

Drinking and Imprisonment in Late Victorian and Edwardian Scotland

David Smith*

This article discusses the response of the Prison Commissioners in Scotland to the large number of persons committed to prison for drinking between 1890 and 1914. These prisoners caused a crisis in accommodation, staffing and routine in Scottish prisons which forced the commissioners to reflect on the personality and environment of these offenders. The attention given to drunkards led to changes away from a moralistic to a more sociological and medical evaluation of the prisoners. The Commissioners began to stress a range of sentences that included rehabilitation; however, this shift towards individualized treatment and away from the reliance on prisons was not supported by the magistracy. In conclusion an assessment is made of the impact of a more determinist and environmental evaluation of criminality on the penal administration of prisons in Scotland before 1914.

Il est question dans cet article des décisions prises par les Commissaires des prisons en Écosse en rapport au grand nombre de personnes emprisonnées pour ivresse entre 1890 et 1914. Ces prisonniers ont causé une crise, les prisons écossaises n'ayant pas la place, le personnel et les procédures appropriées pour les internier, et ont forcé les Commissaires à porter plus d'attention à des facteurs comme la personnalité et l'environnement des contrevenants. Cette attention donnée aux ivrognes provoqua des modifications dans l'évaluation des prisonniers et favorisa une approche plus sociologique et médicale que moraliste. Les Commissaires commencèrent à encourager une série de sentences qui incluraient la réhabilitation, mais cette évolution vers un traitement plus individualisé, administré en dehors des prisons, n'était pas bien vu par la magistrature. On discute en conclusion de l'impact d'une évaluation plus déterministe et environnementale de la criminalité sur l'administration des prisons en Écosse avant 1914.

Historians have remarked upon the decline of indictments for serious crime offenses in England between 1880 and 1914 coinciding with the sharp increase of arrests and indictments for drunkenness and disorderly conduct.¹ Ironically, drunkenness was believed to be the major cause of crime and "appeared to replace sedition as the besetting sin of the working class"² after the peak of alcohol consumption among the working poor had

* David Smith is at the University of Puget Sound.

I would like to thank the American Philosophical Society and the University of Puget Sound for their financial support for this research project and my colleagues William Breitenbach and George Behlmer for their substantial comments on a draft of this paper.

1. V.A.C. Gatrell, "The Decline of Theft and Violence in Victorian and Edwardian England," in V.A.C. Gatrell, Bruce Lenman and Geoffrey Parker (eds.), *Crime and the Law: The Social History of Crime in Western Europe Since 1500* (London, 1980), pp. 238-337; V.A.C. Gatrell and T.B. Hadden, "Nineteenth Century Criminal Statistics and their Interpretation," in E.A. Wrigley (ed.), *Nineteenth Century Society: Essays in the Use of Quantitative Methods for the Study of Social Data* (Cambridge, 1972), pp. 336-96; David Jones, *Crime, Protest, Community & Police in 19th Century Britain* (London, 1982); Robert D. Storch, "Introduction: Persistence and Change in Nineteenth-Century Popular Culture," in Robert D. Storch (ed.), *Popular Culture and Custom in Nineteenth-Century England* (London, 1982); Jennifer Davis, "A Poor Man's System of Justice: The London Police Courts in the Second Half of the Nineteenth Century," *Historical Journal*, 27:2 (1984).

2. Jones, "Crime," p. 25.

passed.³ This study examines the effects of this changed pattern of crime and punishment from the perspective of the Prison Commissioners who administered the jails in Scotland between 1877 and 1914, a period marked by a striking increase in convictions for drunkenness. As the flood of prisoners caused a crisis in accommodation, staffing and routine in Scottish prisons, administrators began to reflect on the personality and environment that brought these offenders to jail. The attention given to drunkards led to a more sociological and medical evaluation of the prisoners. As it became increasingly obvious that short prison sentences were ineffective for this population, the Commissioners began to favour a wider range of alternative sentences, stressing rehabilitation over punishment to help insure that prison would not lose the respect of the population. In addition to supporting the establishment of Inebriate Reformatories for habitual drunkards, the Commissioners also urged the police and the policies of the magistrates to substitute fines and probation for imprisonment. The study concludes with an assessment of these more welfare-oriented attitudes and policies within the wider picture of penal institutions in Scotland before the First World War. This Scottish perspective extends the investigation and discussion of the broader shifts in attitudes towards punishment and criminality which so far has only focused on developments in England and Ireland in the 1890s and 1800s.

I

The level and nature of crime in Scotland reflected trends found south of the Border. The number of cases involving serious crimes brought before the High Courts declined between 1881 and 1901, while there was a dramatic rise in petty offenses disposed of in Summary Courts.⁴ Moreover, the number of prisoners convicted of serious crimes remained remarkably low in comparison to the level of petty offenders, although the total number of crimes against property, both serious and petty, increased after 1900, reaching a peak in 1908. For example, the average number of persons sentenced to Penal Servitude in Scotland reached an all-time low of 74 between 1901 and 1906, down from 432 in the 1850s. The rate increased between 1906 and 1911 but only to 129, while there was an almost continuous decline in those imprisoned for longer than six months.⁵

Yet the Scottish Prison Commissioners continued to be concerned about the growth of crime. Despite the decline in serious crime there was a steady rise of committals from the low of 17,371 in 1851 to a record of 66,769 in 1901. This increase was unvarying between 1878 and 1897, but committals shot up dramatically by one-third between 1898 and 1901.⁶ This surge of committals particularly disturbed the Commissioners because it exceeded the rise in population: the rate of committals per capita had in fact doubled between 1844 and 1898.⁷ Moreover, Scotland had proportionately two-and-a-half times as many

3. Derek Fraser, "The Edwardian City," in Donald Read (ed.), *Edwardian England* (New Jersey, 1972), p. 58.

4. GB., Parliamentary Papers, Report on Judicial Statistics for Scotland, PP, Vol. 117 (1902). For example in Aberdeen between 1897 and 1901 serious cases proceeded against rose from 75 to 95 while those dealt with in Summary Courts increased from 4,339 to 7,057. In 1901, 4,509 were for those under the influence of liquor while the rest included wife-beating, prostitution and juvenile delinquency. *Ibid.*, p. 10. In 1900 of the 180,000 original charges in Scotland only 2,200 ended up in the High Courts. See A.B. M'Hardy, "The Economics of Crime," *Juridical Review*, Vol. XIV (1903), p. 46.

5. Report on Judicial Statistics, PP, Vol. 100 (1914), pp. 9 and 20 and Appendix 20.

6. *Ibid.*, p. 20 and Table V.

7. Eleventh Report, Prison Commissioners for Scotland, PP, Vol. 41 (1889), p. 856.

imprisonments as England, and nearly twice as many as Ireland.⁸ What troubled the Commissioners was that the largest proportion of committals were for certain petty offenses. More than two-thirds of the prison sentences were imposed for drunk and disorderly conduct, petty assaults, obscene language and breach of the peace. In 1896 these offenses represented 38,173 committals, a figure, observed Commissioners, "more than equal to the whole number of commitments for all crimes and offenses in Ireland."⁹ They were also quick to note that most of these Scottish prisoners were committed for offenses involving drinking.

In their annual reports the Commissioners published short histories of 60 prisoners, supposedly collected at random, that recounted the role played by alcohol in the journey to prison. In 1902-1903, a less impressionistic survey by Dr. Crawford Dunlop, the Medical Advisor to the Commissioners, reconfirmed the hypothesis that "Intemperance rules the conditions which lead to the prison gate."¹⁰ He calculated that only 6 percent of prisoners were teetotalers, and that out of the 280 case histories compiled by 1902, drink had played a major role in 228 instances. In testimony before the Elgin Committee, A.B. M'Hardy, the Chairman of Scotland's Prison Commission since 1886, went so far as to assert that, "of course, there is no crime to speak of at all in Scotland; it is all a question of whisky."¹¹

The Commissioners were aware that the jails were being filled with petty offenders not because of the "falling off of the character" of the population but rather because of the increased number of offenses being tried summarily in the police courts. More arrests were made because new statutory offenses were operative in wider geographical areas, so that even Glasgow's reputation for drunkenness was undeserved.¹² The Burgh Police Acts of 1862 and 1892 reflected this attention given to vagrancy, prostitution and drinking offenses. For example, being drunk and incapable and not under the care or protection of a suitable person was for the first time made a police offense in 1892, punishable by a forty-shilling fine or a month in prison. This penalty was in contrast to the five-shilling fine or twenty-four hour imprisonment previously imposed under the Public Houses Act. The Act of 1892 also allowed magistrates to jail drunkards with three previous convictions in the year, for fourteen days without the option of a fine.¹³ The Police Acts that were applicable to the five major burghs were much stricter than the municipal legislation in England and Wales, which consequently led to larger and more oppressive powers of interference by the police in the lives of poorer citizens.¹⁴ The Commissioners pointed out that before the

8. M'Hardy, "Economics of Crime," p. 52. In the comparable rates were 53 in England, 73 in Ireland and 135 per 10,000 in Scotland. The rates remained high in Scotland as the rate of imprisonment in 1901 was 11.11 per 1,000 of the population to 6.19 in England. Thirty Third Report, Prison Commissioners, PP, Vol. 14 (1910), p. 6. See also Fifteenth Report, Prison Commissioners, PP, Vol. 47 (1893-4), p. 365 and the Report from the Departmental Committee on habitual offenders, Vagrants, Beggars, Inebriates, and Juvenile Delinquents, PP, Vol. 37 (1895), p. 10.

9. Nineteenth Report, Prison Commissioners, PP, Vol. 40 (1897), p. 677. For the Commissioners' anxiety about the rise of committals for petty offenses see Twenty First Report, PP, Vol. 43 (1899), p. 856; Twenty Fourth Report, PP, Vol. 45 (1909), p. 6.

10. Twentieth Report, Prison Commissioners, PP, Vol. 47 (1898), p. 646; Twenty First Report, PP, Vol. 48 (1899), p. 859; Dunlop's report is in the Twenty Sixth Report, PP, Vol. 129 (1903), pp. 213-15.

11. Report from the Departmental Committee on Scottish prisons, PP, Vol. 42 (1900).

12. PP, Vol. 37 (1895), pp. 9 and 61; Devon, "Criminal and Community," p. 65. Devon admitted that more spirits were consumed in Scotland which might produce "more drunks in Scotland" but beer sales in England left "fewer sober." *Ibid.*

13. *Juridical Review*, Vol. 4 (1892), p. 73.

14. G.F.A. Best, "Another Part of the Island," in *The Victorian City*, H.J. Dyos and M. Wolff (eds.) (London, 1973), Vol. I, pp. 389-411. For a full list of offenses see John W. Angus, *A Dictionary of Crimes and Offenses According to the Laws of Scotland* (Edinburgh, 1895).

1860s the police in Glasgow just detained drunkards for their own "protection" and hence many cases never came before a magistrate. Even up to 1873 drunkards who could not pay their fines were released by the police; after this date, however, they had to come before the court.¹⁵ M'Hardy regretted this change and felt that the constabulary should use their common sense by dismissing the cases of drunkards who were sober. Drinking and vagrancy, he thought, "could not be called in any sense immoral acts" and he attacked the principle, established by his predecessor, J. Hill Burton, who insisted every arrest had to be investigated by a magistrate. In London the police released and bound over many drunkards when they were sober, but no summons was issued if the offenders failed to come before the magistrates.¹⁶

Police vigilance was seen to be the most important factor in the increase of arrests. For example, even though there were no new statutory changes between 1895 and 1898, committals in Glasgow increased by one-third, and the arrest rate was significantly higher for drinking offenses than in nearby Govan, which had a more impoverished population and was more exclusively working-class.¹⁷ Both the attitudes of the chief constables and the level of recruitment of the ordinary policeman helped determine the arrest rates. In 1902 the Scottish Office, appalled by the "immense increase" in minor offenders, chastised Glasgow for leading the list of arrests of drunkards in towns with more than 50,000 persons. This reprimand was supported by the Prison Commissioners, who asked the Provost and magistrates why, suddenly, 12,000 persons were arrested by the police for using obscene language in the streets. The Provost replied that the increase in arrests was a reflection of the growing number of persons jailed more than twice in the year. However, the magistrates had warned the police to arrest only petty offenders "as a last measure" when the person "became a positive nuisance or danger to the public or a danger to himself or herself."¹⁸

The result of this increased police activity was that the number disposed of in summary courts rose from 356.6 per 10,000 in 1881 to 421.1 in 1906. The Criminal Statistics, however, commented on the "extreme differences" that existed throughout the country in cases disposed of for drunkenness and disorder, which ranged from 7 per 10,000 in Orkney to 811 in Queensferry. Readers of statistics of arrests and convictions for drunkenness were warned that the different practices prevailing in different parts of the country produced "bewildering differences of the law" throughout Scotland.¹⁹

In their attempt to discourage the practice of sending petty offenders to jail for drunkenness the Commissioners focused their attention on the activities of the police courts as much as on the police. Because there were few trained stipendiary magistrates the summary courts were, for the most part, presided over by untrained Bailies who as aldermen lacked knowledge of both the law and conditions existing in prisons. Prisoners, without any legal advice, in a hurried and depressing atmosphere, were often forced to plead guilty

15. Twenty Fourth Report, Prison Commissioners, PP, Vol. 42 (1902), p. 192.

16. *Juridical Review*, Vol. 14 (1903), p. 46; PP, Vol. 42 (1900), question 4801; PP, Vol. 37 (1895), pp. 7 and 10-11.

17. PP, Vol. 37 (1895), p. 9; Twenty First Report, Prison Commissioners, PP, Vol. 43 (1899), p. 856; Devon, "Criminal and Community," pp. 89-90.

18. John Ure Primrose, Lord Provost Glasgow to Balfour, 18 February 1903, Mitchell Library, E.I. 13 (4). See also Balfour's letter where he remarks, "It remains terribly clear that we are further than ever from getting rid of the huge volume of drunkenness and disorder which marks Scottish statistics so unfavourably as compared with those of other countries." PP, Vol. 29 (1903), Appendix, pp. 260-63; Twenty Fourth Report, Prison Commissioners, PP, Vol. 42 (1902), p. 194.

19. Judicial Statistics, Vol. 104 (1909), pp. 9, 10, 13 and 14; PP, Vol. 37 (1895), p. 11.

to secure an easier sentence. As a result, very few cases were dropped or acquitted and appeals were, for all practical purposes, unobtainable.²⁰ Complaints reached the Scottish Office that the summary criminal system in Scotland was "one sided and unfair," controlled by "vindictive and narrow minded" amateur magistrates. Moreover, when police superintendents acted as Procurators Fiscal, they unduly influenced police constables who were examined as the sole witnesses in the drunk and disorderly cases that crowded the courts on Monday mornings.²¹ A deputation from Glasgow Corporation to Liverpool found that in 1901 that city had a much lower rate of apprehensions and convictions for drunkenness than Glasgow, although the former had more licensed premises per head of the population. These lowered rates were attributed to strict supervision of publicans and the rigid enforcement of the licensing laws. Only after 1900 did the police and the magistrates in Glasgow slowly shift their attention from collaring the drunkards on the streets to regulating pubs and drinking clubs. Closing hours on weekends were enforced to encourage workers to go to work and return home sober with their wages on Saturdays.²² It appears however that the magistrates in Glasgow were loath to convict publicans who served to an already inebriated person; and if even convicted, the penalties were much lower than in England.

This increased number of committals for petty offenses reduced the average stay in Scottish jails from the mid-century average confinement of forty days to a low of 14.5 days in 1893. The average slowly crept back up to eighteen days by 1911, but the large majority of sentences was still for very short periods: in 1906, 50,000 out of the 55,000 committals were for less than thirty days. Once again, Scotland compared unfavourably to England where sentences below three months were much less numerous.²³ M'Hardy argued that these short sentences were "useless or worse than useless" because none of "the old terrors" remained and the conditions in jails were infinitely better than those "found in the squalid dens of intemperance."²⁴

The Commissioners openly despaired that these short sentences could "produce permanent alteration" of the character in prisoners.²⁵ The majority of offenders brought before the police courts for drunkenness accepted their sentences with indifference; and only a small minority of women appeared to have been stigmatized by their neighbours after receiving a prison sentence. Consequently the stay in prison gave the majority of prisoners just enough time to get cleaned up and sobered up, and, perhaps, to perform some

20. See the memo from the Under Secretary of State for Scotland, 23rd July 1900, SRO, HH 60/50; Devon, "Criminal and the Community," pp. 198-209; less than 1 percent of cases heard in Summary Courts resulted in dismissal or acquittal, Judicial Statistics, PP, Vol. 117 (1901), p. 12.

21. Hugh D. Glen to Lord Pentland, 14 September and November 2, 1910, SRO, HH 60/153; Magistrates Subcommittee, 20 November 1899, Minutes, Mitchell Library E 1/3 (10). For the depressing atmosphere of the court and poor conditions of the police cells see "The Mill for Minor Offenders," *The Scotsman*, 19th November 1919 and PP, Vol. 42 (1900), questions 3,992 to 4,024. For warnings against irregular and oppressive procedure in police courts see R. W. Renton, *Procedure and Appeal in Summary Criminal Cases in Scotland* (Edinburgh, 1890), pp. 63-69.

22. Report of the Glasgow Subcommittee on Licensing Visit to Liverpool, Mitchell Library, DTC 6/520; 1-15, Magistrates Minute Book, 12 November 1900, E 1/3 (12); *Juridical Review*, Vol. 14 (1903), pp. 59-67 and 409-11; Inspector of Constabulary for Scotland to the Secretary of State for Scotland, 26 October 1907, SRO, HH 4/70.

23. PP, Vol. 37 (1895), p. 6; Sixteenth Report, Prison Commissioners, PP, Vol. 44 (1894), p. 420; Thirty Sixth Report, PP, Vol. 14 (1913), pp. 790-92.

24. M'Hardy, "Economics of Crime," p. 55.

25. Eighteenth Report, Prison Commissioners, PP, Vol. 44 (1898), p. 420; PP, Vol. 42 (1900), question 4801.

very basic menial labour.²⁶ The best evidence that “the humbler classes” experienced “no punishment at all in imprisonment” was their speedy return to the pub as soon as they were turned out of prison. The worst loafers and drunkards, unable to secure employment, soon found trouble and were quickly back in prison.²⁷ M’Hardy, who held the traditional view that prisons should be both reformative and punitive, was distressed that they had become mere “receptacles for many of the mentally and physically infirm”. He felt that the practice of using prisons as “short, though frequent, resting places of the habitual drunkard...indicated an incomplete development of our social life that will be probably corrected in the future.”²⁸

The Commissioners were proud that hard and unproductive labour had been abolished in Scotland, but the volume of short-stay prisoners had threatened to ruin their alternative policy of training in industrial skills. This program, based on work shop production, was impossible to institute for short-term prisoners who obviously could not receive protracted instruction in a trade. These prisoners seemed to be a pure economic drain on the state because they deprived society of the value of the labour they might have performed as “industrious free men and women.”²⁹ It was just as difficult and pointless for prison officials to provide educational instruction for short-term prisoners as it was to find suitable employment for them. Despite the high rate of illiteracy among short-term prisoners, the Commissioners developed a policy that reserved instruction for younger prisoners undergoing sentences longer than six months.³⁰

The high rate of committals for drunkenness and other petty offenses posed innumerable administrative difficulties for the Prison Commissioners, who complained that these prisoners, lacking suitable employment, were lazy and disruptive. Assuming that drunkenness resulted from laziness, the Commissioners thought the most fitting punishment for these would be setting them to work building roads and digging ditches, while housing them in camps where the discipline was less severe than in prison. The provision of suitable labour would prevent prisoners from lying in bed for over ten hours at a time.³¹ Discipline was not, however, a major concern as most of the prison population was tractable and pathetic rather than violent and anti-authoritarian. These prisoners submitted to discipline and few attempted assaults on officers. By 1900 it seemed safe to restrict the use of handcuffs in all prisons in Scotland where corporal punishment had been abolished long ago.³²

The flood of short-term prisoners did place a great strain on prison accommodation, particularly between 1898 and 1900, when there was a constant succession of prisoners who were “here today and gone tomorrow.” Critics in the late 1890s held the Commissioners responsible for this overcrowding which resulted in the need to associate prisoners in the Glasgow area before they could be transferred over a considerable distance to Perth. In response, the Commissioners pleaded with the authorities to keep people out of jail,

26. PP, Vol. 42 (1900), questions 550, 961, 2790, 3863, 4427, 4801, 5008-10; Devon, “Criminal and Community,” pp. 259-65.

27. PP, Vol. 42 (1900), 32 and questions 103, 107, 115, 1059, 4710.

28. A.B. M’Hardy, *Notes on American Prisons* (Glasgow, 1901), p. 38.

29. M’Hardy, “Economics of Crime,” p. 53.

30. Eleventh Report, Prison Commissioners, Vol. 41 (1889), p. 297; see also M’Hardy’s response to the recommendations of the Gladstone Commission, 15th April 1896, Scottish Record Office, HH 57/76.

31. PP, Vol. 42 (1900), question 9291; Fourteenth Report, Prison Commissioners, PP, Vol. 39 (1911), p. 952.

32. PP, Vol. 42 (1900), p. 291; Eighteenth Report, PP, Vol. 44 (1896), p. 821; Twenty Third Report, PP, Vol. 32 (1901), p. 783.

because transfers caused difficulties at railway stations with "unseemly crowds." Prison officials also resented the increased work involved in double registrations, especially those transfers who were eligible for release because their fines had been paid back home.³³ The Commissioners also resisted the idea that short-term prisoners should be sent from local jails to Perth where there was accommodation, because they claimed that long-term prisoners were needed in every jail to help maintain these institutions. The Commissioners were willing, however to send some long-term prisoners to work at the convict prison at Peterhead which housed a dwindling number of convicts in the 1890s, but this suggestion was rejected by the Scottish Office, which bluntly felt "...the Peterhead works are for the prisoners and not the prisoners for the works."³⁴

The transfer of prisoners from the urban areas ran against the major lines of policy established by the Commissioners since 1878. Their objective had been to reduce the fifty-seven smaller prisons dotted over the country and establish nine larger district prisons on mainlines near the major centres of population. This process of consolidation had reduced Scotland's prisons to fifteen by the 1890s. In order to accommodate 99 percent of the prison population that was drawn from south of the Moray Forth, new prisons were constructed during the late-Victorian period in Aberdeen, Dumfries and at Barlinnie in Glasgow. The district prisons housed prisoners from the immediate area so they could keep up family ties and accommodate the rising number of drink-related offenders.³⁵ It was the further increase of committals by 1900 in this category, however, that forced the Commissioners to suggest the construction of a new prison on Clydeside. Despite the lack of enthusiasm and the delaying tactics by the Secretary of Scotland, a new prison was eventually opened at Greenock in 1905 to relieve pressure on accommodation.³⁶

This pressure of increased committals led to understaffing in the prison service. Complaints by the staff in the 1890s about long hours, poor pay and paltry benefits led to a department inquiry into the service in 1892. Another report in 1896 stressed that warders' duties were more arduous in Scotland because of the large number of drunkards in prison. This larger number of drunkards also meant that warders were prevented from giving them any individual attention. The result was a rapid turnover in staff which led to the additional expense of training new warders on probation. The burden placed on the staff remained evident throughout the 1900s as inquiries revealed warders working long and irregular hours. Only in 1906 did the Commissioners believe that there were sufficient supervisory staff to permit prisoners to stay up beyond nightfall for reading and recreation.³⁷ Medical officers were also often overworked, particularly on Monday morning, when they had to examine large numbers of prisoners convicted in the police courts. Nevertheless the workload of the medical officer was increased, as the majority of prisoners were not con-

33. PP, Vol. 42 (1900), pp. 107-08 and questions 339, 349, 388, 1460, 4685.

34. Prison Commissioners to the Under Secretary for Scotland, 17 October 1900, SRO, HH 60/108. M'Hardy tried to convince the Scottish Office that the overcrowding was exceptional and short lived but 1800 transfers went to Perth from Glasgow in 1901. See Twenty Fourth Report, PP, Vol. 47 (1902), p. 194, Moncrieff's memo, 22 February 1899, SRO, HH 57/79. The labour pool at Perth was originally to be 500 convicts but only 179 remained in 1899, M'Hardy, Memo on Revised Draft Prison Bill, April 1, 1899, *Ibid*.

35. First Report, Prison Commissioners, PP, Vol. 34 (1878-9), pp. 189-90; Eleventh Report, PP, Vol. 41 (1889), p. 305.

36. See SRO, HH 57/75.

37. See the petitions and correspondence in SRO, HH 57/42 and 44 and Stuart Johnson's and James Taylor's report in 1892. See SRO, HH 57/40; Report on the Warder Staff by Major Willis's Committee to the Prison Commissioners, 30 October 1896, SRO, HH 60/105; Report on Warder Hours of Duty and Circular from Prison Commissioners to Governors, 2 April 1906, SRO, HH 57/40.

sidered serious criminals but just drunkards “of whom when sober are good natured, law abiding and kindly.”³⁸ A doctor was included as a permanent Commissioner after 1900 as the result of the recommendations of the Elgin Committee.

The Commissioners’ response was twofold when confronted with the large number of drunkards in Scottish jails. They slowly developed a new theory of the causes of these offenses and supported new policies of treatment that were more in accord with these new causal explanations. Instead of assuming the drunkard sent to prison was a rational and autonomous individual capable of free choice, the Commissioners began to articulate, often in medical terminology, that wider environmental and social forces conditioned the behaviour of these offenders encumbered by poverty and illness. Prison chaplains and the Commissioners in the 1880s were willing to offer purely moralistic explanations for the connection between drinking and crime, claiming that because drunkards were too lazy to work diligently, they were forced to engage in illegal activity. However, by the 1900s there were signs that the Commissioners better appreciated the complexity of the problem. They had no hesitation in connecting drinking with parental neglect and in concluding that bad parents would rear a future generation of criminals and drunkards. Society should, they concluded, remove young children who were under the custody of habitual drunkards and child abusers.³⁹ Moreover, M’Hardy was willing to admit that a large number of persons convicted for drinking offenses were “as good as myself” and possessed good and rational sense when sober.⁴⁰

Although many of the offenders brought before the courts were drawn from a wide range of the working classes, the majority of committals came from the ranks of the casual poor. These men and women had a little extra money to spend in periods of prosperity but not enough to pay the fines levied on them. Half of those committed for being drunk or for disorderly behaviour called themselves labourers, “simply because they have no specific knowledge of any handicraft or regular employment.”⁴¹ Two-thirds came from labourers who were bound up with the very complex pattern of seasonal work that existed in Glasgow between 1890 and 1914. A broad spectrum of occupational groups were subject to fluctuations that offered little employment between November and March. Additionally this casual labour market was adversely affected by downturns in the economy and by competition from workers in more skilled trades. J. Treble has concluded that: “For many of Glasgow’s citizens who followed a seasonal occupation, seasonality of employment meant a perpetual struggle to keep themselves and their families above the poverty line.”⁴²

This unskilled “reserve” of labour, lived in miserable conditions in the city centre or near the docks. Among this “residuum” whose hard drinking had left them with feeble bodies and unsteady habits were the least likely to find regular employment and were labeled the “unemployable” or the “loafer class.” There were, however, solid socio-economic reasons that produced poverty in this unskilled group who consequently received low wages and suffered from chronic underemployment.⁴³ By 1912, James Devon, the former medical

38. William Donaldson, Secretary to the Prison Commissioner, PP, Vol. 42 (1900), question 4812.

39. Nineteenth Report, Prison Commissioners, PP, Vol. 40 (1898), p. 677; Twenty Sixth Report, PP, Vol. 29 (1903), pp. 173-4.

40. PP, Vol. 42 (1900), question 9960.

41. Twenty Ninth Report, Prison Commissioners, PP, Vol. 31 (1907), p. 710.

42. J.H. Treble, “The Seasonal Demand for Adult Labour in Glasgow, 1890-1914,” *Social History*, Vol. 3, No. 1 (1977), p. 58.

43. J.H. Treble, “The Market for Unskilled Male Labour in Glasgow, 1891-1914,” in Ian MacDougall (ed.), *Essays in Scottish Labour History* (Edinburgh, 1978), pp. 116-34; J.H. Treble, “Unemployment and

officer at Barlinnie jail in Glasgow and now a Prison Commissioner, had recognized this fact. Devon emphatically denied that drink caused poverty and crime and suggested instead that most petty offenders were in prison because of their squalid and deprived environment. Individuals without families or jobs soon became destitute and ran foul of the law. Devon sought the explanation of crime specifically in Glasgow's over-crowded slums, especially as these areas lacked any recreational facilities other than the pubs.⁴⁴

The Commissioners did note that fully one-third of these offenders were Irish. This group often performed the lowest paid casual jobs and lacked the protection of friends and family, and therefore found themselves more frequently in the police courts than other segments of the population.⁴⁵

The other Commissioners drew some tentative connections between the casual labour market and committals to prison for drunkenness. They remarked that committals did increase in times of general prosperity, such as 1898, 1902, 1911 and 1912, particularly when young unskilled workers received high wages. Conversely in times of trade depression, when there was less money in the hands of the unskilled working class, the prison population dropped. This formula was reversed only in 1908 when the Commissioners noted an exceptional rise in committals that coincided with the depressed state of the economy.⁴⁶

The seasonal pattern of committals also attracted the attention of the Commissioners. Usually the prisons were fullest in July and the summer months and most empty in the winter after January. If the weather was good and there was a strong demand for outdoor labour, committals would remain high into the autumn until the mild weather ceased. On the other hand, very cold winters would depress the labour market and the jails would be relatively empty. This seasonal pattern of committals for petty offenses was disturbed on Fair days and New Year's Eve, occasions when it was observed that "when the wage earning class possess more money it is too often in a certain proportion of cases unprofitably spent in drinking to excess, and in giving drink to loafers and other idle people."⁴⁷

Year after year, the Commissioners' Reports published elaborate graphs to prove that prison committals were highest only when the numbers receiving relief from the Poor Law were at their lowest. Officially unskilled workers were not supposed to get unemployment relief if they were able bodied. However, after 1900 the poor houses accepted a sizeable number of them if they could produce a medical certificate or claim "disablement" under the rubric of "general debility." In many respects the poor houses resembled the prisons: homeless alcoholic men passed in and out of both institutions at an increasing

Unemployment Policies in Glasgow, 1890-1905," in Pat Thane (ed.), *The Origins of British Social Policy* (London, 1978), pp. 149, 152, 161 and 166-67. Falling real wages and the great economic pressures facing the unskilled worker in the casual trades is discussed by T.R. Gourvish, "The Standard of Living, 1890-1914," in Alan O'Day (ed.), *The Edwardian Age: Conflict and Stability* (London, 1979), pp. 30-31.

44. James Devon, *The Criminal and the Community* (London, 1902), pp. 68-82.

45. Twenty Ninth Report, Prison Commissioners, PP, Vol. 31 (1907), p. 711. There were 1,225 Irish, 143 English and Welsh, 1,666 Scots and 29 from other countries in prison on December 31st, 1900. "A majority of prisoners dealt within Glasgow Police Courts are not Glasgow-born; and this holds true of outlying towns. It is the stranger who is the 'bad one'." Devon, "Criminal and Community," p. 95 and Chapter III.

46. PP, Vol. 42 (1900), questions 1460 and 1466; Twenty First Report, Prison Commissioners, PP, Vol. 48 (1899), p. 857; Thirty First Report, PP, Vol. 45 (1909), p. 599; Thirty Second Report, PP, Vol. 45 (1910), p. 742.

47. PP, Vol. 42 (1900), questions 513, 2316; Twenty First Report, Prison Commissioners, PP, Vol. 48 (1899), p. 857; Twenty Fifth Report, PP, Vol. 32 (1901), p. 732. During Fair Week in Glasgow there were about 1,500 arrests per year between 1897 and 1906. Committee of Magistrates, Minutes, Glasgow. Mitchell Library. E.1.13 (17), 30 July 1906.

rate.⁴⁸ The Commissioners were particularly concerned about these habitual offenders, whom they regarded as “loafers” and “vagrants” as distinctly different from the skilled working class. The Committee on Habitual Offenders in 1895 remarked that, although the recommittal rates for this group were not climbing faster than the population, the number of offenders convicted more than ten times was rising rapidly. This so-called “incorrigible class” was constantly subjected to statistical analysis to demonstrate that their numbers were on the increase and that they represented an unnaturally large percentage of the prison population. In 1901, for example, out of the 60,500 committals to prison only 41,600 separate individuals were sent to jail. Although the reconviction rate of those imprisoned more than twenty times reached its apex in the late 1880s, such convictions remained very high through the Edwardian period.⁴⁹

The type of inmate that became common in Scottish jails posed problems for the medical authorities in prisons. There was a high death rate among drunkards during the first three days of imprisonment. In 1899, in response to the deaths of several alcoholic women, the Elgin Committee recommended that postmortems be carried out automatically. The Committee, which concentrated on the availability of medical facilities in prison, concluded that trained nurse warders were adequate to deal with the majority of non-hospital cases and ruled against bringing in trained nurses from the outside.⁵⁰ Local magistrates were also warned by the Scottish office that police surgeons should perform serious examinations to screen out sick and moribund prisoners. This advice was not followed and alcoholics, after drying out, were brought as soon as possible from the poor house to face charges: many prisoners had to spend their entire sentences in prison hospitals.⁵¹ Medical officers strongly recommended that drunkards be given a more substantial diet that would prevent depression and fortify them when they resumed drinking on an empty stomach soon after their release.⁵²

M’Hardy saw prisoners not as vicious criminals but rather as the victims of a “horrible disease” who should be regarded as “sick.” He went as far to suggest that compared to the middle class the poor had imperfectly developed physical and mental characteristics, thus were more susceptible to the “toxic effect of fatigue.” This weakened state, in turn, made them prone to “moral insensibility” and “loss of inhibitions...which goes a long way to explain why many workmen have periodic drinking bouts.” These prisoners, he felt, deserved to be helped by responsible persons, employed to look after “those physically, morally and medically ill in conditions that are not squalid.”⁵³

It was also clear that many offenders convicted of breach of the peace, and other drink-related offenses, were weak-minded. In a departmental report in 1901, James Dunlop noted the current trend to look at the mental state of the prisoner in view of possible treatment

48. Ian Levitt, “The Scottish Poor Law and Unemployment, 1890-1929,” in T.C. Smout (ed.), *The Search for Wealth and Stability. Essays in Social and Economic History Presented to M.W. Flinn* (London, 1979), pp. 264-69.

49. PP, Vol. 37 (1895), pp. 50-51; PP, Vol. 42 (1900), pp. 20-21 and 28. Recommittal rates for drunkenness were particularly high in 1903 when out of the 43,000 committed for that offense only 15,000 were new offenders and 2,500 had been convicted to prison between 20 and 50 times before.

50. PP, Vol. 42 (1900), pp. 102-103, questions: 99-103, 418, 1377, 1560, 1983, 4644, 4655.

51. Circular from the Scottish Office to Burgh Prosecutors, 31 December 1909, SRO, HH 57/205 and M’Hardy’s memo, 18 September 1886, *Ibid.* See also Magistrates Minutes, 26 November 1900, Mitchell Library, L 1/3 1900 (12).

52. PP, Vol. 42 (1900), questions: 942-47, 4948-60.

53. PP, Vol. 42 (1900), questions 118, 962. Also M’Hardy’s comments SRO, HH 60/116, p. 6.

"rather than on the punishment of crime itself." Many weak-minded prisoners not ill enough for detention and treatment in an asylum found themselves constantly in and out of jail. Dunlop recommended the development of state institutions for this class of prisoner so that they could be segregated from society while being kept out of prisons. At the same time M'Hardy urged the prison staff to provide more individual treatment that would enable them to recognize mentally deficient prisoners. Warders were encouraged to continue their close working relationship with the prison medical officer and gain some rudimentary knowledge of experimental psychology.⁵⁴

The recognition that the prison population was no longer composed of hard-core criminals but often with social derelicts who failed to profit from imprisonment, led the Commissioners to reevaluate the type of treatment for these offenders. The Commissioners endorsed a wider range of sentencing policies which stressed rehabilitation that was not solely retributive or prison centered and included the provision of therapeutic treatment in specialized institutions. These more progressive welfarist innovations met resistance from the police court magistrates who still favored prison as the primary instrument for imposing formal legal equality and punishment on offenders who the magistrates assumed were responsible for the crimes committed.

This search for the appropriate treatment and punishment of habitual offenders, particularly drunkards, was given considerable attention in Scotland in the 1890s. The Committee on Habitual Offenders in 1893 recommended that any person convicted more than four times in any one year should receive a minimum sentence of one year on a labour settlement. This plan to reduce the regular prison population was in accord with the suggestions of the more conservative prison officials that habitual drunkards be given progressively longer sentences "to put a stop to the disgraceful condition of the streets on Saturdays in Glasgow."⁵⁵ The idea of self-supporting labour camps was shelved in favour of state-certified Inebriate Reformatories, already established for non-criminal drunkards. The Commissioners in 1898 endorsed legislation that was considered to be a panacea for the treatment of drunkards who were undeterred by short sentences. Habitual drunkards were to be sent to these reformatories for up to three years after they had completed a prison sentence. It was hoped that prolonged seclusion and abstinence would cure the inmates. Treatment at these institutions was to be paid for out of fines collected by the courts from petty offenders. This legislation was only rarely used by the magistrates, and only then, mainly to send to the institutions a small number of women convicted for prostitution or child cruelty. The courts were reluctant to shut away male breadwinners for up to three years. More important than the lack of support from the magistracy was the quick recognition that the reformatories failed to rehabilitate drunkards.⁵⁶ A departmental committee in 1909 alluded to the waste of public funds and the "serious scandal [that] exists in the recurring admission to prison," although they still advocated some means of removing chronic drunkards who were "a source of disorder and social contamination."⁵⁷ The

54. PP, Vol. 42 (1902), Appendix XXIX, SRO, HH 60/116, p. 7.

55. PP, Vol. 42 (1900), questions 1518, 1771, and PP, Vol. 37 (1895), pp. 21-22 and 29.

56. Patrick M. McLaughlin, "Inebriate Reformatories in Scotland, 1902-1921: An Institutional History," unpublished paper presented at the Conference of the International Group for Comparative Alcohol Studies, Berkeley, 2-5 January 1984. Other studies include Roy M. MacLeod, "The Edge of Hope: Social Policy and Chronic Alcoholism 1870-1900," *Journal of the Social History of Medicine*, July 1967, pp. 215-45 and C. Greenland, "Habitual Drunkards in Scotland, 1879-1918: A Historical Note," *Quarterly Journal of Studies on Alcohol*, 21 (1960), pp. 135-39, and Twenty Ninth Report, Prison Commissioners, PP, Vol. 31 (1907), p. 715.

57. Thirty Second Report, Prison Commissioners, PP, Vol. 41 (1910), p. 748.

Commissioners were blamed for having accepted the expert testimony of doctors and other public officials without examining whether alcoholism was primarily a physical and mental disease or the consequence of wretched social conditions. The establishment of the reformatories remained an option for the local authorities and lacked the strong support of the government. The few institutions built were often discontinued by local authorities and the remainder held only a handful of female inmates by the end of the First World War.⁵⁸

In the 1890s the Departmental Committee on Habitual Offenders was appalled to learn that 35 percent of all prisoners were incarcerated in default of fines. Drunkards, in particular, frequently were unable to pay the fines that would have kept them out of jail.⁵⁹ The Commissioners, who were conscious that Scotland lagged behind England, supported legislation in 1899 that allowed prisoners to pay a proportion of their fine to secure early release from prison. Citing the success of an experiment at Greenock in 1895, M'Hardy was optimistic that this legislation would reduce the prison population. He was convinced that the "low working class" in "the prime of life" but still of "the wage earning class" could take advantage of the legislation.⁶⁰ The results, however, were only moderately encouraging as 8,129 prisoners in 1900 paid part of their fines to secure early release and the total had only reached 9,267 by 1907. In contrast, the numbers sent to prison in default of fines in the same year had risen to 47,566.⁶¹ The Prison Commissioners were critical of the police court magistrates for imposing high fines on men and women "pretty far down" the social scale who had practically no means to pay the penalties. In fact, this social class lacked respectable friends or relatives to pay the fines or any means of amassing savings out of their very low wages. To prove that fines were extremely high in Scotland, the Commissioners observed that in 1901 in Ireland 81 percent of the offenders avoided prison by paying their fines while in Scotland only 45 percent were able to do so.⁶²

In order to remedy this situation the Summary Jurisdiction Act of 1908 encouraged the magistrates to give prisoners a reasonable amount of time to pay their fines; this measure reduced by 25 percent the number sent to prison in default of fines.⁶³ The effectiveness of the legislation was hampered by the assumption of some magistrates that installments were not acceptable. The Scottish Office and the Commissioners urged the police courts to interpret the statute broadly and to accept partial payments at any time from offenders.⁶⁴

The Commissioners' dissatisfaction with the policy of the magistrates in the years before the First World War went beyond the interpretation of legal technicalities. In 1909, 41,193 persons were imprisoned — 45 percent of all those awarded fines with an option of prison. It was clear to the Commissioners that a labourer or charwoman who earned 18s

58. McLaughlin, "Inebriate Reformatories," pp. 40-42; Devon, "Criminal and Community," pp. 273-83. In 1912 only 26 women, mainly drunken child abusers, were sent by the courts to Inebriate Reformatories, Thirty Fifth Report, Prison Commissioners, PP, Vol. 38 (1913), p. 524.

59. PP, Vol. 37 (1895), pp. 16, 18. The magistrates had a wide range of options open to them other than sentencing petty offenders to prison, such as probation, security for good behaviour, fines or admonishment. See Henry Hilton Brown, *The Principles of Summary Criminal Jurisdiction* (Edinburgh, 1895), pp. 163-84.

60. SRO, HH 57/82 and 97.

61. Twenty Fifth Report, Prison Commissioners, PP, Vol. 29 (1903), p. 267; Twenty Ninth Report, PP, Vol. 31 (1907), p. 710. Judicial Statistics, PP, Vol. 100 (1914), p. 20.

62. Twenty Fourth Report, Prison Commissioners, PP, Vol. 47 (1902), p. 192. In Ireland 144,000 out of 164,000 persons charged paid their fines while in Scotland only 83,000 out of 127,000 were able to do so; Twenty Fifth Report, PP, Vol. 29 (1903), p. 173.

63. See W.G. Scott to the Secretary for Scotland, SRO, HH 60/161; Thirty Third Report, Prison Commissioners, PP, Vol. 39 (1911), p. 850.

64. Prison Commissioners to the Under Secretary for Scotland, 6 September 1913, SRO, HH 60/160.

to 25s per week could not afford a 7s 6d fine for breaking the peace and consequently would have to serve five days in jail in lieu of paying a fine. A six-penny fine for each day in prison was the reasonable rate suggested by the Commissioners who believed any heavier fine would cause serious deprivation for the offender's family. The Commissioners concluded that the underlying intention of the magistrates was to send this class of offenders to prison by setting payments far beyond their means. The scale of high fines based on custom was attacked for its "apparent equality" which led to a "gross inequality of punishment."⁶⁵ To prevent the filling of prisons with casual offenders a Scottish Office circular in 1912 reminded magistrates in summary courts to provide sufficient time for the payment of fines.⁶⁶

The Criminal Justice Administration Act which came into operation in 1915, finally required magistrates to allow seven days for payment of fines and even urged that further extensions be granted to young persons. Youthful offenders could be placed under supervision until the fine was paid and a report was presented to the court on the status of the offender. A further attempt to prevent committals to prison was made by allowing money found on the offender to be applied towards the fine. An old system of uniform fines was abolished as the Scottish Office recognized that the severity of the punishment varied with the ability to pay. Hence magistrates were asked to take into consideration the means of the offender before fixing the amount of the fine.⁶⁷ Despite the greater flexibility demanded by this legislation, throughout the war years reports reached the Commissioners that magistrates were unwilling to give drunkards enough time to pay their fines as they were eager to send these offenders to prison.⁶⁸

After the passing of the Probation Act in 1907, the Prison Commissioners urged that magistrates use probation as an alternative to sentences and fines. However, probation was used for a minority of cases before 1913 because the conditions were not clearly specified and many local authorities failed to provide probation officers.⁶⁹ In the few areas where they were used, the probation officers were regarded with suspicion by the poor and were overwhelmed by a heavy case load. The Commissioners, impressed by the use of probation in the United States of America, and by an experiment in Dundee, were frustrated and disappointed by the magistrates' unwillingness to expand this option. The Commissioners suggested that offenders should be forced to attend the police court outside of working hours so that their recreation, drinking, and conduct could be supervised. The Commissioners hoped that probation officers, paid by the Treasury, would keep a close watch on the parolees, who could be returned to prison for long sentences if they persistently ignored the conditions set out for them.⁷⁰

65. Thirty Third Report, Prison Commissioners, PP, Vol. 39 (1911), p. 850.

66. Scottish Office Circular, 1912, SRO, HH 60/160. For example in Glasgow in 1911: 24,090 persons were fined, 11,548 paid before prison, 3,251 during their sentence, 1,073 failed to pay, 880 took advantage of the time to pay but 8,213 were sent to jail for the whole period as they could not pay. *Ibid.*

67. See SRO, HH 60/272.

68. D. Combie to the Prison Commissioners, 19 Feb. 1917 and Dr. Devon's memo 13 March 1917, *Ibid.* The only valid reason for not awarding an option of a fine was that the offender had no fixed abode. The Scottish Office noted this was harder to check on with the great influx of workers into Glasgow in the war years.

69. Devon, "Criminal and the Community," pp. 315-20; Thirty Second Report, Prison Commissioners, PP, Vol. 40 (1910), p. 743. Only 2,510 persons were placed on probation in 1908 out of the 179,904 proceeded against this had only risen to 2,787 by 1912.

70. Report to the Secretary for Scotland on the Proceedings of the 8th International Penitentiary Conference by W.G. Scott, PP, Vol. 76 (1911); W.G. Scott to the Under Secretary of State for Scotland, 5 December 1913, SRO, HH 60/161; Thirty Second Report, PP, Vol. 40 (1910), p. 743.

II

As a result of the high rate of committals in Scottish prisons for drunkenness, the Commissioners began to question traditional interpretations of the motivation and circumstances that lay behind these offenses. They also searched for alternative modes of punishment as it became increasingly obvious that imprisonment was neither an effective nor a suitable sentence for these offenders. Consequently, the Commissioners urged the police magistrates to keep drunkards out of prison by resorting to fines and probationary sentences and incarceration in Inebriate Reformatories. These officials, faced with administering a system flooded with petty offenders, often clashed with a magistracy that, as often as not, continued to operate without much heed to the new legislative options at their disposal. This tension between the Commissioners and magistrates was paralleled by the long campaign conducted by the former to keep children and young persons out of jail between 1880 and 1914. Strenuous efforts were made to send juvenile offenders immediately to industrial and reformatory schools as soon as they arrived at a prison but some magistrates, acting in their capacity as Prison Visitors, placed pressure on prison governors not to transmit information concerning the incarceration of children on to the Scottish office. However, after the Children's Act in 1908, fewer young persons convicted of petty offenses and no children under fourteen, were sent to prison in Scotland. In order to jail youths between fourteen and sixteen, a special certificate had to be obtained, demonstrating they were out of control and unsuitable for a remand home. The Commissioners realized that by keeping these special populations out of prisons, a great deal of money could be saved and the deterrent value of prison sentences would be restored. They further believed that if these groups needed treatment or control, they should be sent to specialized facilities removed from the general mixed prison.⁷¹

This experience of administering a prison population largely composed of men and women who were not hard-core criminals necessitated the Commissioners' revision of the opinion that all offenders were in prison as a result of their own free will. It was slowly recognized that drinking was not a vice caused by a lack of self control or a defective character. The Commissioners pointed to the moral culpability of parents for establishing a pattern of drinking. They also began to see uncontrolled drinking not just as the responsibility of the individual but also as a disease to be treated by experts. This shift away from a purely punitive to a medical approach to these petty offenders was accompanied by an increased appreciation of the wider societal forces operating on drunkards before they came before the police magistrates. Although only a rudimentary connection was made between drink-related imprisonments and the crisis in the casual labour market before 1914, the majority of the Commissioners did begin to draw the connection between drinking and poverty and the overcrowded urban environment.

Expert opinion also linked the casual system of employment to juvenile crime. Poverty pushed the young on the streets to become message and newspaper boys, employments that blocked off future prospects and that led to the "frequent possession of

71. Prison Commissioners to the Secretary for Scotland, 24 October 1889, 7 July, 31 August, 26 October 1894, HH 60/97; magistrates seemed willing to send juveniles to short sentences in police cells in lieu of prison proper. The Commissioners received this alternative only with reservations as they were aware of the poor conditions and inadequate facilities in these lock ups. Very young persons would often have to spend time in overcrowded cells with drunks. PP, Vol. 42 (1900), questions 3993, 4008, 4767. M'Hardy was only willing to condone the use of these cells because he did not want to have more people in prison.

money [that] hastens moral corruption." The Scottish Office was told, "the problem is not and should not be a prison problem."⁷² M'Hardy, although critical of European penal theorists' failure to establish "some of their dogmas on sufficient foundation," was cognizant of Enrico Ferri's work that connected bad environment and poor social organization with criminal behaviour. Consequently, he was willing to say that the work of European criminologists had produced a positive change in attitudes towards criminals and, as we have seen, his staff was urged to pursue individualized treatment and to be aware of the psychological condition of the prisoners.⁷³

These tentative moves toward a more environmental and determinist evaluation of criminality did not convince administrators in Scotland to embrace the idea of the "criminal ne" propagated by Cesare Lombroso. M'Hardy asserted that the public in Scotland would remain suspicious of these ideas and never accept any theory that blatantly struck "at the root of free will." Moreover there was little interest in Scotland in interpretations that linked criminal behaviour to physical characteristics or heredity. Nevertheless, M'Hardy was forced to admit to the irony that the idea: "of 'the born criminal' does not seem far from the Calvinist doctrine of Election — the only difference apparently being that Calvin could not indicate the elect and the non-elect, while Lombroso says he can point out some of those who are not of the elect."⁷⁴

It could be argued that the more reformist and flexible stance towards the imprisonment of petty offenders by the Commissioners was in keeping with the general tone of Scottish prisons before 1914. These prisons were not included in the investigation of English prisons by the Gladstone Committee in 1895, which was very critical of the conditions, management and treatment of prisoners. The Commissioners, when asked by the Scottish Office if they felt that the recommendations of the Gladstone Report were applicable to Scotland, replied, with considerable smugness, that their system was superior and needed little change. They pointed out that prison rules had remained unchanged in England since 1876, while in Scotland they had been revised several times because the Secretary for Scotland was not bound by an Act of Parliament. The Scottish system was praised for having abolished unproductive labour and corporal punishment (outside of convict prisons) and for using solitary confinement very sparingly at the beginning of long-term sentences. As a result, Scotland was exempted from the Prison Act of 1898, which made some attempt to rectify some of the problems exposed by the Gladstone Report.⁷⁵

Scottish prisons, however, did not escape criticism at the turn of the century. Allegations made in 1899 about the poor hospital treatment, homosexuality, overcrowding and inadequate facilities for juveniles in prisons led to the inquiry by the Elgin Committee. This Committee's findings, in contrast to the Gladstone Report on English prisons exonerated the penal administration of all these charges and praised the humane attitudes of the Commissioners. The recommendations, essentially ones of detail, asked for better nursing facilities and for more flexibility in determining which prisoners were to receive treatment in hospitals outside prison. In the decade after the Elgin Report, the Commissioners instigated a program of lectures for inmates, promoted better educational and

72. A. Munro to the Secretary for Scotland, 11 April 1907, HH 60/103. The Scottish Office memoed, "These children are being turned by adverse surroundings into life criminals."

73. M'Hardy to the Secretary for Scotland, 21 June 1906, HH 60/116.

74. *Ibid.*

75. M'Hardy to Moncreiff, 22 February 1899, and the Home Office to Moncreiff, 2 February 1899, HH 57/79; Prison Commissioners to Secretary for Scotland, 15 April 1896, HH 57/76.

vocational opportunities, and relaxed the restrictions on the correspondence and visits received by the prisoners.⁷⁶

One has to be careful, however, not to exaggerate the extent of the spirit of reform or the propensity for change in the Scottish system. It would be unwise to assume that the repressive and disciplinary regime, established in the nineteenth century under the progressively centralized control of the state, was suddenly dismantled.⁷⁷ It has been demonstrated that even the headway in keeping petty offenders out of jail met with partial success only because the magistrates were slow to adopt alternative sentencing. Moreover, the experiment with Inebriate Reformatories was a failure: the isolation of alcoholics in a strict disciplinary environment seemed nothing more than another attempt to separate the respectable poor from the "residuum." Even the Commissioners' attempts to keep juveniles out of prison for trivial offenses meant that they urged the magistrates to whip these boys. This position was taken against the sentiments of the police, the bench, and public opinion which considered birching degrading and demoralizing.⁷⁸ The Commissioners, despite their support of reformatories for juveniles, were skeptical of establishing borstals which were proposed under the Prevention of Crime Act in 1908, that supposedly "cured" young adults. M'Hardy was willing to introduce training divisions with "more distinctly reformatory methods" for any class of prisoner, but he was on principle opposed to indeterminate sentencing "when all the so called 'reformed' prisoner had to do was conform to the regulations." Only after considerable hesitation was the first institution for young adults established at Polmont in 1911.⁷⁹

Up to the eve of the First World War, prisons in Scotland continued to hold a mixture of prisoners not subject to individualized punishment or treatment. Long hours were spent either in separate cells or performing work that was monotonous and unrewarding. The crisis that sent large numbers of petty offenders to jail may have begun to move even the conservative administrators to look in a more welfarist and therapeutic direction. But the prisoners — with heads shaven, stripped of their privacy and dressed in prison garb — received few immediate benefits from the changed climate of opinion that was apparent on the horizon.

76. Scottish Office to the Prison Commissioners, 26 July 1900, HH 60/105.

77. For these developments see David F. Smith, "Scottish Prisons Under the General Board of Directors, 1840-1861," *Albion*, Vol. 15, No. 4 (Winter, 1983), pp. 287-312; Joy Cameron, *Prisons and Punishment in Scotland from the Middle Ages to the Present* (Edinburgh, 1983), pp. 92-123; Lynda Blair (ed.), *Law, Crime and Punishment*, Pamphlet No. 5, Historical Sources for Central Scotland (London, 1982), p. 14.

78. See HH 60/101 on the drafts of a Youthful Offenders Bill in 1899; evidence of magistrates, PP, Vol. 42 (1900) questions 2377-2412, 2440, 2524, 3111-3120; Chief Constable's Report to the Joint Standing Committee of the County of Ayr received by the Scottish Office, 25 July 1899, HH 60/101. In the final version of the Bill in 1901 birching was presented as an option in muted tones and the Home Office was willing to remove it "as the Scotch generally object to whipping as a punishment," George Aitken to Colin Moncrieff, 10 February 1899, HH 60/101.

79. M'Hardy to the Secretary for Scotland, 15 February 1908, HH 57/90.