containing disclaimers on various aspects of the Report.<sup>22</sup> Half of the Committee members (four out of eight) were of the view that instead of isolating children in institutions they should be boarded out with 'respectable' families. This, they argued, would be more effective in nurturing the qualities needed to turn them into upstanding citizens; it would avoid contact with the 'prison tradition' with which the schools were historically imbued; and it would also mean that the children received the wholesome benefits of family life rather than have to endure the depressing effects of institutionalisation which meant they were exposed to the influence of 'other bad boys.'<sup>23</sup> The Memorandum cast doubt on the accuracy of the 'optimistic' statistics provided by the schools themselves on the success of children leaving the institutions, arguing that assessments from more independent sources had revealed that the figures produced by the schools should be taken with a pinch of salt.

On the other hand a rival Memorandum by three remaining Committee members expressed support for the general principle of the reformatory-industrial school system and rejected the

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Note also that the figures of child inmates did not include all of those under order of detention as there were always a number of children out on licence. These figures also do not include children in truant industrial schools (in England) or those in day industrial schools.

<sup>21</sup> Report of the Departmental Committee on Reformatory and Industrial Schools, 1896, page 8 and page 132.

<sup>22</sup> For discussion of Report from English perspective see Radzinowicz and Hood (1986); Carlebach (1970).

<sup>23</sup> Memorandum A at page 155 of the Report. With reference to the 'prison tradition' the Memorandum drew attention to Turner's 1870 Report where he called reformatories 'juvenile houses of correction.' (For his comment on industrial schools see page 173 of thesis).

idea that the schools were tainted by prison traditions; they also supported the veracity of estimates given by the schools claiming that seventy three per cent of children from reformatories and eighty three per cent from industrial schools were ‘leading good honest lives.’ These members wished to point out that although they had signed the Report because there was much in the system that they disapproved of they considered that the Report ‘exaggerated the conditions which we find to be less satisfactory.’<sup>24</sup>

What all the Committee members agreed on was that change was required. The Report took the view that reformatory and industrial schools in the UK formed part of a single system and that in practice there was little to distinguish between the two types of schools:

‘We propose to treat reformatories and industrial schools together. If we needed authority for doing so we might find it in the passages already quoted from Mr Sydney Turner and Lord Lingen,<sup>25</sup> but our own conviction is that the children in the two institutions are, in the main, of the same class; and, as a fact, there is no substantial difference in the discipline and regime beyond what can be accounted for by difference of age.’<sup>26</sup>

The Report stated that before an order was made compulsorily detaining a child in either a reformatory or industrial school for a number of years it should be shown that this was necessary both for the child and for ‘the public advantage’ and ‘nothing short of such necessity can justify detention in one of these schools.’<sup>27</sup> The Report contrasted this approach with the ‘asylum theory’ it said was adhered to by ‘a large number of justices on

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<sup>24</sup> Memorandum B at page 158.

<sup>25</sup> Lord Lingen, a Secretary to the Education department, wrote a letter to the Home Office in 1860 on industrial schools coming under Home Office direction. He expressed the view that there was ‘no moral or social difference’ between pupils at both types of schools; in his opinion it was often a mere accident under which provisions a child was committed. Similarly Sydney Turner in his 1870 Report (Page 15) said it was very difficult to distinguish between ‘these two classes of institutions except that the industrial schools deal with the younger or less criminal portion of the class which the reformatory schools receive.....the position of certified industrial schools has thus completely changed and they are, in fact, but reformatories of a milder type....they are houses of detention for the young vagabond and the petty misdemeanant.’

<sup>26</sup> 1896 Report at page 15. (Partly quoted in Radzinowicz and Hood (1986), 209.) The Report noted that the managers of industrial schools emphasised the non criminal character of their pupils when seeking additional funding from public subscriptions but pointed out that reformatories might contain children who had committed only one offence of a very minor sort, while industrial schools often detained children under twelve who had come before the courts on an offence ground but had not been convicted for that offence. Moreover there was nothing to prevent industrial schools from taking previous offenders provided they were not admitted under section 15 (relating to child charged with an offence who had previous conviction for theft in Scotland or felony in England). Additionally children could be sent to an industrial school for associating with thieves. In essence children at both types of schools came from similar backgrounds.

<sup>27</sup> 1896 Report, page 84.



the bench, especially in Scotland.’<sup>28</sup> (This very significant observation on Scotland will be discussed more fully shortly.) According to the asylum theory the only question to be asked was whether a child would be better off in such a school. The Report criticised this as a flawed approach. While there were obvious benefits in committing a child to a school in terms of ensuring that the basic physical welfare of the child was safeguarded, this approach failed to weigh in the balance other important issues, which the Report described as the ‘evils’<sup>29</sup> of institutional life: such as, the risk that the child might not be reformed, but, in fact, be ‘made worse’<sup>30</sup> by his companions in the school; the stigma of having been in such an institution; and, the risk that the child might not be able to earn a living on leaving the school. The Report considered that it was not to a child’s advantage to be sent to such an institution ‘unless the home or the child itself is very bad indeed.’<sup>31</sup> It argued:

‘the presumption has hitherto been in favour of detention as providing an asylum where the child will be better off, in future the presumption should be in favour of liberty.’<sup>32</sup>

By challenging the residential approach the Report offered a different view of welfare from that which had become the norm under the statutory system and one more in tune with the ideas of the original Scottish reformers; Watson would certainly have agreed with the Report’s denunciation of residential schools. But despite the emphasis of the Report on the need to move away from detention, in practical terms the system continued much as before with the same high numbers of committals. By 1910 there were 25,786 children in the residential schools in the UK, some 5,136 of them in Scotland, very similar to the figures for 1893-4.<sup>33</sup> Although the reclassification of schools according to age recommended in the Report did not take place, there was one important area where the Report did have a practical effect: its criticism of the practice of imprisonment prior to admission to a reformatory was influential in paving the way for its abolition in 1899,<sup>34</sup> removing the main

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<sup>28</sup> *ibid.*

<sup>29</sup> *ibid.*

<sup>30</sup> *ibid.*

<sup>31</sup> *ibid.*

<sup>32</sup> 1896 Report at page 95.

<sup>33</sup> See Section 4.5.1 of thesis.

<sup>34</sup> The restructuring of the schools recommended in the Report was not adopted. In keeping with the view of reformatory and industrial schools as forming one system, the Report recommended classification of schools according to age on admission with junior industrial schools for children under ten, senior industrial schools for those aged between ten and fourteen, reformatories for those between fourteen and sixteen and adult reformatories for those between sixteen and eighteen. Reformatory admission was still to be on the basis of

difference between industrial schools and reformatories.<sup>35</sup> The way in which the requirement for prior imprisonment affected Scottish children in particular will be discussed in the next two sections.

#### **4.2.2 Undercurrent of humanitarianism in Scotland**

Despite the large numbers of children being diverted into prolonged detention in penal residential establishments there is evidence that the legacy of the original reformers and their compassionate welfare based system continued to have an influence in Scotland. Like the early reformers, many Scottish judges abhorred child imprisonment: the 1896 Report referred to ‘a strong repugnance to the imprisonment of children’<sup>36</sup> in Scotland. This feeling was widespread in Scottish society: the Report also referred to ‘aversion felt by the Scottish people to the imprisonment of children.’<sup>37</sup> This explained why reformatories were so few in number in Scotland as judges were reluctant to impose the periods of prior imprisonment required when a child was convicted and sentenced to a reformatory. In cases where young children appeared before the courts on offence grounds judges might decide not to convict but to deal with the case by means of an order for detention in an industrial school instead. This could be done if children were under the age of twelve at the date of the order and had no previous convictions.<sup>38</sup>

The Scottish distaste for child imprisonment felt by both the judiciary and ‘enlightened public opinion’<sup>39</sup> resulted in the flourishing of industrial schools north of the border at the expense of reformatories. As the 1896 Report pointed out, industrial schools had of course originated in Scotland: ‘they took their origin in Scotland and have always commanded attention and interest.’<sup>40</sup> As we have seen, they were the central aspect of the Watson vision.

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conviction for an offence punishable with imprisonment but the condition of prior imprisonment was to be dispensed with. The grounds of admission to industrial schools should be restricted and for children under ten the Report recommended boarding out, proposing that in cases where this was not done the Secretary of State should be informed. The proposal that the grounds of admission to industrial schools should be restricted fell on deaf ears: in its provisions on reformatory and industrial schools the Children’s Act of 1908 re-enacted many of the earlier conditions of admission, also amending and adding to them.

<sup>35</sup> Reformatory Schools Act 1899 62 & 63 Vict., c.12; see Radzinowicz and Hood (1986).

<sup>36</sup> P.138

<sup>37</sup> Report at page 131.

<sup>38</sup> S. 15 of Industrial Schools Act 1866. Under s.58(2) of the Children Act 1908 the requirement that there should be no previous conviction was removed. See Section 4.4.3.

<sup>39</sup> Section 3.8.

<sup>40</sup> 1896 Report at page 131: the industrial schools were said to be ‘various in quality; some of them, both boys’ and girls’ schools, admirably managed, others poor and indifferent.’ The schools were described as mainly

However the original day industrial schools created under the pre-statutory system were establishments designed to support vulnerable children and their families in a holistic, humane environment supported by local communities. The residential schools which operated at the close of the nineteenth century were very different institutions imbued with a penal atmosphere, a fact of which judges were well aware.<sup>41</sup> Despite this they did resemble the original schools in some respects: as under the pre-statutory system Scottish magistrates were inclined to use the industrial schools both as an alternative to imprisonment and as a refuge which accepted both neglected and offending children. It has to be recognised that harsh as the schools may have been, there were few alternatives in terms of social welfare provision for children in need. Unlike England where a considerable proportion of children who might equally be candidates for industrial schools were in workhouse schools, Scotland had a lack of poor law schools; boarding out of pauper children was the favoured option and this did not meet the high level of need. In Scotland children were more likely to be detained in residential schools at a younger age and for longer periods, again indicative of the shortage of alternative provision. The likelihood is, as the 1896 Report concluded, that in many cases magistrates felt that they were doing children a favour by sending them to industrial schools.

This continuing humanitarianism, the tendency to view the schools as a place of refuge for children in need, was based on the legacy of original pre-statutory schools. However the 1896 Report was not impressed by this approach. The Scottish judges came under fire for their particularly strong adherence to the ‘asylum theory’ referred to in the general Report.<sup>42</sup> This was interpreted as evidence of a misplaced sense of benevolence leading to ‘lax administration of the Acts’<sup>43</sup> in Scotland. The Report criticised the way in which the Acts from the outset had been applied in Scotland as a means to usher impoverished, neglected children into industrial schools more as an act of charity than because they were genuinely likely to fall into crime:

‘There exists in the Scottish community a widespread and genuine feeling of commiseration towards the numerous children in the large towns who grow up wild or drift into crime because they are neglected and have bad homes. The remedy is

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being ‘treasury maintained schools’ where the allowance was supplemented to a lesser degree by local authorities than in English schools, meaning their income was smaller so they had to be more economical.

<sup>41</sup> *Wilson v Stirling* 1884 2 Couper 518.

<sup>42</sup> The general section of the Report discussed the UK wide system. See Section 4.2.1.

<sup>43</sup> 1896 Report at page 131.

thought to be in schools as substitute for home, as asylums; and this would apply in a certain measure to reformatories as to industrial schools were it not for the fact that until lately the only entrance to a reformatory was through a prison.’<sup>44</sup>

All of this supports the view that, despite the degree of criminalisation entailed in the diversion of large numbers of children to residential schools of a penal nature, the original humane legacy of the Scottish reformers continued to be influential. It also provides some explanation for the disparity between the Scottish and English statistics referred to earlier: it indicates that the differences were attributable in part to the approach of the Scottish judges and the shortage of alternative welfare provision for the poor in Scotland.

#### **4.2.3 Recommendation to end prior imprisonment**

The recommendation to end prior imprisonment was, as already noted, significant. The subject of prior imprisonment as a requirement for admission to reformatories had been a source of controversy right from the outset of the statutory system. While those inspired by true humanitarian motives, such as William Watson in Scotland and Mary Carpenter in England, had always strongly disapproved of the use of prior imprisonment, many others had been staunch advocates of its use, particularly the managers of English reformatory schools. Sydney Turner too had thought it was an indispensable feature of the system, needed both to administer punishment and to deter others from crime.<sup>45</sup> It was the main feature which distinguished the reformatory schools from industrial schools, apart from the age differential between the categories of children admitted to the two types of schools. The fact that a period in prison was required before a child could enter a reformatory was also widely thought to be the reason that the reformatory system failed to expand at the same exponential rate of the network of industrial schools: as we have seen, to avoid sending a child offender to prison a sympathetic magistrate might decide not to convict a child and instead impose an order committing him to an industrial school, a practice especially common in Scotland.<sup>46</sup> This trend was demonstrated in some of the cases referred to later in the chapter.

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<sup>44</sup> 1896 Report, page 138.

<sup>45</sup> See Section 3.3.

<sup>46</sup> 1896 Report, page 138. The Scottish ‘repugnance’ with child imprisonment was given as the reason for the reformatory system in having failed to develop there at the same rate as the industrial school network. (This argument was also applicable to England but to a lesser degree. See Radzinowicz and Hood, Vol V, page 205.) For the UK as a whole the 1896 Report gives the 1894 figures under detention in the 50 reformatories nationwide as 5587 (generally between 13 and 18 years old) while the number under detention in 141 industrial

In 1893 there was an important statute which gave magistrates discretionary power to send children to a reformatory without imposing a period of preliminary imprisonment. This Act also raised the minimum age of reformatory admission from ten to twelve except in the case of previous offenders.<sup>47</sup> The 1896 Report recorded that this statute had been ‘very widely acted upon’<sup>48</sup>: out of 1,487 children sent to reformatories in Britain in 1894, 1,107 were sent without prior imprisonment. It also noted that ‘the Act has helped the reformatories to fill, especially in Scotland.’ Clearly the previous requirement to impose a period of imprisonment had acted as a disincentive for Scottish magistrates to send children to reformatories. The 1896 Committee was not impressed with the traditional arguments put forward to support prior imprisonment, dismissing the idea that this was needed to provide an element of punishment. The main argument against prior imprisonment, according to the Report, was that it added to the ‘reformatory stigma.’ The Committee also disapproved of the ‘inequality’ between Scotland and England in the greater tendency for Scottish magistrates to dispense with prior imprisonment under the 1893 Act. For these reasons the Report recommended the abolition of prior imprisonment. Three years later, in 1899, prior imprisonment was finally abolished altogether,<sup>49</sup> removing the primary distinction between industrial schools and reformatories.

The Report was remarkable for its empathy with the circumstances of the institutionalised child. It adopted a noticeably psychological approach in its references to the detrimental effect on the ‘inner life’<sup>50</sup> of the child: it contrasted the situation of poor, but nonetheless free, children attending ordinary schools with the isolation and confinement experienced by children detained in institutions: cut off from their families and not allowed to go home, even for a day in some cases, despite being under detention for a number of years. There was also the penal atmosphere of the schools to contend with, a continuing legacy which the schools had never shaken off. This owed its origins to the type of prison regime which

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schools was between 17000 and 18000 children aged 6 to 16 (page 8). In Scotland the same year there were 765 children who were inmates in 9 reformatories and 4711 children who were inmates in 34 industrial schools. 979 children were admitted to Scottish industrial schools in 1894 (page 132). It should be noted the Scottish figures giving the number of inmates did not include those out on licence. Later in the Report one of the dissenting memoranda (A) refers to the ‘rapid’ expansion of the numbers in industrial schools over the years from the relatively low figure of 2500 in 1866 (page 157). The 1906 Inspector’s Report states that the numbers in industrial schools (including truant schools in England) doubled from 8788 in 1870 to 16446 in 1880. In 1906 there were 20534 in industrial schools in the UK (pages 6 & 7).

<sup>47</sup> Reformatory Schools Act 1893 56 757 Vict., c.48. This was also known as Lord Leigh’s Act. Under this Act the period of detention was to be not less than three and not more than five years, and the child was not to be detained beyond the age of nineteen.

<sup>48</sup> 1896 Report at page 100. All the quotes in this paragraph are from this page of the Report.

<sup>49</sup> Reformatory Schools Act 1899.

<sup>50</sup> 1896 Report at page 20.

Turner found in some schools when he first began making his reports on these ‘juvenile houses of correction’ and ‘houses of detention for the young vagabond and petty misdemeanant.’<sup>51</sup> Turner had described the discipline in some reformatories where ‘a routine scheme of regulations was enforced and the building fenced with walls, the windows grated and the inmates clothed, confined and watched as they would have been in prison.’<sup>52</sup> The 1896 Committee reported that ‘relics’ of this type of discipline remained ‘either as rules savouring of repression or, more often, as general traditions without a name which insensibly affect the spirit of the management and the life of the school.’<sup>53</sup> The main point the Report emphasised here was that the knowledge that they were detained under court warrant gave the children in these schools a sense of being disgraced and imprisoned, creating a depressed atmosphere which might have long term implications for their future success and happiness.<sup>54</sup>

While the Report adopted the language of psychology in its talk of inner life and depression it was not prepared to accept the new scientific discourse which suggested that the children detained in the institutions were different from other children or in need of specialised treatment.<sup>55</sup> The vehemence with which ideas about the depravity of child offenders was rejected by the Report indicates that such notions were far from being universally accepted. As discussed earlier in the thesis, the late nineteenth century saw the advent of new scientific notions about the young offender.<sup>56</sup> In relation to this it has been argued that a late nineteenth century scientific, positivist focus on understanding the child, together with a new recognition of the psychology of adolescence, altered responses to the young offender.<sup>57</sup> The impact of new knowledges has been emphasised by Garland.<sup>58</sup> In his view they had a significant role in an altered penal landscape where professional expertise in areas such as psychology and psychiatry was an important factor. He argues that psychology was especially influential in relation to juveniles;<sup>59</sup> and professional advice was sought on this area of scientific knowledge and other matters with courts being provided with ‘social

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<sup>51</sup> 1896 Report p.23. By ‘juvenile houses of correction’ Turner meant reformatories, while his reference to ‘houses of detention for young vagabond and petty misdemeanant’ applied to industrial schools.

<sup>52</sup> *ibid.* quoting from Turner’s final Report in 1876 when he was reviewing the system from its early days.

<sup>53</sup> *ibid.* page 23.

<sup>54</sup> *ibid.* at page 21.

<sup>55</sup> *ibid.*

<sup>56</sup> Garland (1985); Wiener (1990); Gillis (1974); Blanch (2007). See Introduction to thesis, and Section 1.5.2.

<sup>57</sup> See Section 1.5.2.

<sup>58</sup> Garland (1985).

<sup>59</sup> *ibid.*, p.26.

background reports, character judgements or the certification of experts.’<sup>60</sup> In this context, he argues, judicial decision-making was framed in accordance with ‘extra-legal’ criteria<sup>61</sup> rather than classical concepts about criminal responsibility and this provided the basis for extensive intervention into the lives of offenders.

However, there is evidence which undermines Garland’s argument. As we have seen, the 1896 Report was very robust in rejecting the concept of the inherent deviance of young offenders, dismissing as completely unfounded the notion that these children were anything other than ‘ordinary.’ Instead, the Report referred again to the words of 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.’<sup>62</sup>

In refuting the idea of ‘depravity’ the Report emphasised that the children in these schools were victims of neglect who needed kindness and attention to bring about their ‘reclamation.’<sup>63</sup> It was clearly absurd to label 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.<sup>64</sup> The Report added that the sheer numbers of children in these schools also meant that it was very unlikely that they were different from other children.

This commonsense approach to the question of the criminality of children was similar in tone to the attitude adopted 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 cautious approach towards scientific investigation which it considered valuable but far from conclusive and beset by ‘conflicting theories.’<sup>65</sup> The Gladstone Report stated that, ‘the great majority of prisoners are ordinary men and women amenable, more or less, to all those influences which affect persons outside.’<sup>66</sup> These sources indicate that there was a strong current of resistance to the new scientific discourses on criminality. The foreign

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<sup>60</sup> *ibid.*

<sup>61</sup> *ibid.*

<sup>62</sup> 1896 Report, page 22. The Report referred to the 17000 children in industrial schools.

<sup>63</sup> *ibid.*

<sup>64</sup> *ibid.*

<sup>65</sup> Report from the Departmental Committee on Prisons, 1895, page 8.

<sup>66</sup> *ibid.*

origin of much this type of theory probably did little to assist its acceptance.<sup>67</sup> 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.<sup>68</sup> Certainly the 1896 Report had little time for theories of this kind. It gave no credence at all to 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.’<sup>69</sup> The Report defiantly declared that the Committee was ‘not at all prepared to admit the theory’ that the children were physically and mentally different from others.<sup>70</sup>

This suggests that the influence of scientific discourse in Britain in the late nineteenth century has been overstated. It indicates that new scientific theories about criminality were treated with scepticism and, ultimately, pragmatic commonsense was far more influential in practice.

#### **4.2.4 The system in operation in Scotland**

One of the most valuable aspects of the 1896 Report is that it provided a very detailed insight into the way the reformatory-industrial school legislation was applied in Scotland. In this section the focus is on the criticisms made of the Scottish system.

##### *4.2.4 (1) Criticisms of procedure*

The Report was critical of cases where laxity of procedure had occurred and on this point had much to say about the way that industrial and reformatory schools statutes were applied by the courts in Scotland. The Report recommended that evidence should be taken down in writing and that a transcript of the evidence and any hearsay information should be

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<sup>67</sup> In 1924 the prison administrator Ruggles-Brise wrote in withering terms about the ‘dogmas of Lombroso’ and dismissed the influence of American and European interest in criminological theory on the English criminal justice system with the comment that, ‘It may be almost said that there is no school of criminology in England.’ Ruggles-Brise, E. (1924) *Prison Reform*, Macmillan & Co., London, page 15

<sup>68</sup> See Bailey on the judiciary being suspicious of new theories and unwilling to depart from classical ideas about criminal responsibility in sentencing of offenders. (Bailey (1997), 304).

<sup>69</sup> This system was explained by 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.’ Page 22 of 1896 Report.

<sup>70</sup> 1896 Report at page 22.



forwarded to the Secretary of State. But it noted that adherence to strict standards of legal procedure varied according to the courts involved and the types of cases they heard. The Edinburgh Police Court dealt only with cases involving an offence, 'whether under the general or under the local law.' These were either reformatory cases or industrial school cases brought under section fifteen (the offence section) of the Industrial Schools Act. The only criticism levelled at this court was that the evidence was not taken in writing.<sup>71</sup> The Glasgow Police Court was also said to be generally satisfactory in providing 'numerous safeguards for justice' apart from failing to ensure that proof of the child's circumstances was taken on oath.<sup>72</sup> However the Report was extremely critical of the casual approach to procedure taken in the courts dealing with those industrial school admissions which were on non offence grounds. While the Burgh Court at Edinburgh, consisting of one Baillie sitting alone, did adopt some procedural safeguards, in the Justices of the Peace Court at Glasgow, constituted by two justices, 'all such safeguards are dispensed with'.<sup>73</sup> The Committee accepted that there was no strict 'irregularity' in this: these were not criminal cases and therefore did not require the same high standard of proof as even the most 'venial' criminal offence by a child that only merited a fine. Nevertheless, decisions made by the courts in these cases had extremely serious consequences for children and their parents and the Report regarded it as 'strange that such lax procedure should be tolerated in cases where the result may be that for four years a child may be deprived of its home and its liberty.'<sup>74</sup>

#### *4.2.4 (2) Professional interests*

There were other factors in addition to judicial attitudes and lack of alternative provision for children which contributed to the volume of committals. For example, there were professional interests involved in ensuring that the schools were supplied with fresh new recruits. In Scotland the managers of industrial schools had agents to procure children for the schools. This was the case in Glasgow, Dundee and probably other towns. This did not happen in England where school boards had agents but not individual schools. According to the evidence of a Glasgow witness the Scottish agents were zealous in their rounding up of likely candidates:

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<sup>71</sup> The Report notes that this was permissible under the Summary Jurisdiction Act. Page 145.

<sup>72</sup> *ibid.*

<sup>73</sup> Report at page 145.

<sup>74</sup> *ibid.*

‘But the agents of the schools do not go about collecting boys to go to the schools?’

*Certainly.*

They do?

*Certainly.*

If a school is under private management, do its managers appoint an agent to scour the streets to collect children who may be sent to the school?

*Certainly, to keep their schools full.*<sup>75</sup>

Another witness, the superintendent of a children’s centre in Glasgow stated:

“... in my experience, which extends over nine years, of attending the courts and dealing with children for industrial schools, if they had no paid officers there would be fewer children in the schools, and those that do not require to go or should not be in the schools would not be there.”<sup>76</sup>

In addition to the schools’ agents there was the very active Royal Scottish Society for the Prevention of Cruelty to Children (RSSPCC). Though affiliated to the English branch of the organisation, the Scottish society adopted a different approach from its English counterpart. The policy of the English society was to avoid committal to industrial schools, taking action against neglectful parents where appropriate but keeping the family together where possible. The Scottish society, on the other hand, vigorously took advantage of the legislation to institute proceedings in industrial schools cases. The evidence of an official of the RSSPCC assured the Committee that they made ‘full inquiry into each case to consider what is due not only to the child but to its parent and the State’<sup>77</sup> but the Report felt it fair to highlight the evidence of Mr MacDonald, the Edinburgh agent to the reformatory office:

‘Do you think the society wish to take away the children? – *In many cases they have done so; they make no secret of it.*

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<sup>75</sup> 1896 Report at p144, para 267

<sup>76</sup> *ibid.*

<sup>77</sup> 1896 Report at page 142.

You are distinctly of the opinion that it is not the policy of the society, then, to keep the home together? – *I say so and have objected to many children being committed, with that in view myself.*<sup>78</sup>

The extent to which the RSSPCC was involved in arranging committals of Edinburgh children to industrial schools will be demonstrated later in the chapter in the analysis of case material.

Often, of course, the activities of these groups were affected by financial considerations. In the case of the school agents there was not only a self interested concern to keep themselves in employment but to ensure that the schools were ‘large and kept full.’<sup>79</sup> At the root of much of the preoccupation with money was the problem that schools were often lacking in resources, partly because they received inadequate support from the local and also school authorities. The need for more money had unfortunate consequences for children: the schools had to exercise stringent economy; they had to be filled to capacity; and, the children were detained for longer to receive the full benefit of treasury allowances and ensure that ‘full advantage was obtained from the labour of the inmates.’<sup>80</sup>

#### 4.2.4 (3) *Truants*

The section of the 1896 Report describing the treatment of truants is complex but very important in exposing the detailed workings of the industrial school legislation and the way the various provisions were applied and contorted. It reveals the way in which the manipulation of industrial school legislation resulted in children being detained for years, simply for truanting. It shows that there was a very significant difference in practice in the way that children truanting from school were treated in Scotland, compared to England.<sup>81</sup> It indicates that abuse of procedure occurred for financial reasons with schools keen to maximise the allowance they received for each child. It also shows that in some cases school boards disposed of their truants by colluding with parents wishing to get rid of their children. Enlisting the help of parents enabled them to have troublesome children admitted to industrial schools for long periods of detention. All of this is very helpful in understanding the cases from the Edinburgh archives discussed later in the chapter,

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<sup>78</sup> *ibid.*

<sup>79</sup> Report at page 146.

<sup>80</sup> *ibid* at page 146.

<sup>81</sup> Report, pages 140-141.

especially those where parents sought to have their children admitted to industrial schools as ‘uncontrollable.’

The reason for the divergence of approach between Scotland and England in the treatment of truants stemmed from the complicated relationship between the Education Acts and industrial school legislation in both countries. In England the Act which made education compulsory was the Education Act of 1870.<sup>82</sup> This Act created school boards with the power to establish industrial schools and to contribute towards the upkeep of children sent there. However while parents could be fined under the Act for failing to send children to school there was no power given to school boards under education legislation to send truant children in breach of an attendance order to an industrial school until amending legislation in 1876<sup>83</sup>: this Act created certified day industrial schools in England, authorising truants to be sent either to these new schools or to residential industrial schools. This meant that, between 1870 and 1876, English school boards wishing to send truants to an industrial school did so by resorting to section 16 of the Industrial Schools Act 1866, which permitted children to be committed as ‘uncontrollable.’ Children admitted under this section were only eligible to receive the lower rate of weekly allowance from the treasury of two shillings, rather than the full rate paid for children admitted as begging or wandering under section 14.<sup>84</sup> The school boards only succeeded in having the children accepted by the industrial schools as uncontrollable by using their power to contribute to make up the difference between the lower rate and the full treasury allowance. This manipulation of the industrial school legislation resulted in children being detained for years simply for truanting. However in 1876, when the amending legislation authorised English school boards to send cases to industrial schools on the grounds of truancy alone, it was envisaged that any detention of education cases for truancy would be relatively short: power was given to managers of the schools to release children on license after one month instead of eighteen months.

For Scottish truants the agony was far more prolonged. In Scotland compulsory education was introduced by the Education Act of 1872.<sup>85</sup> Like the English Act of 1870, this statute

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<sup>82</sup> Elementary Education Act 1870.

<sup>83</sup> The Elementary Education Act 1876. Any child coming within the terms of the industrial schools legislation could be sent to a day industrial school instead of being committed to a residential one.

<sup>84</sup> Report at page 146. The full treasury allowance depended on the date the school was established and could be either 3s 6d or 5s (although the Report also mentions English school boards making the allowance up to 6s or 7s).

<sup>85</sup> Education (Scotland) Act 1872.

allowed school boards to establish industrial schools but did not authorise them to send education cases to industrial schools. However the Scottish Act differed from the English in that under the Scottish education legislation there was no power to contribute towards the upkeep of children in industrial schools. Scottish school boards had to wait until 1893 to receive this power under an Act authorising the establishment of day industrial schools by general statute.<sup>86</sup> This meant that between 1872 and 1893 Scottish school boards wishing to rid themselves of truants resorted to the Industrial Schools Acts as the English school boards had between 1870 and 1876. The important difference between the way that Scottish and English school boards manipulated the legislation was that since the Scottish boards had no power to contribute to upkeep they could not avail themselves of section 16 admitting children as uncontrollable. This would only have given the schools two shillings a week and they would not accept a child for that. Instead the school boards blatantly contrived to have truantiing children admitted under section 14 as begging or wandering, thus enabling the industrial schools to claim the full treasury allowance of five shillings. The effect of this was that truantiing children regarded as a nuisance by school attendance officers found themselves confined to industrial schools for years.

According to the evidence of an agent for the reformatory office who had worked in Glasgow for twenty three years, the school boards elicited the help of parents in having their children sent to industrial schools:

‘Every child sent to an industrial school is one forever got rid of. That is just what seemingly actuates them in following up cases, and inducing the parents to get them sent to industrial schools.....they bring them before the bar and then give evidence against them in order to get them off their list of non attendants. There is no modifying that I can honestly do in the matter. Two or three days a week at our courts of committal there will be four or five school board officers with twice as many children appearing at the bar, and getting them sent.....they take advantage of the Industrial Schools Acts, and prove some sort of wandering and want of

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<sup>86</sup> Day Industrial Schools (Scotland) Act 1893, s.3(b). Under local legislation in 1878 Glasgow already had day industrial schools. See Section 3.7.

The fact that the powers granted to English school boards in relation to industrial schools were not available to school boards in Scotland until much later, the 1893 Act, was said by the Report to be the reason that by 1896 there were no school board industrial schools or truant schools in Scotland. The only example of a ‘public authority’ being managers of either a Scottish reformatory or industrial school was the Glasgow Delinquency Board.

guardianship and that sort of thing, and get them sent under the better paying sections of the Act.’<sup>87</sup>

The problem appeared to be alleviated by the 1893 legislation permitting school boards to send education cases to industrial schools for truancy on condition that the detention for truanting was limited to three months after which a license had to be granted. However this was not the end of the problem.

Despite the 1893 legislation, the practice of detaining truants for years continued in Edinburgh, and probably in other towns too, although the Report only gives details of the situation in Edinburgh. The reason for this was the lack of a day industrial school in Edinburgh until St John’s Hill was opened in 1898; at this point the only day industrial schools in Scotland were those in Glasgow created by local legislation in the 1870s.<sup>88</sup> Under the 1893 Act, children in breach of an attendance order could be sent either to a day industrial school or a residential industrial school but if the magistrate exercised the option of the residential school then, as with the English legislation, the order could not be for longer than three months. This posed a problem for Edinburgh magistrates as residential industrial schools would not accept a child for so short a period as three months and there was no day industrial school. Effectively this made the relevant section of the 1893 Act ‘inoperative.’<sup>89</sup> Faced with this situation the Edinburgh school board resorted to manipulating the provisions of the Industrial Schools Act 1866: eliciting the help of parents they used section 16 to present truant children before the court as uncontrollable in exactly the same way as happened in England between 1870 and 1876,<sup>90</sup> with the same severe consequences for children:

‘A child thus committed under section sixteen of the Industrial Schools Act, for what is virtually a breach of the Education Act, will be committed for a term of years, probably until he is sixteen.....whereas if proceedings for breach of an attendance order had been taken under the Day Industrial Schools (Scotland) Act.....the child

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<sup>87</sup> *ibid* at page 140. In fairness to the Glasgow school board it was also noted that there had been no representation made on the board’s behalf.

<sup>88</sup> Glasgow Juvenile Delinquency Prevention and Repression Act 1878 established day industrial schools in Glasgow.

<sup>89</sup> Report at page 141. Even for fining parents the old Act of 1872 was used.

<sup>90</sup> The previous practice of presenting dubious evidence of wandering under section fourteen (though supplemented by evidence of truancy) and having children admitted under this more lucrative section was halted by instructions from the Crown Agent. But under the 1893 Act Scottish school boards could now contribute to maintenance so they could persuade schools to accept children for the lower fee available under s.16 by making up the difference themselves.

could not have been detained for longer than three months, as at the end of that time the grant of a licence is, under the Act, imperative.<sup>91</sup>

The absence of day industrial schools in other Scottish towns apart from Glasgow meant that similar practices probably occurred elsewhere too. With the establishment of St John's Hill Day Industrial School in Edinburgh in 1898, children in breach of an attendance order could be sent to a day industrial school under the Day Industrial Schools Act and granted a license after a short period of attendance. However, as we have seen, by 1908 the concept of day industrial schools had not been extended beyond St John's Hill in Edinburgh under the 1893 general Act and the four in Glasgow established under the 1878 local Act.

Although there were not many day industrial schools in England either (only sixteen in operation by 1908) there were fourteen residential specialist truant industrial schools which were set up following the 1876 Elementary Education Act to deal specifically with truanting boys sent for short periods of detention.<sup>92</sup> But the idea of a school especially for truants did not take root in Scotland with the exception of one opened at Shettleston in Glasgow in 1905.<sup>93</sup> Financial constraint was probably the reason for the lack of other truant schools in Scotland.<sup>94</sup> It is likely that this was also the reason for the lack of day industrial schools although this was not the case in Glasgow which, as has been discussed earlier, responded to Watson's appeal in the 1870s by using the fund raising provisions of the local Act to support day industrial schools. Certainly the issue of expense was given in the 1908 Inspector's Report as being the main reason that there were so few day industrial schools in England: the treasury grant for day industrial schools was small and the schools were costly for school boards to run. The result was that it was 'soon found that it was really less expensive to the rates to pack a child off to an industrial school and be done with him than to maintain a day industrial school specially for his benefit.'<sup>95</sup> This history of treatment of truants is extremely useful in shedding light on the case material which will be discussed later in the chapter and helps explain why so many of the Edinburgh industrial school admissions occurred at the instigation of parents claiming their children were uncontrollable.

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<sup>91</sup> *ibid* at page 141.

<sup>92</sup> The early truant schools were described in the 1908 Inspector's Report as follows: 'they smacked of prison rather than of the school.' They were said to be more interested in imposing solitary confinement on their pupils than instructing them. (Page 23).

<sup>93</sup> *ibid.* at page 27. In December 1906 the number of children in the school was 139, with 189 on licence.

<sup>94</sup> *ibid* at page 26.

<sup>95</sup> *ibid.* at page 28.

#### 4.2.4 (4) *Young children in reformatories*

As well as the abuses which occurred in relation to truant children, the 1896 Report referred to the unacceptable manipulation of statutory provisions which led to very young children being inappropriately placed in reformatories for older children rather than industrial schools more suitable for their age group. Again this involved complicated machinations under statutory provisions. Under the Reformatory Schools Act 1866, convicted offenders under the age of sixteen could be sent to a reformatory and those under ten should not be sent to a reformatory unless they were previous offenders. This was amended by the Reformatory Schools Act 1893,<sup>96</sup> which raised the minimum age of admission to a reformatory to twelve except where a child was a previous offender. A young child convicted of an offence was therefore eligible to be admitted to a reformatory if previously convicted. Alternatively, and this is what often happened, young child offenders were charged under section 15 of the Industrial Schools Act and the court did not proceed to convict but instead made an order sending the child to an industrial school. However if the child had a previous conviction it was not possible to use section 15 and the court might instead opt to make an order committing him under another section, such as the section 14 provision permitting committal where a child was associating with thieves. In these circumstances where a child had been receiving poor relief within the previous three months the parish was liable for his maintenance under section 38 of the industrial schools legislation which applied only to Scotland.<sup>97</sup> One of the witnesses spoke of his experience of very young child offenders from country districts and also from Glasgow being committed to reformatories under the reformatory statute rather than being sent to industrial schools, as would be the normal practice, simply to avoid them becoming chargeable to the local authorities; he gave the example of children of eight, nine or ten sent to ‘pilfer’ by their mother and caught by school board officers who wished to avoid encumbering their employers, the parish council, with the cost of maintenance. These children would be presented to the court as a reformatory complaint and committed to a reformatory despite their young age, a practice ‘cruel to the children.’<sup>98</sup>

The effect of section 38 also influenced the practices of RSSPCC officers. It was alleged that when they picked up abandoned children and took them to rescue shelters before

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<sup>96</sup> 56 & 57 Vict., c. 48.

<sup>97</sup> Industrial Schools Act 1866, s.38.

<sup>98</sup> *ibid* at page 143.



presenting them to a court for admission to an industrial school they sometimes detained children in receipt of poor relief longer so that they would fall outwith the period when the local authority would have to pay for them. Often the reason given for this delay was to find time to complete inquiries or to arrange their admission to a school but the true purpose was to avoid encountering any problems with parish authorities who resented this drain on their resources.<sup>99</sup>

Although the 1896 Report was forthright in its criticisms of the abuses which occurred in Scotland it concluded that ‘the existence of such a state of things is well nigh inconceivable except on the assumption that all concerned in bringing these children before the courts are persuaded in their own minds that what they are doing is best for the children.’<sup>100</sup> This supports the view that underlying the attitude of many judges was a continuing current of humanitarianism. And this tendency to see the schools as a place of refuge owed its origin mainly to the ongoing legacy of the original reformers.

#### 4.3 QUARRIER’S INITIATIVE

One of the main reasons for the high numbers of children in the schools was the lack of alternative social provision for the poor. One exception to this was the work of wealthy Scottish philanthropist William Quarrier. His initiative for destitute children at Bridge of Weir provides an interesting comparator with the industrial-reformatory schools system at the turn of the century. In many ways Quarrier resembled William Watson. Like him he exhibited religious zeal in his campaign to help impoverished children. He described the children he helped as being similar to the children who were residents in industrial and reformatory schools, the main difference being that the children in his homes did not enter via the courts.<sup>101</sup> The children were referred to the homes either by ‘civilians’, well meaning individuals such as ‘bible women’ involved in missionary work, or sometimes brought by the police.<sup>102</sup> But the children in Quarrier’s homes could equally well have found themselves in an industrial or reformatory school if their rescuers had directed them to magistrates instead.<sup>103</sup> As we have seen, the RSSPCC was very active in Edinburgh in placing destitute children before the courts for admission to industrial schools. It appears that in Glasgow the

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<sup>99</sup> Report at p143.

<sup>100</sup> Report at page 145.

<sup>101</sup> See Departmental committee on habitual offenders, vagrants, beggars, inebriates, and juvenile delinquents (Scotland). 1895.

<sup>102</sup> *ibid.*

<sup>103</sup> See *Maguire v Fairbairn* 1881 4 Couper 536 discussed on page- where reference is made to children sent to reformatories for vagrancy or sleeping in a close.

RSSPCC was far less active than in Edinburgh, and that Quarrier's project performed a similar role in the west of Scotland to that undertaken by the RSSPCC in the capital.<sup>104</sup> Quarrier differed from Watson in a very important respect: his system was entirely funded by private philanthropy and he was free from the constraints of governmental interference, supervision and statutory regulation. This was a freedom Watson would undoubtedly have envied.<sup>105</sup> But Quarrier used this freedom to pursue an extensive programme of emigration of children to Canada, sending many of the children in his care to be placed with farmers' families. By 1895 he was sending 250 children annually, having overseen the emigration of 4000 Scottish children and set up two schools in the colony.<sup>106</sup> As we saw in chapter three children sent to live on colonial farms were very vulnerable to exploitation. It is certain that Watson would not have approved of emigration: he was most concerned with preserving family bonds. Quarrier, on the other hand, appeared to show scant regard for family links in his determination to provide children with a fresh start in Canada.<sup>107</sup> Despite contributing to the Scottish diaspora in such a spectacular way, Quarrier's establishment at Bridge of Weir was a highly impressive and ambitious enterprise. He succeeded in appealing to private religious philanthropy to build elegant and substantial Victorian villas where destitute children were cared for in family-style units, as well as an imposing church and school. And very importantly, even though a difficult life may have been in prospect for many of these children in Canada, they were fortunate to have avoided the stigmatising, criminalising contact with the industrial-reformatory system which could equally well have been their fate if they had been directed to the courts instead. The children Quarrier set out to help were regarded as victims of misfortune rather than children against whom anything had been 'alleged.'<sup>108</sup>

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<sup>104</sup> See 1895 Departmental committee on habitual offenders etc. By 1895 there were 1200 children in residence at Bridge of Weir. There was also a night shelter in Glasgow for 120 children.

<sup>105</sup> See Watson's comments to 1884 Royal Commission on the importance of day industrial schools being free to release pupils when they thought they were ready and when suitable jobs became available, page 413, para.10211. Quarrier criticised industrial and reformatory schools for detaining children for too long.

<sup>106</sup> 1895 Departmental committee on habitual offenders etc.

<sup>107</sup> *ibid.*

<sup>108</sup> *ibid.*, page 323.

## 4.4 THE CHILDREN ACT 1908

### 4.4.1 Background to the Children Act 1908

In many ways the Children Act 1908 was very significant for children in the criminal justice system. It effectively removed the option of child imprisonment in all but exceptional cases and it created the statutory framework for the juvenile court. However, although it was undeniably important in many respects, it will be argued here that it was not the radical break with the past that has been supposed, and that in fact there were many continuities with the Victorian system.

The Act was known as the Children's Charter. It was hailed as the culmination of a gradual process of recognition of the special position of children.<sup>109</sup> The measure should be seen in the context of a developing social welfare programme in which children were accorded special significance: for example, there was a new focus on infant welfare and health, concerned with issues such as provision of school meals and school medical inspection.<sup>110</sup> Against this background the Act set out to deal with a wide range of matters relating to children, consolidating and amending the law in areas as diverse as infant life protection, prevention of cruelty to children and prohibitions on the sale of tobacco to children.

Despite its reputation as a radical measure, in some respects the Children Act simply introduced amendments to existing law. This was the case with the section of the Act concerned with holding parents to account financially for their children's misconduct. The Act which first crystallised this concept statutorily was the Youthful Offenders Act 1901. This set out in section 2 that, where a child or young person under fourteen was charged with any offence for which a fine, damages or costs could be imposed on him by a court of summary jurisdiction and there were grounds for believing that neglect by a parent had 'conduced to the commission of the alleged offence,' then the parent could be charged with contributing to the commission of the offence. Also under section 2 a parent could be made to pay a fine, damages or costs and ordered to give security for the good conduct of the child.<sup>111</sup> The liability of parents was further enforced by section 99 of the Children's Act

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<sup>109</sup> Writing in 1909 a distinguished London magistrate described the Act as 'a great charter of the helpless.' Hall, William Clarke and Pretty, Arnold H. F., (1909) *The Children Act 1908* (3<sup>rd</sup> edition) of *The Law Relating to Children* Stevens and sons Ltd., London by, page 2.

<sup>110</sup> Hendrick(1994).

<sup>111</sup> Youthful Offenders Act 1901, 1 Edw 7, c. 20., s.2 The Act also gave the courts greater power to enforce parental contributions by parents of children in institutions. See Radzinowicz and Hood (1986), 211.

1908 under which parents were assumed to be responsible for fines imposed on their children unless the court was satisfied that the parent could not be found or ‘that he has not conducted to the commission of the offence by neglecting to exercise due care of the child or young person.’

Many years later Lord Kilbrandon in his famous report on juvenile justice in Scotland was to comment that this penalising of parents for actions committed by their children was a foreign import into Scottish criminal law, a punitive measure which was a form of vicarious liability.<sup>112</sup> However, as we have seen in earlier chapters, this concept was very well established in nineteenth century Scotland. In the earliest days of the pre-statutory system, the Child’s Asylum Committee in Aberdeen summoned neglectful parents before it and ordered them to meet their obligations. Under the early statutory system parents could give financial security for the good conduct of their children.<sup>113</sup> One of the main aspects of the statutory system was that parents were required to make financial contributions to the upkeep of their children in institutions.<sup>114</sup> They were penalised if they helped their children to abscond from the schools,<sup>115</sup> and under the Education Acts they could be fined if their children were truants. The 1901 and 1908 Acts encapsulated this familiar concept by holding parents to account financially in a very direct way.

#### **4.4.2 Child imprisonment**

The Children Act 1908 removed the option of child imprisonment in all but exceptional cases. Under the terms of the Act, children and young people below sixteen appearing before the courts charged with an offence were to be given bail<sup>116</sup> and if they were remanded in custody were not to be detained in prison but in an appropriate place of detention.<sup>117</sup> Any child under fourteen who was convicted was not to be sentenced to imprisonment or penal servitude<sup>118</sup> for any offence and could not be committed to prison for failure to pay a fine,

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<sup>112</sup> Report of the Kilbrandon Committee on Children and Young Persons, Scotland (1964), pages 11 and 12.

<sup>113</sup> The Reformatory Schools (Scotland) Act 1854 (Dunlop’s Act); *Hay and Others v Linton* 2 Irv.57.

<sup>114</sup> In Scotland under the Reformatory Schools Act 1866, s.25 and the Industrial Schools Act 1866, s.40 parents who had not paid contributions could have their wages arrested.

<sup>115</sup> Under s.22 of the Reformatory Schools Act 1866, parents could be fined up to £20 or given 2 months in prison with or without hard labour; s.34 of the Industrial Schools Act 1866, applied the same penalties.

<sup>116</sup> Section 94 unless the alleged crime was very serious or there were pressing circumstances such as the need to remove the child from ‘any reputed criminal or prostitute.’ Under s.131 a child was defined as someone under the age of 14, while a young person was someone aged between 14 and sixteen.

<sup>117</sup> Section 108.

<sup>118</sup> Penal servitude was imprisonment and hard labour. See Morris and Rothman ( 1995).

damages or costs.<sup>119</sup> Penal servitude was also abolished for convicted children aged between fourteen and sixteen, and a child of this age could only be committed to prison if the court was satisfied that he was so ‘unruly’ or ‘depraved’ that the normal arrangements provided for in the Act could not apply.<sup>120</sup>

These provisions represented the culmination of a long process. There is no question that the Scottish reformers Watson and Guthrie would have been delighted to see the demise of child imprisonment. Watson’s primary objective was to provide children in trouble with the means to reconstruct their lives in a wholesome environment. Like Mary Carpenter, Watson deplored the imprisonment of children and argued strongly against the provisions of the reformatory school legislation which imposed prior imprisonment as a requirement of reformatory admission. As discussed in earlier chapters, this humane approach was not one which was universally accepted by all of those involved in the early reform movements. Particularly within the English reformatory movement there were many who advocated prior imprisonment as appropriate and necessary both as an expression of retributive punishment and as a means of deterring future misconduct by others. This was the clear view of Sydney Turner and many reformatory managers such as the influential reformatory founder, Thomas Barwick Lloyd-Baker.<sup>121</sup> However by the end of the nineteenth century the humanitarian argument had won the day. The end to prior imprisonment in 1899<sup>122</sup> was followed by the Youthful Offenders Act 1901,<sup>123</sup> which gave courts an alternative to remanding a child in prison, placing him with ‘any person willing to receive him.’<sup>124</sup> All of this pointed the way towards the effective end of child imprisonment enshrined in the 1908 Act.

In Scotland, as we have seen, in keeping with the humanitarian tradition of the original reformers, the judiciary, those involved in running the schools and ‘enlightened public opinion’<sup>125</sup> all shared a ‘strong repugnance’ to the imprisonment of children. The previous

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<sup>119</sup> S.102

<sup>120</sup> S.102. Under s.103 the Act also abolished capital punishment for children and young people.

<sup>121</sup> Manton (1976); Stack (1979). For Turner’s views see Section 3.3.

<sup>122</sup> Reformatory Schools Act 1899.

<sup>123</sup> 1 Edw. 2 c.20. s3

<sup>124</sup> Radzinowicz and Hood (1986): this was little used in practice, and when it was it saw children being referred to a variety of places such as orphanages or the care of a police sergeant. It should also be noted that it had been possible for the courts to avoid committing children to prison on remand since the Industrial Schools Act 1866 which had given power to magistrates to have children sent to the workhouse (poorhouse in Scotland) while awaiting trial.

<sup>125</sup> See chapter three. Reports to the Secretary of State for the Home Department on the state of the law relating to the treatment and punishment of juvenile offenders. 1881 p.210

<sup>125</sup> *ibid.*

section discussed the way in which this aversion to child imprisonment impacted on the development of the statutory system in Scotland, with Scottish judges being reluctant to send children to reformatories until the Act of 1893 made prior imprisonment optional.

The humanitarian influence was significant in England too. As one scandal after another about young children imprisoned for very minor offences entered the public domain, the sympathetic reaction led to policy directives to magistrates to consider alternatives to imprisonment of children.<sup>126</sup> This had a very dramatic effect on reducing the levels of child imprisonment: in the wake of official directives discouraging the imposition of prison sentences for children, the number of juvenile committals to prison dropped from between 80 to 99 a week in April 1880, to about 10 a week in November of that year.<sup>127</sup> But, nonetheless, the Gladstone Committee still considered the retention of child imprisonment a necessity in some circumstances.<sup>128</sup>

However, the humanitarian pressure to end child imprisonment continued. In an early example of the media influencing the direction of criminal justice policy another important development was the effect of a letter written to *The Daily Chronicle* on Friday 28th May 1897<sup>129</sup> by Oscar Wilde highlighting the plight of children in prison. Wilde wrote in protest at the dismissal of a prison warder who had contravened prison rules by giving a young child prisoner some biscuits:

‘The cruelty that is practised by day and night on children in English prisons is incredible, except to those who have witnessed it and are aware of the brutality of the system.’

Arguing that no child under fourteen should be sent to prison he described the ‘limitless terror’ experienced by children kept locked up in a dimly lit cell for twenty three out of twenty four hours. Their misery was compounded by hunger as they were only offered ‘coarse, horrible food.’ He also railed against what he termed the ignorance and stupidity of

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<sup>126</sup> In 1880 the Home Secretary, William Harcourt, responded sympathetically to public reaction over one egregious case; this led him to issue instructions to magistrates insisting that they inform him of any case where they had imposed the sentence of imprisonment on a child under fifteen. A circular followed requesting that magistrates consider alternatives to imprisonment: Radzinowicz and Hood (1986), 625.

<sup>127</sup> *ibid.*

<sup>128</sup> *ibid.* page 627. For remand cases and where there was a conviction for serious offences and no reformatory was available.

<sup>129</sup> *ibid.*; Merlin Holland and Rupert Hart-Davis(eds) (2000) *Complete letters of Oscar Wilde* London, Fourth Estate p.847.

justices and magistrates who sent children to prison on remand. In a challenge to the view that children were contaminated by contact with other prisoners, he added that the only humanising aspect of prison life was the camaraderie and kindness of fellow prisoners. For Wilde the source of contamination was ‘the whole prison system — the governor, the chaplain, the warders, the lonely cell, the isolation, the revolting food, the rules of the Prison Commissioners, the mode of discipline as it is termed, the life.’ Wilde returned to this theme when he published the ‘Ballad of Reading Gaol’ in 1898:

‘For they starve the little frightened child  
Till it weeps both night and day’<sup>130</sup>

Wilde’s writings had the desired effect. In response to the letter to the *Daily Chronicle*, Ruggles-Brise, the Chairman of the Prison Commission issued a memorandum undertaking to do all that he could to put an end to child imprisonment.<sup>131</sup> This helped cultivate the climate in which the following year prior imprisonment as a condition of reformatory admission was abolished in the UK, paving the way for the effective demise of child imprisonment in 1908. Without wishing to overstate the significance of literary works, the impact made by Wilde’s writing underlines the point made in chapter one on the importance of cultural influences both as a barometer and catalyst of change in the criminal justice system.

#### **4.4.3 The Juvenile Court**

The Children Act 1908 created the statutory basis for juvenile courts in the UK. 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 those at which the ordinary sittings are held.’<sup>132</sup> Except by special leave of the court only those directly concerned with the case were allowed to attend.<sup>133</sup> In some respects the juvenile court can be interpreted as a very significant step, setting the seal on the recognition of the special position of children in the criminal justice system and, accordingly a development entirely in keeping with the spirit of the original Scottish reformers. It has been seen as laying the foundation for the

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<sup>130</sup> 1995, Woodstock Books, Poole, New York

<sup>131</sup> Radzinowicz and Hood (1986), page 627.

<sup>132</sup> Section 111(1).

<sup>133</sup> S.111(4). However journalists were not excluded.

governance of juvenile courts in pre-Kilbrandon Scotland.<sup>134</sup> However, despite the 1908 Act being regarded as a ‘major landmark’<sup>135</sup>, it is argued here that the Act was less of a watershed than has been supposed.

The move to introduce juvenile courts in the UK should be seen in the context of the development of juvenile courts in other jurisdictions.<sup>136</sup> As we have seen in earlier chapters, there was a constant exchange of ideas about juvenile justice reform between different countries throughout the nineteenth century, and this continued to be the case in the early twentieth century with patterns of reform following similar trends to some degree. The juvenile court movement in the US was of particular influence. Like the English reformatory movement those advocating juvenile courts in America promoted their cause by courting the great and the good, appealing to a broad range of interests.<sup>137</sup> Similarly, in England, Mary Carpenter relied on the patronage of Lady Byron to support her endeavours;<sup>138</sup> and others in the English upper classes jumped on the bandwagon of reform for their own reasons.<sup>139</sup> But there was important variation in the way reforms such as the juvenile court were received in individual jurisdictions. The juvenile justice culture in which the first juvenile courts operated in Scotland had its own unique qualities derived in part from its history of pragmatic philanthropy. In Scotland the early reforms in pre-statutory Aberdeen, for example, depended on philanthropic support at a community level. This Scottish approach relying on local cohesiveness was in evidence under the statutory system in the successful appeal to Glasgow’s civic conscience in the 1870s to fund day industrial schools under local legislation; it was also evident in the continuing undercurrent of humanitarianism in Scotland. All this meant that the Scottish juvenile court was very different from the American version.

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<sup>134</sup> This was the view expressed in the Report of the Kilbrandon Committee, page 16.

<sup>135</sup> *ibid.*

<sup>136</sup> On juvenile courts in the US see Platt, A. (1977) *The Child Savers: The Invention of Delinquency*, Chicago University Press; Tanenhaus, D. (2001) ‘Growing up Dependent: Family Preservation in Early Twentieth Century Chicago’ in *Law and History Review*, Vol. 19. No. 3; Tanenhaus, D. (2004) *Juvenile Justice in the Making*, New York, Oxford University Press; Willrich, Michael (2003) *City of Courts: Socializing Justice in Progressive Era Chicago*, New York, Cambridge University Press. For Australian juvenile courts see Ritter, L. (2001) ‘Inventing juvenile delinquency and determining its cure (or, how many discourses can you disguise as one construct?)’ Under the terms of the State Children’s Act 1886 South Australia introduced juvenile courts in 1890.

<sup>137</sup> See Platt (1977); Tanenhaus (2004).

<sup>138</sup> Manton (1976).

<sup>139</sup> As noted in Section 1.3, this included allowing reformatories to be built on their country estates and then exploiting reformatory boys as a source of labour. Stack (1979).



The background against which the first American juvenile court was created in Cook County Chicago in 1899 was one where the new social sciences reigned supreme.<sup>140</sup> There was huge interest in understanding the social causes of crime, in ‘socialising justice.’<sup>141</sup> And the juvenile court was the perfect place to experiment with medical-therapeutic ideas of individualised treatment of juvenile ‘delinquents’ and ‘dependents.’<sup>142</sup> The courts were informal, there was an absence of procedural constraints,<sup>143</sup> and an array of specialists were on hand to deliver the treatment required in each case.<sup>144</sup> A crucial aspect of the American juvenile court was its overarching paternalism crystallised in the concept of ‘*parens patriae*,’<sup>145</sup> which meant that the child was regarded as a child of the state and the court acted as a parental court. For ‘dependent’ children the kind of social welfare delivered was ‘dual track,’ varying according to their parental situation:<sup>146</sup> the courts administered mother’s pensions so that where a mother was bringing up children alone, the state stepped in to provide financial support as it was considered a father should have done, and the family remained together but was subject to close supervision by probation officials. On the other hand where the mother was the absent parent the children were sent to be cared for in state institutions.

The Scottish juvenile courts had little in common with the American conception: the magistrates in the Scottish courts had no special expertise in children’s cases and medical-therapeutic ideas about individualised treatment of children were of little, if any, influence. The courts were formal and bound by procedural requirements. Essentially they continued to deal with matters much as before, the main difference being that the juvenile court separated children off from adults appearing in court by being conducted at a different time from the adult courts.<sup>147</sup> But one thing the Scottish and American juvenile courts had in common was

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<sup>140</sup> Willrich, Michael (2003) *City of Courts: Socializing Justice in Progressive Era Chicago*, Cambridge University Press. For example, Willrich discusses the influence of new psychological ideas about adolescence developed by G. Stanley Hall in 1904.

<sup>141</sup> *ibid.*

<sup>142</sup> Tanenhaus (2004); Willrich (2003).

<sup>143</sup> The 1967 US Supreme Court decision *In Re Gault* 387 U.S.1 (1967) marked a change of approach in declaring that children appearing in juvenile courts were entitled to due process protections.

<sup>144</sup> *ibid.*

<sup>145</sup> Tanenhaus (2001), page 555; Willrich (2003), 79.

<sup>146</sup> Tanenhaus (2001).

<sup>147</sup> See Radzinowicz and Hood (1986), 631, for 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.

that on a conceptual level the existence of juvenile courts was an important recognition of the special position of children in the criminal justice system.

There are conflicting perspectives on the effect of the juvenile court in practice. While some commentators invest the establishment of the juvenile court in the UK with great significance,<sup>148</sup> others are a little more circumspect. Radzinowicz and Hood conclude that ultimately the juvenile court that emerged 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.’<sup>149</sup> To assess the difference the juvenile court made in Scotland it is instructive to look ahead a few years to the Report of the Committee on Reformatory and Industrial Schools in Scotland in 1914.<sup>150</sup> In evidence to the Committee, the Chief Constable of Dundee, John Carmichael, responded to a question as to 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.’<sup>151</sup>

Judging from this, one of the main objectives of establishing the court, the segregation of children appearing in court, had been achieved, while that of ensuring that the procedure was presided over by someone with specialist expertise in dealing with children had not. According to evidence given by Edinburgh magistrate, James Rose, 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.

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<sup>148</sup> Garland (1985).

<sup>149</sup> P.633.

<sup>150</sup> Departmental Committee on Reformatory and Industrial Schools in Scotland. Evidence taken by the Departmental Committee on Reformatory and Industrial Schools in Scotland, with appendices. 1914-16 [Cd. 7887]

<sup>151</sup> *ibid.* page 809.

*Do the whole of the magistrates take their turn of that work?*

Yes.”<sup>152</sup>

James Rose expressed extreme dissatisfaction with the use of the juvenile court to deal with child offenders, particularly as most of the offences were extremely trivial, such as playing football in the street or “hanging on to tramway cars”. He argued that appearing in court was an ordeal for children which stigmatised them as criminals:

“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 an 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..”<sup>153</sup>

This appraisal shows the frustration and disappointment felt by some magistrates and indicates that while the juvenile court certainly improved matters for children by keeping them separate from adult offenders, it fell very far short of being a genuinely specialist forum. The evidence here supports the conclusion that the chief importance of the creation of the juvenile court was on the conceptual level in its recognition of the special position of children.

Garland’s interpretation of the court’s significance acknowledges the importance of the juvenile being accorded a special position. However, he sees in this an avenue for extensive social intervention into the private domain of the family, particularly the working class family. For Garland the principle of special juvenile courts ‘endorsed the conception of the child or juvenile as a special category and promoted a separate institutional basis for the future development of social work and criminological initiatives.....Thus if the juvenile was the tactical point of entry established in criminological discourse, the juvenile court provided its institutional equivalent in practice.’<sup>154</sup> According to this view, the 1908 Act was highly influential in laying down the “‘revolutionary’ principle”<sup>155</sup> that from now on ‘the

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<sup>152</sup> *ibid.* page 291.

<sup>153</sup> *ibid.* page 290.

<sup>154</sup> Garland (1985), 222.

<sup>155</sup> *ibid.* Here Garland is quoting Lord Advocate Shaw’s use of ‘revolutionary.’

problems of family ‘failure’ 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.’<sup>156</sup> Garland goes on to refer briefly to s.58 of the Act which set out the range of conditions under which children may be admitted to an industrial school. He notes that the court is empowered to deal with both offending and neglected children. He refers to s.58(1)(d) which stated 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.’<sup>157</sup> Most of the conditions contained in s.58 were re-enacted from earlier legislation but s.58(1)(d) was one of the few changes. Garland points to the broad range of situations where a child could be removed and quotes with approval a comment by John Clarke that ‘from the first the court was empowered to intervene to rescue the child from the vagaries of working-class socialisation.’<sup>158</sup> In Garland’s view, then, the juvenile court marked the opening of a new vista of interventionism, a world of probationary inspection, expert knowledges and increased surveillance.

The point to be emphasised here is that, in setting out grounds on which children could be admitted to industrial schools, the 1908 Act was largely consolidating earlier legislation and adding one or two amendments. There was little that was new in s.58. It re-enacted the terms of the 1866 Act to do with begging, wandering, being found destitute, frequenting the company of thieves, being ‘refractory’ in a workhouse or poor law school and being presented by parents as beyond control. It also re-enacted the section of the amending Act of 1880 concerned with a child found residing with prostitutes.<sup>159</sup> There was one entirely new provision in addition to section 58 (1)(d): a girl was eligible to be sent 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.<sup>160</sup> In relation to children who had offended there was some modification of the earlier provisions: where a child under twelve was charged with an offence he could be sent to an industrial school but the

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<sup>156</sup> *ibid.* at page 223.

<sup>157</sup> Section 58 (d) He also refers to the child being liable to be removed where a parent was a thief or a prostitute. These situations could have been covered by s.58(d). The subsection dealing with a situation where a child was associating with thieves does not refer specifically to a parent although it could include a parent. According to subsection (f) a child could be removed where found in a house with prostitutes. This was in line with previous legislation, the Industrial Schools Amendment Act 1880, s1. However the 1908 Act added the qualification that a child living with a mother who was a prostitute was not liable to be sent to an industrial school where the mother had taken ‘due care to protect the child from contamination.’

<sup>158</sup> *ibid.*, page 223.

<sup>159</sup> 1908 Act, S. 58(1)(e). See note 157, *supra*. See too Section 4.5.1.

<sup>160</sup> 48 & 49 Vict. c. 69.

requirement under section 15 of the 1866 Act that there should be no previous conviction was removed.<sup>161</sup> In addition, a child of twelve or thirteen 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.'<sup>162</sup> In relation to reformatory admission, a child convicted of an offence between the ages of twelve and sixteen could be admitted to a reformatory, as before; but the minimum age of admission was twelve so that younger children with a previous conviction were no longer admissible.<sup>163</sup>

Generally, though, the provisions were much the same. Even the addition of the new condition in section 58(1)(d) empowering magistrates to remove children where they considered parents unfit by reason of criminal or drunken habits had a familiar ring about it. Criminality of parents had been a longstanding ground of admission. Under the Prevention of Crimes Act 1871 children under fourteen of a woman twice convicted of 'crime' could be sent to an industrial school;<sup>164</sup> and, children in a workhouse or poor house school with a parent who had been convicted of a crime punishable by imprisonment, or penal servitude, had been liable to be admitted to an industrial school since the 1866 statute.<sup>165</sup>

Clearly these provisions were nothing very new. There was still great continuity with existing legislation and practice. This suggests that there are elements of Garland's argument which are in need of re-evaluation. His thesis is that there was a radical change of emphasis in this period, but the evidence does not all point in this direction. It has to be conceded, of course, that there were very significant developments around this time. For example the 1908 Act states that where a child is presented to the court by a parent as beyond control the court may decide to place the child under the supervision of a probation officer instead of sending him to an industrial school.<sup>166</sup> And, of course, as well as the development of

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<sup>161</sup> Section 58(2).

<sup>162</sup> Section 58(3).

<sup>163</sup>Section 57. Under the Reformatory Schools Act 1893, 56 & 57 Vict., c.48, commitment to reformatories was allowed for convicted offenders between 12 and 16 but younger children were admissible if they had previous offences.

<sup>164</sup>34 & 35 Vict.,c.112, s.14.

<sup>165</sup>Section 17. Under this section children could be sent to the industrial school where the managers of the workhouse or poorhouse school represented to the court that this was desirable and the court accepted this. This was also the section that applied to children who were found to be troublesome or 'refractory' by the managers of the pauper schools.

<sup>166</sup> Section 58(4). The child was to be dealt with as under the Probation of Offenders Act 1907, except that 'the recognisance on entering into which he is discharged shall bind him to appear for having a detention order made against him.'

probation,<sup>167</sup> the creation of juvenile courts and virtual end of child imprisonment were enormously significant. However, it is very important not to underestimate the ongoing links with the Victorian criminal justice system. In many respects as far as children were concerned the juvenile court was conducting business much as usual. This observation is clearly supportive of Victor Bailey's position which also underlines the continuities with the past. More directly in point, it also resonates strongly with Platt's observation on the introduction of the juvenile court in the US: he argues that the American juvenile court has been wrongly construed as a radical innovation. He maintains that it was a 'politically compromised reform which consolidated existing practices.'<sup>168</sup>

Referring back to chapter three, the argument was developed there that ideas about reformation of individual offenders were widely accepted and put into practice far earlier than the Garland thesis allows.<sup>169</sup> Garland argues that the Victorian criminal justice system treated offenders in a uniform fashion with no account taken of 'criminal type or individual character.'<sup>170</sup> In his view the focus on individual reformation developed at the turn of the century. However there is evidence that the ethos of the reformatory school was from its inception based on adapting programmes of reformation to meet the needs of the individual offender.<sup>171</sup> All of this points to a pattern of underlying stability in many respects rather than one of radical change.

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<sup>167</sup> Probation of First Offenders Act 1887; Probation of Offenders Act 1907.

<sup>168</sup> Platt (1977), 135.

<sup>169</sup> See Section 3.3.

<sup>170</sup> Garland (1985), 14.

<sup>171</sup> See Sydney Turner's 1876 Report, Nineteenth Report, page 11.

## 4.5 EVIDENCE FROM THE ARCHIVES

### 4.5.1 Industrial School Admissions

In this section, my aim is to examine archival material with the intention of shedding some light on the practices of the courts. Analysing the records of children admitted to industrial schools in Edinburgh brings to life many of the observations made in the 1896 Report discussed earlier in the chapter.

The material here is drawn mainly from the Industrial Schools Complaints Books for Edinburgh, large volumes concerned with admissions to industrial schools with details of the burgh court process relating to each child.<sup>172</sup>

The volume for 1901-04 relates to complaints under the Industrial Schools Act 1866 regarding ‘uncontrollable or abandoned children’ which were cases under section 14 and section 16. Normally the cases resulted in the children being sent to a residential industrial school until the age of sixteen.<sup>173</sup> Most of the cases concerned children who were destitute and found wandering with no visible means of support. Often children had been found on the streets selling small objects for sale such as matches, white heather, or papers. In these circumstances the complaint was in terms of the children being found begging for alms ‘under the pretext’ of selling these items. These children fell under section 14 of the 1866 Act.<sup>174</sup>

The majority of cases were brought at the instance of an inspector of the Royal Scottish Society for the Prevention of Cruelty to Children (RSSPCC) who initiated the legal process before the magistrates at the burgh court in Edinburgh. Commonly known as ‘the cruelty,’ the society originated in the 1880s. It is clear that the RSSPCC inspectors were embarked on a moral crusade. Following legislation making cruelty to children a criminal offence, they assumed the responsibility of intervening in cases involving possible neglect. They were particularly vigilant in inspecting even the personal cleanliness, beds and bedding, home

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<sup>172</sup> Edinburgh City Archives. Records are available from 1871 up to 1935.

<sup>173</sup> If sent to a day industrial school the child would be ordered to attend until the age of fourteen.

<sup>174</sup> Section fourteen refers to children found begging ‘or receiving alms (whether actually or under the pretext of selling or offering for sale any thing)’; wandering with no home or ‘visible means of subsistence’ or destitute.

conditions, character and earnings of families.<sup>175</sup> According to an account based on the records of the society:

‘The RSSPCC was the only family welfare agency in Scotland from its foundations in 1884 until well into the 1960s. During this period no other organisation daily engaged with the consequences of poverty and parental neglect for children’.<sup>176</sup>

The overall impression gained from reading the cases is that the RSSPCC, sometimes assisted by other associations such as missionary groups, was tremendously active in Edinburgh. Their role involved rescuing neglected children either reported to them or discovered by them. Often they placed children temporarily in a ‘shelter’ at the organisation’s base at 121 High Street until they could be brought before the magistrates. As the 1896 Report noted, their *modus operandi* was sometimes questionable.<sup>177</sup> Unlike their English counterparts, which supported vulnerable children in a family context while ensuring neglectful parents were appropriately dealt with, the Scottish society adopted the policy of vigorously promoting removal of such children to institutional care.

A typical example where a child was brought by the RSSPCC inspector before the court under section 14 was provided by the case of Angus McKay on 28<sup>th</sup> January 1901. The record notes that Angus, aged thirteen, was ‘found destitute, being an orphan.’ Angus was committed to Liberton Industrial School until the age of sixteen. Similarly, on 29<sup>th</sup> September 1903, James Turnbull, an RSSPCC officer, presented twelve year old Thomas Duffy to the court on the ground that he had ‘been found begging or receiving alms under the pretext of selling or offering for sale white heather.’ In this case Thomas’s father signed his consent to his son being sent to Mars industrial training ship until the age of sixteen.

On 2<sup>nd</sup> March 1904, James Turnbull presented an eleven year old boy named David Herbert Scotland to the court after he had been ‘found wandering and not having any home or settled place of abode or proper guardianship or visible means of subsistence.’ This time the child’s mother signed her consent to her son being sent to Mars until the age of sixteen.

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<sup>175</sup> According to RSSPCC circular of 1909. See Clapton, G., (2009) ‘Yesterday’s Men: The Inspectors of the Royal Scottish Society for the Prevention of Cruelty to Children, 1888 -1968’ in *British Journal of Social Work* 39 (6): 1043-1062.

<sup>176</sup> *ibid.* The article notes that the Social Work (Scotland) Act 1968 ‘signalled the end of the RSSPCC’s dominance in the field of the prevention of child cruelty.’

<sup>177</sup> See Section 4.2.4 (2).



In another case presented by James Turnbull, on 2<sup>nd</sup> April 1904, a ten year old girl named Mary Fox was found ‘wandering in the Canongate, Edinburgh having no home or proper guardianship or visible means of subsistence, her father being an soldier in India and her mother a woman of bad character.’ Mary was committed to Nazareth House, Aberdeen, until the age of sixteen. The institutions to which children were committed depended on their religion. Catholic girls like Mary were often sent to Nazareth House in Aberdeen, while Catholic boys were sent to St Joseph’s in Tranent. Protestant children were sent to a number of different schools, usually in Edinburgh, such as the original ragged school in Liberton or schools in Leith. For older children or often those ‘beyond control’ the Mars training ship in Dundee was a common destination. Some children were sent to schools in other areas such as Stirling, or Newton Stewart. It was not unusual for siblings to be sent to separate industrial schools.

In exercising their role to protect children, the RSSPCC inspectors also presented many children who were living in houses with known or reputed prostitutes. Often there was a note of written evidence provided by an RSSPCC inspector with details of visits he made to the residence of the children investigating their situation. Cases of this sort were dealt with under section 1 of the Industrial Schools Amendment Act 1880<sup>178</sup> and the circumstances in which the children were found were usually well corroborated by two police constables.

The case of the three Rafferty children was one in point here. Mary Agnes, aged twelve, Hugh, aged ten, and six year old James were presented to the court on 15<sup>th</sup> July 1904. In addition to the testimony of James Turnbull, there was evidence from another RSSPCC officer and two police constables testifying to the children being found in a house resided in by prostitutes. The court was provided with evidence of the circumstances of the children when officers visited them on eleven separate occasions; evidence was given that on eight out of eleven visits there were prostitutes in the house. Details were also given of the number of men in the house on each occasion. Mrs Rafferty was described as a deserted wife who was ‘very much addicted to drink’ and reliant on the earnings of prostitutes for her income. All three children were committed to an industrial school until the age of sixteen. Mary Agnes was sent to Nazareth House in Aberdeen and both boys were sent to St Joseph’s in Tranent.

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<sup>178</sup> Under s.1 of the Industrial Schools Amendment Act 1880, a child was eligible to be sent to an industrial school if ‘lodging, living or residing with common or reputed prostitutes, or in a house resided in or frequented by prostitutes for the purposes of prostitution.’

A surprisingly large number of children also appeared before the magistrates at the instigation of their parents, often a single parent, more usually a father, or perhaps another relative, such as a grandparent. The allegation in these cases was that the child was uncontrollable in terms of section 16 of the 1866 Act. Usually, this charge would be made about a boy of eleven, twelve or thirteen, but in one case this charge was made by a father about his six year old daughter. Another case involving a girl, Emma Lindsay Cooper, was presented by her father Robert on 11<sup>th</sup> November 1901. He stated that ten year old Emma ‘resides with him, wanders away from home for nights at a time and his wife being dead he is unable to exercise proper control over his said daughter.’ In this as in the earlier cases the child was sent to be detained in an industrial school until the age of sixteen. Sometimes there was a short statement signed by the parent to the effect that they consented to the child being sent to an industrial school, and sometimes there was an undertaking by the parent that they would contribute a certain amount to the child’s upkeep.

Some insight into the reason for so many children being committed under section 16 was given by the evidence presented to the 1896 Committee. At first sight it seems strange that so many children were presented to the court by their parents or guardians as uncontrollable. The answer lies in the complicated manipulations of process that took place to deal with truant children, as discussed earlier. As the 1896 Report noted, the school board sought to elicit the support of parents to present truant children as uncontrollable. Sadly, it appears that many parents were willing to co-operate with this.

The cases discussed so far do not involve children committed to an industrial school on offence grounds. Some examples of this type of case appear in general Edinburgh burgh court and police court records. For instance, in the volume for February 1909, there are cases of children sent to an industrial school having appeared in court on charges of theft. They were not convicted, but an order was pronounced committing them until the age of sixteen under section 15 of the 1866 Industrial Schools Act.<sup>179</sup> One such case was that of nine year old William Stead, sent to Liberton Industrial School after being charged with stealing a pack of cigars from a shop.

Turning to the Industrial School Complaints Book for 1908-10, it is interesting to note that the front of this volume contains a loose leaf sheet with a table recording the ‘number of children committed to Industrial Schools under s.58(1) (of The Children Act 1908) from the

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<sup>179</sup> This was before the Children Act 1908 came into effect.

Burgh Court, Edinburgh, during the year 1910.’ Under the Act of 1908 the Burgh Court was operating in these cases as a juvenile court. The table is reproduced below.

Industrial Schools for Boys						Industrial Schools for Girls			
Mars Training Ship, Dundee	St Joseph’s Tranent	Lochend Rd., Leith	Fernie Park, Perth	Dr Guthrie’s, Liberton	Total	Victoria, Resalrig Rd.	Nazareth House, Aberdeen	Dr Guthrie’s, Gilmerton	Total
7	13	9	11	4	44	6	3	4	13

Total number of boys and girls = 57

These 57 children were some of the 787 children admitted to the 32 Scottish industrial schools in 1910, making a total of 4,323 children under detention. This was a much larger intake than that to the now reduced number of seven Scottish reformatories operating at this date, which admitted 185 children and had 813 under detention in 1910.<sup>180</sup> Nationally the UK figure for industrial schools was 19,857 children under detention in 143 industrial schools,<sup>181</sup> while the reformatory figure was 1,462 admissions and 5,929 in under detention

<sup>180</sup> Fifty fourth inspector’s Report , 1911, table on page 38. The Report for 1908 (50th Report for 1906) discusses the low number of seven reformatories in Scotland commenting that: ‘It cannot indeed be said that reformatories have ever aroused much interest in Scotland. They have always been outnumbered there to a greater extent than England by industrial schools.’ The Report notes that the ‘high water mark’ in terms of reformatory numbers was 1880 with 52 reformatories in England and twelve in Scotland. By 1908 this had fallen to 7 in Scotland. Several reformatories had closed within the previous ten years, including Oldmill in Aberdeen and the girls’ reformatory there. The Inverness reformatory also closed in 1884 and the Dalbeth reformatory for Catholic girls became an industrial school in 1891 when the numbers of reformatory admissions became too low. The one area which defied this trend was said to be Glasgow which under the ‘public spirited’ management of the Glasgow Juvenile Delinquency Board gave its girls’ reformatory a ‘fresh new start’ in buildings at East Chapelton in 1882 which was a ‘conspicuous success’. However it had closed the reformatory for boys in 1886 and instead transferred cases to the Kibble reformatory in Paisley. Page 10.

<sup>181</sup>ibid.page 12.

in 43 schools.<sup>182</sup> The 1910 Report gives the figure for all classes of residential schools within the system, including short-term residential schools, as 25,786 (20,726 boys and 5,060 girls.) There were also 3,320 children in the UK attending day industrial schools at the end of 1910.<sup>183</sup>

Again, post 1908, many of the Edinburgh industrial school cases proceeded at the instance of an inspector of the RSSPCC and a considerable number continued to be instigated by parents alleging that children were ‘uncontrollable.’ Post 1908, the wording of the crave by the complainer was different, simply asking that the court order the child to be sent to a certified industrial school, rather than the previous practice of framing matters ‘according to justice’ with the requirement that the child ‘answer this complaint’ before the court. There was evidence of more detailed particulars and details being recorded about the child and his family circumstances, often moralistic in tone denouncing the parents for being addicted to drink.

An interesting example, showing the implementation in practice of s.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,’ is provided by a case from 1909 concerning Mary Ann and James Sutherland.<sup>184</sup> The case was initiated by the RSSPCC inspector after he had received a complaint that the children, aged eight and six, were being neglected and appeared at school in an unkempt condition. The parents did not accept the basis of the complaint and had two witnesses to support them. The inspector argued that they had previous convictions for theft, fraud and assault, were of intemperate habits and had neglected their older children who were in industrial schools already. The case was sisted pending further reports and there are extensive notes of further visits and investigation by the RSSPCC, as a result of which the parents appeared to have made a concerted effort to impress. 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.’

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<sup>182</sup>ibid. at page 6.

<sup>183</sup>ibid at page 5. Additionally, there were children living in auxiliary homes for working children who had left institutions.

<sup>184</sup> See Section 4.4.3.

This sober state of affairs was corroborated by visits by two other officers over the following two months, and the case was ultimately deserted. According to the Garland thesis, this case could be interpreted as an example of the extent to which the 1908 Act allowed extensive scope for intervention in the domestic sphere, allowing close surveillance and invasive control of family circumstances on welfare grounds. However, as the discussion of the earlier cases relating to children committed under section 1 of the Industrial Schools Amendment Act 1880 amply demonstrates, intrusion into the private domain was already a well established feature before the Children Act 1908.

#### **4.5.2 Reformatory admissions: Wellington cases**

As was discussed earlier, Wellington Reformatory near Edinburgh was in many ways the Scottish incarnation of Mettray: Sydney Turner's description of the school praised the architecture adopted, a number of pavilion type buildings each designed to house a small number of boys in family style units; he noted the resemblance to the first English reformatory, Red Hill in Surrey where he had been instrumental in creating a school based on Mettray but intended to be attuned to English culture.<sup>185</sup> I wish to focus now on the children admitted to the Scottish Mettray in at the turn of the nineteenth century.

As in earlier decades, most of the boys admitted had been convicted of minor offences. Usually the offence was one of theft. One case that was slightly different was that of fourteen year old Thomas Wardrop, who was convicted of malicious mischief at Linlithgow Sheriff Court on the seventeenth February 1893. He was sentenced under the 1886 Reformatory Schools Act to ten days prior imprisonment followed by three years in Wellington. He was charged with having broken six panes of glass in an office window and thrown four stones onto a railway line from a bridge 'to the danger of the lieges.' Thomas had a previous conviction for theft for which he was admonished. In the section of his admission form where comments on the child or his parents could be added his mother was condemned as 'mother loose – given to drink.' Thomas was described as 'quite neglected and in danger of becoming a confirmed criminal.'

Some of the boys were convicted of the crime of intending to commit theft. For example, the charge relating to thirteen year old Charles Blumont stated that 'being a known thief he was found in a shop with intent to commit the crime of theft.' On seventeenth March 1893 he was convicted at Edinburgh Police Court and sentenced under the 1866 Act to ten days prior

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<sup>185</sup> See Section 3.1 for Turner's reference to Wellington as the 'Scottish Red Hill.'

imprisonment followed by five years at Wellington. Charles had a previous conviction for theft for which he had been admonished. The notes on his admission recorded that his father was at sea and his mother said that he was 'beyond control', that he was prone to staying out at night and would not attend school. There was also a note that the police believed that since his last conviction he had been 'associating with bad characters.' Clearly the 'beyond control' formula was taken into account in reformatory admissions as well as those to industrial schools.

Another case where a boy was convicted of intent to commit theft and was condemned by his parents as 'beyond control' was that of fifteen year old Charles Thom. The offence with which he was charged in the police court was that 'being a known thief he was found on the Bridge at Canonmills, Edinburgh with intent to commit theft.' As in the previous cases Charles had an earlier conviction for theft for which he had been admonished. On the 27<sup>th</sup> of March 1893 he was sentenced under the 1866 Act to ten days imprisonment followed by five years in Wellington (although under the amending Act of 1893 the offender was not in any case to be detained beyond nineteen.)<sup>186</sup> The admission records stated that Charles's father was 'poor,' a 'gas worker' and that 'nothing was known against him.' As in the previous case Charles's parents made matters worse for him by detailing behaviour designed to demonstrate that he was beyond control:

'His parents state that this boy is beyond control, will not work, keeps bad company, and has not resided with them since December 1892. The police state that since his last conviction he has been an associate of thieves.'

Another case where a parent apparently wished to have a child admitted to a reformatory was that of twelve year old John Dick, convicted on the eighth of April 1893 at Edinburgh police court of 'theft aggravated by his having been previously convicted of theft.' Again, under the 1866 Act he was sentenced to ten days imprisonment followed by five years in Wellington. As in the previous cases he was said to be beyond control, a poor attender at school and in the habit of keeping bad company. The record stated that his mother, described as poor and a widowed housewife of good character, 'wishes him sent to a reformatory school.' These reformatory cases were like the industrial school cases where parents of truanting or troublesome children facilitated the admission of the children to institutions.

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<sup>186</sup> Reformatory Schools Act 1893.

By the early 1900s, the admissions to Wellington were being sent there directly without a period of prior imprisonment. As discussed earlier, this requirement had been removed by the Act of 1899.<sup>187</sup> Although prior imprisonment had not been compulsory for reformatory admissions since the amending Act of 1893, which gave magistrates discretionary power to dispense with it, the Wellington records suggest that between 1893 and 1899 the children being sent there were sent to prison first.<sup>188</sup>

In the early 1900s, the convictions and sentences of the boys were dealt with under the Reformatory Schools Acts 1866 and 1893, as amended by the Act of 1899. An interesting case from 1902 which exemplifies this was that of fifteen year old Daniel Oliver, who was convicted of theft of clothes. He was sentenced at Stirling Burgh Police Court to four years in Wellington with no prior imprisonment. The notes recorded that his father was a labourer, poor and of good character. Daniel was said to be associating with bad characters, committing petty thefts and failing to attend school. The history of his previous three convictions is interesting in illustrating the types of sentences young offenders were likely to receive before they reached the stage of being candidates for admission to Wellington. The punishment imposed for his first offence of theft was '2s 6d or five stripes';<sup>189</sup> on his second conviction he was admonished and on his third appearance in court he was imprisoned for seven days.

The boys sent to Wellington did not always remain in the school for the full time stated in the sentence. Sometimes they were discharged earlier. This is what happened in the case of fifteen year old James Ferguson, who was convicted of theft at Glasgow Central Police Court on 30<sup>th</sup> October 1902. James had been convicted earlier the same month for 'using obscene language' but had been admonished for this. The assessment given of James's father in the notes was that he was poor, a blacksmith, 'of indifferent character said to be cohabiting with a prostitute.' James was recorded as having 'no fixed place of residence' and lacking in 'parental supervision.' Although he was sentenced to three years in Wellington, he was discharged from the school on 25<sup>th</sup> August 1903, having been detained for ten months. The warrant authorising his release was issued by the Secretary of State at the Home Office.

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<sup>187</sup> See Section 4.2.1.

<sup>188</sup> See Section 4.2.3.

<sup>189</sup> The reference to stripes was to whipping.

Early discharge was also the outcome in another case from 1902, that of twelve year old Donald Davidson convicted of a minor theft in Hawick Sheriff Court on 12<sup>th</sup> November 1902. He had a previous conviction for petty theft and was sentenced to five years in the reformatory school. The records show that he was declared eligible for discharge in May 1903 after six months detention. As in the previous case no reason was given in the records for the early release. There was an exchange of correspondence regarding Donald's placement on release. The school wrote to the poorhouse governor in Hawick asking for Donald to be admitted 'as a pauper'. The governor responded that he would require permission from the Inspector of the Poor. Replying to the request, the letter from the Inspector of the Poor stated:

'My council would not wish him to go to the poor house where the stamp of pauperism would be more firmly impressed upon the child. We board all our children out in comfortable homes.'

He undertook to make inquiries to see if Donald's grandmother would be able to look after him so that, 'the boy may not go near the poorhouse at all.' This response was not surprising. While the school authorities were seeking to transfer Donald from one institution to another, those administering the poor law in Scotland preferred to board children out with suitable families rather than detain them in poorhouses.<sup>190</sup>

Turning to the cases of boys admitted to Wellington under section 57 of the Children Act 1908, it is interesting to note that the case notes continued to refer in many cases to children being beyond control. For instance, thirteen year old James McEwan who had no previous convictions, was convicted of theft at Edinburgh Police Court on 22<sup>nd</sup> March 1913 and sentenced to five years in Wellington. The details of his background recorded that his father was dead, his mother was a domestic servant, and he had been living with an aunt and uncle who claimed that he was beyond their control.

One interesting difference in these later cases is the reference to probation in the records of some children, such as fourteen year old James Liddle. He was convicted of theft of a wrap shawl on the 20<sup>th</sup> February 1913 at St Rollox Police Court, Glasgow and sentenced to five years in Wellington. His history of convictions began with an offence of theft at the age of nine for which he was cautioned by a police superintendent. When he was twelve he was

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<sup>190</sup> See Section 4.2.2, with reference to the 1896 Report.



admonished for malicious mischief, and when aged thirteen he stole an overcoat and was on probation for twelve months.

It is also worth noting that as well as new forms of response to juvenile offending such as probation, there were still cases where corporal punishment was administered. Thirteen year old William Sutherland was convicted for five acts of theft at Leith police court on 1<sup>st</sup> February 1913. He was sentenced to five years in Wellington. William's background was that he was the son of a dock labourer, his mother was dead and he was described as neglected. His notes recorded that 'the boy has been previously birched (six stripes) in the Sheriff Court for theft by housebreaking.' Clearly probation was at one end of a range of penal responses which also incorporated less enlightened approaches.

The discussion of these Wellington admissions, and also those referred to in the previous chapter, has given some indication of how changes in legislation regulating admission to reformatories were implemented in practice by the courts. It has illustrated, for example, the changes in relation to prior imprisonment from the period of fourteen days under the Youthful Offenders Act 1854 through to the eventual demise of the practice in 1899. The remarkably constant feature throughout the whole period was that boys continued to be admitted for usually very minor offences, often with the complicity of parents. This parental complicity in the process of removing children was not just a feature of the Scottish system. It was a pattern which was repeated in schools for young offenders throughout Europe at this period.<sup>191</sup> On a theoretical point it has been argued that this detracts from the Foucauldian interpretation of such institutions as being the embodiment of disciplinary power.<sup>192</sup> The Foucauldian focus on discipline fails to account for the agency of the actors involved in the process, in this case the choices made by parents who helped to have the children admitted.<sup>193</sup>

#### **4.6 Cases in the High Court of Justiciary**

In contrast with the cases where parents were complicit in the referral of children to industrial schools, there were situations where parents strongly objected to their children's removal. And in some cases the admission of children to institutions was challenged in the High Court of Justiciary. There are several reported cases where the High Court considered

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<sup>191</sup> Dekker (2001).

<sup>192</sup> *ibid.*

<sup>193</sup> *ibid.*

bills of suspension and liberation asking the court to quash decisions of lower courts and order the release of children. Two of these cases were referred to briefly in chapter three. In *Maguire v Fairbairn*,<sup>194</sup> the High Court passed a bill of suspension and liberation in the case of a fifteen year old boy who had been sentenced to ten days imprisonment followed by five years in a reformatory for breach of the peace. The reason given by the High Court for its decision to pass the bill was that admission to reformatories was not intended by the legislature to apply to ‘minor grades of crime,’<sup>195</sup> only those of ‘graver complexion’<sup>196</sup> such as theft. The second case referred to in the previous chapter was that of *Wilson v Stirling*,<sup>197</sup> where the High Court passed a bill of suspension and liberation freeing a nine year old boy who had been sentenced to an industrial school for begging without due notice having been given to his mother. In this case and others the High Court was extremely critical of irregular or unfair practices. Criticising the magistrate’s actions Lord Neaves said:

‘Such a proceeding is at variance with common justice and humanity, and cannot be approved by the court.’<sup>198</sup>

The High Court was also vigilant in rectifying abuse of procedure in the case of *Mckenzie v McPhee*.<sup>199</sup> In this case the High Court suspended an order sending a girl of ten, Margaret McPhee, to Maryhill Industrial School for 5yrs and ordered her liberation. The child and her mother had both appeared in Glasgow Police Court on charges of theft. The mother was convicted of theft and sentenced to thirty days in prison. The girl was not convicted but an order was made under section 15 of the Industrial Schools Act 1866 committing her to the industrial school. The procedure followed in the Police Court in respect of the mother was irregular in terms of the Glasgow Police Act 1866: no citation was served by the police, no intimation was given of the charge and no advice was given of a right to adjournment. The mother’s conviction was quashed and the Lord Justice Clerk was scathing about the conduct of the police as public prosecutors here, accusing them of having perpetrated ‘a travesty of legal proceedings in a civilised country.’ In relation to the girl the irregularity arose because her father had not been informed. Lord Adam said:

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<sup>194</sup>1881 4 Couper 536.

<sup>195</sup>ibid. page 541.

<sup>196</sup> ibid.

<sup>197</sup>1884 2 Couper 518.

<sup>198</sup>ibid., page 528.

<sup>199</sup>1889 2 White 188.

‘The Magistrate pronounced the order in the absence of the proper guardian of the child, and in the face of remonstrance by the mother. It humbly appears to me that this was a proceeding of a most oppressive kind, and if such proceedings are common in the Police Court of Glasgow the sooner they are put a stop to the better.’<sup>200</sup>

For an insight into the judicial understanding of the Industrial Schools Act 1866 Lord Traynor’s comment was revealing:

‘The Industrial Schools Act is intended to provide for the case of children who have no guardians, or whose guardians are neglecting them. But it is a new idea to me that children of law-abiding citizens, whatever their position in life, may be sent to an industrial school in this way. It is admitted that the order was pronounced in the absence of the girl’s father, and without intimation to him that such an order was to be pronounced. We cannot sustain such an order.’<sup>201</sup>

Adopting a similar line, the Lord Justice Clerk objected to the child of a ‘law-abiding citizen’ appearing for the first time on a charge of theft being sent away for five years with no intimation being given to the father:

‘If that is the practice it is high time that the court should interfere to stop it. The object of such an Act as the Industrial Schools Act is to provide for the case of children who are not expected to be dealt with in their own homes.’<sup>202</sup>

It is important to note that the emphasis here is on the status of the father as a person of good character, a law-abiding citizen. In other cases where the child was not fortunate enough to have a parent regarded by the court as an upstanding citizen then the absence of notice was not held to be a material factor. This was the situation in the case of *Hunter v Waddell*,<sup>203</sup> which concerned a boy of eleven named Isaac Hunter and his four friends who appeared in the burgh police court in Troon on a charge of stealing twenty four cakes of sweet meats from an automatic machine. The boys all entered pleas of guilty. Isaac’s friends all had their parents in court to support them and promise to take charge of them. The boys were fined 2s 6d each with an alternative of twenty four hours imprisonment. The fines were all paid.

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<sup>200</sup>Ibid., page 219.

<sup>201</sup>Ibid., page 220.

<sup>202</sup>Ibid., page 219.

<sup>203</sup>1905 7F. 61.

Isaac Hunter had no one with him in court and the prosecutor decided to withdraw the charge of theft and he was dealt with instead under section 15 of the Industrial Schools Act 1866.<sup>204</sup> He was ordered to be detained in the certified industrial school in Kilmarnock until the age of sixteen. Again in contrast with the earlier cases where parents colluded with children's admission, in this case Isaac and his father William Hunter brought a bill of suspension of the order for detention in the industrial school and for Isaac's liberation. They complained the order had been pronounced without notice to the father and was oppressive. It was held that the order was not in the circumstances oppressive and the suspension was refused. Unfortunately for Isaac, the judges took a dim view of the lack of parental presence in court. Mention was made of Isaac's irregular attendance at school and the opinion was formed that Isaac was not being properly cared for. He was therefore regarded as a proper candidate for an industrial school. Lord McLaren emphasised that an important factor to be considered in determining whether a parent should have received notice was whether he was a 'well conducted person.' This comment underlined the importance of the respectability of parents in the court's decisions on such issues.

It is clear that, while in some cases the High Court was willing to step in and intervene to remedy what it saw as oppressive or abusive practices, in others it upheld the decisions of lower courts. Another example of this was provided in the 1901 case of *Taylor v Tarras*.<sup>205</sup> This case concerned a thirteen year old boy, John Taylor, who was charged with theft in Fraserburgh police court on a complaint under the Burgh Police (Scotland) Act 1892. He was convicted and sentenced to a reformatory school for three years under section 14 of the Reformatory Schools Act 1866. No complaint was served on John in advance of the trial and the magistrate failed to advise him of his right under the Burgh Police Act to ask for an adjournment. In addition his mother, his only surviving parent, had not been informed of the proceedings, although his uncle knew of the matter and was present in court. With his mother's consent John sought to suspend the conviction, but the High Court upheld it on the ground that under the Burgh Act there was no absolute duty on a magistrate to inform the accused of his right to an adjournment. In reaching this decision the High Court took into

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<sup>204</sup> In cases where young children appeared before the courts on offence grounds judges might decide not to convict but to deal with the case by means of an order for detention in an industrial school instead. This could be done if children were under the age of twelve at the date of the order and had no previous convictions. Under s.58(2) of the Children Act 1908 the requirement that there should be no previous conviction was removed.

<sup>205</sup> 1901 3F. 39.

account that in the interim John's mother had died and that he had no relatives willing to care for him. As the Lord Justice Clerk put it:

‘Accordingly, if we were to sustain this suspension we would practically turn the poor boy adrift on the streets, whereas under the education and discipline of the reformatory school it is to be hoped that he may ultimately become a useful member of society.’

This approach lends weight to the observation made by the 1896 Committee Report on the judicial attitude to the schools in Scotland, that in some respects judges regarded committing children to the institutions as a benevolent act.<sup>206</sup> But, on the other hand, there is also evidence that judges were well aware of the ‘penal element,’ as Lord Neaves put it in the case of *Wilson v Stirling*.<sup>207</sup>

#### 4.7 CONCLUSION

What is clear from this chapter is that by the end of the nineteenth century the statutory system had evolved into a net widening diversionary mechanism under which thousands of children were subjected to prolonged detention in penal establishments, entailing criminalisation of children, particularly Scottish children, on an immense scale. As we have seen, the 1896 Departmental Committee Report revealed many abuses but the system continued much as before into the early twentieth century. Despite this departure from the original holistic principles on which Watson had based his scheme, there continued to be a current of humanitarianism evident in the approach adopted by the Scottish courts: this remained in the abhorrence of child imprisonment demonstrated by many Scottish judges; it also survived in the tendency of judges to view the schools as a refuge for children in need, particularly in the absence of adequate alternative provision for the poor. As we have also seen, the period saw the virtual end of child imprisonment and the introduction of the juvenile court, both developments in the spirit of the original Scottish reformers who were mainly concerned with recognising the special position of children within the criminal justice system in a pragmatic way. However, although juvenile courts were a great advance on a conceptual level, in practical terms they failed to deliver much that was of benefit to children.

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<sup>206</sup> See Section 4.2.2.

<sup>207</sup> 1884 2 Couper 518.

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 juvenile court being little more than a mechanism to separate children appearing in court from contact with adult offenders. And the Garland argument in *Punishment and Welfare* that the juvenile court presided over 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. On the question of the influence of scientific theory on developments, there is also ground for caution. Despite its psychological talk of ‘inner life’ of children and the effects of depression on child development, the 1896 Committee Report was not amenable to the idea that children who were committed by the courts to institutions were in any way different from ordinary children or in need of specialised ‘treatment.’ Taking all this into account it is fair to conclude that, although the period witnessed important changes, the underlying theme was one of continuity with the statutory system.

## **CONCLUSION: CHAPTER FIVE**

### **THE ROAD TO KILBRANDON**

#### **5.1 INTRODUCTION**

In 1887 William Watson died, disillusioned, at the age of ninety one. As the century was drawing to its close the gulf between the humanity of his original project and the austerity of the statutory system was immense. His early achievements in Aberdeen in the 1840s had inspired him to forge ahead with the development of the pre-statutory Scottish system, the first successful attempt in Britain to create a national diversionary system for juvenile offenders. But, in subsequent decades the demands made by the UK statutory system altered his system beyond recognition. In the final decade of the nineteenth century there were about twenty four thousand children under detention in reformatory and industrial schools in Britain, usually detained for many years and subjected to a penal regime.<sup>1</sup> Sadly, Watson did not live to see the Children Act 1908. However, the Act's provisions virtually ending child imprisonment, and creating the juvenile court set the seal on the recognition of the special position of children in the criminal justice system. Finally, the special case for children was enshrined statutorily, even if, in practice, the juvenile court failed to deliver much of an improvement for children.

This final chapter to the thesis brings the historical account up to date and draws some overall conclusions. It is not the intention in this chapter to explore the twentieth century history in depth, but rather to point to the connections between the period studied in detail in the thesis and later changes. With this in mind section two attempts to flesh out the account offered in the thesis by examining developments in the inter wars and section three considers the Kilbrandon Report. This includes discussion of the background to the Report and argues that in important respects William Watson can be seen as foreshadowing Kilbrandon. Section four presents key conclusions in the following areas: the impact of diversionary systems; childhood in the nineteenth century; the underlying tensions, conflict, and compromise within nineteenth century juvenile justice reform; and, the areas in which the thesis poses challenges to existing thought. The focus of section five is on research conclusions in relation to criminalisation and the key factors which operated together to

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<sup>1</sup> Report of the Departmental Committee on Reformatory and Industrial Schools, 1896, p. 8 and p. 132.

criminalise children. The final section discusses transjurisdictional issues which have emerged in the thesis, and draws together topics of concern and debate which recurred throughout the period studied and which remain very relevant to contemporary juvenile justice.

## 5.2 THE INTER WAR YEARS

Although this thesis does not provide a detailed account of the twentieth century history, it is important to have some sense, even if necessarily sketchy, of the path taken by Scottish juvenile justice in these intervening years from the Edwardian period until the Kilbrandon Committee received their remit in 1961. As with many areas of life, the aftermath of the First World War proved a decisive period for the industrial and reformatory school system in the UK. The war years were marked by a high level of admissions to the schools.<sup>2</sup> This was attributed by some commentators to increasing numbers of children getting into trouble because of lack of parental supervision when their fathers were on military service or their mothers were working, concerns which were to re-emerge during the Second World War too.<sup>3</sup> However, by the 1920s there was a marked decline in admissions.<sup>4</sup> For a number of reasons, predominantly social change, the schools fell out of favour. The classic Victorian solution of institutionalisation seemed old fashioned in a brave new world where much that had seemed inevitable before the war was now open to challenge.<sup>5</sup> Widely publicised revelations uncovering abusive treatment of children had over time eroded public faith in the system.<sup>6</sup> In addition, there was much improved social welfare, education and health

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<sup>2</sup> The total number of committed cases in the schools on 31<sup>st</sup> December 1914 was 25,357. Fifty eighth Report of the Chief Inspector of Reformatory and Industrial Schools 1914-16 [Cd. 8091].

<sup>3</sup> Bailey, V.(1987) *Delinquency and Citizenship: Reclaiming the Young Offender, 1914-1948*, Clarendon Press, Oxford, page 11; Smith, D. (2007) 'Official Responses to Juvenile Delinquency in Scotland During the Second World War' in *Twentieth Century British History*, Vol. 18, 1.

<sup>4</sup> See *In Re the Clyde Industrial Training Ship Association* (1925) 22 Ll. L. Rep. 272: this was a petition to wind up and dispose of the assets of the industrial school training ship *Empress*. The petitioners stated: 'From 1908 onwards the number of boys in the ship had steadily declined, chiefly, the petitioners believed, owing to the Courts having departed from the practice of sending juvenile delinquents to industrial schools. By 1923 there were only 149 boys on board, the full complement being 400.' P. 272. The numbers of admissions to Scottish industrial schools in 1925 was 521(368 boys and 153 girls), compared to 955 in 1894. Admissions to Scottish reformatories in 1925 reflected a similar trend, standing at 126 new admissions (115 boys and eleven girls), compared to 207 in 1894. Judicial statistics, Scotland, 1925. 1928 [Cmd. 3007] pages 62 and 63. See Section 4.2.3.

<sup>5</sup> Rose, G. (1967) *Schools for Young Offenders* Tavistock, London , page 11; On various forms of institutionalisation as the instinctive nineteenth century response to social problems in the US see Rothman (1971); Rothman (1980).

<sup>6</sup> As Home Secretary in 1910 Winston Churchill ordered an inquiry into revelations about an English reformatory published in *John Bull* under the title of 'Reformatory School Horrors – How boys at the Akbar School are Tortured – Several Deaths.' The findings of the inquiry rejecting the claims of brutality led to



provision to support the poor and their children.<sup>7</sup> There was also a change in criminal justice culture as judges opted for other solutions such as probation instead of sending children to the institutions.<sup>8</sup> All of these factors combined to reduce the role of the schools which had, after all, been created as essentially a response to the problems of children in the mid nineteenth century when no viable safety network of social services existed. By the 1930s the distinction between industrial and reformatory schools had been erased. Following the Children and Young Persons (Scotland) Act 1932 they became known as ‘approved schools’ catering for both children who had committed offences and those in need of care and protection.<sup>9</sup> This Act embodied most of the recommendations made by the Morton Committee set up in 1925 to review juvenile justice in Scotland, including the raising of the age of criminal responsibility from seven to eight.<sup>10</sup>

As in the nineteenth century, the inter war years were marked by heated debate as to how best to treat children brought before the courts. On one level, the widespread use of probation orders for young offenders seemed progressive. In 1933, orders of probation were made in 1225 cases in Scottish juvenile courts, while 258 children were committed to institutional

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accusations of a cover up and 7000 people attended a public protest on the matter which was debated in Parliament. See Carlebach (1970) page 85. Lobbying against the system also came from the Howard League for Penal Reform which in 1919 revealed the contents of an unpublished Departmental Committee Report on the schools accusing them of reducing the children in their care to ‘little factory hands in inefficient factories.’ Carlebach (1970) page 89. In similar vein, there was an outcry in Scotland in 1918 about children at Kibble reformatory being sent to work in a munitions factory in Paisley. Smith, D. (2007) ‘Official Responses to Juvenile Delinquency in Scotland During the Second World War’ in *Twentieth Century British History*, Vol. 18, 1.

<sup>7</sup> Hendrick, H. (2003) *Child Welfare: historical dimensions, contemporary debate*. Policy Press, Bristol.

<sup>8</sup> The Judicial statistics, Scotland, 1925. 1928 record the figure of 826 orders of probation being made in cases before the juvenile courts in that year. This was out of a number of 9950 cases of children coming before the juvenile courts charged with a criminal offence. Of the 7,726 convicted more than half (4,182) were admonished while 3,182 received a fine. A sizeable number, 255, were ordered to be whipped – this was over twice the number ordered to a reformatory school ( see p.215 of thesis). For discussion of the prevalence of whipping and the controversy surrounding the continuation of this practice (which was frowned upon in England by this stage) see Mahood, L. (2002) “‘Give him a doing’: the Birching of Young Offenders in Scotland” in *Canadian Journal of History*, Vol 37, 439. On probation in England see Rose, G. (1967) *Schools for Young Offenders* page 11. Also Carlebach (1970) page 89.

<sup>9</sup> The Children and Young Persons (Scotland) Act 1932 was consolidated in the Children and Young Persons (Scotland) Act 1937.

<sup>10</sup> Departmental Committee under the chairmanship of Sir George Morton K.C. appointed in 1925 to investigate the treatment and training of young people and young offenders requiring care and protection. The Committee Reported in 1928. See Smith (2007).

On the issue of the raising of the age of criminal responsibility see the 2002 Scottish Law Commission ‘Report on Age of Criminal Responsibility’ discussing section 14 of the 1932 Act at page 5. The Report notes that this provision placed the age of criminal responsibility on a statutory basis, bringing the law in both Scotland and England into line and ‘moved Scots Law away from its earlier emphasis on not punishing children accused of crime rather than deeming them incapable of guilt.’

schools.<sup>11</sup> However, while most children convicted by the courts were dealt with by way of admonition or a fine, there were also those in the Scottish judiciary who still believed in the value of corporal punishment for juveniles, something which was resorted to far less frequently in England.<sup>12</sup> There were 207 children sentenced to birching in Scotland in 1933. The reasons for the continued adherence to the practice of birching in Scotland are not clear, but there was considerable public concern about this issue in the inter war years.<sup>13</sup> There were objections too from professionals, such as magistrates, and also the police, who were charged with the unpleasant task of delivering the punishment. A vocal anti-birching lobby emerged supported by the labour movement and feminist groups. Women's organisations fiercely objected to the class bias in what they perceived as a brutal form of punishment being inflicted almost exclusively on the sons of the working class, a similar argument to that often heard in the nineteenth century when reformers stressed the vastly different responses to misconduct by the children of the wealthy.<sup>14</sup> Pressure from opponents of corporal punishment succeeded in securing a Departmental Committee on the issue in 1937, which recommended an end to the practice throughout the UK.<sup>15</sup> Moves to introduce legislation to this effect were shelved with the outbreak of war in 1939 and the use of corporal punishment was not finally abolished until the Criminal Justice Act of 1948.

The leap from a criminal justice culture in which birching was practised to one which only a relatively short time later was able to accept the recommendations of the Kilbrandon Committee seems extraordinary. And yet it is also perfectly consistent with one of the main points to emerge from this thesis: that the alteration in penal patterns in juvenile justice results

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<sup>11</sup> 1934-35 [Cmd. 4757] Judicial statistics, Scotland, 1933. Of the 9179 children proceeded against 547 were acquitted or had the charge withdrawn. Where the charge was proved and an order was made without conviction 824 were dismissed, 1225 received a probation order, 63 were sent to an industrial school and 53 were subject to a bond with or without securities. 6465 children were convicted by the juvenile courts. Of these 4058 were admonished, 2000 fined, 207 were sentenced to whipping (birching), 124 were ordered to a reformatory, 73 were subject to caution with or without securities and 3 were committed to places of detention, to be known as Remand Homes when the 1932 Act came into effect on 1st November 1933. This date marked the end of industrial and reformatory schools. Thereafter the schools were designated approved schools and the figures relating to them appeared in Scottish Education Department returns. The school committals in the 1933 judicial statistics included those sent to approved schools in November and December that year. Under the 1932 Act the age limit for young persons was raised to 17 and juvenile courts dealt with children up to 17, rather than 16. Pages 9 and 64. The number of young offenders sentenced to borstal detention in Scotland in 1933 was 135, 130 boys and five girls (aged between 16 and 21). Page 9.

<sup>12</sup> The Departmental Committee on Corporal Punishment 1937 (Cadogan Committee) reported that unlike the other jurisdictions within the UK where probation had replaced corporal punishment, Scottish courts continued to order whipping 'more freely' than elsewhere. Mahood (2002), p. 446.

<sup>13</sup> *ibid.* This article discusses the impact of the vocal and politicised anti-birching lobby in Scotland.

<sup>14</sup> Mahood (*supra*) discussed the protests made by the Scottish Women's Co-operative Guild and the Scottish Women's Labour Party.

<sup>15</sup> The Departmental Committee on Corporal Punishment 1937 (Cadogan Committee); Mahood, L. (*supra*)

to a large degree from the outcome of the recurrent battle between conflicting positions on what might be termed the care/control continuum. There is always a vying for supremacy between differing perspectives and sometimes the cogency of a radical and persuasive agenda is what changes the direction of criminal justice policy. Like William Watson, Lord Kilbrandon offered a visionary new approach to juvenile justice based on holistic values and both were able to lead Scottish juvenile justice in a new direction.

## **5.3 KILBRANDON**

### **5.3.1 The road to Kilbrandon**

In examining the origins and working of the pre-statutory system, the thesis has presented evidence of a fully functioning welfare based approach to juvenile justice in Scotland well over a century before the Kilbrandon Report.<sup>16</sup> In many ways William Watson can be seen as foreshadowing Kilbrandon and there are strong grounds for arguing that the road to the children's hearings system mapped out by Kilbrandon was in a sense a route along which Scottish youth justice had travelled long before. The Kilbrandon Committee was appointed in 1961 "to consider the provisions of the law of Scotland relating to the treatment of juvenile delinquents and juveniles in need of care or protection or beyond parental control."<sup>17</sup> Published in 1964, the Report highlighted the failings of the existing juvenile court system and recommended that juvenile cases under sixteen should be referred to a children's hearing, a panel of three lay members charged with the responsibility for deciding on the child's need for 'special measures of education and training.'<sup>18</sup> The recommendations paved the way for the Social Work (Scotland) Act 1968, which came into effect in 1971.<sup>19</sup> The children's hearings provide an informal and child friendly setting in which children themselves can participate, along with others interested in their welfare. Under this system the criminal courts are only involved in juvenile cases in very limited circumstances, either those involving serious offences where the Crown retains discretion to prosecute, or where contested grounds of referral are heard by a Sheriff.<sup>20</sup> Additionally, orders made by a panel are subject to appeal to the Sheriff Court.<sup>21</sup>

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<sup>16</sup> Report of the Kilbrandon Committee (1964).

<sup>17</sup> *ibid* page 6.

<sup>18</sup> *ibid* pages 79 and 80.

<sup>19</sup> The Act came into effect on 15<sup>th</sup> April 1971. See McK. Norrie.(1997).

<sup>20</sup> McK. Norrie.(1997), p.125; *Butterworths Scottish Family Law Service* (2012), London, LexisNexis, para.[C1182], p.C.727.

<sup>21</sup> Children Scotland Act 1995, s.51(11)(b).

There are striking echoes of William Watson's approach in the Report. It strikes a chord with Watson in the following ways in particular: firstly, in its holistic approach to children in trouble, seeing all such children as having the same basic difficulty of being in a situation where 'the normal up-bringing processes' have, 'for whatever reason, fallen short.'<sup>22</sup> In adopting this view Kilbrandon, like Watson, rejected the idea of distinguishing between children who had offended and those presenting other sorts of problems. The second striking similarity is the focus on the need to provide children with special measures of education and training.<sup>23</sup> And, equally resonant of Watson, is the Kilbrandon notion of the centrality of supporting families and encouraging parental co-operation in improving life for children, thus fostering a sense of responsibility in an inclusive manner.<sup>24</sup> Watson could almost have written the lines of the Report discussing the system in place for removal of children to residential training institutions where the infrequent contact meant that parental responsibility was 'extinguished' and parents were reduced to 'passive spectators.'<sup>25</sup> And the Report's emphasis on community involvement in decision making about children reflected in the lay membership of the hearings' panels has parallels in the important role played by the Child's Asylum Committee in Aberdeen and the admissions committees to the pre-statutory industrial schools throughout Scotland in the 1850s. It is hard to escape the conclusion that Kilbrandon emerged as a worthy successor to Watson, imbued with a vision very much in the spirit of his radical approach.

In its appraisal the Kilbrandon Report reviewed the background to juvenile justice in Scotland, making reference to the significance of the Children Act 1908 as a 'major landmark' which laid the foundation for the governance of juvenile courts: although amended by later legislation the core principles of the system operating in 1961 remained those set out in this Act.<sup>26</sup> This assessment of the 1908 Act reflects the importance of the statute but overlooks the extent to which the system in operation in Scotland in the first half of the twentieth century still adhered to nineteenth century conceptions. As discussed in the thesis, the 1908 Act was not an unambiguously decisive break with the past. And elements of the nineteenth century framework survived into the mid twentieth century. This was particularly evident in the categories of grounds under which children could be brought before juvenile

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<sup>22</sup> Report of the Kilbrandon Committee , p. 9 and p. 77.

<sup>23</sup> *ibid*, p. 9 and p. 80.

<sup>24</sup> *ibid* p.14 and p.77.

<sup>25</sup> *ibid* p.16.

<sup>26</sup> *ibid*. p.16.

courts. At the time Kilbrandon was appointed these included delinquency, care and protection issues, truancy or 'refractory' conduct.<sup>27</sup> This has a very familiar ring about it to anyone immersed in Victorian juvenile justice and can clearly be traced back to the nineteenth century statutes regulating admission to reformatory and industrial schools. Similarly, as I shall discuss in more depth shortly, the idea of holding parents to account financially for their children's misconduct, a notion which Kilbrandon considered alien to Scots law, is one rooted in the nineteenth century approach which applied throughout the UK.

### **5.3.2 The Kilbrandon Report**

Kilbrandon assessed the existing system of juvenile courts in terms of their capacity to meet the needs of children, and concluded that a completely new approach was required, one which did not centre on the traditional court model. He found that dealing with children by way of absolute discharge or admonition, as happened in many cases, did not get to the root of the problem, which was how to deliver supportive measures to help such children. For similar reasons he rejected the imposition of fines. In 1962, 8428 young offenders under 17 were fined. Of these 5788 were under 16 and in 746 of these cases the fine was imposed on the parent (although in practice it was normally the parents who paid fines imposed on children). The Report referred to fines on parents as a 'punitive' measure which was essentially a form of vicarious liability.<sup>28</sup> Kilbrandon argued that penalising parents for actions committed by their children was a foreign import into Scottish criminal law.<sup>29</sup> He traced the genesis of the provisions on fining parents back to the Children Act 1908, as re-enacted by section 59 of the 1937 Children and Young Persons (Scotland) Act. However, as has been discussed earlier in the thesis, this concept had in fact first been crystallised statutorily in section 2 of the Youthful Offenders Act 1901. And the idea of holding parents to account financially was also

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<sup>27</sup> *ibid.*, p. 6. 'Juvenile delinquents and juveniles in need of care or protection or beyond parental control, we take to mean broadly those juveniles who may in certain specified situations or circumstances be brought before a juvenile court. The law recognises four such groups -juveniles alleged to have committed crimes or offences, children in need of care or protection, children who are refractory or beyond parental control, and children who are persistent truants.' These were grounds under the 1937 Children and Young Persons (Scotland) Act.

<sup>28</sup> Report of the Kilbrandon Committee, p. 11.

<sup>29</sup> *ibid.*, pages 11 and 12. The Report states: 'so far as fines are concerned, it therefore appears that in Scotland the present position in relation to juveniles is of fairly recent statutory origin, and that, in so far as it imports the idea of applying, subject to certain qualifications, penalties on the parents for the misdeeds of their children, it represents a concept not otherwise found in the criminal law, or to any appreciable extent in the civil law.' The statutory provisions created a rebuttable presumption with the onus on the parent to show no failure to exercise due care of the child so 'it is not necessary for the court to be satisfied affirmatively that the parent has conduced to the commission of the offence; and in practice courts are no doubt guided, in the absence of any positive attempt at rebuttal by the parents, by the background Report and other information before them, and by the parents' general demeanour on appearance before them.'

embodied, although in not in such a direct way, in the provisions of the nineteenth century reformatory and industrial school legislation where parents were liable to contribute to children's upkeep in the institutions. This notion, therefore, was arguably very well established in Scottish juvenile justice historically.

In any case, as Kilbrandon rightly pointed out, fining parents did nothing to train children and it was far more useful to attempt to encourage parental co-operation in a more inclusive manner. Looking at the history of the courts, he lamented the fact that as far back as 1932 the opportunity had been missed to seize the chance to set up a widespread system of specially constituted justice of the peace juvenile courts manned by those particularly qualified to deal with children's cases.<sup>30</sup> The 1932 Children and Young Persons (Scotland) Act had allowed for such courts to be set up by the authority of the Secretary of State in areas where the local authorities requested them. Only four areas elected to introduce these courts. Faithful to the innovative tradition of William Watson, one of these was Aberdeen. The other areas to opt for the new courts were Ayrshire, Fife and Renfrewshire. Kilbrandon admired this type of specialist court, comparing it to similarly constituted courts set up as juvenile courts in England and seeing it as possessing some of the same qualities to be found in the membership of the proposed children's panels. He observed:

‘The importance, to my mind of this apparently almost abortive provision in the practice of Scotland is that one might well expect that the people who are to man the new panels will be the same, to a large extent, as those who sat in the statutory juvenile courts. It is greatly to be hoped so. We can ill afford to lose the services of informed and public-spirited people.’<sup>31</sup>

The failure to set up more of these types of court meant that in most of Scotland juvenile cases were heard by Sheriff Courts, the Burgh (or Police) Courts, and ordinary Justice of the Peace Courts rather than the specially constituted type. The main problem with this system was that it was incapable of addressing the critical point, that, as Watson recognised long before, most children in trouble were essentially facing similar difficulties. This was the case whether they came before the court on grounds of delinquency, care and protection issues, truancy or ‘refractory’ conduct, terminology with a very long pedigree stretching back to the nineteenth century cases discussed earlier in the thesis. But, in contrast with Victorian

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<sup>30</sup> *ibid.* p. 1; Kilbrandon, Lord (1968) ‘The Scottish Reforms: The Impact on the Public’ in *British Journal of Criminology* Vol. 8, 235.

<sup>31</sup> Kilbrandon (1968) *supra* p. 239.

judges who were prepared to accept the credibility of parents arguing that their children were guilty of refractory conduct and so ‘beyond control’, Kilbrandon rejected the appropriateness of parents being able to use this ground to institute proceedings: in his view such situations indicated the presence of familial problems requiring ‘careful inquiry into the home background and parental attitudes.’<sup>32</sup> Clearly the time was ripe for an overhaul of juvenile justice and this is what Kilbrandon succeeded in achieving for children under the age of seventeen:

‘In the broadest sense this means the revocation of the jurisdiction of the criminal courts, except in rare cases.....over young people between the ages of eight and sixteen, or seventeen after the year 1971.’<sup>33</sup>

This summed up the ethos of post Kilbrandon juvenile justice: for most children in trouble the arrival of the children’s hearings system in Scotland heralded an era of radical decriminalisation. The children’s hearings system was established in 1971 and still deals with the vast majority of children in trouble, forming the basis for the uniquely Scottish approach to youth justice.<sup>34</sup>

What has emerged from the discussion in this section is that the historical perspective has enabled us to look at Kilbrandon in a new light, highlighting the connections between nineteenth century conceptions and twentieth century developments. Very importantly, it has shown the parallels between Watson and Kilbrandon, suggesting that in many ways William Watson can be seen as foreshadowing Kilbrandon.

## **5.4 KEY RESEARCH CONCLUSIONS**

This next section of the thesis presents the key conclusions of the research in four different areas: the impact of diversionary systems; childhood in the nineteenth century; conflict, and compromise in juvenile justice reform; and, challenges to existing thought.

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<sup>32</sup> Report of the Kilbrandon Committee, p. 8 and p. 43.

<sup>33</sup> Kilbrandon (1968), p. 236. This is an extract from a talk delivered by Lord Kilbrandon at the University of Glasgow on February 13<sup>th</sup> 1968. This reference relates to juvenile offenders. The Kilbrandon Report noted, ‘By law juvenile offenders comprise offenders aged 8 or over and under 17’ (p. 6). However, the children’s hearings also consider cases of children in need of ‘compulsory measures of care’ from infancy up to the age of seventeen (ibid., p. x).

<sup>34</sup> McK. Norrie (1997), p.1; See Sections 1.2 and 5.6, with reference to argument that the welfare-based ethos of the children’s hearings system has been eroded in recent years. McAra (2006).

#### 5.4.1 The impact of diversionary systems

One key research finding is that by the end of the nineteenth century diversionary systems for juveniles within the criminal justice system had evolved into a mechanism for diverting large numbers of children into prolonged detention in penal residential establishments, a development which had a particularly excessive impact on Scottish children. As noted in the previous chapter, in 1894 the daily average population of the Scottish reformatory and industrial schools (about 5,500) was double that of the entire Scottish adult prison population. In England and Wales, on the other hand, the 1894 figures show the number detained in the schools (about 17,500) was slightly less than the adult prison population.<sup>35</sup> At the close of the century there were about 24,000 children under detention in the 141 industrial schools and 50 reformatories across Britain, with around 5,500 of these held as inmates in 43 Scottish institutions.<sup>36</sup> This was criminalisation of children, especially Scottish children, on an immense scale.

Not only do these statistics underline another theme running through the thesis, the uniqueness of the Scottish dimension and the need to investigate this; they also highlight the complexities involved in any such investigation. On one level the high number of Scottish children held in institutions represented a complete distortion of the idealism of the original Scottish reformers and their pre-statutory system founded on principles of compassion, civic co-operation and local cohesion. But it would be wrong to suggest that the legacy of the reformers was completely abandoned. By that I mean that some Scottish judges were still clearly influenced by humanitarian considerations in their responses to children appearing before them. To that extent they acknowledged the spirit which motivated the first attempts at reform in Scotland and there was always an abiding current of genuine altruism flowing through the Scottish system. However under the statutory system judges faced the difficult dilemma of reconciling their humanitarian inclinations with a punitive statutory regime.

As the 1896 Report of the Departmental Committee on Reformatory and Industrial Schools demonstrated, not only did Scottish magistrates cling to the vestiges of humanitarian idealism by their abhorrence of child imprisonment, they were also wedded to the ‘asylum theory.’ This too had a humanitarian imperative, derived to a large degree from the history of the welfare based pre-statutory schools. It was based on ‘a widespread and genuine

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<sup>35</sup> See Section 4.2.1, page 165, note 20 for detailed references relating to these statistics.

<sup>36</sup> Report of the Departmental Committee on Reformatory and Industrial Schools, 1896, p. 8 and p. 132.



feeling of commiseration towards the numerous children in the large towns who grow up wild or drift into crime because they are neglected or have bad homes.’<sup>37</sup> Such attitudes accounted for the tendency in Scotland to view the schools as a refuge for children in need of help.<sup>38</sup> This was associated with an over-readiness to commit children to the schools, especially industrial schools where prior imprisonment was avoided. But at the same time there was judicial awareness of the now penal nature of the establishments to which children were being sent.<sup>39</sup> It is also important to recognise that in many ways judges considered that despite the penal aspect of the schools they had little choice but to commit children in need as there were inadequate alternative support systems available in Scotland.<sup>40</sup> Under the English poor law pauper children were commonly admitted to poor law schools.<sup>41</sup> This did not happen in Scotland where the practice was to board out pauper children,<sup>42</sup> a scheme which did not meet the needs of the large numbers of destitute children. Apart from notable exceptions, such as Quarrier’s enterprise in the west of Scotland, there was a widespread shortage of viable support networks for destitute children.<sup>43</sup> Scottish magistrates were presented with children whose presence in court was often associated with this lack of welfare provision. All of this offers some explanation for the high volume of committals to the schools: it points to the disparity between the Scottish and English figures being attributable to the approach of the Scottish courts, and also the inadequacies in Scottish social provision for the poor.

#### **5.4.2 The child in the nineteenth century**

One key finding of the thesis is the central role played by new ideas of childhood in the reform of juvenile justice. In the nineteenth century childhood was pictured through a new cultural lens. This vision of childhood derived from an amalgam of different sources including the Romantic ideal of childhood portrayed in literature, religious ideas and the Victorian domestic ideal of family life. According to this new cultural configuration the child was regarded as innocent and in need of protection. But for those children who came to the attention of the criminal justice system the realities of life were far removed from the

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<sup>37</sup> 1896 Report, p. 138

<sup>38</sup> See comments of Lord Justice Clerk in *Taylor v Tarras*, Section 4.6 of thesis.

<sup>39</sup> See, for example, the reference by Lord Neaves to the ‘penal element’ of industrial schools in the case of *Wilson v Stirling* 1884 2 Coupar 518.

<sup>40</sup> See *Taylor v Tarras* (supra).

<sup>41</sup> Report of the Departmental Committee on Reformatory and Industrial Schools, 1896, pages 131,132,137.

<sup>42</sup> Abrams, Lynn (1998) *The Orphan Country: children of Scotland’s broken homes from 1845 to the present day*, Edinburgh, John Donald.

<sup>43</sup> See Section 4.3 of thesis.

idealised conception of childhood. The heightened sensitivity to the position of children emphasised the need to make special provision for children in the criminal justice process: it highlighted the inappropriateness of imprisoning children alongside adults, underpinning moves to extend summary procedure for young offenders. This processed children's cases quickly, thereby avoiding long periods on remand with adult prisoners. The recognition of the special position of children also lay at the heart of diversionary developments, providing for children to be sent to reformatory and industrial schools instead of prison; and it was also the basis for the creation of juvenile courts.

In the hands of philanthropic evangelists who initiated reform of juvenile justice the new emphasis on the vulnerability of children was a powerful concept. The notion of the child as in need of care and protection was put into practice in the day to day running of the pre-statutory day industrial schools in Scotland. It could be seen in the concern to ensure that children received adequate food every day of the week; that they were educated and that they were turned out looking clean and tidy, even to the extent of insisting that their hair should be 'bone combed.'<sup>44</sup> As noted in chapters one and two, this concern with respectability was a defining feature of the schools with huge stress being placed on children being God-fearing and hard working as well as of respectable appearance. The notion of respectability shaped intervention in the lives of children in a way which can be linked to Eliasian ideas of the civilising process. Effectively, the schools sought to transmit the values and manners of upright citizenry from the respectable classes to the most marginalised, impoverished and degraded in society. Charles Dickens described this group of children as having 'a raggedness and dirtiness which defied classification, and demanded an establishment of their own.'<sup>45</sup> The day industrial schools were, in essence, engaged in a genuine civilising exercise, an attempt to elevate the poorest children into the ranks of acceptability, sobriety and citizenship. Only in this way, by emulating and adopting the lifestyle of the respectable orders of society, could children free themselves of the stigma of criminality. But this was not a mere concern with outward aspects of civilised existence such as acceptable appearance. The primary goal was to instill moral values. This was an outreach to vagrants and offenders who were, by virtue of their mode of life, excluded from society: the project was energised by a missionary agenda where children were seen as a

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<sup>44</sup> See chapter two.

<sup>45</sup> Dickens (1851), p. 544. Dickens was referring to children attending ragged schools in England, which catered for the same kind of children as attended day industrial schools in Scotland. He said that these children needed schools of their own because even the 'humblest' schools were "too respectable" apparently for these youngsters.' See Section 2.3.2.

means of raising the moral condition of their wider families. They were tasked with being miniature evangelists who would return to their homes each evening and impart to their parents the scriptural values they had absorbed in the day industrial school.<sup>46</sup> If the ultimate aim was moral transformation of families, this could only be achieved by placing the child in a pivotal role at the centre of family life. This echoes the theme expounded by Aries who talked about the central position of the child as the focus of family life. For the pre-statutory Scottish system supporting the child in this position at the heart of their families was of prime importance. This emphasis on maintaining the integrity of the family explains why Watson was so critical of developments under the statutory system which saw children separated from their families in residential schools. Like Aries, Watson argued that residential education was, by its nature, detrimental to children. There are definite parallels between Aries's theory and the disciplinary nature of reformatory education.

With regard to the application of Elias's theory there are two further points to be made. Firstly, as noted in the previous section and discussed in depth in chapter one, the idea of civilising and decivilising is useful for understanding the contradictory forces, progressive and regressive, present in the history of juvenile justice. As we have seen, throughout the nineteenth century there was a tension between irreconcilable perceptions of children in the criminal justice system. On the one hand there were the progressive developments. This was exemplified by Watson's civilising mission which saw children in trouble as vulnerable and in need of care and help. On the other hand, under the punitive regime in statutory reformatory and industrial schools regressive, decivilising, harshly disciplinarian features were in evidence.

Secondly, as noted in chapter one, Elias's theory has been widely applied in the analysis of the relationship between violence and civilisation. In this context it has been used to explain a relative pacification of society occurring in the course of the civilising process. This idea has been applied to account for a decline in homicidal violence over time.<sup>47</sup> But, as the cases discussed in this thesis illustrate, in the nineteenth century the focus of concern for juvenile justice in Scotland was not violent offending by the young. The cases discussed in the previous chapters were almost exclusively to do with very minor, non violent, offences: vagrancy, trivial thefts or low level disorder. If we compare this to the contemporary

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<sup>46</sup> Watson described the role of children in their 'family circle' as being that of 'home missionary in homes so wretched the self-regarding missionary would have feared to enter.' Watson (1851), 25.

<sup>47</sup> Spierenburg (1996)

situation where there is much anxiety about violent offending by the young<sup>48</sup> it is indicative of an important shift of emphasis, with the focus now on more aggressive conduct.<sup>49</sup> This presents a challenge for those who argue that there was a process of pacification over time. It points to the need for a more nuanced interpretation of Elias's theory which can incorporate both civilising trends such as pacification over time and those in the opposite direction, as I argued in chapter one.

To sum up this section on childhood, the main point being reinforced here is that over the course of the nineteenth century it is possible to detect abstract ideas and new conceptions of childhood reflected in practice in the reform of juvenile justice, affecting the lives of children in a very tangible way.

### **5.4.3 Conflict and compromise**

Underlying the account presented in this thesis has been the tension involved in balancing different interests and perspectives, in addressing issues of both care and control, dealing with contrasting perceptions of children as vulnerable and in need of love on the one hand and yet somehow also posing a threat or presenting challenges to order on the other. Inevitably, addressing these issues caused division and debate, as was shown in the first chapter in the context of the discussion on the civilising process. Later chapters demonstrate that conflict was evident at every stage, from the very first attempts at reform and this was sometimes resolved by compromise on the part of the reformers. As we have seen William Watson in Scotland and Mary Carpenter in England were both eager to gain parliamentary support for their ideas of reform. However, to advance their cause they had to concede certain key principles, notably their resistance to prior imprisonment of children under the reformatory legislation. Public opinion demanded to be assured that the children of the undeserving poor, and especially those of the 'dangerous classes'<sup>50</sup> would not receive special privileges at a time when many children of the respectable poor did not have access to adequate education. The obvious wish to satisfy critics of the new reforms that there was

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<sup>48</sup> See Section 1.2, with reference to knife carrying.

<sup>49</sup> See Section 1.2 and Section 1.4.2 (1).

<sup>50</sup> Mary Carpenter's term. See Chapter Two.

no ‘bonus on crime’<sup>51</sup> was evident in the earliest Reports by the influential Inspector Sydney Turner where he emphasised the hardships imposed on juvenile offenders.

It is important to appreciate that those involved in reform of juvenile justice were far from being united in their approach. Part of the argument presented here has been that one of the main reasons for the change in ethos in Scotland under the statutory system was the introduction of a punitive dimension influenced by developments imported from the English reformatory system. But supporters of the reformatory movement in England were not all of a punitive mindset. Far from it. The movement was deeply influenced by the disciplinarian model of Mettray in France but it encompassed a broad spectrum of views.<sup>52</sup> At one end was the formidable humanitarian philanthropist Mary Carpenter with her focus on the child’s need for love idealised in her idyllic Red Lodge Reformatory for girls in Bristol.<sup>53</sup> Bought with money gifted by her patron Lady Byron, the reformatory was housed in a splendid Elizabethan mansion. This was the glorious setting in which Mary Carpenter could put into action her dreams of nurturing wayward children, allowing them to reclaim their childhood with games, picnics and pets to look after, although of course in practice she faced plenty of challenges and things were not quite so ideal. But there were also those who complied with popular demands for retribution by speaking approvingly of prior imprisonment as a condition of reformatory admission, notably Inspector Sydney Turner.<sup>54</sup> To Carpenter’s dismay the retributive mindset ended up holding sway. And the punitive approach found a very receptive audience among upper class English landowners who were doubtless motivated by a degree of self interest in (apparently magnanimously) welcoming reformatory establishments on their country estates as a useful source of labour.<sup>55</sup> All of this blend of mixed motives was enshrined in the UK legislation.

Often, the rather pejorative term ‘child savers’ has been applied to nineteenth century juvenile justice reformers.<sup>56</sup> This labelling is suggestive of the paternalistic and superior attitude sometimes attributed to Victorian reformers who, it is argued, for their own reasons attempted to impose their values on those they set out to help. As has become clear, those

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<sup>51</sup> Mary Carpenter’s expression when giving evidence to 1852 Select Committee on Criminal and Destitute Juveniles, p. 98.

<sup>52</sup> See Nineteenth Inspector’s Report on Industrial and Reformatory Schools, 1876, p5 where Sydney Turner describes how Mettray principles were adapted in the Red Hill reformatory in Surrey; see too Driver (1990).

<sup>53</sup> Manton (1976).

<sup>54</sup> See Sydney Turner’s comments at page 10 of Nineteenth Inspector’s Report.

<sup>55</sup> Stack (1979).

<sup>56</sup> Platt (1977).

involved in reform were far from being a homogeneous group with a fixed agenda: there was a range of personalities with differing viewpoints and intentions. Some were exemplary, while others were less than noble. But it is important to recognise that it was genuine humanitarianism which primarily motivated the initial reform of juvenile justice in nineteenth century Scotland and despite the later transformation of the original project and the extent to which children were criminalised, the Scottish approach always retained a continuing current of humanitarianism.

The point being reinforced in this section is that juvenile justice reform entailed constant conflict between differing perspectives on the care/control continuum. And, to advance their cause, reformers sometimes resolved this conflict by compromising on key principles such as opposition to prior imprisonment.

#### **5.4.4 Challenges to existing thought**

The sheer scale of the system of reformatory and industrial schools raises a host of important issues. Firstly, as discussed in chapter three, it calls for a reassessment of the relative significance of reformatory and industrial schools within the nineteenth century criminal justice system.<sup>57</sup> The schools were far from being simply private marginal institutions on the fringes of the system, as Garland maintains.<sup>58</sup> Although the schools were run by independent managers on the ‘voluntary principle,’ they were regulated by statute, children were sent to them by court order and they were under Home Office direction. They were subject to statutory inspection, received public funding and were very much seen as an integral part of the criminal justice panoply.<sup>59</sup>

As statutorily certified institutions in which thousands of children were detained by order of the courts they played a very important role, exercising a public function as an arm of the criminal justice system. Recognising this involves re-evaluating their position, locating them firmly in the centre rather than at the fringes of the system as Garland suggests.

Understanding the importance of the schools in this way also has implications for the development of ideas about individual reformation of offenders. It was a central aspiration of the highly influential first national Inspector of reformatory and industrial schools, Sydney Turner, that children should receive ‘reformatory training’ of a scriptural nature. He wrote

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<sup>57</sup>Section 3.3 of thesis.

<sup>58</sup>Garland (1985), p. 8.

<sup>59</sup>Section 3.3 for parliamentary quote on the schools in 1866 as ‘public’ or ‘state institutions.’

that reformatory schools aimed to 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.’<sup>60</sup>

That such an agenda was being promoted as the ideal method by Turner, who sought to set his stamp on the schools throughout the UK from his appointment in the mid 1850s, does not fit at all easily with 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.”<sup>61</sup> Turner’s comments suggest that ideas about individual reformation had wide currency far earlier than is usually assumed – in the mid nineteenth century rather than at the turn of the century.

The second research conclusion which challenges existing thought concerns the juvenile court. While recognising that the creation of the juvenile court was a significant step on a conceptual level, the thesis has argued that in many respects the juvenile court did not change the way children were treated. It has been shown that the grounds of admission to the schools were not greatly expanded by the 1908 Children’s Act, which largely consolidated the earlier legislation governing admissibility and added one or two amendments. Even the section empowering magistrates to admit children where their parents were deemed unfit by reason of criminal and drunken habits was not entirely new, as criminality of parents had been a ground of admission since the mid nineteenth century.<sup>62</sup> Under the 1866 industrial school legislation children in a workhouse or poorhouse school with a parent in prison had been liable to be admitted.<sup>63</sup> Similarly, under the 1871 Prevention of Crimes Act, children of a woman twice convicted of crime could be sent to an industrial school.<sup>64</sup> As discussed in chapter four, this emphasis on underlying stability conflicts with Garland’s view that the juvenile court was an important part of a new penal landscape where there was extended capacity for interventionism and control over family life. And on this interventionist point, the case material in Chapter Four has shown there was considerable scope for judicially sanctioned

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<sup>60</sup> Nineteenth Report 1876, p. 11.

<sup>61</sup> Garland (1985), p. 14.

<sup>62</sup> s.58(1)(d)

<sup>63</sup> s.17 of the Industrial Schools Act 1866.

<sup>64</sup> 34 & 35 Vict., c.112, s.14.

intrusion into domestic circumstances long before 1908. The evidence points to considerable continuity with existing practice.

The third research finding which conflicts with existing approaches concerns the influence of scientific theory. The thesis has presented evidence that scientific notions of the young offender<sup>65</sup> were questioned and greeted with scepticism by, for example, the 1896 Report. This evidence of resistance to new scientific ideas poses challenges for Garland's claims about the far reaching impact of new knowledges.<sup>66</sup> He argued that expertise in the human sciences occupied an important role in a new penal realm where judicial intervention was influenced by the investigations of professionals, such as psychiatrists, psychologists, and other experts, rather than purely in accordance with classical legal criteria concerned with criminal responsibility. This 'extra-legal'<sup>67</sup> expertise was often concerned with issues such as evidence of deviation from normality, and psychological knowledge was of particular influence in cases involving juveniles.<sup>68</sup> The input of experts to the court process was provided by 'social background reports,' or 'character judgments.'<sup>69</sup> However, it has been argued in this thesis that, while there was certainly general awareness of new scientific disciplines, such as psychology, and interest in them there was also considerable scepticism about them. Such resistance to scientific ideas about the deviance of offenders undermines the suggestion that they were greatly significant in altering judicial decision making.<sup>70</sup> It is argued here that commonsense notions about the causes of youth offending were more influential. For example, although the 1896 Report made psychological references to the 'inner life'<sup>71</sup> of children and the effects of depression on child development, it stoutly rejected the idea that young offenders were different from other children or in need of specialised treatment. It robustly refuted any notions of depravity, pointing instead to other causes such as parental neglect and the effects of poverty. The Report defiantly declared that the Committee

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<sup>65</sup> Garland (1985); Wiener (1990); Gillis (1974); Blanch (2007).

<sup>66</sup> Garland (1985).

<sup>67</sup> *ibid.*, p.26

<sup>68</sup> *ibid.*

<sup>69</sup> *ibid.*

<sup>70</sup> See too argument in Bailey (1997) that judges in the early twentieth century steadfastly adhered to classical notions of jurisprudence in the sentencing of offenders. He states that sentencing statistics show that judges were averse to committing offenders to, for example, inebriate reformatories and even when they did sentence offenders to a term in these institutions they only imposed sentences similar in length to those imposed for prison sentences, thus adhering to classical notions of proportionate rather than indeterminate sentencing of the positivist inspired variety (p304). Bailey's scepticism about the influence of criminological discourse is supported by the comment from the Gladstone Report quoted in Section 4.2.3 of thesis.

<sup>71</sup> 1896 Report, p. 20



was ‘not at all prepared to admit the theory’ that the children were physically and mentally different from others.<sup>72</sup>

This indicates resistance to new scientific ideas about criminality, suggesting that the influence of scientific discourse in late nineteenth century Britain has been overstated. It undermines the argument that a scientific, positivist focus on understanding the child together with a new recognition of the psychology of adolescence altered responses to the young offender.<sup>73</sup> It suggests that while new scientific ideas were widely circulated, ultimately pragmatic commonsense was still the predominant influence.

## **5.5 CRIMINALISATION**

One striking feature of this study is that the historical perspective has allowed us to see that over the course of time there have been certain key factors involved in the criminalisation of children. These were outlined in chapter one: policing, procedural changes, judicial decisions, and legislation. In chapter two these elements emerged as critical for the criminalisation of children in Aberdeen in the 1840s. In Watson’s writings these were the four predominant variables, each of which played its part, and worked together in criminalising children. These critical cogs in the wheel of criminalisation were not only important on a local level; they were equally relevant on a much wider scale. As we have seen Susan Margarey’s work shows parallels in Metropolitan London.<sup>74</sup> In both Scotland and England changes in criminal administration had far reaching consequences for children within the criminal justice system.

As Watson’s observations make clear, the development of urban policing was crucial. Under new local police Acts there were many criminal prohibitions designed to create order in public spaces in the industrialised centres of population, and some of these impacted on children’s outdoor pursuits, criminalising their normal activities on the streets. More vigorous policing made it more likely that children’s breaches of criminalised conduct would come to police attention. The development of summary procedure in the new police and justice of the peace courts meant that children’s cases were dealt with expeditiously, but created an ever escalating volume of children appearing in court. And the situation was compounded by inconsistencies in sentencing by magistrates unqualified in the law, which led to some children being sentenced to spells in prison for breaching trivial prohibitions.

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<sup>72</sup> 1896 Report, p. 22.

<sup>73</sup> See Section 1.5.2.

<sup>74</sup> Margarey (1978).

Over the course of time the same type of variables highlighted in Watson's account affected the treatment of children throughout the criminal justice system, creating a kind of calculus of criminalisation. In chapter one of the thesis, an attempt was made to identify a framework of criminalisation; markers which could be used to evaluate criminalisation as applied to children as a group. The aim has been to track the course of criminalisation by looking at formal criminalisation such as legislation and judicial decisions and also the practical outcomes of criminalisation in terms of substantive practices. This means the impact of practices of policing, procedure and sentencing, the very issues which preoccupied Watson. By examining developments in these areas, the thesis set out to explore the route by which children came to be seen as raising distinct issues in relation to criminalisation. Chapter one concluded with the recognition of the importance of Lacey's and Ashworth's ideas on the centrality of criminal justice actors, of appreciating that while formal legislation may be the first stage, the practical impact of formal criminalisation is felt in its enforcement by criminal justice agencies.<sup>75</sup>

For children the first point of contact with the criminal justice system was usually a policeman. Taking Aberdeen in the 1840s as an example, the increased police presence and activity was crucial in ushering children into the criminal justice process. But changing police practices were critical too. Following the changes implemented by Watson, police co-operated with the new diversionary system by bringing vagrant and offending children directly to the Child's Asylum Committee for consideration; and the police assisted in a very direct way by providing two teachers for one of the industrial schools. However, it is important to recognise that the means by which children came to the attention of criminal justice authorities were not limited to official policing: as we have seen from the cases discussed in the thesis, organisations such as the RSSPCC in nineteenth century Scottish cities, as well as individuals, ranging from church missionaries to parents accusing their children of some minor offence or of being beyond control, also took it upon themselves to initiate the process.

In terms of procedure, one of the most striking changes which affected children was, of course, the impact of summary jurisdiction. From 1828 onwards summary procedure was widely used to allow lower courts to deal quickly and simply with offences. As discussed in chapter one, this had both positive and negative aspects for children. The main benefit was that the availability of summary procedure enabled their cases to be dealt with quickly,

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<sup>75</sup> See Section 1.2 of thesis.

avoiding long periods in prison awaiting trial where they could be contaminated by contact with adult prisoners. On one view this was in line with the new modern ideas of childhood which cherished the notion of the child as vulnerable and in need of protection. On the other hand the use of summary procedure in the police and burgh courts had an adverse impact on children. In Scotland there is clear evidence to show that under summary procedure children appeared before the courts much more frequently than before. Effectively there was a system in place where the availability of fast procedure encouraged prosecution of trivial offences and children were repeatedly ushered quickly through the courts and subjected to a conveyor belt of short term sentences of imprisonment, greatly increasing the volume of young offenders. Tracking the issue of procedure over time has revealed that under the statutory system the burgh and police courts sometimes paid scant to procedural regularities, again to the detriment of children whose liberty was at stake.<sup>76</sup> By the end of the period studied the juvenile courts were operational, offering a new conceptualisation of special procedure for children although as we have seen in practice they adhered to much that was well established in the Victorian tradition and the break with the past was less radical than has been supposed.

Next the role played by the judiciary. This had two dimensions, one on a political level and the other the more traditional sentencing role. On the level of political action it is noteworthy that in the early days of reform some of those most effective in bringing about change in ways of dealing with juvenile offenders in Scotland were the judges before whom young offenders appeared, especially Sheriffs. Foremost among the innovators in this area were, of course, Sheriff Watson in Aberdeen and, to a lesser degree, the Sheriff of Lanark, Sir Archibald Alison. Faced daily with the large numbers of children repeatedly appearing before local courts for minor offences such as begging, breach of the peace or trivial thefts<sup>77</sup> Watson and Alison, in common with many other judges,<sup>78</sup> felt disillusioned. Not only did imprisonment of children expose them to adverse influences, it was seen as a hopeless deterrent and a spell in prison branded a child for life, making it difficult to secure employment in the future. As we have seen, then, in Aberdeen and Glasgow in particular it was Sheriffs who led the way in introducing new diversionary schemes to respond to juvenile offending. As noted in chapter one, in the early nineteenth century the recognisably modern role of the Sheriff was relatively

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<sup>76</sup> See *McKenzie v McPhee*, Section 4.6 of thesis.

<sup>77</sup> Comment made in a letter by Watson to Thomson. Quoted in biography by Marion Angus, Angus (1913) p. 59.

<sup>78</sup> For example, Sheriff Barclay of Perth who wrote on the subject of juvenile delinquency. See Section 1.3.

new,<sup>79</sup> and Sheriffs held considerable sway. They were charged with overseeing the professionalised administration of justice in their Sherifffdoms,<sup>80</sup> and occupied a privileged role at the centre of legal and political power. Their prominent position in society gave them an important political platform, enabling those with a zeal for reform to effect change within their local jurisdiction, and to influence change on a wider front.

Of course the success of these diversionary schemes depended upon the willingness of judges to co-operate with them and under both the pre-statutory and statutory systems the decisions made by judges were the ultimate determinant of children's fate. While most cases involving children were finally decided by judges in the burgh and police courts, the thesis has discussed the important role of the High Court of Justiciary in reviewing decisions made in the lower courts. From the earliest days of the statutory system and the case of *Hay and others v Linton*<sup>81</sup> in 1855 recourse to the High Court of Justiciary was available, even if rarely resorted to, to challenge orders committing children to institutions. Though not all such challenges were successful, the High Court proved more than willing to quash decisions and order the release of children where it was satisfied that the lower court had acted oppressively in abusing procedural requirements by adopting irregular or unfair practices.

As well as considering the role played by criminal justice actors such as the police and judges, and the effect of procedural changes, it has also been vital to examine the impact of legislative changes on the criminalisation of children. Examining the detail and impact of legislation has been a crucial part of this study. Particular attention has been paid to the body of statutes governing the regulation of the reformatory and industrial schools, to the changes made over time as the system developed into a uniform regime across the UK and to the criminalising impact of the net widening effect of statutory diversionary approaches. Throughout the study it has been very clear that carrying out historical analysis of this kind has uncovered much that resonates strongly with issues that are topics of current discussion.

In chapter two reference was made to the parliamentary furore over the criminalising capacity of the English statute, the Industrial Schools Act 1857 with one MP objecting to the 'multiplication of offences.' Concern about the unjustifiable creation of new criminal offences was also something which greatly agitated William Watson: he vehemently complained about the absurdity of the new criminal prohibitions under the Aberdeen Police Act which created

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<sup>79</sup> See Farmer (2011); Farmer (1997).

<sup>80</sup> *ibid.*

<sup>81</sup> 2 Irv.57.

offences of a kind ‘hitherto unnoticed.’ As we have seen the vigorous prosecution of offences intended to prevent nuisance behaviour in public spaces impacted particularly unfairly upon children. All of this has very obvious relevance for the contemporary debate on responses to antisocial behaviour by young people.<sup>82</sup> It also indicates that disquiet about overcriminalisation is far from being a new phenomenon.<sup>83</sup>

Similarly, Watson’s comments on the injustice involved in ‘raising harmless acts to penal offences punishable by fine and imprisonment’,<sup>84</sup> a process of criminalisation then being replicated by local Police Acts across the country,<sup>85</sup> went right to the heart of many issues involved in criminalisation, demonstrating that Scottish lawyers in the early nineteenth century were perplexed by difficult philosophical questions about justifications for criminalisation, although perhaps this was not a frame of reference they would have recognised. Here Watson was grappling with issues of the kind being tackled by his contemporary, John Stuart Mill, whose notion of the ‘harm principle’ addressed the limits on the state’s justification for imposing criminal punishment on its citizens.<sup>86</sup>

Watson was very concerned about this expansion of the criminal law. He considered it a deep injustice that the prisons were being filled with adults and children convicted for breaching new offences under Police Acts, especially when the stigma associated with imprisonment made employment almost impossible to find. According to Watson this overcriminalisation had potentially drastic consequences: nothing could be more calculated to ‘pauperise and demoralize the poor and increase the number of delinquents.’<sup>87</sup> For him it was an issue of the legitimacy of the law: in effect he was saying that people could accept *mala in se* offences such as assault but could not see the justice in being punished for *mala prohibita* offences they did not even know existed which criminalized ‘harmless’ activities. This of course was a period when the demands of increasing industrialisation and the chaotic clamour and disorder of overpopulated cities added to the pressure for regulation emanating both from government at a national level and from local urban centres. And the weight of this new mass of regulation undermined the traditional conception of criminal law as

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<sup>82</sup> Scottish Executive Report (2007), ‘Use of Antisocial Behaviour Orders in Scotland’, available at [www.scotland.gov/Resource/Doc/198276/0053019.pdf](http://www.scotland.gov/Resource/Doc/198276/0053019.pdf); Ashworth and Zedner (2010).

<sup>83</sup> See, for example, Ashworth and Zedner (2008); Husak (2007).

<sup>84</sup> Watson (1877), 40.

<sup>85</sup> See Barrie (2008).

<sup>86</sup> Mill, J.S. (1859) *On Liberty*, London, Parker. Interestingly there is evidence of exchange of correspondence between Mary Carpenter and JS Mill, a long letter from Avignon dated December 1867 in which he exhorted her to support the cause of the female franchise (a topic on which she was lukewarm) Manton (1976) p. 217.

<sup>87</sup> Watson (1877), 40.

concerned with public wrongs<sup>88</sup> that were also moral wrongs. For Watson, and doubtless many of his contemporaries, it was difficult to see the moral transgression involved in breaching trivial regulations and it is clear that he considered the moral basis of the criminal law as a foundational *sine qua non*.

While not using the expression the ‘core’ of the criminal law this is obviously what was suggested when he indicated that offences such as assault or theft were properly described as crimes while regulatory breaches were simply ‘magnified into crimes.’ According to Watson, to qualify as criminal an act had to be ‘wilfully injurious to person or property,’ qualities which were conspicuously absent in the newly created offences criminalizing children’s activities such as flying a kite, throwing a snowball or sliding on ice. Here he grappled with central principles about the nature of the criminal law – issues of intention, what counts as harm and justifications for the creation of criminal offences and imposition of punishment. Most noteworthy here is the idea that the criminal law had to be seen to be linked to commonsense notions of morality. To be just, in his view, criminal law had to concern itself with matters which ordinary people had an innate sense were in violation of commonly accepted standards of behaviour: matters such as theft, wife beating or assault. Entirely absent from this discussion was any concept of a moral requirement to obey criminal law of the regulatory kind because it was moral to submit to such ordinances for the sake of the common good.<sup>89</sup> It is safe to say that Watson would have been baffled by such a notion. At this period the regulatory state was still in its infancy, and Watson’s writing indicated his resistance to aspects of modernisation, and the growing burden of regulation which accompanied increasing industrialisation. The main impression given by Watson’s comments is one of anger and frustration at what was perceived as a new, unjust and oppressive form of the criminal law. All of this emphasises the point that ideas about the relationship between criminal law and morality, and about justifiable criminalization, are deeply anchored in their historical context.

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<sup>88</sup> Farmer (1997) ; Farmer, L. (2010) ‘Criminal Wrongs in Historical Perspective’ in *The Boundaries of the Criminal Law* , OUP; Lacey, N. (2011) ‘What Constitutes Criminal Law?’

<sup>89</sup> Tadros, V. (2010) ‘Criminalisation and Regulation’ in *The Boundaries of the Criminal Law* , OUP.

## 5.6 TRANSJURISDICTIONAL INFLUENCES

Although the focus of the thesis has been on developments in Scotland and England, a wider dimension has also been recognized. We have seen that the need to address the profound consequences of rapid economic change was the catalyst for juvenile justice reform not only in the UK but in other European countries and the US too. The rapid population growth, the displacement of the poor and the brutal demands made on children in the labour market by the expansion of capitalism were all features which affected western economies. One very striking theme running through the thesis is the extent to which in the nineteenth century there were channels of communication and influence flowing to and from Europe and the US, spreading new ideas about juvenile justice reform. There was an active philanthropic network of reformers who eagerly exchanged new ideas and approaches. This was very evident from the way in which the reformatory movement in England was inspired by the Mettray model. Schools similar to Mettray appeared in many European countries, including, as we have seen, a Scottish version.<sup>90</sup> In turn, the founder of Mettray was influenced by visits to new types of schools for young offenders run by religious philanthropists in the US.<sup>91</sup> Similarly, Mary Carpenter was deeply influenced by developments being tried out by her Unitarian friends in New England.<sup>92</sup> There was undoubtedly a high level of interaction and awareness about international developments. Impressively, the section of the French criminal code, the Code Penal, on children under sixteen being deemed to act *sans discernement* featured in the book written by Watson's co-reformer in Aberdeen, Alexander Thomson in 1852.<sup>93</sup> This section of the French criminal code was also referred to as significant by Sydney Turner in one of his reports.<sup>94</sup> The spread of ideas from one jurisdiction to another continued throughout the century as its closing decades witnessed the introduction of juvenile courts. All of this has relevance for contemporary theories about criminal justice policy convergence in the UK and the US, suggesting that this is a phenomenon which has well established historical antecedents; it is not simply a feature of existence in today's western economies linked up by super sophisticated instant global communication.<sup>95</sup>

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<sup>90</sup> See Section 3.1.

<sup>91</sup> See Section 1.4.4.

<sup>92</sup> Manton (1976).

<sup>93</sup> Thomson (1852), 112. See Section 1.4.4.

<sup>94</sup> See Section 3.1.

<sup>95</sup> See Garland (2001); See too T. Jones and T. Newburn (2007) *Policy Transfer and Criminal Justice*.

Finally, the thesis has something to say which is of relevance to contemporary understanding of convergence/divergence within devolved jurisdictions in the UK. In particular it has the power to shed light on the controversial question of the potential dangers associated with policy standardisation. This is a topic which has modern parallels in the recent concern about the effect on Scottish welfare based children's hearings system of an emergent punitive discourse.<sup>96</sup> One of the main contentions of the thesis is that in the nineteenth century the combined impact of standardising UK wide legislation and centralising influences impacted negatively on the Scottish welfare based system in such a way as to subvert its whole ethos. The historical perspective shows that this is not the first time that the distinctively Scottish, holistic approach to juvenile justice been presented with challenges which have the capacity to undermine welfarist principles.

Debates over the most appropriate methods of responding to wayward youth within the UK could hardly be more relevant in the light of the 2011 disturbances in London and other major English cities. The fact that such unrest was conspicuously absent from Scotland's urban centres has provoked much speculation about the reasons for the Scottish restraint. This has included academic and journalistic comment on the relatively high degree of cohesiveness and community co-operation in Scotland as well as praise for the support systems available for young people.<sup>97</sup> Whatever the reasons may be for Scottish youth remaining above the fray one thing that has emerged ever more clearly from the discussion is that Scotland is different from England. This raises many questions about the appropriateness of standardising tendencies particularly in the current volatile, highly politicised and punitive climate surrounding discussion of youth justice policies south of the border.<sup>98</sup>

## **5.7 CONCLUSION**

What has emerged strongly from the thesis is that Scotland's contribution in the field of nineteenth century juvenile justice was far more extensive and complex than might be supposed on reading the conventional accounts of historians with a focus on the English situation. In common with other countries much of the impetus for reform in Scotland was

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<sup>96</sup> See Section 1.2.

<sup>97</sup> *ibid.*

<sup>98</sup> *ibid.*



driven by philanthropic initiatives, but the Scottish experience in the 1840s and 1850s differed from elsewhere in that Scottish reformers achieved a remarkable degree of success in setting up a unique pre-statutory national experiment to deal with juvenile offending. This innovative diversionary system was the first major attempt in Britain to set up an organised and widely implemented diversionary system for juvenile offenders. This provided a model forming the basis for the statutory system throughout UK, underpinning a legislative framework which, thanks to British imperialism, was even emulated as far away as Australia.<sup>99</sup> From 1854 onwards, the original humane project underwent a transformation as it adapted to pressures to create a uniform system. The creation of a body of statutorily certified, largely residential institutions of a penal character subverted the original benign ideals of Scottish reformers, presenting a marked contrast to the pre-statutory system of Scottish day industrial schools which in many ways had been a genuinely crime preventive, social welfare initiative. By the end of the nineteenth century, diversionary systems for juveniles within the criminal justice system had evolved into a mechanism for diverting large numbers of children into prolonged detention in penal residential establishments. These diversionary practices impacted excessively on Scottish children, entailing criminalisation on an immense scale. However despite this gulf between the idealistic aspirations of the original Scottish reformers and the outcome as it developed in practice it is important to recognise that the distinguishing feature of the pre-statutory system, humanitarianism of a radical kind, left its hallmark on the Scottish approach which continued in some respects to reflect its legacy.

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<sup>99</sup> Ritter (2001)

## TABLE OF CASES

<i>Deas v Stewart</i> 1885 5 Couper 638.....	144
<i>Hay and others v Linton</i> 2 Irv.57.....	112
<i>HMA v Beattie &amp; Kelly</i> (1868) 1 Couper 1.....	150
<i>HMA v Mary Ann O'Brien, Agnes Wallace and Janet McNaught</i> , Brown's Justiciary Reports 2 1844-45, 499.....	84
<i>Hunter v Waddell</i> 1905 7F. 61.....	210
<i>In Re Gault</i> 387 U.S.1 (1967).....	192
<i>In Re the Clyde Industrial Training Ship Association</i> (1925) 22 Ll. L. Rep. 272.....	215
<i>Lord Advocate v Brown</i> 1875 3 Rettie 188.....	144
<i>Maguire v Fairbairn</i> 1881 4 Couper, 536.....	155, 208
<i>Mckenzie v McPhee</i> 1889 2 White 188.....	209
<i>Taylor v Tarras</i> 1901 3F. 39.....	211
<i>Wilson v Stirling</i> 1884 2 Couper 518.....	209, 212

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Sir William Rae's Act 1828 9 Geo. IV cap.29

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The Children and Young Persons (Scotland) Act 1932  
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## APPENDIX

This appendix sets out details of the main statutes in the period 1841-1866.

### Statutes

*Act of 1841 for repressing juvenile delinquency in the City of Glasgow (4<sup>th</sup> and 5<sup>th</sup> Victoriae, c.36).*

Under section 19 ‘inmates may be admitted to Houses of Refuge on their own request’. There was no age requirement stipulated in this section. Section 20 stated, ‘Offenders under trial may be admitted as Inmates’. Applied to children under twelve. With the concurrence of the management of the House of Refuge children could ‘pray to be admitted’ prior to conviction. The trial could be discharged and the child admitted for a specified period.

*The Reformatory Schools (Scotland) Act 1854 (17 & 18 Vict., c.72-74) also known as Dunlop’s Act.*

This act applied only to Scotland and despite the title including the word ‘reformatory’ it was later to become known as the Scottish Industrial Schools Act. Its terms applied to destitute children who had not been convicted of any offence. Section one empowered a sheriff or magistrate to send vagrant children apparently under fourteen to ‘any reformatory school, industrial school or other similar institution within Scotland’ (unless security was found for their good behaviour). Under the terms of this seminal Scottish Act vagrant and destitute children could be admitted to ‘any reformatory school, industrial school or other similar institution within Scotland.’

*The Youthful Offenders Act 1854 (17 & 18 Vict., c.86).*

This Act was introduced throughout the whole of the U.K. In Scotland it applied in addition to Dunlop’s Act. Dunlop’s Act dealt with vagrant children who had not been convicted of any offence and the Youthful Offenders Act targeted children convicted of an offence. The Youthful Offenders Act empowered courts to send ‘any person under the age of sixteen years’ convicted of an offence to a reformatory school. The detention in the reformatory was to be preceded by a minimum period of imprisonment of fourteen days. Children were to remain in the reformatory school for a ‘period not less than two years and not exceeding five years’(s.2). Following the introduction of this Act a network of reformatories for



convicted children appeared in England. In Scotland some schools in the existing network of industrial schools of the Watson variety initially applied to be certified as both reformatories and industrial schools under the two new Acts, Dunlop's Act and the Youthful Offender's Act. This practice meant that non offenders and convicted children were mixed. The national inspectorate disapproved of this and it was stopped by an Act of 1856 under which dual certification as an industrial school and a reformatory was no longer permitted. After this more reformatories were established in Scotland.

*1856 'Act to amend the mode of committing Criminal and Vagrant Children to Reformatory and Industrial Schools' (19 & 20 Vict., c.109).*

Applying throughout the UK this Act provided that the school to which young offenders were committed need not be named in the sentence. More importantly, as mentioned above, schools could not now be certified as both reformatories and industrial schools.

*The Industrial Schools Act 1857 (20 & 21 Vict., c. 48.)*

This Act applied only to England. Under this Act certified industrial schools were introduced in England. The Act is entitled a statute 'to make better provision for the care and education of vagrant, destitute and disorderly children and for the extension of industrial schools.' It applied to children under the age of fourteen. No child was to be detained in an industrial school beyond the age of fifteen without his consent. The Act was in essence the English equivalent of Scotland's 1854 Dunlop's Act, an important difference being that the English Act failed to define vagrancy in the specific terms found in the Scottish Act, simply referring to 'children taken into custody on a charge of vagrancy' (section 5). Another significant difference from Dunlop's Act was that under section 6 a conviction for vagrancy was required before admission to a certified industrial school under court order. However, this condition of conviction was dispensed with by an Act in 1861 (24 & 25 Vict. c.113) bringing the English legislation into line with that in Scotland on this point.

*The Industrial Schools (Scotland) Act 1861 (24 & 25 Vict., c. 132.)*

This Act repealed Dunlop's Act and the Act of 1856 (19 & 20 Vict., c.109). The Act extended the category of children admissible under court order to industrial schools to include not only vagrant and destitute children but children under twelve charged with an offence. This allowed very young offenders to be dealt with under the industrial schools legislation rather than that applying to reformatories thus removing the need to endure a

period of prior imprisonment. Also now admissible to industrial schools under court order were children who were associating with thieves as well as ‘refractory’ (uncontrollable) children under the age of fourteen, but not any who had previously been imprisoned for more than thirty days. A parent applying to have a ‘refractory’ child admitted could be ordered to make the maximum parental contribution of 5s. per week, a provision designed to reinforce parental responsibility. The Act did not reinstate the provision in Dunlop’s Act enabling security to be offered for good behaviour of children; this particularly affected areas such as Edinburgh where Poor Law Inspectors had invariably offered security. The Act also empowered managers of schools to lodge out children under detention with their parents or respectable parties which was the usual practice in Aberdeen already.

*The Industrial Schools Act 1861 (24 & 25 Vict., c,113).*

This was an English Act on industrial schools in similar terms to the Scottish Act of 1861. The English Act provided a clearer definition of vagrancy than existed in the earlier English Act of 1857, defining it in the terms originally expressed in Dunlop’s Act and repeated in the new Scottish legislation: begging, wandering, being without visible means of subsistence. For this reason Turner described this as the ‘first effective Industrial Schools Act’ for England.<sup>100</sup> Like the Scottish Act this English Act transferred supervision from the Committee of Education to the Home Office and extended the class of children admissible under court order to include those charged with an offence, those associating with thieves and refractory children, but not those with previous convictions. The condition under the 1857 Act which required a conviction for vagrancy prior to admission was not re-enacted. (This had never been a condition in Scottish legislation.) Additionally, while the Act of 1857 had placed a lower age limit of seven on admission to industrial schools there was no such restriction in the new Act. In this respect the Act was brought into line with Scottish legislation which had never had a lower age limit. The absence of a specified minimum age was sometimes used to admit very young children, a practice criticised by the Inspector.<sup>101</sup>

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<sup>100</sup> Eighteenth Report, 1875, page 4.

<sup>101</sup> See chapter three.

*Industrial Schools Act 1866 (29 & 30 Vict., c. 118).*

This Act consolidated the Scottish and English legislation, placing the certified industrial schools of both countries within the same statutory framework. The statute set out the categories of children who could be sent under court order to an industrial school when brought by ‘any person’ before a magistrate in Scotland or two justices in England.<sup>102</sup>

*Reformatory Schools Act 1866 29 & 30Vict. c117.*

Like the Industrial Schools Act 1866 this Act repealed previous Acts and placed the legislation in both Scotland and England on the same statutory footing. The Act provided that young offenders under the age of sixteen could be sent to a reformatory after serving a prison sentence of ten days, again for not less than two and not more than five years. This meant that the Act reduced the period of prior imprisonment from fourteen to ten days. The other main change introduced by the Act was that children under the age of ten were not to be sent to reformatory unless they were previous offenders

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<sup>102</sup> For full details see 3.4.3(2).

## GLOSSARY OF TERMS

These are terms which appear frequently in the sources. However it should be noted that they are not always used consistently. For example, while the English usage of the term ragged school usually meant an evening or Sunday school, in Edinburgh the description was adopted by Rev Guthrie's schools to describe day industrial feeding schools which were quite different and run on the lines of Aberdeen's day industrial feeding schools. There are numerous examples of industrial feeding schools being referred to as ragged schools.

*Asylum* - Essentially asylum was a generic description of an institution providing accommodation. Watson used the term asylum when referring to the grand Edinburgh schools such as Heriot's, also known as hospitals, which provided accommodation for their pupils.<sup>103</sup>

*Child's Asylum* – This term appears in sources describing the system in Aberdeen. Explaining the system to the 1852 Select Committee on Criminal and Destitute Juveniles, Alexander Thomson referred to the Child's Asylum as a 'channel of admission' to the industrial schools. Housed in two rooms which were part of a House of Refuge, this was the venue where children picked up by the police for vagrancy or other problematic behaviour had their situation considered by a committee composed of representatives from the management body of the industrial schools (many of whom were magistrates), along with town councillors, police representatives and poor law officials.

The term also appears in other sources where it is used to describe a place providing temporary refuge for children found destitute on the streets. For example, in the records relating to the activities of RSSPCC in Edinburgh in the 1890s children are described as having been taken to the child's asylum in the High Street.

*House of Refuge* – This referred to a variety of institutions, such as homes for the destitute or for women who had been involved in prostitution. It was also used to describe the institutions set up in Glasgow for young offenders. The girls' House of Refuge in Glasgow originated as an annexe to the existing institution for prostitutes known as the Magdalene Asylum.

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<sup>103</sup> See Watson (1872).

*Industrial School* – Aimed at stamping out juvenile vagrancy and petty crime the original pre statutory industrial schools were set up in Aberdeen by William Watson in the 1840s and soon schools on the same model appeared in most large Scottish towns and some English ones. Paid for by voluntary subscriptions, these schools were staffed by paid teachers. They retained pupils for the whole day, providing meals, education and industrial training such as shoemaking and tailoring. Under the 1854 Dunlop's Act in Scotland and The Industrial Schools Act 1857 in England vagrant children could be sent by court order to industrial schools which had received statutory certification. In Scotland existing industrial schools sought certification. In England there had been few industrial schools prior to the 1857 Act and many were established in the wake of the legislation. Children sent under court order to industrial schools had not been convicted of any offence but were detained in the schools.

*Ragged school* – This term referred usually to schools set up to provide for the very poorest of children whose appearance was so 'ragged' and dirty that they were not deemed admissible to ordinary schools. Unlike the industrial schools run by paid teachers which retained children for the whole day and provided them with meals, these schools were often evening or Sunday schools staffed by volunteers. Common in large English cities, they did not provide food and only gave children a very basic education with more emphasis being placed on scriptural knowledge.

*Reformatory* – The reformatory schools were set up on a statutory basis throughout the UK under The Youthful Offenders Act 1854. Reformatories were institutions which detained convicted young offenders under the age of sixteen. Like industrial schools they provided industrial training. Admission to a reformatory school was always preceded by a conviction and by a prior period of imprisonment – 14 days under the original 1854 legislation, reduced to 10 days in 1866, then to 7 days in 1893 until finally in 1899 prior imprisonment was dispensed with altogether. Prior to the 1854 Act the main establishments in Scotland which could be regarded as reformatories were the Houses of Refuge in Glasgow. However under the pre 1854 system children admitted to the Houses of Refuge via the courts were received as voluntary inmates and not as convicted offenders.

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