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THE TREATMENT OF DELINQUENT AND POTENTIALLY DELINQUENT CHILDREN AND YOUNG PERSONS IN SCOTLAND FROM 1866 TO 1937.

by

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ABSTRACT

The treatment of delinquent and potentially delinquent children and young persons has its historical context within the development of the institutions of social control and regulation as they evolved and expanded within the changing role of the state in regulating, guiding and controlling the lives of its citizens. Between the middle years of the nineteenth century and 1937 there was a long process of gradual change from a position where the state took no particular regard of children and their problems to a situation where state intervention was expanding into almost every dimension of the lives of all young persons with a view to their potential as citizens.

As the incoming tide of collectivist welfare policies washed away the foundations of the *laissez-faire* era, the nineteenth century emphasis on 'punishment' was gradually replaced by a priority being given to 'protection and training'. The criminal culpability of the Victorian delinquent was superseded by a new awareness of the social and psychological susceptibility of the twentieth century adolescent. The evolution of a more holistic approach sought to integrate, rather than alienate, wayward youth. Hence, the state took preventive measures in the 'youth labour' problem and in the encouragement of 'organized youth'. The institution of the juvenile courts and their developing expertise 'diagnosed' rather than 'judged' and gave priority to ameliorative methods of treatment within the community rather than to the Victorian emphasis on institutional isolation. Institutional treatment was regarded as a last resort and the systems of training in reformatories, industrial schools and Borstal institutions progressed from a severity of institutional pragmatism to a greater concern for the future integration of individual inmates as citizens.

CHAPTER 1

DEVELOPMENTS IN THE AGE OF '*LAISSEZ-FAIRE*'

The treatment of delinquent and potentially delinquent children and young persons between the middle years of the nineteenth century and 1937 is, essentially, an insight into the development of British social policy and the hesitant extension of the sphere of state action with regards to the social problems created in the wake of rapid industrialization. In the first half of the nineteenth century the sphere of government concern in domestic affairs was limited to law enforcement, public order, the administration of justice, the control of public money and the supervision of the executive power.[1] The gradual involvement of the State in the treatment of youthful offenders and children in need of care and protection originated in an extension of the first three of these traditional functions; namely, those relating to law enforcement, public order and the administration of justice. Therefore, the treatment of delinquent and potentially delinquent children and young persons finds its historical context within the development of the institutions of social control and regulation as they evolved and expanded within, what Eric J. Evans has referred to as, the changing role of the State in regulating, guiding and controlling the lives of its citizens.[2]

1. Ideology in the age of '*laissez-faire*'

As David Garland has argued, the dominant ideology in British society from the middle of the nineteenth century up to the 1880s was based on three 'pillars of wisdom'; namely, classical economics, utilitarian philosophy and evangelical religion (in several conformist and non-conformist versions). These three major foundations gained coherent strength from being united under the general concept of 'individualism' or *laissez-faire*, which influenced all aspects of bourgeois life, 'from economics and philosophy to law and philanthropy'. These

values permeated the organization of the economy, the policies of the State and the practices of its institutions, giving this creed an authority and a prestige which favoured particular social classes.[3] It was believed, as Derek Fraser has explained, that everyday society could be regulated by a moral code which centred on work, thrift, respectability and self-help. For the Victorians, self-help was the supreme virtue and the middle-class pretext for the existence of a *status quo* in which individual effort raised the most competent and industrious to the top, while those who remained at the bottom were regarded as essentially inferior.[4]

State policies represented and legitimized the interests of the dominant middle classes wherein individuals, institutions and business enterprise were permitted to pursue profit unrestricted by government intervention in, for instance, wage or profit levels, hours of labour and so on. In the middle of the nineteenth century the State accepted the obligation to intervene only to the extent of ensuring the efficient and successful operation of the free market or to prevent the evils of monopoly, anarchy or other problems to which a totally unregulated economy was prone.[5] In this context the middle class values of sturdy independence, work, thrift, respectability and, above all, self-help, were universalized through middle class institutions and built into the daily practices and beliefs of all classes through, for example, the writings of the popular moralizers (Samuel Smiles and others). The result was, as Garland explains, an 'institutionalized ideology of individualism, which characterized each person as a free, rational, responsible subject in possession of his self and his destiny.'[6]

The concept of the individual free subject permeated all the philosophical, political, legal, religious and cultural dimensions of life in mid-Victorian Britain. In the political aspect of this ideology each individual (by which the Victorians

meant each British-born male adult) was regarded as a free and equal citizen, in possession of a full series of civil rights - to vote, to own, to contract, to sue, to avoid arbitrary arrest, and so on. The possession of these civil rights was not, however, accompanied by any political or social entitlements. Therefore, a citizen who lacked property possessed all his civil rights but he lacked the power to exercise them. For the non-property owning classes the only civil right they had the power to exercise was to sell the only asset they owned; namely, their personal labour power.[7]

2. Church attitudes

Religion was a factor of extreme importance in the social fabric of Victorian life, although it has to be acknowledged that the religious census of 1851 created consternation among the faithful by revealing the number of empty pews throughout the country.[8] In both England and Scotland the Established Churches and the dissenting churches attempted, throughout most of the nineteenth century to limit their concern to the spiritual and eternal welfare of individuals and not to the social or economic well-being of the industrial masses. They did not challenge the *status quo*, and economic individualism and the hierarchical class structure were not subjected to Christian scrutiny.

One of the most depressing facts of church history in Scotland is, according to Donald Smith, the extent to which the Established Church had, by the end of the eighteenth century, ceased to be 'the church of the people' and had become, by the nineteenth century, an institution that was manipulated by the privileged classes. In the period 1830-1850, while still laying claim to the allegiance of the majority of the Scottish population, the Church of Scotland had, in effect, moved away from popular orientation by accepting the existing

hierarchical social class structure, and demonstrating allegiance to the constitution which guaranteed the special privileges and position of the Established Church and its ministers.[9]

The stance of the Church of Scotland on social and economic questions was defined in the writings of Dr. Thomas Chalmers. He had a commanding influence, not only in the pre-Disruption Established Church and in the later Free Church, but also over the thinking of the Dissenting Presbyterians. For many years after his death in 1847, the influence of Chalmers' teaching on political economy pervaded the whole pattern of church life and work in Scotland.[10] Chalmers was representative of churchmen who were anxious to demonstrate the relationship between *laissez-faire* economic theory and the teachings of Christian morality. Chalmers advocated that there was no better device than political economy for teaching the working classes that their misery and distress in times of industrial depressions, unemployment, the need to work long hours for starvation wages, the constant threat of poverty and destitution were all due primarily to lack of their individual initiative in the adoption of Christian (middle-class) virtues of 'sobriety, intelligence and virtue'. Chalmers and his acolytes attempted to rationalize on moral and religious grounds the laws invented by the classical economists, such as the law of supply and demand, the theory of population, freedom of contract and the 'iron laws of wages'. Consequently, the Church of Scotland took the position of defending and preaching justification for the inequalities inherent in *laissez-faire* economics and the concept of the 'individual free subject', rather than subjecting these values to Christian criticism.[11]

In the first half of the nineteenth century, as Smith has argued, the 'dominant Calvinist orthodoxy' of the period was easily adapted to the individualist tenets of capitalism because this 'theological individualism' stressed in moral and ethical terms the virtues of industry, thrift, sobriety, hard work and honesty; concepts which, in the doctrine of *laissez-faire*, were stated in economic terms. This fusion of moral and economic virtues was enthusiastically adopted by the rising middle classes and preached by the Church.[12]

The attitude of the presbyterian Dissenters in Scotland, the Secession and Relief Churches, and their relationship with the State was quite different from that of the Established Church. They had no vested interest in the *status quo*, in either Church or State, since they received neither state recognition or support. Hence, in the first half of the nineteenth century they retained a far greater degree of freedom of thought and action than was possible in the Church of Scotland. The Dissenting ministers were popularly chosen by their congregations, were paid modest stipends and were more generally of lower class background than the Established or Free Church clergy. Consequently, they remained in closer affiliation with the common people, actively participating in the anti-slavery campaign in the 1830s and the agitation for the repeal of the Corn Laws in the 1840s. However, they tended to regard the State as outwith the concern of the church. Furthermore, none of the Dissenting churches, not even the United Presbyterian Church, formed in 1847, attempted to be a national church in the sense that the Established Church was and the Free Church became. Hence, they lacked a sense of religious paternity for the nation. Surprisingly, the Dissenters, in their contemporary sermons and articles in periodicals, expressed a universal acceptance of the necessity for the hierarchical social class system. They echoed the convictions of Dr. Thomas Chalmers in their belief that - 'if there were no rich with their kindly

charity and benevolence, the spiritual and material condition of the lower orders would be desperate'.[13]

In the second half of the nineteenth century the Church of Scotland continued to look back to the doctrines of the eighteenth and early nineteenth centuries. It remained locked within its position as an established institution whose vested interests in the social order made it defensive and non-progressive with regard to laws, institutions and the preservation of the distribution of power and authority which maintained the *status quo*. Consequently, even as late as 1880 the Established Church had not challenged Disraeli's concept of the 'Two Nations'. The Church continued to teach the lower classes that it was

> their duty to God and to society to accept their lowly position as divinely appointed, and to perform with patience, diligence and industry,without grumbling about class hostility, the humble but honest tasks appropriate to their inferior status.

Attitudes within the Church to the problem of poverty, trade unions and social reform and the theories of classical political economy remained unchanged from what they had been in the 1830s and 1840s. These attitudes were compounded by the growing prosperity and the general optimism of success in the country after 1850, which gave even less reason for doubting *laissez-faire* and the policies of economic individualism.[14]

In the 1850s and 1860s the awareness of the Free Church was only slightly more sensitive than that of the Church of Scotland with regards to the development of political democracy. After the Disruption of 1843 the Free Church, because it had to compete with the Established Church for adherents and approbation, assumed the most inflexible evangelical and orthodox doctrinal position of all the churches. Consequently, there was a tendency to concentrate on spiritual change as the sole means of social betterment, and to neglect the

importance of political and economic change in improving the condition of society. The Free Church was strongly influenced by the belief, which was very pervasive in the Chartist period, that an interest in politics, especially by the working classes, diverted their attention from more urgent personal reform and was damaging to the spiritual life.[15]

Almost every religious denomination had its own charitable enterprises by about the middle of the nineteenth century. In England, the Anglicans emerged from almost total theological isolation and, along with Nonconformists and Roman Catholics, maintained their own independent charitable funds. In 1859 the Jewish Board of Guardians was set up. The religious denominations often provided a source of temporary charity in times of either national or local economic distress. The churches were also behind the development of Visiting Societies, which attempted to span the gulf between Disraeli's 'Two Nations' by personal contact. The Visiting Societies reached out to the lower orders by going to see people in their own homes. To this list could be added a myriad of street, missionary and Bible societies,[16] all of which set their own criteria relating to moral admonition and private forms of discipline (such as the temperance pledge or church attendance) upon applicants who requested their help.[17]

The Scottish churches were very actively involved in home mission work in the period 1850-1880 with, what Smith has referred to as, 'a mixture of evangelical concern, philanthropic zeal and social alarm'. In this period several major nation-wide evangelistic campaigns took place and a great variety of schemes of social improvement and philanthropic effort appeared. The churches preached to wealthy members of their congregations that it was their duty to narrow the social divide between the 'Two Nations' by visiting the poor, teaching

them the Bible, taking an interest in their welfare, giving them advice, unwanted clothing and soup. The middle-class Scottish congregations responded with earnest zeal to their task of improving the spiritual and moral condition and alleviating the physical hardship of the lower classes.

In the 1850s and 1860s all the Scottish churches, but particularly the Free Church, were active in evangelical work among the ever-increasing numbers of the 'lapsed masses' in urban industrial areas. Down-town mission churches, supported and staffed by wealthy congregations, were established in the hope of encouraging the poorest classes to attend a church within their own neighbourhood with a congregation of their own social level. Wealthy industrialists in the west of Scotland supported the extensive work of the Free Church in the wynds and slums of Glasgow. By the 1870s the Free Church was aware that its long campaign of evangelism in Glasgow had made no real progress because it had been exclusively concerned with the spiritual and moral condition of the lower social orders. Some awareness of the adverse moral effects of bad sanitary and housing conditions in the 1850s and 1860s was infused into Free Church thinking by men such as George Lewis, William Blaikie, Hugh Miller and James Begg. Perhaps, as Smith points out, the earlier awareness in the Free Church regarding the cause and effect relationship between the degraded moral state and the 'spiritual destitution' of the lowest class and the bad living and housing conditions which almost seemed to smother their lives, can be attributed to a stronger sense of evangelistic mission and a consequently keener sense of perception regarding any impediment obstructing that mission. It was due to the efforts of James Begg that the Free Church General Assembly set up a committee to investigate the moral implications of bad housing in 1858. This committee was discharged in 1867, but it represented an important change in Christian social

thought. The Church of Scotland gave very little indication of any awareness that from the 1830s onwards Scotland's working-class housing in the industrial towns was inferior when compared with the rest of the United Kingdom or any other advanced European country. It was not until the 1880s that the Established Church requested an investigation of the housing of the poor to be carried out by the Presbytery of Glasgow. The Synod of the United Presbyterian Church did not give any formal or official consideration to these social problems during the nineteenth century.[18]

Although church doctrines differed considerably between England and Scotland, in the age of *laissez-faire* they had in common a predisposition towards schemes of personal moral reform, rather than directing their considerable power and influence towards social and economic change, which would have cleared the way for a moral and spiritual regeneration of the 'lapsed masses'. The concentration of the churches on 'eternal welfare' made their teachings and their existence as institutions irrelevant to the lives of the lower social orders, those, who because of social and economic deprivation, were not free to seek their salvation.

3. <u>The Law</u>

It was, in the opinion of Garland, the law that wove the concept of the 'individual free subject' into the social fabric on both a symbolic and a practical level. The law required and enforced freedom of contract, freedom of trade, freedom of ownership, freedom of movement and of choice; but, it stipulated the rules of private property as the condition and guarantee for each of these rights of freedom - a stipulation which unequivocally resulted in the denial of these rights of freedom to the non-property owning classes *en masse*. With regards to the criminal law, as Garland points out, the concept of the 'individual free subject'

appeared in the dock as the guilty subject who was fully responsible and charged for the commission of a crime which was always presumed to result from freedom of choice with regards to individual actions.[19]

Furthermore, the law made no distinctions between adults and juveniles as 'individual free subjects' fully responsible for their actions. The Scottish civil and criminal law gave no more protection or discrimination to children than did the law of England. The application of the principle of *doli capax*, which had evolved out of a long history of judicial precedent in Scotland and England, meant that children had no rights to legal discrimination on the grounds of their youth. David Hume in his *Commentaries on the Law of Scotland* stated that children over the age of seven were liable to punishment as criminals and that 'in fixing the measure of punishment to be inflicted the courts were not, and could not be, confined to dispense it according to years and days'.[20] In Scotland judges and magistrates did have greater discretionary power to modify sentences according to the youth or circumstances of the accused, whereas in England there was an assigned penalty for every crime which was inflicted despite any extenuating circumstances.[21] However, in Scotland as in England, there was great uncertainty regarding the legal status of the juvenile offender because there was no distinct legal rule under which a child could not be convicted. Legal precedent presuming *doli incapax* for those under seven years of age was not sufficient protection. The Select Committee on Criminal and Destitute Juveniles 1852 heard in evidence from Alexander Thomson, Deputy-Lieutenant and Justice of the Peace in Aberdeen and Kincardine that, in Scotland, there were instances of children of six years of age being sent to prison for petty theft, and one case where a justice of the peace actually convicted and sentenced a child of 18 months along with its mother. In effect, a child of any age was liable to the criminal law of

Scotland at the discretion of the judge.[22] The death penalty was applied with equal severity to juvenile offenders in Scotland as it was to their counterparts in England. The intervention of royal clemency to commute the death penalty to a sentence of transportation or imprisonment was applied to offenders of all ages and was not specifically reserved for juvenile offenders.[23]

While there were many similarities in the legal principles both north and south of the border, there were differences which gave the problem of juveniles greater recognition under court procedure at an earlier date in Scotland than in England. By the second decade of the nineteenth century it had become apparent to court officials that the use of the full formal court procedure in the trial of juvenile offenders was inappropriate and merely 'undermined the majesty of the law'.[24]

Despite the ridiculous nature of the situation, as a legal principle there was a particularly strong adherence in England to the belief that to deny a child the right to a trial was to deny him the 'right of all free-born Englishmen to trial by jury'. To differentiate between child and adult in court procedure was to interfere with the liberty of the individual.[25] In parallel to the strong adherence to these legal principles, there was, nevertheless, in England a growing awareness that the pre-trial detention of a child for weeks or months before being called to trial at the Quarter Sessions brought the child into constant association with adult criminals in the gaols, thus developing criminal interests and habits.[26] Summary conviction by magistrates was promoted as a solution to the problems of court procedure and pre-trial detention of youthful offenders. In England a deeply ingrained non-progressive attitude prevailed which clung to the notion that it was unconstitutional to confer upon magistrates the power of 'judge, jury and

executioner'.[27] It was not until the passing of the *Summary Jurisdiction Act* (10 & 11 Vict. Ch.82) in 1847 that a measure of summary jurisdiction was introduced into the English legal system. Children, not exceeding 14 years of age, found guilty of simple larceny might be summarily convicted by two justices of the peace in petty sessions. In 1850 the age of juvenile offenders, charged with larceny, who came under the summary jurisdiction of magistrates, was raised from 14 to 16 by the *Act for the Further Extension of Summary Jurisdiction in Cases of Larceny* (13 & 14 Vict. Ch.37).[28]

In Scotland the public prosecution system, where private interests were entirely excluded and the Procurator Fiscal only proceeded in cases where conviction was likely, avoided wasting court time on trivial cases and saved many first offenders from pre-trial detention in prison. Scotland introduced summary jurisdiction in 1828 with the *Act to Facilitate Criminal Trials in Scotland* (9 Geo.IV.Ch.29) permitting summary proceedings to be conducted for minor offences. The trial took place before a Sheriff who was empowered to impose a maximum sentence of 60 days imprisonment or a fine of £10.[29] This Act did not originate in a recognition of the problem of juvenile offenders, but rather from alarm at the rising tide of crime in general emanating from late eighteenth and early nineteenth century social problems in a Scotland which had experienced a more dramatic change into industrialization than that suffered by England.[30]

Although the legal procedures of public prosecution and summary jurisdiction were not initiated in Scotland to deal specifically with juvenile offenders, their existence meant that, at an earlier date, Scotland had a more efficient system by which children could be dealt with. John Hope, Lord Justice Clerk, informed the Select Committee of 1847 that all juvenile offenders were

charged in the first instance summarily either in a Police Court or before a Sheriff without juries. Only on subsequent offences were juveniles charged before a Sheriff and a jury.[31] However, if sentenced, a juvenile offender on a first conviction, unable to pay a fine, was submitted to a maximum of 60 days imprisonment in the common gaol. Subsequent convictions entailed longer periods of imprisonment in the company of hardened criminals. Once a juvenile had transgressed the law of Scotland that young person was regarded as a criminal entirely responsible for his own criminal actions on the same basis as an adult offender.

The 'individual free subject' was, as David Garland has argued, a central concept in all treatises relating to penality in Victorian Britain. What must be understood is that the concept of the 'individual free subject' was a social convenience, necessary for formulating the structure of the social fabric in the interests of certain classes. These so-called 'freedoms' did not have fundamental credibility with regards to human nature and social conditions. Judges were aware of 'extenuating circumstances' in cases appearing before them, and the limitations on the 'free will' of offenders, young and old, to remain outside the world of crime. However, in Victorian bourgeois social perspective the maximum freedom of the individual necessitated a minimal degree of interference from the State.[32] This was formulated into a code of rules outwith which sympathetic judges were not empowered to act.

4. Limits of State Intervention

However, the Victorian State was not entirely non-interventionist. Operating as a capitalist State it created central institutions through which power was authoritatively directed, the population regulated and social relations between

classes maintained and perpetuated. Furthermore, the Victorian State was, it can be argued, active in regulating the general conditions relating to the maintenance of the labour force.[33]

There were in the 1830s and 1840s, significant examples of State intervention on these lines. The old Poor Laws, both north and south of the border, were replaced by a more bureaucratically efficient, centrally supervised, system. Factories were subjected to government inspection by the *Factory Acts* of 1833, 1844 and 1847, in order to enforce new and stringent conditions on the employment of women and children.[34] J.P.Kay (later Sir James Kay-Shuttleworth), Edwin Chadwick and John Simon, revealed the relationship between industrial squalor, disease and the high death-rate. While J.P.Kay described the horrific conditions of early nineteenth century Manchester, it is noticeable that he focused on the failings of the working classes, believing that much of the solution lay in the directed development of sober and provident habits. Edwin Chadwick produced a wealth of statistical information in his *Sanitary Report* of 1842 demonstrating social class and environmental effects on life expectancy. Chadwick recognized in the problem the diminished efficiency of the nation as a consequence of high mortality rates and frequent debilitating illnesses; but, while his Report called for the adoption of uniform standards to protect public health and for the implementation of a plan for the improvement of drainage, filth removal and water supply, he also called for a scheme to improve the moral condition of the industrial population.[35] Therefore, it is evident that the State continued to insist that the moral failings and bad social habits of individual members of the lower social orders were, in considerable part, responsible for the state of their environment. Another important point made by Evans is that the first public health statute of the period; namely, the *Public Health Act 1848*, was

passed at a time of serious national concern over cholera epidemics - a water-borne disease which could reach the middle and upper classes and was not, like typhus and other diseases founded in unhealthy conditions, confined mainly to the overcrowded and unsanitary areas where the working-classes and the poor were congregated.[36]

On the basis of these examples some historians, particularly David Roberts in *Victorian Origins of the Welfare State* (1960), have argued that this was indicative of the emergence of the welfare state during this period. The extension of government involvement into these matters provoked contemporaries, such as Herbert Spencer in *The proper sphere of government* (1843) and *Social statistics* (1851), to express fear that government progress along these lines would result in inefficiency and eventually tyranny.[37] However, this argument is not generally accepted. Historians, notably Evans and Garland, have argued that between about 1830 and 1870, while industrialization instigated new social priorities which demanded some degree of State involvement, this intervention was only of an advisory or permissive nature - it was not mandatory. It was only in the *Sanitary Health Act 1866* that the State crossed the boundary between 'permissive' and 'mandatory' powers - and that was again at a time of national concern regarding a cholera epidemic. Between 1830 and 1870 State intervention was really limited to the regulation and facilitation of the free operation of the market in the interests of the 'greater good of all'.[38] Furthermore, such State involvement was usually reluctant and minimal, granted as a necessary 'instrumental evil' rather than as a positive promotion of social welfare.[39] It was not the function of the State to handicap or put obstacles in the way of those who contributed most effort to Britain's industrial supremacy, or to provide the aid which would enable a greater number of the populace to compete on equal terms. This policy was a matter of deliberate choice and not ignorance

because, as Evans has pointed out, the reports of the ever-growing numbers of political economists, inspectors and civil servants, provided information indicating areas where the State should take action to deal with imperative social problems.[40] In the policy of the Victorian State before 1870 a crucial distinction was made between the spheres of public and private life. According to Garland, this distinction meant that, with only a very few exceptions, the economic, moral or religious welfare of the individual was unequivocally a matter of private concern.[41]

5. The Residuum

According to Garland, there was, by the middle years of the nineteenth century, a distinct chasm between the 'respectable' and 'rough' elements of the working classes. The skilled workers - the 'labour aristocracy' - had assumed within their mechanics institutes, friendly societies, co-operatives, temperance societies and Methodist chapels, the bourgeois values of respectability, self-help, and thrift. Their political stance, with regards to employers and the authorities had become one of co-operation and compromise by the mid-nineteenth century. This position of favour and security clearly distinguished them from the mass of unskilled workers.

The large middle sector of the working classes, who were generally in employment and fairly respectable, were, however, less secure than the skilled workers. They were, at best, mainly semi-skilled workers, low-grade clerical staff and tradesmen, prone to seasonal unemployment, economic depression and consequent social failure. The proximity of the 'residuum' to this large mass of the working population was regarded as a permanent threat to the security of society. The population of 'the residuum' lacked morality and manners; it

scorned the middle-class formula of respectable family life, religious duty and hard work in regular employment. This class was outwith the regulatory institutions of society, excluded by laws and property, regarded as undesirable by the labour market, destitute and alienated from involvement in the social fabric and consequently from any sense of social responsibility.

There was an anxiety to contain the problem of 'the residuum' and to prevent its 'contaminating' influence from spreading upwards in society. Consequently, Victorian society developed, what David Garland refers to as, a 'network of institutions' which were concerned with the disciplinary, moral and political regulation of 'the residuum'. Altogether, the penal system, the Poor Law, the education system and the private agencies of moralization and self-help formed a definite strategy of social control.[42] It was out of this concerted effort at the regulation of 'the residuum' that the problem of the destitute, delinquent and potentially delinquent offspring of 'the residuum' emerged; the children and young persons who were the ragged 'flotsam and jetsam' of the city streets and who existed precariously on the fringes of crime. The youth of 'the residuum' was trapped into a life of destitution and crime as victims of the perfunctory nature of the legal and penal systems and as sufferers of neglect under the Poor Law, and the education systems. They were beyond the reach of most of the agencies of moralization and self-help in both Scotland and England.

David Garland has classified the institutions within the network geared to the social control of 'the residuum' into two groups. Firstly, the repressive agencies of social control, including the Poor Law and the penal system; and, secondly, the agencies which sought to achieve control through restorative or

reformative methods including education and the work of philanthropic and voluntary agencies concerned with moralization and self-help.

6. Poor Law

Both north and south of the border the period extending from the middle of the eighteenth century to the middle of the nineteenth century was one of dramatic change. There was an unprecedented growth in population. The economic optimism which characterized the latter half of the eighteenth century absorbed the demographic increase within the rapid advance of the factory system and the increasing scale of industrialization, providing a new diversity of work opportunities and increased wages for skilled and unskilled workers. In the early decades of the nineteenth century the situation gradually changed as the supply of labour exceeded demand; a situation which was exacerbated by Irish immigration and by the demobilization of soldiers and sailors in the aftermath of the Napoleonic wars. Severe cyclical trade depressions were a feature of the economic conditions of the first half of the nineteenth century. Rural craftsmen and subsistence farmers were gradually deprived of their independent means of earning a living.[43] Improved road, canal and railway communications facilitated social mobility as the desperate and the destitute were attracted from rural areas into the overcrowded urban centres, where the surplus of labour kept wages low and employment was entirely at the mercy of the booms and slumps in the economy or the strikes and lock-outs in the factories. The urban areas became the convergence points for destitution.

The English Poor Law system and the Poor Law legislation in Scotland were formulated in the seventeenth century to cope with the problem of rural destitution, but the scale of poverty in the industrial areas of the nineteenth

century was beyond the limits of the system.[44] In Scotland the control of the old parish system crumbled as thousands of able-bodied unemployed and their children, denied relief in their over-burdened home parishes, joined the desperate surge into the urban areas in the hope of finding work. The population of Glasgow rose from 83,769 at the time of the first census in 1801 to 155,650 by 1841.[45] By 1825 the majority of the population in the slum areas of Glasgow were immigrants mainly from other areas of Scotland, the Highlands and Ireland. Unable to find work, and lacking the residential qualifications for relief from the city parishes of Glasgow, this vast rural immigrant population was in a situation of urban destitution.[46] The inability of the Established Church to respond to the problems created by demographic migration resulted from the inflexibility of the parish system which was slow to appreciate that the fellowship which facilitated the operation of the Poor Law in rural parishes had no relevance in the fragmented society of the crowded urban areas.[47]

As the problem of temporary unemployment increased in scale in Scotland and England, there was a hardening of attitudes towards the provision of relief for the victims of economic conditions and their families. In England the lax administration and increased costs of poor relief were accepted as a necessary corollary of the prolonged military hostilities with France; but after 1815 the allowance system was subjected to severe criticism.[48] The deterrent attitude of the *Poor Law Amendment Act 1834* in England was built around the premise that men were masters of their own fate and that fear of the workhouse would make useful independent citizens out of prospective paupers.[49]

Under the old Poor Law legislation of Scotland the unemployed never had any statutory rights to poor relief but, under the paternal systems of some of the

rural parishes a limited amount of relief was granted particularly in times of economic distress. After 1800 there was a gradual consolidation of opinion in Scotland to the effect that the able-bodied unemployed were not entitled to any form of relief from the poor fund. In Scotland, it was the Disruption of the Church of Scotland in 1843 which finally brought the old poor relief system to its knees. Congregations were split and church collections declined accordingly. The Established Church was still required to devote half of its collections to poor relief, in the distribution of which kirk sessions could not discriminate between recipients on a sectarian basis. The dissenting congregations were under no legal requirement to contribute to poor relief. The majority of the middle classes remained in the Established Church and consequently carried the burden of providing poor relief in parishes without a legal assessment.[50] Middle-class objections to these financial obligations contributed much to Poor Law reform in Scotland.[51]

In Scotland the *Poor Law Amendment Act 1845* brought the Scottish Poor Law more in line with that of England - although considerable differences remained. The Church was relieved of the responsibility of poor relief, a central Board of Supervision was instituted with parochial boards at the local level under an Inspector of Poor.[52] Attitudes were continued which originated in the sixteenth and seventeenth centuries. The statutory distinction between the 'legal poor' and the 'undeserving poor' or 'outcast poor' was perpetuated. The attitude of social censure towards destitution was, if anything, more intense in Scotland after the passing of the legislation of 1845. By adopting an attitude of social censure, rather than toleration, the administrators of the new Poor Law in Scotland alienated the potentially disruptive elements in society which they sought to control. They, in effect, created a class of 'social outcasts'; adults and children

who were abandoned to a life of squalor, destitution and inevitably crime. In its first annual report of 1847 the Board of Supervision for Scotland expressed an awareness of the importance of providing care and protection for the children of parents who had no legal claim to parochial relief. The connection between juvenile deprivation and the development of criminal habits was understood, but the Board of Supervision made no proposals for any initiative to be taken to deal with the problem within Poor Law provision. The administration of poor relief had become much more institutionalized and impersonal; it was not the function of its representatives to seek for possible 'legal' recipients of relief among the swarms of ragged children on the streets.

The poor relief system of Victorian Britain in the age of *laissez-faire* chose, in its separate operations north and south of the border, to exclude from consideration the effects of seasonal forces, economic cycles and trade depressions on the lives of the poor. It chose to ignore the helplessness of young and old who were entrapped within a downward spiral of poverty. Under the prevailing climate of *laissez-faire* poverty was also considered to be a matter of self-will by the individual free subject. Poor relief was, as Garland has argued, not an aspect of the normal rights of citizenship which it was to become in the twentieth century. In Victorian Britain, until the 1890s, to put oneself into the hands of the Poor Law authorities was, for young and old, a relinquishing of the rights of citizenship in exchange for the minimum necessities of life - to choose the status of 'pariah'.[53] This shameful stigma, coupled with the repressive regime within the institutions, was designed to act as a deterrent to prevent all but the genuinely destitute from applying for assistance. Consequently, it is a paradox that the Poor Law legislation, which had as its ultimate objective the control of the potentially disruptive elements in society by the eradication of destitution, should,

as a result of its punitive methods and its cold bureaucratic administration, have failed to transform the habits of the poor. Instead, it may be said that it contributed in large measure to the alienation of 'the residuum', turning both adults and juveniles towards varying degrees of crime and delinquency as an alternative means of survival, directing them inevitably towards the other agency which exerted a repressive control over 'the residuum'; namely, the penal system.

7. Penal System

The late eighteenth and early nineteenth centuries comprised a period in which there was a general approval in both England and Scotland of the operation of a penal system based on the principle of the deterrence of crime by severity of punishment. Public opinion, both north and south of the border, sanctioned a repressive and coercive system of prison discipline within which juvenile offenders were given no protection from the degradation of the worst aspects of prison life. Under the ideology of liberalism, as David Garland has pointed out, while the penal system involved State intervention regarding serious forms of prohibition, regulation and the restriction of personal liberty, these interventions were still within the ideology of the minimal state. The strict ideas regarding the separation of the private and public spheres of life meant that the penal system was only concerned with the punishment of the individual as a transgressor of the social contract; while the welfare and reform of the offender were matters for his or her own conscience and for any private agencies which voluntarily offered their aid.[54]

In the early years of the nineteenth century the Scottish prisons in the larger urban areas were suffering from the same internal pressures of overcrowding as the English prisons. As the transportation system for convicts

declined towards its final demise in 1867, the prisons became more generally used as penal institutions for prisoners with long-term sentences. The situation was further aggravated by a steep rise in the crime rate as the Industrial Revolution, with its 'booms' and 'slumps' in trade created new depths of poverty and social deprivation among the rapidly increasing population in the congested urban centres.[55]

To counteract the problem of so many prisoners in association by day and by night under the congregate system, Scotland experimented with the same new methods of discipline and internal organization that were being applied in England; namely, the solitary system, the separate system and the silent system. The solitary system denied the prisoner any form of association and labour, while books and exercise were almost completely denied to him. The separate system allowed work in cells, some books and exercise and communication with prison officers. The *Prison Act 1839* (2 & 3 Vict. Ch.56) enacted that to prevent contamination by association any prisoner could be separately confined during the whole or part of his or her imprisonment.[56] Thus juvenile and young offenders were not excluded from this form of treatment. The silent system allowed work in association, but in total silence, with prisoners compelled to hours of pointless work on the crank or treadmill. The identity of the individual prisoner was removed by substituting numbers for names and insisting on prisoners wearing masks during hours of exercise.[57]

The separate system was introduced into the Glasgow Bridewell in 1825 by the governor, William Brebner.[58] The governors' journals of the General Prison at Perth reveal the severity of solitary confinement and the fact that it was applied without compunction to very young prisoners on the same basis as it was

to adult inmates. All juveniles on admission to Perth General Prison were subjected to one month of solitary confinement. This could be waived for those who were as young as eight or nine years of age. Of the juveniles who were subjected to solitary confinement many were reported on as 'becoming incoherent in their minds', or, 'their minds gave way'. There was a constant stream of youthful prisoners being transferred to the imbecile and lunatic wing. Suicides were frequently attempted and often successful.[59] The highest proportion of punishments recorded against juvenile offenders in Perth General Prison related to attempts being made to communicate with other prisoners, or for being noisy in the cells and disturbing the peace of the prison. Between 1851 and 1853 numerous young offenders in the age group 10 to 16 spent hours in dark punishment cells.[60] Young female prisoners endured the same punishments for swearing, refusal to work, damage to cell furniture or for attacking prison officers.[61] In December 1845 a programme of special outdoor exercise, gardening and gymnastics had to be devised to revive some of the young male offenders who were suffering from varying degrees of physical stiffness resulting from prolonged periods of solitary confinement.[62]

In the prisons of Scotland and England it was recognized that the new systems of discipline were particularly unsuitable for children whose active minds and physical health suffered from long hours under either the solitary or separate forms of discipline. The change from the congregate system of the eighteenth century, with its indiscriminate herding of prisoners, to the cold social and psychological austerity of the new disciplinary systems of the nineteenth century, resulted in the youthful offender being defined as a problem within the penal system which required a separate form of treatment. The new reforms were far from ideal but they had the effect of making the prison administrators look at the

individual offender and made them aware of the adverse effects of confinement upon children. The new prison administrators who emerged in the nineteenth century were dedicated, not only to introducing reforms, but to making them effective. Consequently, they regarded the increasing numbers of children in the gaols as a hindrance to the successful implementation of the new systems of organization and discipline.[63]

Evidence given before a series of parliamentary enquiries between 1811 and 1819, the Select Committees on Criminal Commitments and Convictions in 1827 and 1828 and the Select Committee on Criminal and Destitute Juveniles 1852, delineated the failure of the existing penal system in England and Scotland to provide effective treatment for the juvenile delinquent.[64] Once branded with the prison mark, a child considered himself or herself as belonging to the criminal fraternity and the severity of prison treatment merely served to alienate these youthful misdemeanants from the authority of law and order. It became apparent to the Victorian public that repressive treatment under the existing penal system, with particular reference to youthful offenders, did not function as a preventive measure against the rising crime rates of the early nineteenth century.

Indeed, as Donald Withrington has commented, in the 1840s and 1850s, the reports of the Prison Board for Scotland and those of the county police committees, showed an increase in costs relating to the whole of the penal system; but crime, with particular reference to that committed by juveniles, continued to increase. Pauperism was still endemic irrespective of the stringent and repressive procedures of the *Poor Law Amendment (Scotland) Act 1845* and the increasing expenditure on the relief of poverty and the provision of medical support for the

poor. The social habits of 'the residuum' had not been altered or improved and drunkenness and prostitution were, if anything, more apparent.[65]

Linda Mahood has placed the new awakening, in Scotland, to 'the moral state of the nation' in the 1840s, around the time the Registrar General began to publish statistical enquiries into the living conditions of Scotland's poor. These investigations which exposed the degree of illegitimacy, infanticide, prison convictions and intemperance among the lower orders, disillusioned the Scottish establishment with regards to its claims of moral superiority over its English and continental neighbours.[66]

It was obvious that the penal system and the Poor Law - what David Garland refers to as 'the negative and repressive axis' of the social control network instituted in Victorian Britain[67] - were not succeeding in making 'the residuum' upwardly socially mobile or instilling into individuals the bourgeois standards of morality, work, thrift and self-help. If anything, the repressive nature of the prison and the workhouse actually locked 'the residuum' and their offspring into the world of the social outcasts - the vast untouchable underworld which created in the minds of the Victorian middle-class public a prevalent fear of social instability, with the consequent threat to personal safety and the security of property.

8. Self-help and Charity

As Smith has commented, it was not until about the middle of the nineteenth century that the more socially conscious members of the middle classes began to take a serious interest in the social condition of the lower orders.[68] The environmental influences on human behaviour were gaining more sympathetic

understanding.[69] From the obvious failure of the harsh repression of the workhouse and the prison to make worthwhile citizens out of 'the residuum', or to stem the increase in their numbers, came a desire to improve the disposition of the lower orders to 'help themselves' by resorting to what Garland has referred to as 'restorative and reformative' methods conducted by a wide range of philanthropic and voluntary agencies concentrating on particular types of clientele and aspects of lower-class life.

In the first place, there was a wide range of working-class self-help agencies. As Evans has argued, there were advantages in the working-classes insuring themselves against sickness, old age and temporary unemployment because this resulted in pressure being taken off the Poor Law and it also promoted the middle-class values of thrift, independence and self-help. The government approved of burial and collecting societies, building societies, savings banks and the cooperative movement. For the very poor, particularly in Scotland and the north of England, the 'penny savings banks' were established. The Liberal government created the Post Office Savings Banks from 1861 to provide greater security for smaller deposits. However, all of these forms of self-help depended on a regular income from which the appropriate savings could be made. Henry Mayhew [1812-87], the journalist and writer, observed that among the casual labourers in London the regular saving required by such self-help schemes could not be provided for. Therefore, these schemes only had relevance to skilled workers and regular earners - it was impossible for casual and poorly paid members of the lower social orders even to consider participating.[70] Housing charities, such as the Peabody Trust, attempted to provide cheap homes for the working classes, but they also tended to accommodate applicants who were in regular work. It was, as Fraser has commented, only Octavia Hill's housing

experiments which actually reached the destitute.[71] Octavia's despotic management of selected tenants from the lowest levels of society was specifically aimed to 'educate' such people to be independently responsible.[72]

It was estimated that in 1861 there were 640 charitable institutions in London. The annual income of the London charities was £2.5 million (not including private individual charity), an amount which exceeded that spent by Poor Law authorities in the capital. This indicates that the Poor Law provision for public need was far below what was required.

In Scotland very similar developments took place. Groups, such as the National Social Science Association and the Scottish Social Reform Association, came into being. Their objective was to analyse, systematically and 'scientifically', the nature of the prevalent social problems and to promote a gradual amelioration of the worst aspects of these problems through voluntary action.[73]

Fraser has argued, that while there was, most certainly, a genuine concern behind the charitable efforts of many middle-class Victorians there was, nevertheless, a large element of *noblesse oblige*. Charitable work was a duty which had to be seen to be done. A great deal of kudos and social snobbery was gained out of appearing on published subscription lists. The committees and social functions involved in charity work gave opportunity for the socially ambitious to mix with their social superiors. Charity became an important element in the image of Victorian respectability.[74]

Essentially, the whole concept of charity enshrined the principle of social elitism. Charity could not function without the existence of a class of superior wealth, the excess of which could be dispensed to the poor. Furthermore, in the Victorian period superior wealth was unequivocally linked to superior attitudes and values.[75] Despite all their well-meaning efforts the philanthropists, missionaries and settlement workers could not overcome the barrier of their own social superiority.[76] The tragedy was that, in consequence, these crusaders did not divert their efforts into reforming the social system which was causing such poverty, misery, apathy and social and physical degradation.[77]

By the 1870s it was believed that the indiscriminate dispensing of charity was, in fact, encouraging the dependency, laziness, demoralization and mendicacy which it sought to eradicate. It was these deficiencies which the Charity Organization Society (COS), founded in 1869, aimed to rectify. The intention of the COS was to put the charities of London on a more rational basis by defining proper areas of competence, devising and executing scientific methods of social casework and educating and reforming the recipients of charity so that they might become independent and self-respecting. The early leaders of the COS, including Charles Bosanquet, Edward Denison, Octavia Hill and C.S.Loch (secretary 1875-1913), devised pioneering methods of professional social casework, but in social philosophy they were rigidly traditional in their defence of self-help individualism long after it had lost credibility.[78] Central to COS thinking was the distinction between the 'deserving' and 'undeserving' poor. The dispensation of aid was restricted to those who only required temporary relief and a chance to set themselves straight following some exceptional tragedy or hardship; but, for those whose homes or characters failed to come up to the required standards of respectability, reliability and sobriety, or those who had relatives who were liable,

though not necessarily able, to give support, relief was denied and they were simply given a reprimand and reminded of the necessity for self-help, hard work and thrift. Christian charity and welfare aid were not, as Garland has pointed out, the main aims for the COS and its applied charities; essentially, their objectives were the enforcement of the doctrines of economic liberalism and the conversion of the poor into morally and socially disciplined, self-helping and worthwhile citizens. The work of the COS and its allied agencies did not achieve a massive conversion of the lower orders of society; neither did they reduce the numbers of destitute social casualties who continued to fill the prisons and the workhouses. They made no attempt to equalize the basic conditions which divided destitution from economic security; but rather they reinforced this division in order to isolate 'the residuum' from the mass of the working population for the purposes of social control. In so doing they further defined 'the residuum' and their children as 'social outcasts', a 'dangerous class' and a prevalent threat to the *status quo*.[79]

9. Education

The imminent threat of the unpredictable and uncontrollable behaviour of masses of immigrants from rural areas, living in overcrowded urban areas, alienated from the controls of tradition and obligation in a village community,suggested the requirement for education to habituate the populace to its new social role and obligations.[80] As Richard Johnston has commented, education was perceived as an instrument for moulding public morals and social attitudes to create a hard-working, loyal, religious, content and socially deferential workforce.[81]

In England, in the early years of the nineteenth century, the quality and quantity of education was still based on privilege. For the minority, who could

afford, the fees, there was educational opportunity extending to university level; but, for the lower orders, there was a deficiency of education.[82] Attendance at Sunday schools, charity schools, endowed, village or dame schools, was, for most poor children, irregular or, at best, seasonal. The schools of the National Society for Promoting the Education of the Poor in the Principles of the Established Church (founded 1811) and the British and Foreign School Society (founded 1814), provided rudimentary education and religious instruction for a great many poor children, but their activities were limited by the extent of their subscription lists.[83]

The inherent dangers in a population lacking sound principles and a sense of responsibility prompted state action to expand the provision of elementary education.[84] By the mid-1840s the extent to which the State should assume responsibility for education was in the forefront of current debates. In the first place, the initial grant of £20,000 in 1833 had, by 1847, escalated to £100,000. Secondly, the evidence of the Newcastle Commission on Popular Education (1858-1861), gave R.R.W.Lingen (1819-1905), who succeeded Kay-Shuttleworth as secretary of the Committee on Education in 1849, the pretext to establish a 'payment by results' capitation system in the famous and fiercely criticized Revised Code of 1861. The Revised Code was strictly geared to the '3 Rs'. Lowe was able to justify the new stringent control of the system by impressive savings on the education budget as the State imposed basic standards and refused to support those who could not attain them or those children who, in the opinion of the State, were being educated 'above their station and business in life'.[85] The agenda for the quality of education was, therefore, set by social class considerations. As Webb has commented, those who regarded schools in England as 'engines for producing literate and moral workmen and house-maids' were

secure in the knowledge that working-class children would not be given ideas 'above their station'.[86] Thus, education was promoted as an agent for 'social control' rather than for 'individual opportunity'.[87]

Scotland had long remained complacent in the assumption that the egalitarian principles, built into the parish school system by John Knox and the other reformers, continued to ensure that education was a catalyst for 'individual opportunity' regardless of social class. After 1760 the Church of Scotland began to lose its way as the agency which had supported a nation-wide education scheme for Scotland.[88] The paternal practices of the parish churches with regards to education could not keep pace with the changing economic and social structure of the population in the industrial era. The parish schools were not geared to deal with the children of the lowest grades of the new urban poor.

In the nineteenth century the Church of Scotland attempted to regain its control of education by the establishment of assembly and sessional schools. In 1820 Dr. Thomas Chalmers expressed his influential conviction that the security of the nation depended upon the combination of a 'renewed church'; a 're-energized church life' and greater support for the efforts of the 'godly schoolmaster' in urban and also in rural parishes.[89] In other words, Chalmers stressed the combination of what Carl F. Kaestle has referred to as 'religion for social control rather than individual redemption' and 'education for social control rather than for individual opportunity'.[90] As Withrington has commented, Chalmers perceived the efforts of the parish school teachers to be the most effective means of converting the sons and daughters of the 'lapsed masses' into faithful church attenders[91] - and thus exerting upon them both educational and religious control. While inaugurating two 'parochial' schools in St. John's

parish, Glasgow, Dr. Chalmers expressed, on the one hand, the ancient concept of the parish schools of Scotland, whereby the children of the various social ranks in the parish attended on an equal footing and mingled freely to reduce the 'wide and melancholy gulf of suspicion' between the wealthy and the labouring classes;[92] but, on the other hand, he also expressed ideas which betrayed the rise in Scotland of a new class consciousness with regards to the quality and purpose of education. He had to placate any incipient fears, in his mainly middle-class audience, that the provision of such quality of education to the lower social ranks would erode the social status of the well-to-do, and he did this by stating his firm conviction that 'to the end of the world the men of opulence will be few and men of industry will compose the multitude'. In Chalmers's opinion the objective of the egalitarian provision of education in the parochial schools was not to 'turn an operative into a capitalist', but rather 'to turn an ignorant operative into a learned operative'; to instil into him the required standards of 'worth and respectability' but not necessarily to raise him above the sphere of life into which he was born[93] - in other words, to create a hard-working, content, respectable and socially deferential workforce. These ideas went with Dr. Chalmers into the Free Church of Scotland and its schools which were gradually opened after the Disruption in 1843. He also had considerable influence, as we have seen, over the minds of churchmen in the United Presbyterian Church which was also in the process of providing its own denominational schools.[94]

In Scotland, in the first half of the nineteenth century there was a move along the less democratic lines of educational developments in England, away from the ideal of education for 'individual opportunity' irrespective of class, towards a class conscious awareness of the quality and quantity of education for the purposes of social control. Certainly, by the middle of the nineteenth

century, in urban centres, such as Edinburgh, many of the wealthier classes had rejected the 'classless' tradition of the parish school system and had subscribed to the education of their own children in exclusive schools. By the 1860s there were over 80 of these 'higher class' schools.[95] During the same period there was, in direct contrast, a considerable increase in charity schools and 'dame' schools for the poor, which generally maintained very low standards of teaching. Factory and works schools proliferated, the most famous being the one at New Lanark, provided by Robert Owen. Spinning schools and schools of industry operated in rural areas to train girls in various forms of domestic industry. Subscription schools operated in both town and country. Infant school societies, particularly those in Edinburgh and Glasgow, attempted to provide some basic education for young children. The Society in Scotland for Propagating Christian Knowledge, founded in the eighteenth century, brought education to 300,000 children in the Highlands and islands.[96]

The nineteenth century educational scene in Scotland was as complicated as that in England. There were so many agencies participating, yet they were still ineffective in reaching the most destitute and deprived children in the depths of the industrial slums. Such children were not in the public eye; they were subsumed within the general morass of 'the residuum' in the urban areas.

David Stow [born in 1793, son of a Paisley merchant] came to Glasgow in 1811. He observed the overcrowded and degrading social conditions of the Saltmarket in Glasgow. His social conscience aroused, he made an attempt to estimate the number of poverty stricken children who swarmed in the slum areas. Taking a population of 360,000 he estimated that 300,000 were in the poor and working classes; of these, 120,000 were in, what he called, the 'uprising', another

120,000 in the 'sinking' and the remaining 60,000 in the 'sunken' group of beggars, thieves and degenerates. From his investigations it was apparent that no less than half the population of Glasgow could not afford to have their children educated even in the most meagre of the existing educational establishments.[97] The Sunday schools, opened by David Stow in the Saltmarket in Glasgow in 1816 and in the Tron parish in 1817, proved to him that one hour of teaching on a Sunday was not sufficient to counteract the evils of daily exposure to a slum environment.[98]

In Aberdeen, Sheriff William Watson[99] commented that a good common day school education was available for the children of the working classes in the Education Society, the Bell's Schools and several sessional schools. However, there were still many children who could not attend owing to either the poverty of their parents or to the fact that they were orphaned, deserted and destitute. Tickets were issued to the children of the poorest families in Aberdeen giving free education for three months with the possibility of renewals if attendance was regular and progress good. The scheme failed on the grounds that the children were too ragged and dirty and teachers did not want to admit them. Sheriff Watson observed that giving an education ticket to a starving and begging child was like 'offering a stone instead of bread'.[100]

Dr. Thomas Guthrie (1803-1873)[101] contrasted the almost excessive educational provision in Edinburgh for children of the upper and middle classes with the educational neglect of the children of 'crime, misery and misfortune'. While charity schools, such as Lady Effingham's, Lady Anderson's and the Duchess of Gordon's, benevolently provided education for a poorer class, they did

not touch the lowest class of children who could not avail themselves of a gratis education even though offered.[102]

These children who were so disreputable, or so destitute, that they could not attend school were the class from which the rising generation of criminals was drawn. In England, education was explicitly recognized as an agent in crime prevention in literacy surveys and judicial or prison returns which demonstrated the connection between ignorance and crime.[103] The Society for Investigating the Causes of the Alarming Increase in Juvenile Delinquency in the Metropolis conducted the first systematic investigation into the contemporary causes of juvenile delinquency in 1815. Among the most significant of the causes identified was educational deprivation. The Society recommended that schools should be financed to provide formal education and religious training to protect children from being forced into a life of vice and crime as a means of survival.[104] Mary Carpenter,[105] the leading lady activist on the problem of delinquency in England, identified the children against whom the doors of the existing schools were closed as 'the children of the perishing and dangerous classes'. The 'perishing classes' were those who had not actually fallen into crime, but who, from ignorance, destitution and their social circumstances, were almost certain to do so. By the term 'dangerous classes' she was referring to those who had actually received the prison brand, or those who had not yet been caught by the law but were living by crime rather than honest work. In Mary Carpenter's opinion the great objective of the education of the 'perishing and dangerous classes' had to be moral and religious instruction, since these children had so little knowledge of right and wrong. However, she challenged the point of view that any additional knowledge beyond a basic acquaintance with the elementary principles of reading, writing and figures was a luxury which should not be bestowed freely on these 'degraded

children'. It was her contention that in order for such children to benefit from moral and religious instruction and to aid their development into useful, honest, industrious and content members of society, they should be given education of a quality that would enable them to understand the meaning of the words they read.[106]

In 1819 the letter from the Prince Regent to the General Assembly of the Church of Scotland specifically recognized education as a means of controlling crime. The fathers and brethren were urged to pay attention to the instruction of prisoners and the education of the young.[107] In 1847 Dr. Guthrie wrote of these wretched children in emotive terms intended to stir public sympathy -

> ...their only passage to school is through the police office; their passport is a conviction of crime; ...it is only within the dreary walls of a prison that they are secure of either school or Bible; ...it is a sad thing to look in through the eyelet of a cell door on the weary solitude of a child spelling his way through the bible.[108]

In 1850 Sheriff Watson warned -

> ...refuse to feed, clothe or educate the starving, naked and ignorant child, you cannot free yourself from the consequences of unaided poverty or ruinous neglect. ...You may refuse to contribute a farthing to prevent crime, but you must pay the half crown to punish it...[109]

Victorian Scotland had as great an obsession as Victorian England with the delegation of power and privilege, and as grave a sense of impending social instability and revolution. The desire to reform society, both north and south of the border, through the rising generation highlighted the inadequacy of the education system to perform as a subtle agent for the social control of the children of 'crime, misery and misfortune'; because the youthful members of 'the residuum' were beyond the compass of existing school provision. In Scotland, where there was less antagonism to State intervention in education than in

England, and less bitter contention between the Church schools, successive attempts by government in the 1850s to legislate for a new national school system were dashed on the votes,not of Scottish elected representatives,but of English Dissenter MPs, who feared state intervention of any kind in English education. For them a successful Scottish bill would have posed an alarming precedent.[110]

In Scotland there was a greater consensus of opinion which gave priority to educational, rather than religious concerns, in discussions relating to the passing of the *Elementary Education (Scotland) Act 1872*. Scotland also put greater pressure on the churches and other school agencies to transfer their schools into the new national system.[111] However, in the age of *laissez-faire*, the State was not willing to acknowledge an obligation to effectively impose compulsory education or provide free elementary education in the English legislation of 1870.[112] In the Scottish legislation of 1872 the State instituted compulsion, but found this difficult to enforce because it did not go one step further and introduce free elementary education. Consequently, the children who lived in the depths of 'the residuum' continued to escape the network of educational provision.

10. <u>De-carceration</u>

Restorative and reformative methods of social control turned towards a concentration on the youth of the lower social orders as a means of reforming society through the rising generation. The only way to gain control over the neglected, deserted, orphaned, ill-treated and runaway children and young persons of 'the residuum', who existed beyond the intervention of any of the existing agencies of social control, was to lift them out of the downward spiral of poverty, destitution, demoralisation and crime which led inevitably to their incarceration as

inmates of the poorhouses of the prisons. There was, as we have seen, a growing concern regarding the repressive regime of the prisons and poorhouses in controlling youthful paupers, orphans and misdemeanants, and the impact that these institutions had upon their moral development. The solution was to establish separate and non-statutory institutions which would divert the youth of 'the residuum' away from receiving the prison brand or the poorhouse stigma, either of which, it was believed, would make them socially and morally irredeemable. As Linda Mahood points out, what philanthropists and moral reformers, concerned with such problems as juvenile delinquency and prostitution, were doing was adopting, what criminologists now refer to as, a 'de-carceration strategy'. The aim was to take youthful misdemeanants directly into their care, before they became hardened to vice and crime, in order to isolate them from their degrading environment for the purpose of supervising their reformation.[113]

11. England - Reform Versus Punishment

Those who believed that young offenders could be reformed, if caught at an early stage of their criminal career, advocated educational and homely reformatories as an alternative to incarceration in prison. The earliest reformatories in England originated in philanthropic efforts to aid both delinquent and potentially delinquent children between whom they made very little differentiation. It was believed that by classifying these children into different categories or degrees of involvement with crime, providing education and giving them employment training, they could be effectively rehabilitated as useful members of society.

In England there was a proliferation of philanthropic bodies and moral reformers actively involved as 'child savers'. The Philanthropic Society, founded

in 1788 and incorporated in 1806 by Act of Parliament (PP XLVI, Geo.III, Ch. 144), formed itself into an operation which was concerned with both delinquent and potentially delinquent children. Its supporters established a reformatory at Bermondsay which operated as a prison school for boys who had a definite involvement with crime; a manufactory at St. George's Fields for the employment training of destitute boys, and a separate school for girls which provided basic domestic training.[114] In 1840 the Philanthropic Society moved its operations to Redhill in Surrey, where it established a reformatory which was based on the famous Mettray Reformatory in France. The Warwickshire magistrates opened their Asylum for Convicted Boys in 1818 at Stretton-on-Dunsmoor to provide shelter and training in practical trades for destitute and homeless youthful offenders on their probation scheme.[115] Another variation on the theme of 'de-carceration' took the form of the training ships or floating reformatories promoted by Jonas Hanway, who, along with Sir John Fielding, was a founder of the Marine Society, and Captain Edward Pelham Brenton.[116]

Peter Bedford, the Spittalfields philanthropist, and his associates founded the Society for the Improvement of Prison Discipline and for the Reformation of Juvenile Offenders in 1818, to continue the work begun by the Society for Investigating the Causes of the Alarming Increase in Juvenile Delinquency in the Metropolis. A Refuge for the Reformation of Juvenile Offenders was opened in 1830 by Peter Bedford and associates to give shelter, employment training and religious and moral instruction to youths who, on discharge from prison, were destitute and left with no alternative but to return to criminal means of survival. The failure of this refuge, due to lack of financial support prompted Peter Bedford and his Society to promote the idea of all such institutions for juveniles being financed by State support with regular government inspection to provide a system of reformation based on education and employment.

Successive parliaments refused to recognize the need to give State support to reformatories as proposed by Peter Bedford.[117] There was no official recognition of reformatories as an adjunct to the penal system. The creation of reformatories and their financial requirements were left entirely in philanthropic hands.

The official line continued to support 'repression' by advocating the establishment of separate juvenile prisons. There was a preoccupation with the idea of punishment having to be seen to be done. The reports of the Select Committees on Criminal Commitments and Convictions of 1827 and 1828 included, as a principal recommendation, the proposal that a House of Correction should be established for young criminals with some form of after-care in a hostel. The Select Committee of the House of Lords on Gaols and Houses of Correction, appointed in 1835, also studied the operations of the voluntary reformatories but recommended the establishment of a separate prison for juvenile offenders.[118]

The *Parkhurst Act 1838* instituted an old military establishment at Parkhurst on the Isle of Wight as a prison to hold 'any young offender under the age of 18, male or female, as well as those under sentence or order of transportation or under sentence of imprisonment'. Offenders were to be held in Parkhurst until transported by sentence of law, or until they became entitled to their liberty or were otherwise removed by the Secretary of State.[119] Discipline and life-style were harsh in Parkhurst where there was to be nothing to 'weaken the terror of the law or lessen in the minds of the juvenile population, or their parents, the dread of being committed to prison'. The use of leg irons was continued until September 1840.[120] At Parkhurst the first objective was the penal correction of the offender by confinement, spare diet, rigorous enforcement of

rules and hard work,[121] followed by, as a second objective, 'his reformation and instruction in the arts most likely to be useful to him in the life he will lead...'.[122] Parkhurst continued to be used as a prison for young offenders until 1864.

Although the *Parkhurst Act* created the first official separation between the treatment of adult and juvenile offenders under the penal system of England, it unfortunately continued the trend of giving repression and punishment priority over reform and rehabilitation. The youthful offenders within its walls were still identified as criminals. The government was still afraid to relax any deterrents because the memory of the French Revolution was still vivid.[123] As a result of the prevalent fear of losing control over the undesirable elements in society, the official attitude taken in 1838 was that delinquent children should continue to be punished within the penal system but in separate prisons. Provision for the potentially delinquent children and the creation of reformatories was left to the enthusiasm and social conscience of individual philanthropists, who recognized that drastic changes had to be made in the law so that the problem of the delinquent and potentially delinquent child could be defined as a social rather than as a criminal problem.

12. <u>Scotland - Prevention Versus Cure</u>

Scotland, in contrast to England, was far less preoccupied with the punishment of young offenders and far more concerned with the need to prevent crime by the reform of delinquents at an early stage in their criminal career, and with the need to provide care and protection for children whose fall into crime was highly probable. Philanthropic zeal stirred the public conscience and directed humanitarian action for reform towards the creation of reformatories and industrial feeding schools as alternatives to imprisonment for youthful offenders.

In Glasgow, community awareness of the need to reform the penal system with regards to the incarceration of juvenile offenders was expressed in a report written by a committee of the Glasgow council in 1819. After showing that there had been an increase in the number of commitments to the Glasgow Bridewell from 388 per annum in 1810 to 1,443 per annum in 1818 the report stated -

> The peculiar characteristic of this dissolute state of society is juvenile delinquency, keeping the inhabitants in constant alarm, disturbing the peace and endangering their property.

It was recognized that a high proportion of the minor offences dealt with by the magistrates, as well as a high proportion of the more serious crimes coming before the Sheriff Court were committed by those who were 'tender in years, but hoary in crime'. A penitentiary was recommended as the 'only legitimate school of reform' for such offenders -

> ...but it must not be a place where the wretch that once enters its walls comes out only to return; ...it must be a place where every fair chance is to be afforded for amendment and where, by attention to industry, instruction and morals, the victims of error may be reclaimed from the path of ruin.[124]

The idea of a separate penitentiary or place of reformatory treatment for young offenders also took hold in Edinburgh where, in January 1819, a public meeting was held to propose the establishment of a house of refuge for delinquents. In Both Edinburgh and Glasgow further proposals for similar institutions were published in 1824 and around 1830 but these early efforts resulted in no action being taken, partly because of the impracticability of the plans, but mainly as a result of public apathy.[125]

The first positive action taken in Scotland, with regards to the decarceration of the youth of 'the residuum' was initiated by the Rev. Stevenson MacGill, DD., a churchman of philanthropic intent and evangelical motivation.[126]

Dr. MacGill was a strong advocate of Scottish prison reform and he had positive opinions on the reformation of young delinquents, male and female.[127]

Dr. MacGill devised a plan for, what he referred to as, a 'workhouse' consisting of two main divisions; one, for boys and another for men who, on release from the Bridewell, were almost certain to resort to criminal activities as a result of being destitute of employment. It was also proposed that boys who showed some promise of reform in the Bridewell should be transferred to his 'workhouse' for occupational training and educational instruction. Furthermore, it was Dr. MacGill's idea that this institution should also be used as an alternative to incarceration in the Bridewell for boys, who, on appearing in court, were found to have committed offences as a result of having no skills or means to earn an honest living, or as a result of falling into bad company.[128]

The 'workhouse' scheme proposed by Dr. MacGill gained public support and patronage and was put into operation on an experimental scale around 1819. Ten years later, in 1829, William Brebner, the reforming governor of the Glasgow Bridewell, went one step further and advocated the establishment of a completely separate institution to deal specifically with youthful male offenders in the city.[129] By 1829 William Brebner would have been able to evaluate the effects of his introduction of the separate system into the Glasgow Bridewell, and he was in an ideal position to appreciate the negative effects of imprisonment on young boys and girls. As governor of the Bridewell, William Brebner would also have been co-operating with Dr. MacGill as boys were transferred from the prison to his 'workhouse'. At Brebner's instigation the Society for the Suppression of Juvenile Delinquency in the City of Glasgow was appointed to promote the

establishment of the Glasgow House of Refuge for Boys.[130] A public appeal in 1836, supported by Mr. Miller, Superintendent of Police, raised £10,000.

Dr. MacGill was involved in all this activity and was the main speaker at the public meeting proposing the establishment of the House of Refuge. Much benefit was derived from his experimental work with delinquent boys in his 'workhouse'. The Glasgow House of Refuge for Boys was opened on 18 February, 1838. The inmates initially included boys who were first offenders as well as those who already had a criminal record but had been convicted of crimes of a less serious nature. In all such cases a sentence to the Bridewell might be commuted to a term of apprenticeship in the House of Refuge. In addition, it was also intended to provide shelter and assistance for young lads on discharge from the Bridewell. Places were also allocated to boys who applied for admission, or who were persuaded to apply for admission, on the grounds that their extreme destitution was driving them towards survival crime.[131] The aim was to provide each boy with an intellectual training which would enable him to take his place intelligently in life; to train him in industrious habits by teaching him a trade or occupation which would provide him with the means of earning a living; and, above all, to aid him in acquiring a good moral character so that he would return to the world as an honest and useful member of society. This institution was the first reformatory in Scotland.[132]

The House of Refuge for Boys proved to be so effective in reducing the finances expended on the prosecution of juveniles that Glasgow decided to open a refuge for girls in 1840. In Glasgow, action regarding the protection and reform of young women and girls had, in fact, started some 39 years previously with the formation of the Glasgow Society for the Encouragement of Penitence in 1801.

Dr. MacGill was its first secretary and, in the second edition of his *Discourses*, he outlined his plan for a House and a School of Industry for females who were willing to 'engage in such useful employments as may preserve them from the alleged necessity of returning to their crimes for subsistence'. Work was to be provided for those willing to labour and the ignorant were to be instructed and given advice. Dr. MacGill opened the Glasgow Magdalene Institute in 1815.[133] Those they intended to rescue were not hardened professional prostitutes with established criminal records and severe drinking problems, but young female delinquents, paupers and vagrants who were free of disease and not too habituated to life on the streets.[134] It was hoped that women would come of their own free will, but in practice, most cases were brought forward, or persuaded to come forward, by magistrates, court missionaries, the police, or were referred from lock hospitals. Applicants had to convince the directors of their desire for reform and voluntarily submit to a strict regime of work, prayer and discipline. This 'voluntary incarceration' also entailed a complete separation from family and former associations.[135]

This institution continued to operate until 1840, when, in order to minimize the costs of providing a refuge for girls, the old Magdalene Institute was simply renovated for the purpose. The new combined institution was called the House of Refuge for Females. The directors of the 'Magdalene' only agreed to the merger on the condition that accommodation was maintained for 40 penitent prostitutes under the age of 25. The remaining 120 places were for children and adolescents who, after being charged or convicted of a crime, 'consented' to go to the House of Refuge as an alternative to prison. A few places were also allocated to destitute girls and orphans who were considered to be in imminent danger of falling into crime and who applied, or were persuaded to apply for admission.

The penitent prostitutes, the children and adolescents convicted of crime and those who, 'from extreme destitution might be in danger of doing astray'', were segregated into separate wings within the House of Refuge.[136]

The House of Refuge for Females and the Magdalene Institute continued to operate in combination for a further twenty years. It was only under the impact of the mid-nineteenth century legislation dealing specifically with delinquent and potentially delinquent children that the character of the institution changed sufficiently to make the segregation of the penitent prostitutes imperative, so that they would not have to associate with 'criminal elements'. A new Magdalene Institution was opened in Glasgow in 1860. There was believed to be a qualitative difference between a 'magdalene' and a 'criminal'. This distinction was a matter of very slight degree, in most cases, since many girls charged with crime were also involved in prostitution and vice versa.[137]

The Glasgow Magdalene Institute was not the first of its kind in Scotland. It was, in fact, the Edinburgh Magdalene Asylum, opened in Canongate Street by the Philanthropic Society in 1797 which pioneered the reformatory treatment of young destitute, homeless and misdemeanant women in Scotland, who, through having no other means of subsistence had become involved, to some degree, in prostitution.[138] In 1832 Edinburgh went on to establish the first female reformatory in Scotland when it opened the Dean Bank Institution for the Reformation of Female Delinquents for the moral and industrial training of young girls,[139] thus attempting, at an earlier date than Glasgow, to create a segregation between young female criminals and prostitutes.

By the end of the 1830s most of the larger Scottish cities had at least attempted to develop some form of reformatory institution. The most outstanding developments in the Scottish context were in Glasgow. The Glasgow Houses of Refuge together formed the largest reformatory of that time in Britain and served as a model for some English conurbations; notably, Liverpool, where the chief magistrate was reported by the *Glasgow Herald* in 1839 as claiming that the city institution for juvenile offenders was based on the Glasgow model. In 1866 the *North British Daily Mail* claimed that the House of Refuge had been the model for many similar attempts throughout the United Kingdom.[140] The Glasgow Houses of Refuge were also unique in that they were the only institutions of this kind to have a special Act of Parliament to regulate their operations; namely, the *Glasgow Juvenile Delinquency Repression Act* (4 & 5 Vict. Ch.CXXXVI. 1841).[141]

Both north and south of the border the development of reformatories for youthful offenders originated in the efforts of magistrates, prison governors, police officials, prison chaplains and others, aware of the inadequacies in the system regarding the incarceration of juveniles in prison, in taking measures to provide institutions of refuge for boys and girls who found themselves in a state of destitution on discharge from the prisons. The early reformatories were generally regarded as an adjunct to the prison system and they were, in many ways, an extension of the prison reforms of the early nineteenth century. For instance, the regime of the reformatories was structured on the basic tenets of the new separate system; namely, that every prisoner should be provided with suitable labour or employment, and with the means of moral and religious instruction.[142] However, it has to be noted that the social rescue operations of the Philanthropic Society in London, the Marine Society established by Jonas Hanway and the Houses of

Refuge in Glasgow all made provision, not just for youthful offenders who had been punished by the law, but also for unconvicted boys and girls in a situation of destitution on the very edge of being drawn into crime.

The next initiative which attempted to keep the children of 'the residuum' out of the prisons and the poorhouses was entirely Scottish in origin. Industrial feeding schools were the concept of Sheriff William Watson of Aberdeen. In his capacity as stipendiary magistrate, Sheriff Watson was in a position to observe at first hand the evils of juvenile vagrancy and the difficulty of preventing it when great numbers of indigent children had no other means of survival than begging or stealing.[143]

The principles behind what came to be recognized as the 'Aberdeen system' of industrial feeding schools were, firstly, a recognition that the whipping post and the prison could not possibly have any beneficial effects on developing the moral instincts of destitute and starving children;[144] secondly, the need for a proper system of education including moral and religious teaching for the children who were too ragged and destitute to take advantage of existing provisions for the education of working class and poor children; thirdly, the requirement for some means of training these wayward children in habits of industry and teaching them that they must earn their bread by hard and honest labour;[145] fourthly, it was Sheriff Watson's contention that the existing agencies involved in the work of social rescue and crime prevention institutionalized their inmates by isolating them from their family and former associations for the duration of a period of reformation within the confines of the institution. This isolating system - often referred to as the Scottish hospital system - in the opinion of Sheriff Watson, made the inmates, with particular reference to children, easy prey to dishonest opportunism

on their release. Furthermore, Sheriff Watson believed that where possible parental responsibility and family affections should be maintained.[146] Sheriff Watson said of his schools -

> There is no one feature of these schools which is not to be found in some other school, poorhouse or hospital - but there is no other institution where the different parts are so combined.

It is true that the elements of his schools could be found in houses of refuge for the destitute, magdalene asylums, night asylums and soup kitchens.

The first industrial feeding school was opened for boys in Chronicle Lane on 1 October, 1841 as an adjunct to the Aberdeen House of Refuge for the Destitute. During the first six months 106 boys were admitted, the average daily attendance reaching 50. The Superintendent of Police reported a considerable decrease in juvenile delinquency and begging. The 7th Report to Parliament of the Inspector of Prisons stated that in the half year ending 20 May, 1841 thirty boys under 14 years of age were committed to prison in Aberdeen; but during the half year ending 20 May, 1842 the number dropped to six. In 1843 an industrial feeding school for girls was opened.[147] By 1851 Sheriff Watson had four of these schools in Aberdeen catering for around 300 children.[148]

His resolve strengthened by the success of his schools in Aberdeen, Sheriff Watson proceeded to advocate industrial feeding schools throughout Scotland as the solution to the problem of providing an alternative to imprisonment for the delinquent child and protection for the potentially delinquent child. Perth followed the example of Aberdeen and opened a boys' school of industry in 1843. Dundee held a great public meeting to hear Sheriff Watson's ideas and an industrial school was founded in December 1846. Glasgow invited Sheriff Watson to speak at a public meeting in 1847, and the first industrial school was

opened in that city on 31 May, 1847 as an annexe to the Night Asylum. Greenock adopted the 'Aberdeen system' in 1848 after a visit from Sheriff Watson. Inverness, Falkirk, Rothesay, Ayr, Stranraer and Dumfries all received Sheriff Watson and consequently took action to collect subscriptions and establish their own industrial feeding schools.[149] While staying in Bridge of Allan, Sheriff Watson published a letter in a local newspaper commenting on the number of begging children in the area, and in 1849 the Sheriff-Substitute of Stirling opened an industrial school.[150]

Sheriff Watson had no success in 1844 when he attempted to arouse Edinburgh to a sense of duty towards its hordes of vagrant and starving children who infested the streets and overcrowded the prisons. The small Vennel Ragged School, opened by Dr. William Robertson, minister of New Greyfriars in 1846, did not make much impact on the problem. By coincidence, Sheriff Watson travelled on the 'Defiance' coach to Brechin in 1846 in the company of Dr. Thomas Guthrie of Edinburgh. They had a long conversation on industrial feeding schools.[151] Dr. Guthrie had the strong personality and the inspiration of Free Church evangelical conviction to lead a philanthropic crusade to rouse Edinburgh from its apathy. Recognizing the power of the printed word, he published his *First plea for ragged schools* in January 1847.[152] His eloquent and vivid description of the lurid life of the 'street urchins' and the 'arabs of the city' was very effective propaganda which 'opened the purse strings of the Edinburgh citizens'. Dr. Guthrie formed the Ragged and Industrial School Association in 1847, and opened the Edinburgh Original Ragged and Industrial School in the same year. Within the first year three schools were opened, the first dealing with 105 boys in premises in Ramsay Lane; the second, coping with 90 girls at number 533 in the Lawnmarket, and the third, located in Warriston Close,

admitted 70 children under the age of ten.[153] Dr. Guthrie was accused of proselytising because his schools admitted Roman Catholic and Protestant children, but all religious instruction in the schools was conducted according to the Protestant faith. While Dr. Guthrie took great pains to ensure that no protestant denomination should predominate in influence, he refused to permit Roman Catholic teaching in his schools. As a result of this religious controversy, a group of Dr. Guthrie's supporters broke away to open the United Industrial School in South Gray's Close in 1847, where the principle of admitting both Protestant and Roman Catholic children was continued, but religious instruction was given to each in their own faith - 'combined in things secular, separate in things religious'.[154]

The 'Aberdeen system' of industrial feeding schools evolved into what became known, south of the border, as the 'Scottish system' mainly as a result of the efforts of Sheriff William Watson and Dr. Thomas Guthrie in conducting a campaign to popularize their schools beyond the borders of Scotland. They made separate personal appearances at public meetings in Birmingham, Hull, Bradford, York, Liverpool and Belfast. In London, William Locke took up the idea and founded the Ragged School Union in 1844, and by 1852 there were 100 schools with 13,000 pupils for whom rudimentary education, religious and industrial instruction and meals were provided on a non-residential basis. Dr. Guthrie and Sheriff Watson led a deputation to London in 1851 for a meeting with Lord Lansdowne to request that aid be granted to the industrial feeding schools from the public funds as a supplement to voluntary subscriptions. Their evidence was valued by the House of Commons Committee for the Inquiry into Destitute and Criminal Juveniles in 1853. In addition, both Sheriff Watson and Dr. Guthrie

were prolific writers on the subject and their publications were widely disseminated.

The industrial feeding schools of Scotland expounded a unique formula for the treatment of delinquent and potentially delinquent children as a social rather than as a criminal problem. In the first place, these schools took complete charge of the children for thirteen hours a day. Sheriff Watson firmly supported the non-residential principle with the children returning home at night to reduce the risk of institutionalization. However, some of the schools in the larger and more industrialized areas found they had to introduce dormitory accommodation at an early stage. Perth School of Industry for Boys provided dormitories from its opening in 1843, as did both of the girls' schools in Perth. The industrial schools in Dundee, Glasgow and Leith gave overnight accommodation on the grounds that the parents were so dissolute and dishonest that it was unwise to trust them with the custody of their children.[155] In Edinburgh Dr. Guthrie's schools provided shelter initially only for those children who had no home. Lodgings were arranged with respectable people, but as finding suitable people became a problem, dormitory accommodation had to be provided.[156]

In the second place, along with education both secular and sacred, food, clothing and industrial training were gratuitously provided. This level of provision was why Sheriff Watson strongly objected to the term 'ragged' being applied to the system of schools he had devised. Unfortunately, the three *Pleas for Ragged Schools* written by Dr. Guthrie had linked this designation to the industrial feeding schools. Sheriff Watson argued that the ragged schools, which had evolved in England out of the Sunday School movement and the London City

Mission, only provided elementary education in reading, writing and arithmetic for a few hours either in the morning or the evening and that -

> ...to suppose that the many who spend the day in idleness and vice will derive much benefit from attending two or three hours at an evening or morning ragged school argues greater faith in the power of elementary education than we have ever been able to attain.

In Sheriff Watson's opinion the ragged school without food and industrial training was merely a common free school with the epithet of 'ragged' prefixed. He believed that evening and morning ragged schools were being filled up by many children whose parents could have afforded to send them to common day schools. In consequence, the ragged schools were not necessarily reaching the really destitute, neglected and delinquent children. It was only the industrial feeding schools which could effect the thorough education and moral reformation of such children.[157]

In the third place, it was a central ethos of the industrial feeding school system that it did not just provide some basic education which might, or might not, benefit an individual child, but that the problems of juvenile destitution, vagrancy and delinquency be eradicated as a preventive measure against crime. Both Sheriff Watson and Dr. Guthrie advocated that it was less costly to society to prevent crime than it was to cure it. Their intention was to remove children from the path which would eventually lead to their incarceration in prison. In order to gain popular support in achieving this objective, Sheriff Watson and Dr. Guthrie played on the social prejudices of the subscribing public which varied from a genuine philanthropic benevolence to a desire to protect private property and the *status quo* from social upheaval.

Reformatories and industrial feeding schools were social rescue operations formulated to achieve what the harsh repression and the socially condemning measures of the penal system and the Poor Law could not; namely, to reduce the problem of 'the residuum' by concentrating 'reformative and restorative' methods on the rising generation of the lower social orders. They reached beyond the limits of social intervention in existing educational provision and in charitable mission work to give the children who were either involved with crime, or surviving on the fringes of the criminal world, protection against destitution and starvation, and to provide them with education and employment training. They approached the problem of delinquent and potentially delinquent children through the social rather than the criminal perspective, emphasizing reform rather than punishment; prevention rather than cure. Essentially, however, they were agencies of social control whose aim was to prevent crime by snatching the youth of 'the residuum' out of the downward spiral into destitution and criminal involvement, thus diverting them from becoming a financial burden on the State in the poorhouses and the prisons; in other words, to socially and morally mould the children of the lower orders as good, law-abiding citizens by inculcating in their young minds the bourgeois values of self-help, independence, thrift, hard work and deference to the *status quo*. The attempts of reformatories and industrial feeding schools to meet the full extent of the problem of the children of 'the residuum' were increasingly frustrated by the fact that they were voluntary and non-statutory agencies.

By the middle of the nineteenth century, as Linda Mahood has argued, voluntary philanthropic initiatives were being criticized for their ineffectiveness in making an impact on the overwhelming problems. Consequently, there was an increasing tendency to look to the reform of the law and the improved police

forces as agents of social control[158] as a means of enabling social rescue agencies, such as reformatories and industrial schools, to be more effective.

13. Police Forces

The emergence of a uniformed, bureaucratic agency of State law enforcement which was recognizably a modern professional police force can be dated, in England, from a succession of Acts beginning with the establishment of the Metropolitan Police in 1829 to the compulsory provision of county forces in 1856.[159]

In Scotland, the *Act to enable burghs in Scotland to establish a general system of police* was placed on the statute book in 1833. This Act was 'enabling' and not 'mandatory', which meant it was possible for burghs to ignore it altogether, or, if they already had a local Police Act, they could opt for its retention in preference to the 1833 Act. The formation of efficient, disciplined police forces was as slow in Scotland as it was in England.[160] The statutes of 1847 and 1850 were again only 'enabling' but there seemed to be an increase in the pace at which police forces were being set up. By 1852, police forces were being maintained in 67 burghs with the total number of police officers in urban areas reaching 1,370.[161]

Reforms were eventually made and the police forces were stabilized. Closer links developed between the operations of voluntary social rescue agencies, such as reformatories and industrial feeding schools, the police forces, and local magistrates in the attempt to set up locally efficient systems for sweeping children off the streets and for keeping them out of the prisons.

14. Law Reform

There was a decided need for the discriminatory treatment of children under the criminal law. Magistrates in England lacked the power and had no clear policy to follow regarding alternatives to imprisonment for young offenders, although some, like the Warwickshire magistrates, set up their own reformatory and directed appropriate cases towards it. In Scotland, on the rising tide of burgh reform in Aberdeen, Edinburgh and Glasgow, local Police Acts provided magistrates with some legal authority to create a limited distinction between the treatment of adult and juvenile offenders with regards to their punishment at the mercy of the law. In Aberdeen, Sheriff William Watson invoked the powers of a local Police Act of 1829[162] to authorize the police to apprehend all juvenile mendicants and convey them to Sheriff Watson's industrial school, which was moved out of its original single room in the House of Refuge for the Destitute and into larger premises in the former city soup kitchen to facilitate a greater influx of children as a result of police action.[163] Later, a Child's Asylum Committee was formed composed of magistrates, Police Commissioners, Poor Law authorities and representatives from the industrial schools. The function of this committee was to consider the cases of youthful petty offenders handed over by the police and to decide whether such cases would be sent to the industrial feeding schools.[164]

The Edinburgh Police Act 1832 allowed a sum of £400 to be granted to a House of Refuge for juveniles. This provision aided the Dalry Reformatory for Girls (originally at Boroughmuirhead), the Dean Bank Institution for Girls and the Original Ragged Industrial School. The availability of funds from the police rates meant that there was a close liaison between the police and reformatory institutions in Edinburgh which facilitated the direct transfer of children to these

institutions after their conviction in the Police Court. The police were also much more thorough in bringing young misdemeanants and destitute, begging or vagrant children into the Police Court.[165]

In 1841 the *Act for Repressing Juvenile Delinquency in the City of Glasgow* [4 & 5 Vict. Ch., 36] instituted a Board of Commissioners for the repression of Juvenile Delinquency in the city of Glasgow. The Commissioners were given administrative control over the Houses of Refuge for male and female delinquents and they were empowered to defray expenses by levying a rate on the Glasgow citizens (one penny in the pound on rents of £12 and above).[166] Prior to the 1850s, the Glasgow Houses of Refuge were the only institutions of this nature to be financially supported and administered by a local Act of Parliament - perhaps a testimony to the scale of the problem in Glasgow and to the initiative of that city.

In Scotland there were many instances of magistrates and justices of the peace sending children to industrial schools and reformatories as an alternative to prison under local schemes developed to deal with the problem of delinquent and potentially delinquent children in each of the major urban areas. However, it must be understood, that the liaison between the sheriffs, magistrates, police officers and local houses of refuge, reformatories and the industrial feeding schools in Scotland, was one which depended, to a considerable extent, on the willingness of individuals to co-operate. Under the Glasgow *Act for Repressing Juvenile Delinquency 1841* offenders, under the age of 12, brought to trial before a magistrate could be admitted to the Houses of Refuge at the discretion of the magistrate. The young offender had to be willing to accept this arrangement of 'voluntary incarceration' as an alternative to imprisonment; some children

refused the option of going to the House of Refuge because the term of imprisonment for a minor offence was often shorter than the term of committal to the House of Refuge. Destitute children could be admitted to the House of Refuge at their own request, but this request had to be certified by a magistrate. Finally, the Board of Commissioners had the power to determine the fitness of every individual for admission, and they could refuse to accept children on the grounds of varying degrees of physical or mental abnormalities.[167] Sheriff Watson's use of the local Police Act in Aberdeen attempted to sweep all the mendicant children into his industrial school, but there was no law to hold them there. Desertions from all such early institutions were frequent as a result of the children tiring of the routine or the parents withdrawing them. It was fortunate that in Scotland many sheriffs and magistrates had a particular interest in, and even a direct involvement with the treatment of the young offenders who appeared before them in court - for instance, Sheriff William Watson of Aberdeen, Alexander Thomson Deputy-Lieutenant of Aberdeen and Kincardine, and Sheriff William Barclay of Perth.[168]

What was required in Scotland was legal provision on a national scale to remove local variations and ensure that young offenders received the same degree of consideration in all areas and that ,once in these institutions, their attendance was enforced by legal detention. These points were given in evidence before the Select Committee of 1852-53. Petitions were sent from Glasgow, Dumfries, Inverness, Leith and Fife to the Home Office in London exerting pressure for the passage of legislation.[169]

England remained locked in controversy regarding the child's culpability and the age of discretion. The idea that harsh punishment for the young was

meant for their ultimate salvation was derived from the moral view that crime was not only an offence against society, but an offence against God.[170] The controversy was further exacerbated by a strong adherence to the fears of State interference with parental rights,[171] and the suspicion that any advantages given to young delinquents would be against the 'honest poor'. The depth of the controversy was revealed at a meeting of the Royal Society of Arts in 1855 where the traditionalists expounded the view that juvenile offenders could distinguish between right and wrong and should be punished. There was a firm adherence to the concept whereby the law made no distinction between adults and juveniles as 'individual free subjects' fully responsible for their criminal actions. Investigations into juvenile delinquency had revealed the fact that children could equal and sometimes exceed adults in degree of vice and crime.[172] Those who took a more progressive attitude towards reform of the criminal law of England signalled the need for the reform rather than the punishment of young offenders.[173] It was asserted that the age of the child, the depraving influences in his or her childhood at the hands of neglectful or dissolute parents should all be taken into account in deciding the degree of guilt that should be borne by the young offender;[174] in other words, the extent to which the child was a 'free subject' exercising a choice in the matter of committing a crime, or to what extent was the child a victim of circumstances beyond his or her control which left the child no option but to be drawn into the world of crime.

In England the bitterness of the controversy necessitated legislative compromise to ensure that crime, even that committed by the young, could be seen to be punished. In Scotland, there was an absence of the acrimonious conflict between reform and punishment so prevalent in England. Scotland perceived the

treatment of the delinquent and potentially delinquent child as essentially one problem within the prevention of crime and the control of 'the residuum'.

Dunlop's Act, passed on 7 August, 1854 was entitled - *An Act to render reformatory and industrial schools in Scotland more available for the benefit of vagrant children* (17 & 18 Vict. Ch.74). The children it applied to included any child under the age of 14 found begging or without any settled place of abode or proper guardianship and having no lawful or visible means of subsistence. Such children could be brought before a Sheriff or a magistrate by a constable, and though not charged with an offence might be ordered to be detained in any reformatory, industrial school or similar institution in Scotland for such time as was necessary for his or her education. The commitment was not to be ordered if the parent found security of between £1 and £5 to guarantee the good behaviour of the child for at least twelve months. To remove any doubts that this Act could be an incentive to parental neglect, parents were made liable to managers of the school to contribute to the maintenance of their children; if the parent was unable to contribute, the expense was made recoverable from the parochial board of the parish to which the child, if a pauper, would have been chargeable. Magistrates were given the legal authority to commit mendicant children to institutions before they committed an offence, and to enforce their attendance by court order for a specified period of time. With this Act, Scotland was ahead of England in taking preventive steps regarding juvenile crime. Dunlop's Act did not formulate any distinction between reformatories, houses of refuge and industrial feeding schools with regards to the treatment of potentially delinquent children.

Legislation concerning children who had committed offences came with the *Act for the better care and reformation of youthful offenders in Great Britain*

(17 & 18 Vict. Ch.86) which was placed on the statute book on 10 August,1854. Known as the Palmerston Act, this statute reflected the climate of opinion in England and placed a decided emphasis on having an element of penal punishment in the treatment of young offenders. All young offenders coming before any court, judge, police or stipendiary magistrate or two justices of the peace, convicted of any offence punishable by law, either on indictment or on summary conviction, were to be sentenced to at least 14 days imprisonment before they could be admitted to a reformatory for a period of between two and five years. The great achievements of this Act were that it instituted a more liberal interpretation of *doli capax* based on a recognition that young offenders up to the age of 16 should be treated separately from adults under the criminal law, thus ensuring they received 'a child's punishment for a child's crime'.[175] This Act also activated the principle of State guardianship of young offenders which had merely been established in the *Act for the care and education of infants who may be convicted of felony 1840*. In England the Palmerston Act was exclusively concerned with giving State legal and financial recognition to reformatories which admitted only those children who had been convicted of crime. In Scotland, reformatories, houses of refuge and industrial feeding schools, applied for certification under the Palmerston Act in order that youthful offenders could be committed to them after their 14 days of imprisonment. Many of the Scottish institutions had dual certification under both the Dunlop and Palmerston Acts, which meant that there was no clear distinction, in Scotland, between the treatment of delinquent and potentially delinquent children.

However, a segregation was made between the treatment of delinquent and potentially delinquent children in Scotland by the *Reformatory Schools (Scotland) Act* (19 & 20 Vict. Ch.XXVIII). Passed in June, 1856 this amending Act

stipulated that no more of the Scottish institutions were to be permitted to have certification under both the Palmerston and the Dunlop Acts. This Act instigated the development in Scotland of a dual system of institutions which were to be clearly identified as either reformatories or industrial schools; the former providing treatment for youthful offenders after their 14 days of incarceration in prison, and the latter giving protection and training for children whose involvement with crime was otherwise imminent.

Not until 1857 was provision made in English law for the treatment of potentially delinquent children. The *Act to make better provision for the care and education of vagrant, destitute and disorderly children and for the extension of industrial schools* (20 & 21 Vict. Ch.48), following developments in Scotland, permitted the establishment of industrial schools for the better training of vagrant children in England. This Act extended to England the same provisions that had been granted to Scotland under Dunlop's Act. By 1857 England had, under the authority of the law, the means to provide for the treatment of delinquent and potentially delinquent children in a dual system of reformatories, for those who had been convicted of crime, and industrial schools for vagrant and destitute children.

In 1861 temporary consolidating Acts were passed in England (24 & 25 Vict. Ch.113) and in Scotland (24 & 25 Vict. Ch.132) which extended the classes of children admissible to industrial schools to include children under the age of 12 charged with an offence punishable with imprisonment or some lesser punishment. At the discretion of a magistrate such children could be committed to an industrial school instead of a reformatory.[176] These Acts went some way to removing the harsh distinction created between children who had transgressed the

law and those who were in imminent danger of doing so. Furthermore, in their respective countries, these Acts of 1861 extended the categories of children considered appropriate for industrial school treatment to include all those under the age of 14 found begging, wandering or frequenting the company of reputed thieves, or any child under 14 years of age represented by the parents as uncontrollable.

The dual system was consolidated by the *Reformatory Schools Act* (29 & 30 Vict. Ch.117) which applied to both England and Scotland. The youthful offenders who could be committed to reformatories by the courts were to be those convicted of an offence punishable with penal servitude or imprisonment, and the detention in a reformatory was to be preceded by not less than 10 days imprisonment. Detention was not to exceed 5 years in duration or to extend beyond the age of 21. On admission youthful offenders were to be under 16 years of age, but, unless previously convicted, they were not to be under the age of 10. The law relating to industrial schools in Scotland and England was consolidated by the *Industrial Schools Act 1866* (29 & 30 Vict. Ch.118). This Act stipulated that children could only be detained in industrial schools until the age of 16. No child could be admitted who was over the age of 14. Also excluded from industrial schools were those children over the age of 12 who were on a charge or those who had previously been convicted of crime. It is to be noted that in the consolidating Acts of 1866 the inmates of reformatories were always referred to as 'youthful offenders'; whereas, the inmates of industrial schools were described as 'children'.

By 1866 the law of Great Britain had not only defined the juvenile delinquent and the potentially delinquent child, but had differentiated between the

two by applying a degree of punishment in the training of the former and surrounding the latter with institutional care and protection. The progress of events by which the problem of the youthful offender and the child in imminent danger of falling into crime were identified differed north and south of the border. Due to the more flexible procedures existing in the Scottish legal system and the more enlightened attitudes of law officers, earlier attempts were made in Scotland to separate the juvenile offender from the criminal mass with regards to court procedures and criminal punishment. There was an earlier recognition in Scotland in legal terms that proper provision had to be made to give care and protection to the potential delinquent in order to gain control over their drift towards criminal activities. Where Scotland placed initial stress on rehabilitation, England emphasized punishment. This meant Scotland had very few reformatories and no real segregation was made between the treatment of delinquent and potentially delinquent children until the Act of 1856 (19 & 20 Vict. Ch. XXVIII) made such distinction necessary. In England the opposite situation pertained, and industrial schools had to be created to make provision for vagrant, destitute and disorderly children under the Act of 1857 (20 &21 Vict. Ch.48). Scotland ceased to have separate legislation with the passing of the *Reformatory Schools Act 1866* (29 & 30 Vict. Ch.117) and the *Industrial Schools Act 1866* (29 & 30 Vict. Ch.118). These Acts instituted an identical system of reformatories for youthful offenders and industrial schools for potentially delinquent children in England and Scotland.

Developments in the treatment of delinquent and potentially delinquent children in the age of *laissez-faire* culminated in the creation of a dual system of reformatories and industrial schools as a compromise between voluntary and State action[177] formulated on a fusion of Scottish and English ideas. Once the national

system was instituted by law all local efforts, in England and Scotland, were formed into a national system of reformatory and industrial schools.[178] The medium which was mainly responsible for drawing the Scottish and English schools into line was the Reformatory and Industrial Schools Inspectorate, formed in 1857 and centred in London. The first full-time Inspector to be appointed was Rev. Sydney Turner, a leading reformer in the field of juvenile crime and the supervisor of Redhill Reformatory in Surrey. As a section of the 'law and order' inspectorates [the others being the Prison Inspectorate (1835), and the Constabulary Inspectorate (1856)], the Inspectors of Reformatory and Industrial Schools were given the responsibility of overseeing the efficiency of the voluntary or privately run reformatories and industrial schools which were, from the State's point of view, part of the system for the maintenance of law and order or social control. The Inspectors of Reformatories and Industrial Schools had the same powers as the other 'law and order' Inspectorates, to withhold grants where serious inefficiency was discovered.[179] As the Scottish reformatory and industrial schools became more dependent on state support, the management committees of these voluntary institutions had no option but to comply increasingly with government standards and regulations as communicated through the Inspectorate. Hence, the residue of Sheriff Watson's non-residential principle as a safeguard against institutionalization gradually disappeared from the Scottish schools, as did the mixing of destitute and criminal children under the pressure of legislation and guidance from the Inspectorate.[180] Like the Prison Inspectors, the Reformatory and Industrial Schools Inspectors directed their efforts at the enforcement of uniform standards in the interests of criminal justice and social control.[181]

15. Conclusion

By the end of the 1860s, as Evans has argued, it was possible to perceive a growing recognition that State intervention should not be confined to the aversion of 'great evils' or limited to ensuring the efficient and successful operation of the free market. It was realized that State intervention in social questions was a positive good and there was an increasing gamut of problems which could only be approached through positive State action.[182]

One of these problems, in the age of *laissez-faire*, was the social control of the youth of 'the residuum'. What was created was a 'network of social control mechanisms' specifically dedicated to the children and youth of the lower social orders. Previously these children had not been given any particular recognition or specific treatment under the repression of the law, the penal system and the Poor Law; and they were beyond the reach of existing educational provision and all charitable and missionary work. The social control network which was devised for delinquent and potentially delinquent children was formulated on a partnership of voluntary and State action in deference to the prevailing climate of 'individualism' and *laissez-faire* - one example of what Fraser has referred to as 'state-aided, state supervised, private philanthropy'.[183] In becoming involved in the protection and training of destitute and delinquent children, the State also stepped over the almost sacred Victorian boundary between public and private life. It became involved in the private relationship between parent and child with particular reference to the role of parental neglect among the lower social orders as being the cause of criminal behaviour among children. Information provided by Royal Commission and Select Committee investigations, and by the accumulation of details supplied by the increasing numbers of fact-finders employed by the government, indicated the correlation between the cruelty of drunken parents and

the readiness, or necessity, of children to stay out of the home for as long as possible, thereby becoming involved in the activities of street life. The Rev. Sydney Turner, first Inspector of Reformatory and Industrial Schools, stated his awareness of the contribution that parental greed and dissolution made in directing a child on the path to crime -

> At an age when the children of the wealthy would be carefully tended, and on no account allowed to leave the precincts of the nursery, he was sent out to beg or pilfer, beaten if unskilled or unlucky, rewarded and praised if clever and successful. He had...brutal and unnatural parents, who traded in their children's depravity...while they themselves revelled in the gluttony and drunkenness which their children's crimes had purchased.[184]

This statement reveals that the problem of delinquent and potentially delinquent children was defined in terms of social class. State intervention in the parent-child relationship in the lower social orders was justified as a means of further dividing and controlling 'the residuum' in the interests of the security of respectable citizens and the future welfare of the nation. Rev. Sydney Turner also gave expression to the growing awareness that social and environmental influences reduced the criminal culpability of the child. Within the age of *laissez-faire* the delinquent, misdemeanant and wayward children of 'the residuum' of society came to be understood as victims of their circumstances; in other words, there was a growing awareness of the delinquent and potentially delinquent child as a social rather than a criminal problem. Furthermore, the creation of a 'network of social control' specifically designed to snatch the youth of 'the residuum' out of the whirlpool of social degradation and crime, indicated a change of attitude towards the place of children in society from a situation where they were merely parental liabilities or social nuisances, to a situation where their potential and value as future citizens was given increasing consideration. However, it must be understood that in the age of *laissez-faire* the driving force

behind the concern with the problem of the wayward youth of 'the residuum' was the security and maintenance of the *status quo*; in other words, social control rather than the welfare of the individual child.

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CHAPTER 2

THE DISINTEGRATION OF '*LAISSEZ-FAIRE*' TO THE AGE OF WELFARISM

From the 1880s onwards the problem of delinquent and potentially delinquent children and young persons must be perceived within the context of the disintegration of the *laissez-faire* Victorian state and the rise of new collectivist welfare policies. This was a period of intellectual, social and political turmoil. *Laissez-faire* ideology was challenged by new theories of social philosophy which cast a new perspective on the social order. From the 1870s the churches in England and Scotland could no longer be counted on as bulwarks of the *laissez-faire* state and organized religion entered something of a prolonged crisis. In economic terms *laissez-faire* became increasingly redundant when challenged by the 'great depression', the 'labour problem' and foreign competition. The 'social question' and the 're-discovery of poverty' created a concern for the welfare of the nation with greater state intervention. This stimulated the rise of 'new' Liberalism, the emergence of class politics, 'new' unionism and the challenge of socialism. In the context of the new organic view of society, repressive and negative forms of social control that had created divisions in society had to be replaced by social control mechanisms which, while maintaining social peace and order and checking individual actions inimical to the social welfare, were designed to promote the unity and cohesion of the social order.

1. Social Philosophy

The hegemony of the principles of *laissez-faire* began to crumble in face of the challenge from several revolutionary strands of social philosophy which created a new intellectual climate facilitating the development of economic, political and social change along 'collectivist' lines.

(i) *Social Darwinism*: The theory of evolution or natural selection - sometimes referred to as the 'development hypothesis' - had a pervasive impact. It provided a background of scientific authority with which all forms of social and political thought had to come to terms. Exponents of both 'individualism' and 'collectivism' found in the concept of evolution a scientific context for their theories. Before Darwin published *The Origin of Species*, Herbert Spencer had interpreted the new scientific understanding of natural selection and competitive response to environmental change as 'the survival of the fittest' and justification for arguing an extreme case in favour of the *laissez-faire* ethos. Within the last two decades of the nineteenth century there was a change in the interpretation of the political and social implications of evolution based on the new understanding that 'the laws underpinning the evolutionary process were based on 'collectivism' rather than 'competition'. This new climate of intellectual opinion was referred to as 'hyper-Darwinism' or 'collectivist Social Darwinism'. The growing complexity and the significance of the whole social organism was recognized.

The move away from the Spencerian interpretation was led by influential intellectuals such as T.H.Huxley, Karl Pearson and L.T.Hobhouse, who all considered that too great an emphasis on individual liberty of action, on *laissez-faire* and free competition was inappropriate in the context of a highly evolved and complex society in which there was an increasing need for social peace and order and the avoidance of disruption and unrest. Substantial educational and other social provision was essential and this could only be effectively provided by an extension of state responsibility and intervention.

Many aspects of the thinking inspired by this new interpretation of the theory of evolution came together in the social philosophy expressed by the

Fabians. In his contribution to *Fabian Essays* (1869), Sydney Webb wrote of the organic view of society and of social control over the individual within that context. Society was, in Webb's opinion, an 'aggregate of individual units'; society 'created the individual' and it made the individual by moulding his character and attitudes. Where individual action was 'inimical to the social welfare, it must sooner or later be checked by the whole'. It was Webb's perception that there was more need to 'improve the social organism' than to 'pursue merely individual development'. An internecine struggle for existence among individuals was 'a menace to the survival of the human species as a healthy and permanent social organism', and it indicated the need for a 'consciously regulated co-ordination among the units of each organism'. Webb referred to this as an 'irresistible evolution into collectivism' which, he pointed out, was clear to see in the steady increase in government regulation of private enterprise and the growth of municipal administration. Developing on these ideas Benjamin Kidd in *Social Evolution* (1894) argued that the 'collectivist' tendency was the dominating principle of a 'healthy and progressive' social organism. Not simply state management, but state interference and state control on a greatly extended scale was what evolution implied.[1]

(ii) *Eugenics and 'national efficiency'*: The term 'eugenics' was coined in 1883 by Sir Francis Galton (Darwin's cousin) who defined it as 'the study of agencies under social control that may improve or impair the racial qualities of future generations either physically or mentally'. It gained scientific authority from its association with evolutionary and genetic theories and from its application of the biological principles of breeding to improve the quality of the human stock. It was seen by its adherents not simply as a genuine science, but also as a system of values involving the concept of an ideal society. Eugenicists

recognized environmental change and the improvement of man's natural and social context as being essential to progress, but their main concern was with a planned genetic improvement of the human material to create an ideal society of individuals with desirable biological qualities.

Notions of this nature gained wide acceptance in professional and progressive circles concerned with the prevention of racial degeneracy;[2] a problem which was demonstrated in the disastrously high proportion of the youth of the nation rejected for recruitment in the Boer War.[3] Liberals, Conservatives and socialists, including leading intellectual voices, supported this branch of biology as a means for the promotion of 'national efficiency'. A range of legislative policies in human stirpiculture were contemplated to supervise the elimination of the unfit. Issues such as the need to tackle the eugenic problem by segregating and, if possible, sterilizing defectives, such as the insane, the feeble-minded, confirmed criminals and even paupers, came to a head in public debate over the *Mental Deficiency Bill 1912* and similar legislative proposals which were based on the belief that the community had to be protected from this threat of racial degeneration by appropriate state action leading to compulsory detention of the mentally, morally, physically or socially 'unfit'. The main point of debate was whether justice to the individual should give way to the scientific protection of the welfare of the community.[4]

(iii) *Psychological theory*: Psychology was not obviously associated with any particular political analysis. Since the 1880s a 'new' psychology had developed in Germany and the United States and, to a lesser extent, in France and Britain, and it began to establish itself as an academic subject in several British (mainly Scottish) universities. The British Psychological Society was founded in

1901 by James Sully, the child specialist. One form of social psychology, Behaviourism, which had its foundations in social anthropology, was a significant development in this period. William McDougall's *Introduction to Social Psychology* (1895) and Graham Wallas's *Human Nature in Politics* (1908), introduced a new emphasis on 'instincts' and 'character' and in company with Gustav LeBon's *The Crowd* (1895) attempted to explain forms of human behaviour. This gave a new dimension to the debate on 'the city', the urban masses and prospects for the 'new democracy' which was developing in Britain between 1880 and 1918.[5]

Certain facets of psychological theory, bearing on the contraposition of the individual and the collective, were significant in that they cast grave doubt upon a number of the basic assumptions about human nature which were fundamental to *laissez-faire* political thought; in particular the belief in the rationality of mankind. Psychology, therefore, provided a tremendous impulse for the acceptance of some form of collective control. Both the Freudian theory of the subconscious and the theory of Behaviourism, perceived the free and rational will of the individual, so central to libertarian political and social ideology, as a delusion. The Freudian school believed that man was motivated by unconscious psychical forces, while the followers of Behaviourism theorised on the overwhelming importance of automatic bodily responses to outside influences. Freedom was thus a figment; morality was simply the means by which attempts were made to regulate non-ethical impulses; rational purpose was an illusion. Thus, much of the intellectual core of *laissez-faire* political and social thought was challenged; particularly, that the emphasis on the importance of individuality and freedom from external restraint necessarily rested on the supposition that human beings were essentially creatures of reason - that the state should leave well alone

and that the individual would act rationally in the realm of freedom thereby sustained.[6]

(iv) *Idealist philosophy:* In the later 1870s the increasingly apparent ineffectiveness of classical political economy; the disillusion with the arguments justifying competition propounded by Spencer and others; a growing conviction that the empirical and rationalist tradition was intellectually and morally a lost cause, combined with a reaction to orthodox theology, to excite an interest in Idealist philosophy.[7] Led by T.H.Green, F.H.Bradley and Bernard Bosanquet, the School of British Idealists based in Balliol College, Oxford, combined the philosophical and political teachings of ancient Greece with those of the German philosophers Kant and Hegel, to evolve the concept of a 'common good', which would be brought about by state intervention in the practical aspects of social and community welfare. The British Idealists had a very important influence on the intellectual climate out of which the welfare state was to emerge.[8] Taught to an increasing number of young men from the 1870s onwards, the Hegelian views of the Oxford philosophers created a fundamental revolution, particularly when some of these students began to fill positions of power in the state.[9] Scotland, perhaps more than England, was intellectually receptive to the social and political philosophy of the Idealists with its strong Christian and moral-religious undertones. A large proportion of the Idealist School were Scottish, and nearly all of them were to become prominent in the academic world in Scotland and England. One of the most prominent academics of Scottish nationality to emerge from among the Oxford Idealists was David Ritchie (1853-1903). He became a Fabian and an exponent of what was later referred to as 'evolutionary utilitarianism'. It was Ritchie's conviction that 'individualism' had been banished for the good of all; and that the drafting and activation of social policy for the

good of all would be left to a properly representative government. His organic vision of society directly challenged Spencerian views in that co-operation was the keynote rather than competition - heralding the final demise of policies of social welfare which were founded in charity. In Scotland these progressive views swung social philosophy away from the social conservatism of Thomas Chalmers, and merged 'social Darwinism' with moderate socialism. There was an acceptance of the new research in social psychology and comparative psychology with particular reference to the aspects which emphasized community orientation and interdependence, which had echoes of concepts expounded by Adam Ferguson during the era of Scottish Enlightenment. Ritchie and his acolytes favoured legislative action on behalf of the whole community and not for narrow or party interests, as well as the development of community controlled services by local government.[10]

2. The New Politics

The rapidly changing ideological climate of the last quarter of the nineteenth century had a powerful influence on the manifestos and programmes of the established political parties.[11] At the same time the distribution of political power in Britain was altering dramatically.

The right to vote was granted to the urban working classes in 1867 and, with the further extension of the franchise to workers in rural and mining areas in 1884, the working classes numerically dominated the electorate. In 1885 the *Redistribution of Seats Act* gave population a more proportionate weight over merely property. The foundation of the Independent Labour Party in 1893 gave the working classes political representation. In addition, from 1911 Members of Parliament were granted a salary of £400 a year from the public purse, which

provided a degree of financial support that facilitated the entry of working class representatives into the House of Commons. Consequently, from the 1880s onwards political party programmes were increasingly formulated for mass appeal, setting British politics on a new and precarious course of competitive bidding for votes.[12]

Traditional political affiliations also began to change. The Liberals - always the party of free trade and non-conformism - were, by the 1890s losing the loyalty of their old allies, the industrialists and businessmen, as well as the vote of the urban working classes who had favoured the Liberals since 1867. Increasing numbers of the business and industrial sectors began to acknowledge that the new realities of the economic climate required a political ethos contrary to that of traditional Liberalism.[13] The Liberals' working class vote was seeping away to the new independent Labour groups, the SDF, the ILP, the Fabians (etc.), which demanded the re-organization and expansion of the state. In an attempt to stem the tide of disaffiliation, a group, calling itself the New Liberals, was formed around the theorists Marshall, Hobson and Hobhouse. This left-wing Liberalism introduced an element of social reform and collectivist ideology into the Liberal Party which marked the beginning of a new progressive and flexible attitude towards social amelioration.[14] However, the senior members of the Liberal Party, notably Lord Roseberry, had a deep distrust of socialism and grave reservations regarding most forms of collectivism.[15]

The Conservatives, under Lord Salisbury, continued to uphold the hierarchical theory of the social order in which class conflict, arising out of the gross inequality of wealth was muted by a sense of moral responsibility and '*noblesse oblige*' on the part of the wealthy towards their social inferiors.

Salisbury, like his predecessor, Gladstone, detested the new plutocracy of industrial and financial wealth and he distrusted democracy. Nevertheless, he also faced the realities of late nineteenth century politics and replaced the old Tory reliance upon patronage and loyalty by a vigorously efficient party organization which found new support from a significant section of the working classes.[16]

The majority of politicians and all of the major parties came to the conclusion that some measure of state welfare legislation was advisable. They were persuaded by the success of Bismarkian policies in unifying the German nation and in stemming the advance of socialism. Social Imperialists gained influence, even over Conservative politicians,with their arguments that the role of the state in protecting British capital abroad had to be complemented by a policy of social welfare at home in order to guarantee internal stability, to close the doors to socialism and to improve the efficiency of the workforce. In 1895 Balfour declared that 'social legislation' was the 'most effective antidote to socialism'.[17] The great advances in social welfare legislation in the early years of the twentieth century drew their inspiration out of, on the one hand, the ideology of the new social philosophy, and, on the other, the urgency of political survival and social control.

3. Economics

In the last three decades of the nineteenth century, the economic structure of Britain went through a transformation which was testimony to the breakdown of liberal free-market capitalism and the rise of the new era of monopoly capital.[18] From the 1870s economics was no longer regarded as a branch of moral philosophy,[19] and it was realized that the economic 'laws' were not 'built into the

structure of the universe'. They could be challenged and altered by non-economic factors and human actions.[20]

The 'great depression' 1873-96 was perhaps the most significant factor in the decline of *laissez-faire* economics. Following a prolonged era of prosperity the most devastating effects of this depression were felt in the crisis of confidence which it induced and the challenge to liberal orthodoxy which it inspired. A further source of erosion on the free trade philosophy came from the alarming decline in the rate of industrial profit and the rate of industrial growth; circumstances which were the result of under-investment and a revived working-class militancy.[21] Furthermore, Britain's dominance in overseas trade was being challenged by Germany, the United States and Japan - an inevitable consequence of other nations with greater natural resources catching up on Britain.[22]

By the 1880s unemployment had reached a crisis point as the growing 'labour problem' began to join forces with that of poverty to become the major social issue. In addition, growing industrial unrest combined with the revival of socialism foreshadowed the threat of civil strife. In attempting to explain the 'fear' in the social atmosphere of the period, social scientists focused attention on unemployment, underemployment and low wages. This led to a recognition of the 'problem of labour' as one requiring urgent solution because it was integral not only to economic and social distress, but also to industrial relations, foreign competition, technological progress and the more general social and political crises.[23]

The 'youth labour problem' emerged out of the general crisis of unemployment in the 1880s. Where 'youth' was concerned there was a more

developed appreciation of the significance of 'age' in relation to the labour market, and to the participatory roles of young people in daily working life.[24] The areas of anxiety with regards to the employment of youth included - the decline of apprenticeship and the growing prevalence of unskilled or semi-skilled labour; the restlessness of late nineteenth and early twentieth century youth with their inability to settle in a job for any length of time; the exploitation of boys and girls as a reservoir of cheap labour used to replace the grown man; the casting out of lads of eighteen or nineteen from employment into the casual market when they were due to be paid full adult wages. Much concern was also centred on the transition from school to wage-earning employment.[25] A correlation was perceived between youthful crime and frequent or prolonged unemployment. The demoralizing nature of all forms of street trading was recognized.

4. <u>The Churches and the Importance of Religion</u>

Organized religion reached the high point of its social significance in the late years of the nineteenth century. Thereafter, in England and in Scotland, it declined in importance as the membership of most Protestant religious organizations, including churches and voluntary organizations ceased to grow relative to population.[26]

The decline in the strength of religious fervour had many causes - a certain revival of the old eighteenth century rationalism; the new rationalism of science, particularly in biology; and the 'higher criticism' which discredited the literal interpretation of the Bible was a great blow to presbyterian confidence.[27] In England the rise of a new cult of 'hedonism' challenged the central place of traditional Sabbath observance in people's lives. Concern with spiritual after-life was moved off centre stage by the rising star of 'materialism'.[28] In the inter-war

years even the Church of England no longer had the voice of authority in public affairs that had been its prerogative in the nineteenth century. Church mission and charitable work declined in face of the extension of the state's social services.[29]

Similarly, in Scotland, religious social reform and mission work lost ground to the emerging state welfare policies and to the rise of the Labour movement, which challenged the remnants of evangelical *laissez-faire* expectations that evils such as poverty and destitution were best overcome by attacking personal sinfulness as the means to social improvement.[30] Overtures made by the Christian Socialist element in the Church of Scotland to trade unionists, Fabians and Labour leaders, such as Keir Hardie, between 1890 and 1914, resulted in the development of Social Unions which initiated working-class model housing, baby clinics and holidays for slum children. This co-operation broke under the strain of the turmoil in the decade beginning in 1910. Industrial disputes, rent strikes, Red Clydeside and the start of World War I resulted in the Protestant churches losing control of many school boards and parish councils to Labour representatives. Between 1890 and 1914 the influence of the Scottish presbyterian churches in public affairs and social reform was marginalized as the politicization and state amelioration of social problems advanced.[31]

While it is evident that a process of 'secularization' was set to continue in British society by the early years of the twentieth century, it must also be noted that religion clung on to its role as an agent of 'social control' in the youth work practice which began to emerge in the 1870s and 1880s, developing out of a long tradition of mainly religious charitable activity among young people in connection with Sunday schools, temperance societies and the Band of Hope. By the 1870s the YMCA was attempting to recruit more adolescent and working-class members

and it was extending its sporting and recreational facilities. It provided a model for later youth workers, who perceived that a combination of religion, recreation and welfare could capture the allegiance of youth and so provide opportunities for their social and moral education. The youth movement of the 1880s was strongly influenced by organized religion. Groups, such as the Boys' Brigade, founded by William Smith in Glasgow in 1883, the Church Lads Brigade (1891) and the Boys' Life Brigade (1891), promoted temperance propaganda, opposition to secularism, the protection of girls and women away from home, and they were concerned with sustaining the ideal of the 'Christian family'. Further motivations included keeping boys 'off the streets', teaching the value of discipline, promoting the public school *esprit de corps* and advocating the virtues of 'character'. Religious belief and church attendance were actively encouraged, but as time went on this did not remain as the principal aim of the movement as a whole.[32]

5. Social Question

In the 1880s and 1890s there was a new public and political focus on what was referred to as the 'social question' - a 're-discovery of poverty'. Empirical social surveys and investigation by journalists and other objective writers revealed the existence of massive inner-city populations living in utter desperation.[33] The prevailing tone of the social reporting of the last two decades of the nineteenth century moved away from the merely descriptive and anecdotal style of the 1850s and 1860s to a more analytical and critical line of approach which demanded change.[34] Investigations such as *Progress and Poverty* (1881) by Henry George; *The Bitter Cry of Outcast London* (1883) by Andrew Mearns; *In Darkest England and the Way Out* (1890) written by William Booth, and Seebohm Rowntree's survey of York in 1901, all identified the 'poverty trap' and guided public and political perceptions to appreciate that poverty and its consequences were, for

many people, not the sequel of individual moral deficiency or inadequacy, but an intricate interplay of economic, social and environmental parameters on their lives.[35] Furthermore, the theories of urban degeneration and 'eugenics' had a very disturbing effect on the public and political conscience which gained ground from the poor physical quality of recruits for the Boer War and from the evidence provided by the *Report on Physical Deterioration 1904*. Concern at the greater efficiency of the German workforce magnified these fears as did the growing probability of an imperial war in Europe.[36]

The change, as Pat Thane has argued, was from a 'moral' to an 'economic' diagnosis of the problem of poverty. In the late years of the nineteenth century there was a growing recognition that the cure for the problem of poverty did not lie in the extortion of more self-help and hard work from the poor, but in government intervention to support the poor in an economic situation over which they had no control. Poverty could not be eradicated by individualist charities or charitable organizations. There was a general air of disillusion with the mid-nineteenth century optimistic belief that a free and unfettered economy would eventually generate sufficient wealth to solve many dimensions of the social problem. The capability of the British economy to sustain the required rate of progress was called into question. 'Individualism' was increasingly recognized to be redundant as a solution to the 'social problem' and all hopes for progress gradually swung towards 'collectivist' policies.[37]

Questions were raised concerning the proper role of the state with particular reference to the manner in which the social problem of the poor was to be administered. Demands for serious government intervention in the social sphere came from Fabians and the various socialist groups as well as from a broad

spectrum of Social Imperialists with cross-party allegiances. In addition there was a demand for change from the increasingly vocal pressure groups of professionals, technicians, scientists and intellectuals.[38]

By the 1890s it was becoming generally apparent that any effective solution to the 'social problem' necessitated comprehensive state intervention including welfare provision, housing improvements, medical care and unemployment relief. Developments on these lines also necessitated a revision of the old distinction between the 'deserving' and the 'undeserving' poor. The extension of the franchise and the rise of trade unionism in a period of economic insecurity meant that politicians had to acknowledge that the lower classes had power and had to be treated as political subjects whose conditions of living must be maintained above a certain standard. The overall effect of these public and political changes in attitude amounted to, what David Garland has described as, 'a breakdown of the free-market form of social organization', necessitating a transference of certain social regulatory functions from civil control to state control.[39] Between 1895 and 1914 state responsibility continued to extend. Many of the socially progressive ideas which were in the air in the last two decades of the nineteenth century were actually formulated into policy during the Liberal government's term of office from 1905 to 1914. The first steps were taken towards, what could be referred to as, state technocracy in the organization and control of the social field, facilitated by the revolutionary adoption of a system of re-distributive taxation based on the principle that the wealthy should contribute to the provision of the necessities of the poor. Lloyd George introduced a compulsory insurance scheme against sickness and unemployment; a non-contributory old-age pensions scheme was initiated in 1909; labour regulations governing minimum wages were instituted to protect workers, mainly

women, in the sweated trades and for the protection of miners in 1912; labour exchanges were inaugurated in 1909 to control the movement of labour and prevent unnecessary unemployment.

The provision of working-class housing remained as a long-term problem. Although housing had become a serious public social and political question by the 1870s, government interest, until the First World War, remained restricted to matters relating to the elimination of slums, the regulation of sanitary arrangements and the alleviation of problems relating to public safety. It was only in the last few years before World War I, in response to growing Labour pressure, that the government began to show some concern for the building, as well as the regulation, of housing for the lower classes.[40] Legislation passed between 1909 and 1924 failed to stimulate the building of houses on the required scale, either by local authorities or by private building speculators.[41] Consequently, the demand for working class housing continued to exceed the supply into the 1930s with all the social and moral problems for young and old inherent in overcrowded living conditions which were particularly evident in the north of England and Scotland.

In the closing years of the nineteenth century 'home and family' were still regarded as the 'mainstay' of the nation's greatness, and the feature of family life which could materially influence the future health and 'betterment' of the nation was the welfare of children.[42] By the early twentieth century acute public concern about the health and safety of children was forcing the state to assume greater responsibility for the welfare of youthful citizens. The reforms passed by the reforming Liberal administration of 1905, providing for the feeding and medical inspection of school children, the early notification of births and, in particular, the *Children Act 1908* indicated a new concern with children as the

nation's most valuable natural resource. These social reforms, aimed at the youth of the nation, were formulated by the 'collectivist' ethos of the 'new', 'progressive' or 'radical' Liberalism that sought to replace the role of 'political economy' by a form of 'moral economy'.

Under the prevalence of fears regarding the 'physical decay' of the race in the aftermath of the Boer War, and the lack of confidence in Britain's ability to compete with her industrial and imperial rivals, many children's charities began to advocate state-sponsored social remedies for the youth of the nation. The NSPCC and the State Children's Association were calling for a larger state share in child welfare work before 'national efficiency' emerged as a popular slogan in 1902.

Expectations of the young were also changing. During the late years of Victoria's reign there was, as George Behmler has argued, a progressive lengthening of childhood. Compulsory education, from 1870 in England and 1872 in Scotland, had institutionalized for each child a training period - the school years - within which they could develop the intellectual and physical powers necessary to cope with the adult world. In England the school-leaving age had been raised to 14 by 1900,[43] and in Scotland the same school-leaving age was imposed by statute in 1901. What must not be neglected is the social control aspect of education. The implementation of the Education Acts considerably restricted the free will of children who would otherwise have roamed the streets.[44]

An additional factor in the extension of childhood was the conversion of many working-class parents to the middle-class sentimental attitude regarding childhood. By the end of the nineteenth century juvenile precocity was no longer favoured by working-class parents who aspired to upward social mobility for their

offspring and who no longer relied on them to supplement family income. By 1914 the considerable advances made in the provision and the quality of fresh milk and the development of health visiting schemes had significantly contributed to a reduction in infant mortality rates, which encouraged the poorer classes to place a greater emotional investment in the development and welfare of each child.[45] Slum clearance projects and the steadily increasing activities of local authorities in the field of public health gradually ameliorated the environmental conditions within which the youth of the nation was nurtured, although the problem of providing adequate housing for working-class families was to continue into the 1930s. It was believed that crime, vice, immorality and child neglect were the inevitable consequences of overcrowding and insecurity of tenure.

Essentially, the social policies initiated by the Liberal government 1905-1914 were a means of providing forms of security and integration for workers and their families which modified the most severe consequences of the market system and the inequalities and insecurities inherent in its distributional effects. There was a new rhetoric of equalization which talked of 'citizenship' rather than 'social classes'. The new social policies gave members of the lower classes a new image of 'equality of status' in addition to the 'political equality' gained from the extension of the franchise. Workers were no longer merely commodities in the market subject to the whims of capitalists, the uncompromising moral attitude of charity and the severity of the Poor Law. The ultimate aim of these measures of security and equalization of status was the 'readmission of the outcast' and the creation of a social solidarity that would unite the nation; in other words, the institution of new and more subtle forms of 'restorative and reformative' social controls which operated by enlisting the desire of the individual for security and social or economic advance, rather than simply by providing his or her immediate

needs. These new mechanisms of social control were, in effect, a social contract with the state, operated by winning the allegiance and commitment of the workers in the interest of their own and their family's future. Once committed the worker was then obligated, in the pursuit of self-interest, to be regular, reliable, conscientious, respectable and untainted by a criminal record or imprisonment. The worker was, as Garland has argued, 'policed and regulated by the manipulation of his own self-interest'[46] and that of the future welfare and social respectability of his children.

6. Penal System

The progressive challenge of 'collectivism' to the increasingly redundant ideology of *laissez-faire* not only weakened the social control inherent in unemployment, debt, poverty and the general insecurity in the circumstances of life for the lower classes, but it also pulled away the foundations from the penal system and the Poor Law - the 'negative and repressive' aspects of Victorian social control.[47]

The new subtle forms of social control through 'restorative and reformative' mechanisms of social provision and state-induced self-control were sufficient for the 'normal' majority of the population, but for the non-compliant minority of wayward and marginal cases a more forceful system was required. This was provided by a new range of penal procedures and institutions which correlated effectively with the new social structure.[48]

It has been argued by Garland that, in the years between the *Gladstone Committee Report 1895* and the start of World War I in 1914, the basic structure of the modern penal system was formulated. This is not to imply that all the

previous actions, institutions and practices of the Victorian system were abandoned; indeed, even the new developments in this period, such as probation, Borstal, preventive detention and 'individualization', had some degree of precedent in the Victorian system or earlier. However, a new structure of penality definitely emerged which, although it retained a deterrent aspect, was also dedicated to various forms of correction, normalization, care and improvement. By the 1880s judicial execution was rare and infrequent. The use of corporal punishment had gradually been curtailed to the birching of juvenile offenders as an alternative to imprisonment. In particular, a new penal welfare dimension was introduced which had far reaching effects throughout the penal system. The surviving elements from the Victorian system, including the prisons, after-care, fines, along with reformatory and industrial school detention, were subjected to internal changes in accordance with the new structure of the penal network. This new structure was composed of three major sectors, which Garland has referred to as - 'normalizing', 'corrective', and 'segregative' - each one containing a number of institutions and agencies entailing progressively increased measures of control and a greater intensity of penal treatment. Of course, for those inmates who showed signs of compliance and improvement there was also the chance of moving from a greater to a lesser degree of severity - gaining promotion to a more lenient category of institutions. This system of progressive grading was also repeated within the individual institutions where it formulated a new system of internal discipline which replaced the old system of punishment with a more positive structure of incentives, rewards, promotions and withdrawal of privilege, all of which 'individualized' their inmates.[49]

The 'normalizing' sector included the state-sponsored sanctions of probation, after-care and licensed supervision, all of which were directed, not

simply at the prevention of law-breaking, but also at the teaching of specific standards of behaviour and attitudes in the pursuit of 'good citizenship'. Of the three sectors within the new penal structure, this was the one with the greatest proximity to the normal or primary institutions of socialization - the family, the school, the workplace, etc. - since these sanctions were community based and did not require the removal of the offender from his or her own social environment. Treatment under this sector was only applied to those who were potentially or marginally criminal, or were returning to society after a period of detention in Borstal, reformatory school, etc. Normal systems of socialization were employed by probation or after-care officers, involving personal influence, friendly persuasion and teaching, aimed at supporting and augmenting the discipline inherent in the school, home and workplace, but with the backing of the coercive powers of the court.

Probation, supervision and after-care were, in effect, an extension of judicial power. They took state intervention into the daily lives, the homes and families of offenders. These sanctions were concerned with more than simply crime prevention; they were directed towards 'normality' and the making of good citizens. It was a means of 'improving' offenders and their families and of adding to the social welfare by using discreet and humane methods to prevent the downward spiral of minor offenders into crime.[50]

The 'correctional' sector was one stage further into the new structure of the penal system. The constituent elements within this sector were institutionally based but correctional or reformative in character, and included Borstals, reformatories, industrial schools, as well as privately-run retreats for the inebriate

and the weak-minded. Borstals were entirely new to the system, while the other institutions were continued from the previous system.

The selection of inmates for each of these institutions was based on the degree to which they were open to correction, their youth, character, etc. The institutions retained the power to refuse those who, in their estimation, were incorrigible. Sentences were of an indeterminant and non-proportional nature, which meant that they could be terminated at the discretion of the institution's staff subject to the conduct of the inmate and to certain criteria of reform and correction. Each of these institutions was required to provide a system of corrective training, education, industrial or work training and reform.

This 'correctional' sector was designed to operate contigously with the 'normative' sector. In cases where the 'normalizing' sanctions failed or were inappropriate because of the character of the offender or his or her background, then the 'correctional' sector provided the next set of options for treatment. The 'correctional' sector was dependant upon the investigations of probation and after-care agencies for the information required to make the original assessment and allocation, the subsequent classification by character, and the final decision regarding release. Similarly, the 'normalizing' agencies operated to provide the 'corrective' institutions with information on the supervision of after-care and the transmission of information about the offender's progress, the success of the training or the need for recall.

As Garland has pointed out, the effect of the legislation which formulated the 'correctional' sector in the early twentieth century was to extend the influence and the duration of penal control by means of longer reformative sentences and

the additional periods of supervision. It also gave penality a definite image of correction and reform, and it played a crucial intermediary role - a stage from which offenders could either be retrieved into society or further advanced into the sphere of penal control.[51]

The 'segregative' sector formed the ultimate component of the new penal structure, furthest removed from everyday social life, which was designed to control those who had either refused, or who had been unable, to submit to the discipline prevailing in the normal social order; in other words, habitual offenders who were assessed as incorrigible. The institutions within this sector included the various state reformatories for the inebriate and the feeble-minded, the preventive detention institutions and, in particular, the ordinary prisons. While segregation had existed as a feature of the Victorian system, the new penal system defined this section much more clearly, particularizing its functions and demarcating them from those of the 'correctional' and 'normalizing' sectors.

Under the various penal changes there was a realignment of the role of the prison which moved it out of correction and into segregation, although, as Garland has claimed, the official rhetoric indicated the reverse. Between 1895 and 1914, the population of the prison was redefined by the withdrawal of various categories into specialist institutions or non-custodial sanctions. The groups removed not only included the habituals and the mentally ill, who were beyond reform, but also all of the reformable categories and the redeemable cases for whom there was hope - juvenile and young adult offenders; adult first offenders and even the mildly inebriate and feeble-minded who might respond to treatment. Consequently, the inmates who remained in the prisons were serious or frequent offenders whose cases justified the punishment of imprisonment. The segregative

nature of prison treatment was further emphasized by the introduction of legislation which controlled the frequency of short sentencing by, for example, the introduction of the payment of fines by instalments. Furthermore, although official assertions were made to the effect that the prisons were to become more reformative in character, there was no introduction of indeterminate length of sentence, release on licence, etc. The effect of the post-Gladstone Committee reforms on the prisons was, paradoxically, to make them less rather than more 'reformative'.

The 'segregative' sector functioned as the ultimate sphere of coercion within the penal system, while all three sectors of the new penal network together formed a coercive force behind the new institutions of the social domain.[52]

7. Criminology - Controversial Theories

The development of the new penal system was influenced by theoretical controversies with a scientific and analytical origin in the fields of psychology and sociology. The first area of debate was the 'nature/nurture' dispute. In this issue the influence of the 'environment' was counterbalanced by that of the 'individual constitution'. This debate was more a matter of rhetoric than substance and it was quickly realized that the two positions could be reconciled. The solution involved focusing on the individual as the central object of inquiry and simply drawing together the 'constitutional' (nature) and 'environmental' (nurture) influences impinging on him. This approach was developed in the works of Lombroso, Ferri, Tarde and others.[53]

The second area of controversy centred on the notion of the 'born criminal' or the 'criminal by nature'. This was to have important repercussions on

the related question of 'corrigibility' and the potential scope of 'rehabilitation'. While, on the one hand, if such a 'type' existed in nature, then its discovery and investigation would provide criminology with a new and very strong scientific and practical discipline. If 'born criminals' could be identified before they first offended, then, as some criminologists argued, a real preventive policy was a practical possibility. However, this theory was self-contradictory in that if such a fatal flaw existed in the characters of certain individuals, these individuals were 'absolutely irreformable'. In contradiction to what was essentially a defeatist attitude, writers such as Saleilles, Morrison, Holmes, Ruggles-Brise and others dismissed the concept of the 'born criminal' as 'superstition' and emphasized the aims of rehabilitation and the possibility of success in most cases.[54]

Closely related to this was the third area of contention which involved the question of 'determinism' versus 'free will'. The theoretical conflict revolved around the precise characterization of the 'ego' or the personality. Writers, including Ferri, Garafalo, Ellis, Smith and Schlapp, asserted their belief in a logic of determination and behavioural reaction. In contention with this view, Saleilles, Prins and Von Lizt supported the notion that 'freedom' and 'determination' were both operative in the human personality. Individuals were free to develop their moral character, but once this character is formed 'the fundamental law of physical causality' would prevail. In practical terms this debate had ramifications in the question of 'criminal responsibility' and the possibility of 'reform'. Without 'free will' there was no possibility of 'reform' or 'rehabilitation'. This again reinforced the notion of criminality being an incurable condition and those who were afflicted by it were 'lost to society'.[55]

Serious arguments revolved around the fourth area of debate which considered the question of 'eugenic sanctions' and their employment against offenders. Various forms of 'elimination' or 'social surgery', which were intended 'to prevent the procreation of individuals who, in all probability, would develop vicious and depraved characters', were promoted by writers such as Garafalo, Battaglini, Ellis and Bradley. These ideas were opposed, notably by James Devon and J.F.Sutherland, on the grounds that there was no evidence to support the theory that habitual criminals were prolific or liable to pass on criminal tendencies to their children. Furthermore, they rejected the form of morality expressed in the 'eugenic' argument.[56]

The fifth area of discussion centred on the social aspects of crime causation and the importance of social reform. Enrico Ferri in *Criminal Sociology* (1917) asserted that the abnormality at the root of criminality was to be found in 'society itself', as well as in the individual, and he advocated that many of the central elements of the capitalist society be called into question and reformed. T.Holmes in writing *London's Underworld* (1913) and J.F.Sutherland in *Recidivism* (1908), both identified inequalities of wealth, unemployment, bad housing and so on, as fundamental causes of crime which had to be removed before the reform of individuals was possible. Evelyn Ruggles-Brise, author of *The English Prison System* (1921) saw the solution in the social programme of the Liberal government.[57]

What is summarized by criminologists under the title 'l'hygiene preventive' comprises all those social and political reforms which make up the 'Social Programme' which is engaging the attention of our statesmen today. Better housing and lighting, the control of the liquor traffic, cheap food, fair wages, insurance, even village clubs and Boy Scouts.

A sixth area of intellectual debate was centred on the discovery of 'adolescence'. British delegates to the International Educational Conference in Chicago in 1893 returned home to disseminate the teaching of Dr. G. Stanley Hall in the new field of child study and the identification of the 'adolescent' problem.[58] The other important figures in the development of a psychology of adolescence were J.W.Slaughter and Sir Thomas Clouston. G. Stanley Hall, the American psychologist, was well known for his pioneering work on child development, for his theory of recapitulation, and for his very influential two volume study *Adolescence* published in 1904. J.W.Slaughter, his student and acolyte, resided in England where he was chairman of the Eugenic Education Society and secretary of the Sociological Society. From these positions he promoted Hall's theories, in addition to which he published *The Adolescent* in 1910, a work which was reprinted three times by 1919. Sir Thomas Clouston, distinguished Edinburgh psychiatrist and founder member of the British Child Study Association, advocated his views on adolescence in books, articles and lectures.[59]

Hall interpreted his 'theory of adolescence' in the framework of 'post-Darwinian Biology', so that the 'turbulence' of adolescence was linked to a 'wide spectrum of physiological and psychological changes determined by evolution'. By insisting that the psychoses and neuroses and the emotionalism in the general behaviour pattern were all normal manifestations of adolescence, he presented youth as the 'prisoner of its own nature'. Even the healthy boy could be led into crime and immorality as the result of a 'blind impulse' over which 'consciousness' had no control. Consequently, some form of 'education' was necessary to protect the young person and society during the adolescent period. Without protection, guidance or care, youth was vulnerable to the self-destruction

of body, mind and morals. Hall gave significance to the environment because, in common with many other social scientists, he believed that its influence in 'producing acquired characteristics transmissible by heredity' was greatest during the youthful years.

The psychology of 'adolescence' gained a wide audience at conferences and in reports where motions were passed and recommendations made for more control of, and protection for, the 'critical and perilous age that comes between childhood and the onset of maturity'. The breadth of Hall's conception had a great appeal for a wide spectrum of social scientists, educators and youth workers. The two disciplines of psychology and education were developing a close working relationship prior to 1914. The influence of this relationship was demonstrated by the appointment of Cyril Burt as educational psychologist to the London School Board in 1913 - the first post of its kind in Britain.[60] Burt was very influential in popularizing the 'necessity' for psychology in the understanding and treatment of delinquent and wayward youth. His theory of 'modified environmentalism' attributed the delinquent tendencies of an individual, not simply to the existence of adverse environmental, home and family conditions, but to the effect of such adversity on a susceptible individual.[61] C.E.B.Russell, Chief Inspector of Reformatory and Industrial Schools 1913-1917, was also greatly influenced by Hall's theory. Through the publication of his definitive work, *Working Lads Clubs* (1908), written in association with L.M.Rigby, and *The Making of the Criminal* (1906) as well as a series of public lectures, he urged teachers and social workers to be aware of and make allowance for the conditions which separate adolescence from childhood.[62]

Hall's psychological portrayal of the 'adolescent' contributed in large measure to a redressing of the balance between the 'individual' and the 'environmental' - the 'nature' or 'nurture' - approaches to the problem of wayward and delinquent youth. The awareness of 'adolescence' as a 'stage in life' reduced the severity of the legal criterion of 'guilt' in its application to wayward youth. A background psychological report became an increasingly important component in the assessment of youthful offenders under the more enlightened legal protocol and the Juvenile Courts introduced in the early years of the twentieth century. Furthermore, psychological assessment gradually became an integral feature of the institutional treatment of offenders.

8. Court Procedures and Legal Protocol

Court procedure, under the Victorian system, for the assessment of cases and the allocation of sanctions was regulated by the legal principles of 'guilt', 'responsibility', 'legal evidence' and 'proportionate punishment'.

Under the new penal strategies, the legal criterion of 'guilt' was no longer the essential principle on which legal intervention was initiated. For instance, the new legislation on children, inebriates and other categories such as habituals, allowed interventions to be instigated without the necessity of an offence having been committed and to be justified on other grounds than that of the 'guilt' of the subject. Intervention could now be justified upon a 'condition', a 'character' or a 'mode of life', any of which could indicate a failure on the part of an individual to carry out their obligations as a citizen or an inability to do so. The criterion of 'responsibility' was also subjected to considerable redefinition. 'Responsibility' ceased to be universally presumed and instead it became increasingly subject to the test of analytical investigation.

There was a gradual revision of the judicial power and an extension beyond the traditional legal protocol. It was no longer sufficient, with regards to many categories of offenders, to prove 'guilt' and 'responsibility' for the commission of a specified offence in open adversarial trial according to the stipulated conventions of evidence, fact and law. For instance, in cases of juveniles and young offenders, advice was increasingly sought from experts in fields other than the law - doctors, psychiatrists, social workers - regarding the normality or pathology of 'characters', 'mental or moral states' and 'modes of life'. Sentencing, therefore, became less a matter of justice under the letter of the law, and more a question of proper administration and diagnosis based upon expertise in the 'human sciences'.

This new expanded system of legal protocol required a much more in-depth knowledge of the cases coming before it. Concern went beyond the immediate facts and the relevant legal provisions to reach into the background, history, character and corrigibility of the individual concerned. There was a subtle change in the role of the judge, who no longer functioned simply as the arbiter of adversaries, but increasingly as the ultimate examiner of various sources of expert advice and processes of investigation. This change in the role of the judge was particularly evident in the new Juvenile Court, where it was not only important to get the truth from the child, but also from the parents, as well as assessing information from the school, the investigation officer, social worker and any other potentially relevant sources of information.

Through the work of various voluntary agencies - probation officers, after-care agents and so on - the information available to the authorities was expanded beyond a specific concentration on the offender, to include his or her family and

home background. As well as expanding the scope of information for consideration by the court, these new inquiries provided a greater depth of information on the character and history of the offender, going well beyond immediate appearances. Techniques of inquiry adopted from charity and social workers, including the 'circular approach', 'separate and contradictory questioning', 'practical verification of the family's way of life', the 'surprise visit', added a new dimension and scope to inquiries under the legal system.[63]

These advances in the treatment of delinquent and potentially delinquent children under legal protocol were initiated by the *Children Act 1908* which, as Victor Bailey has argued, expressed the belief of the reforming Liberal administration in the correlation between a welfare policy and a penal policy as a means of controlling crime.[64] Under the provisions of the 'Children's Charter' the treatment of delinquent and potentially delinquent children was moved out of the context of 'crime' and into the broad field of 'social policy' on child welfare. The gradual shift away from the Victorian emphasis on 'punishment' to a greater concern for the 'protection and training' of children in need of care and protection, and for youthful offenders as human beings and potential citizens, was further advanced in Scotland by the *Children and Young Persons Acts 1932* and *1937*. The whole policy, with regards to wayward youth was to prevent the creation of a class of social outcasts and their alienation from the control of the social order.

9. <u>The Extension of the Role of the State</u>

The treatment of delinquent and potentially delinquent children and young persons within the evolution of British social and penal policy provides an insight

into the extension of state intervention and the development of the necessary administrative expertise.

There was an awareness among nineteenth century observers of the 'self-expanding administrative process' lurking beneath the expansion of government activity. In influential circles there was a hostility to the growth of centralized power in either regular government offices or extra-departmental agencies. Similarly, there was no great desire to encourage local self-government activity. The adherence to the principles of *laissez-faire* and self-help meant that state intervention began in a fragmentary style and in an atmosphere of reluctance. Only the pressure of circumstances eroded the barriers of *laissez-faire* and forced public opinion to recognize that state action was necessary in special cases or conditions,[65] such as the protection and treatment of delinquent, potentially delinquent and destitute children and young persons among many other social problems.

Between the mid-1870s and 1914, many political theorists were abandoning the mid-nineteenth century liberalism which had limited the role of central government and were promoting a more positive role for the state in order to gain freedom for a wider spectrum of society. T.H.Green and the School of British Idealists in Oxford University advocated their perception of the state as a 'positive agency, the function of which was to advance the general welfare of society'. During the 1880s and 1890s the Fabians expressed their growing awareness of an important change in the climate of British political opinion which constituted a loss of confidence in private enterprise and a greater willingness to correct abuses by resorting to a use of the legislative and administrative power of the state.[66]

There has been a controversy among historians regarding the manner of the inherent and cumulative process of government growth, and about the factors which occasioned it, with particular reference to the importance of Benthamite or similar ideas as compared with the practical administrative necessity. Much of this process can be explained in terms of Oliver MacDonagh's theory on government growth. MacDonagh identified five stages in the process of incremental administrative growth. Firstly, the public exposure of a social evil or problem - for instance the series of parliamentary enquiries between 1811 and 1819, the Select Committees on Criminal Commitments and Convictions in 1827 and 1828 and the Select Committee on Criminal and Destitute Juveniles 1852, all revealed the scale of the problem of delinquent and destitute juveniles and indicated that existing voluntary efforts could not cope with it. Legislation then followed,the outcome of which involved some form of compromise between vested interests - in the case of legislation relating to the extension of the provision of reformatory and industrial schools in 1854 and 1866 this involved formulating the partnership between voluntary agencies and the state. The second stage ensued when the limits of the effectiveness of existing legislation were realized. The obvious solution was to appoint enforcement officers who were made responsible for the proper implementation of the Acts - the Reformatory and Industrial Schools Inspectorate was formed in 1857. The work of the inspectorates quickly revealed the deficiencies of the law and led to the third stage; namely, the demand for more substantial powers and the need for adequate central authority to make the work of the inspectors uniform, to support it against opposition and to supervise the collection of evidence and further proposals for reform. Fourthly, what then became evident was a need for a continuing process of regulation related to growing and changing experience, leading on to the fifth stage where the officers began to demand and receive a 'discretionary initiative'

to take upon themselves a wider sphere of administrative discretion. Implicit in this whole process was a trend which was snowballing towards a much more dynamic role for government. Professor MacDonagh claimed that a 'new sort of state was being born'.[67]

MacDonagh's theory provides an abstract outline of the 'interior momentum' behind many of the nineteenth century reforms. Thus it describes the provisions made for the protection and treatment of delinquent and potentially delinquent children and young persons within the evolution of British social and penal policy. Once the state went into partnership with the voluntary agencies in the treatment of this social problem, it added an extra dimension of 'self-generating administrative momentum'. The whole system gradually became more bureaucratic as the state assumed an increasing proportion of the financial support and instituted an administrative structure to inspect, supervise and standardize the network of institutions created to deal with the problem of the children and young persons who were brought before the courts, either as delinquent young offenders, or as children in need of care and protection. Increasingly the state took the initiative - for instance the development of the Borstal system was entirely a state initiative - and the voluntary element in the partnership declined to a more passive role. Expertise was gradually transferred from the voluntary to the state sector.

The development of expertise on the government side was, in many respects, inevitable. As W.H.Greenleaf has argued, 'those involved in the machinery of administrative control will themselves demand and often secure its extension'. During the last century or so, this process has accelerated as the administrative organization was made more efficient by various reforms and changes. For instance, the reform of the Civil Service, which involved the

adoption of open competition as a means of recruitment, produced in time government offices staffed by men of talent, purpose and initiative who made it their career and who naturally wanted to extend their range of functions and make them more effective as a service to the community. It is generally accepted that it was the devotion to its public duty of a reformed Civil Service that was, in large measure, responsible for the development of the 'positive' and 'interventionist' state.[68]

By the turn of the century the Civil Service came to be dominated by a new 'generalist elite' who were recruited without patronage and selected on their intellectual merit. They were predominantly from middle-class, public school backgrounds with Oxford or Cambridge degrees in the classics and liberal arts. This background gave them a strong sense of public duty and liberal, tolerant minds which equipped them to approach problems in a more pragmatic and flexible way. They were less tied to precedent and legalistic interpretation. Some of the most outstanding of these younger entrants, such as C.E.Troup, were selected by Lushington to further his aims of building up the criminal department of the Home Office into the first modern specialist branch. The new chairman of the Prison Commission, appointed by H.H.Asquith (Home Secretary 1892-95) was Evelyn Ruggles-Brise, another open competition entrant to the Home Office. By this time the Prison Commission was considered to be a worthy source of posts for First Division Officials. Ruggles-Brise regarded his area of prison administration as a social science. He emphasized the importance of 'environment' rather than 'heredity' in the criminal character and he promoted the 'regenerative' rather than the 'repressive' aspects of imprisonment.

The flexibility of the penal legislation which followed the *Report of the Departmental Committee on Prisons 1895* was due, in large measure, to the influence of men such as Troup and Ruggles-Brise, as was the structure of the new penal system. The military overtones of prison administration were gradually replaced by a new 'scientific' ethos. The re-definition of the 'criminal' meant that children were given special categorization by the prohibition of their imprisonment under the *Children Act 1908*. The establishment of the Borstal system provided special treatment for young adult offenders.[69] Court procedures and legal protocol became less a matter of simply applying the letter of the law and more a matter of proper administration and diagnosis as, with particular respect to the operation of the Juvenile Courts, the legal principles of 'guilt' and 'responsibility' were redefined.

However, the new structure of the Civil Service meant that officers of the 'expert' class - the inspectors - were excluded from senior administrative posts and from having any representation at the highest ministerial counsels. They no longer had direct access to the Minister, and all their plans, ideas and activities were subject to sifting and interpretation by their seniors who lacked knowledge of the technical and scientific practicalities in the field.[70]

The Reformatory and Industrial Schools Inspectorate was subject to bureaucratic growth and delegation of authority typical of the pattern of administrative change in government departments. Expansion was the result of the additional functions created for the inspectors by legislation. The degree of inspection which had been adequate in 1876 did not meet the requirements of the 1890s. In the mid-1880s the standard annual visit with the occasional surprise visit was the normal pattern. By 1913 each institution was being inspected two or

three times a year, and it was proposed that this be increased to four. Inspectors still had no power to intervene directly with the running of the schools. Their only sanction remained the withdrawal of the central grant and they continued to be reluctant to use it. Through techniques of advice and encouragement they promoted higher standards in the educational provisions and medical care provided and caused managers to consider aspects of children's welfare which had been accorded little attention under Rev. Sydney Turner's jurisdiction. In line with developments in other inspectorates, specialists were recruited: in 1882 an 'examining assistant' was appointed to concentrate mainly on the schoolroom aspect of inspections; the first woman was recruited in 1903; a medical officer was nominated in 1910 and in 1913 this post was upgraded to full-time.

Although it was greatly expanded, the Reformatory and Industrial Schools Inspectorate was not entirely successful, mainly because, as Jill Pellew has pointed out, its field of administration was not of great political significance. Successive Chief Inspectors, notably Legge and Robertson, complained that their work was 'misunderstood' or that it was 'regarded as insignificant'. Furthermore, this was the only one of the Home Office inspectorates whose headquarters remained outside the main department. The reason for the general lack of interest had something to do with the whole status of reformatories and industrial schools within the field of social reform. While, on the one hand, the government gave increased recognition in the *Children Act 1908* that the welfare of deprived and criminal, or potentially criminal, children was important, reformatories and industrial schools were not accorded the same attention as, for example, the new Borstal system of which the Home Office was so proud. The Borstal system came under the jurisdiction of the Prisons Inspectorate which was accorded greater significance by the Home Office than was the Reformatories and Industrial

Schools Inspectorate. Apart from anything else, the position of these schools - technically independent, but essentially dependent on public funds from the state and from local authorities (two sources often in conflict) - had created an administrative situation which was frought with problems for the Home Office. Problems had been exacerbated by the Treasury's lack of co-operation over grants.[71] Furthermore, there was also a growing strength in the argument that reformatories and industrial schools should be taken out of the jurisdiction of the 'law and order' inspectorates and placed within the administrative sphere of education.

The inspectors, generally, may not have been allowed any direct influence on policy making but, by 1914, their 'expert' advice had become integral to central administration and their 'field work' facilitated the enforcement of laws and the imposition of standards in the pursuit of national compliance and uniformity. It was an essential component in the development of the new administrative system.[72]

Between 1908 and 1937 the 'inherent administrative momentum' of the state was expanding into all aspects of the lives of young persons. Children were no longer regarded as a burden on society, but as an investment in the future of the nation. The recognition of the vulnerability of adolescents in general prompted the state to extend its protective and preventive measures beyond the confines of institutions and into the community by developing more subtle forms of social control, keeping pace with the changing dimensions in the youth problem. In its promotion of the youth movements in the inter-war years the state was not simply attempting to provide young people with healthy attractions and recreations, it was promoting the image of 'organized youth' as a subtle means by which control

could be exerted to formulate behaviour and mould the character of the potentially wayward adolescent into what was considered to be responsible citizenship according to middle-class standards.

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CHAPTER 3

COURT PROCEDURE

While it may be true to say that by 1866 there was recognition in legal terms that the juvenile offender and the potential delinquent required separate treatment from the rest of the adult criminal mass, it is also true that there was still much scope for considerable modification in the principle and practice of the law in dealing with children. Law reform had focused on either dealing with juveniles before they were within the grasp of the law, or on their reformation after they had been convicted. There was a need for reform of the system in the interim period when the Procurator Fiscal had the case in hand, but before a conviction was obtained. Court procedure did not recognise that a child's conception of crime was in many cases very different from that of a reasonably intelligent adult, or that weighing evidence in such cases required particularly sensitive judgement on the part of the Magistrate or Justice of the Peace.[1]

In his annual report of 1874 the Chief Inspector of Reformatory and Industrial Schools criticised the slightly less formal procedure in Scotland whereby a single magistrate was empowered to perform the duties which, in England, were shared by two or more justices in petty sessions or a stipendiary. The Chief Inspector advocated formal summary court procedure for dealing with juvenile cases because such cases involved not only the liberty of the child and the rights of the parent, but also placed a charge on the ratepayers and the Treasury.[2]

In Scotland cases of juvenile delinquency could be brought before three courts - the Sheriff Court, the Justice of the Peace Court and the Burgh or Police Court. The Sheriff Courts were presided over by the Sheriff, or more usually, by the Sheriff-Substitute sitting as sole judge. The Justice of the Peace Courts were under the jurisdiction of two or more members of the Commission of the Peace, but there was no uniform practice throughout the country of holding sittings of this court for the disposal of summary criminal work. The Police Courts or Burgh Courts (including the Court of the Bailie of the River and Firth of Clyde) were held by the Judges of

Police of the city or burgh. A Judge of Police meant either a Sheriff or a Magistrate of the burgh, i.e. any Magistrate or provost who having served as provost or bailie had then been elected by the town council as Judge of Police. The normal practice was for two Magistrates to preside, but by law one Magistrate could sit as sole judge and the Sheriff could preside alone. In Glasgow the Police Court was presided over by the bailies, the law permitting one bailie to sit alone. There were local variations to this three level structure e.g., in Edinburgh the Burgh Court and the Police Court were two distinct courts. The Burgh Court, established under an ancient charter, had a criminal jurisdiction higher than that of the Police Court and equal to that of the Sheriff Court. Either a Sheriff or a Magistrate could preside alone over this court.[3]

The allocation of cases among these various courts was a matter of local arrangement among the officials subject to the direction of the Sheriff and the Justices and ultimately of the Lord Advocate. The more serious cases were referred to the Sheriff Court which had the power to inflict heavier sentences.[4]

In the last quarter of the nineteenth century court procedure was such that children were brought hastily before a summary court with no notice necessarily being given to parents. A complaint was read over to the child in terms which were unintelligible to a young mind. If the child did not ask for time, which happened in most cases because of ignorance of procedure, the trial took place immediately. No defender was assigned and although it was the duty of the judge to act as counsel for the child, he only knew the facts presented by the prosecution. The Procurator-Fiscal performed his duty; one or more policemen were called to prove the case. In a very short space of time the child was categorized as a criminal. No written record was kept of the evidence and the child had no right of appeal.[5]

Juveniles were, in the late years of the nineteenth century, still the victims of a perfunctory court procedure which was structured to deal with adult criminals. Observations of court procedure in juvenile cases recorded in 1880 promulgated the flaws in the system and made perceptive proposals for reform. There was a need for investigation into the home background and the culpability of parents through

connivance or neglect. It was recognised that parents should be involved in all stages of legal proceedings against their children. Apprehension and trial procedure should be avoided in the case of first offenders, to be replaced by a solemn and kindly warning delivered by the judge in his chambers to the child and, if necessary, to the parents. It was believed that this procedure would provide the best chance for the reformation of a juvenile delinquent and for an improvement in the conduct of those on whom he or she might be dependent. The only existing example of a judge as the representative of the state acting in *loco parentis* was that of the interviews of the Lord Chancellor of England with the wards under his guardianship. Where the trial of a child was necessary in the inferior courts for further offences, an Agent for the Poor should be appointed to attend to the interests of the poor children left helpless and unprotected in the courts. Nothing should be placed on record which could ruin the future careers of the wards of the state.[6]

The principle of having entirely separate courts for children was promoted in Britain by Benjamin Waugh when he published *The Gaol Cradle, Who Rocks It?* (First edition 1875). Not until the passing of the *Children Act* in 1908 was statutory authority given to the principle of separate courts. Section III (1) of the *Children Act* enacted -

> "A court of summary jurisdiction when hearing charges against children or young persons, or when hearing applications for orders or licences relating to a child or young person at which the attendance of the child or young person is required shall, unless the child or young person is charged jointly with any other person not being a child or young person, sit 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, and a court of summary jurisdiction so sitting is in this Act referred to as a juvenile court."

However, the Act of 1908 did not lay down any requirements for the constitution of a juvenile court. In view of the widely varying circumstances of different courts an option was allowed by which the juvenile court could be held either in a separate place or at a separate time from that of the adult court. It was the opinion of the Secretary of State for Scotland, expressed in a Scottish Office Circular of 1923, that where practicable it was preferable for the juvenile court to be held in a room other

than that used for the adult court. The committee room of a Town Hall, an Education Office or other room belonging to a local authority were suggested as possible locations. Since the main object was to remove children's cases from any possible association with the ordinary court, the room should certainly not be in the same building as the court unless there was a separate entrance. In some places the Magistrates' room provided the required seclusion within the court building. In the rare cases where the provision of a separate room would be impracticable the juvenile court should be held on a different day or at a different time from the ordinary sittings of the court. Only where it was impossible to allocate a different day for the juvenile court was it to be held on the same day as the adult court; but in these instances the hour of the juvenile court should be fixed earlier than that of the ordinary court business allowing for some interval to elapse between the end of proceedings in the children's court and the commencement of ordinary business.[7]

The Departmental Committee of 1928 reported that after the issue of the Scottish Office Circular the situation had improved, but it was still apparent that in many areas the spirit of the *Children Act* was not being observed. Many districts had been complying with the Act by merely holding the juvenile court in the forenoon at an hour immediately before or after the ordinary police court. Evidence had been presented to the Committee that contact between juvenile and adult offenders could take place. One police court actually allowed offenders under 14 years of age to remain during the hearing of adult cases; a direct contravention of section 115 of the *Children Act*.[8]

It was the opinion of the Departmental Committee of 1928 that the place in which the juvenile court was held and the arrangements there were factors of paramount importance in producing the right atmosphere to which the child would readily respond. It was the recommendation of this Committee that the jurisdiction of juvenile courts be transferred to Justice of the Peace Courts specially constituted for the purpose in a different building from that in which the ordinary sittings of the Justice of the Peace Courts were conducted.[9]

The *Children Act, 1908* section 98(1) enacted -

> "Where a child or young person is charged with any offence, or where a child is brought before a petty sessional court on an

> application for an order to send him to a certified industrial school, his parent or guardian, may in any case, and shall if he can be found and resides within reasonable distance, and the person so charged or brought before the court is a child, be required to attend at the court before which the case is heard or determined during all stages of the proceedings unless the court is satisfied that it would be unreasonable to require his attendance."

The Departmental Committee of 1928 observed that in most cases the mother appeared in court or sometimes an older brother or other relative. Appearances by the father were very rare, perhaps because attendance at a forenoon session of a juvenile court would mean loss of wages. Statistics compiled on one juvenile court revealed that in a 35 week period out of the 323 cases under review the father appeared in 14.8%. It was recommended that the juvenile court be held in the evenings to permit both parents to attend.[10]

The *Children Act 1908*, section III(4) prevented the public, other than those directly connected with the case, from being present in a juvenile court except by leave of the court, but permitted accredited representatives of a newspaper or news agency to be admitted. The publication of the name and address of a juvenile offender had given to some juvenile offenders a false sense of glamour about their appearance in the police court, while others had lost employment or found difficulty in obtaining work afterwards. In either case the result was a drifting into criminal habits which defeated the ultimate purpose of the juvenile court. Perhaps realising their responsibility, the Institute of Journalists had passed the following resolution -

> "In the interests of public morality and the training of future citizens, the Institute of Journalists urges all newspapers to withhold the names of juvenile offenders tried or convicted in children's courts, as well as those of children innocently involved in criminal cases."

Not all newspapers followed this dictum. On looking into this matter the Departmental Committee of 1928 were not prepared to recommend that all press references to juvenile court proceedings should be prohibited by statute because publicity might be desirable in certain cases. However, they did advise that the attention of magistrates should be drawn to the need to recommend to local press representatives the injury which could be caused by publishing anything which would

identify the offender.[11]

The *Children Act 1908* introduced many worthwhile reforms into the treatment by the courts of children and young persons up to the age of 16, but it did not go quite far enough. Many parts of the proceedings were still suggestive of criminal trials. Although modified, the procedure was still formal. Uniformed police officers were present in court. The right of trial by jury and the charging of a child with, and finding him guilty or not guilty of, a specific offence still continued.[12] Juvenile court hearings were regulated along with adult court hearings by the provisions of the *Summary Jurisdiction (Scotland) Act 1908*. Juvenile courts were still, essentially, criminal courts. In effect, this meant that an offender could not be brought before them and simply corrected for acts which were short of crime, but which, if persisted in, might result in crime.[13] From the legal point of view law and order had to be maintained and the terror or punishment was necessary as a restraint on criminal activities.[14]

It was the opinion of the Departmental Committee of 1928 that convictions should not be recorded in juvenile courts. In applying the *Children Act 1908*, the court had to record a conviction against a juvenile offender even when the boy or girl was simply being admonished or fined for a minor offence against police byelaws. This was illogical when consideration was given to the fact that under the *Probation of Offenders Act 1907*, section 1(1) the court had power to place an offender on probation without proceeding to a conviction if the case was proved and there were extenuating circumstances. Under the Act of 1907 a court order was made out, but this did not place on the juvenile offender the social degradation implied by the words "conviction" and "sentence."[15]

The Scottish National Council of Juvenile Organisations concluded from their investigation into the situation in Edinburgh in 1921 that it was undesirable to bring before the juvenile court cases of trivial offences. The enquiry collected particulars on 346 boys under 16 years of age who, in 1921, appeared before juvenile courts in Edinburgh on a charge of playing football on the streets. Similar information was

received on 76 cases of breach of the peace. From one point of view it was regrettable that a boy should have the disgrace of the Police Court inflicted on him for so trifling an offence as playing football in the streets. The converse was equally true: that by summoning boys to appear in the ordinary court room (the practice in Edinburgh) the disgrace of subsequent appearances at court was in many cases minimised. Appearance at court had a hardening effect. It also conveyed the mistaken impression that e.g., football on the street was as much of a crime as theft from a warehouse. The Council recommended in their report that all normal first offences of breach of the peace, not regarded as being of a serious nature, and all first offences of playing football on the streets, should be dealt with by the Chief Constable or the appropriate Superintendent of Police, outwith police premises where possible. Any reprimand should be given in the presence of parents or guardians.[16]

The Departmental Committee of 1928 reported that the practice of caution had been abandoned in certain towns after the passing of the *Children Act 1908* because of a lack of statutory authority. Among Chief Constables there was a division of opinion on the utility of this procedure. In Glasgow the system had worked satisfactorily with the parent and child being asked to meet in the Superintendent's office at an hour in the evening in order to permit the father to be present. In 1926 the number of offenders under 16 years of age cautioned in Glasgow was 2,317 (2,198 boys and 119 girls). The Departmental Committee were of the opinion that where the practice of caution was being used and the results were satisfactory, it should be continued. They also advocated that many of the offenders cautioned for minor offences should be given the opportunity of joining voluntary organizations to give them interests that would keep them out of further trouble and the courts.[17]

There was also controversy over the operation of the *Children Act* with regards to the trial of young offenders in adult courts. A juvenile offender under the age of 16 when charged jointly with any other person of over that age had to be tried in the ordinary court. The effect of section III(1) was to exclude this juvenile offender from the jurisdiction of the juvenile court. The Prison Commissioners supplied statistics on the approximate number of such cases -

Table 1

Juvenile Offenders Tried in Adult Courts

1921	1922	1923	1924	1925
940	727	801	1115	1015

A large number of juvenile offenders were being charged in the adult courts for what were in many cases trivial offences. In one case 5 boys under 16 were charged with a boy of 16 ½ years of age, which meant they were all brought before the adult court on a joint charge. It would not be practical to charge a juvenile offender and his adult associate in separate courts. In serious cases the adult court was appropriate, but for the more everyday run of cases flexibility could be built into the system by giving the Procurator-Fiscal statutory authority to determine in which court juvenile offenders and juvenile adult offenders of 17 and under 21 years of age, appearing on a joint charge, should be tried.[18] It was also recommended that convictions should not be recorded against juvenile adult offenders who were admonished and dismissed in adult courts.[19]

No adequate provision was made in the court system under the *Children Act 1908* for the discovery of young people who were socially, mentally or physically defective.[20] In many cases of juvenile delinquency it was desirable, and in some cases essential, that the court hearing should be preceded by a medical examination and report. The cases requiring this provision included boys and girls apparently mentally sub-normal, boys charged with offences referred to as cases of indecent behaviour or indecent assault and other serious or repeated cases of juvenile delinquency. The Scottish National Council of Juvenile Organisations recommended that towns with a population of at least 150,000 should appoint a medical man for the purpose of being available at juvenile courts for all appropriate cases to be referred to him for examination. Expending money on the medical examination would mean defective delinquents would receive the correct treatment early on and so save state expenditure in the long run.[21]

The *Children Act 1908* made no recognition of the fact that there was a need for special Magistrates at juvenile courts. The first move towards this required reform

came with the passing of the *Juvenile Courts (Metropolis) Act 1920* which applied to the Metropolitan Police Court District. Section 1(2) of the Act directed that in the nomination of Magistrates to be Presidents of juvenile courts regard be paid "to their previous experience and their special qualifications for dealing with cases of juvenile offenders."[22] A Scottish Office Circular of 1923 emphasized the same point in greater detail -

> It is generally admitted that the problem of the delinquent child is different from that of the adult and needs special treatment. Success in dealing with children who are charged with offences depends largely on the experience and personality of the judge. It is, therefore, desirable that, except where such cases are extremely few there should be, where possible, a separate rota of Magistrates or Justices which should include those who have gained experience of the problem of juvenile delinquency as social workers, or teachers, or who are specially interested in the training of young people.[23]

The Departmental Committee of 1928 reported that no Scottish town had taken action to delegate the work of the juvenile court to one or two Magistrates specially chosen with the required qualifications. In the larger population centres all the Magistrates presided in turn at the Police Courts, usually acting for a fortnight at a time. Within their fortnight of duty the Magistrates presided over both adult and juvenile courts as required. It was not unknown for newly elected Magistrates to be called on to preside at the juvenile court within a few days of election. The personnel of the court changed so often that it was not surprising there was a lack of constructive or settled policy in the treatment of juvenile delinquency, or that there was a lack of continuity in the treatment of offenders reappearing before the court. There was also inconsistency in dealing with offences of the same nature.

The Sheriff Courts did not suffer from lack of continuity and inconsistency because a Sheriff could preside in the same court for many years. It must be understood that the work of the Sheriff in the juvenile court was only a small part of his total work and his appointment was not made because of having an aptitude for dealing with juvenile offenders. The Departmental Committee were of the opinion that there was no reason for retaining the jurisdiction of the Sheriff in juvenile courts.

It was the recommendation of the Departmental Committee that jurisdiction in the case of children and young persons should be transferred to Justice of the Peace Courts specially constituted for the purpose. These courts should be presided over by a panel of Justices, both men and women, carefully chosen on account of their special qualifications through experience in the education or social services and their insight into the problems of adolescence and childhood.[24]

The *Protection & Training (Scotland) Report 1928* was a very influential report. Its perceptive recommendations formed the basis of the *Children & Young Persons (Scotland) Act 1932*. The changes effected by this new Act were structured to put into effect improvements suggested by the past experience of the courts in dealing with juvenile offenders and neglected young people. The Act was designed to augment the authority of those whose duty it was to find the best method of treatment for young people charged with offences, or to help young unfortunates in need of care and protection. It was realised that the degree of success achieved in dealing with the young was bound to have an important influence on the problem of crime in the future. In order to turn young people away from anti-social conduct the Act established the principle of co-operation between many agencies. Justices and Magistrates, Education Authorities, Police Authorities, Probation Officers and other social workers were all component parts of the system for studying the individual and his circumstances. Section 16 of the Act provided -

> Every court in dealing with a child or young person who is brought before them either as needing care or protection or as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps to remove him from undesirable surroundings and for securing that proper provision is made for his education and training.

The methods available to the court for dealing with a child or young person whether charged with an offence or brought before a court as needing care or protection were closely assimilated. By the Act of 1932 treatment for children and young persons in the courts emphasized "remedial measures" rather than "punishment." Section 17 of the Act provided that the words "conviction" and "sentence" were no longer to be used in relation to children and young persons dealt

with summarily. This was not simply a concession to sentiment; it was the central principle which was to govern the treatment of juvenile offenders. Reclamation was the supreme objective. Any stern measures which had to be applied to the cases of offences by young people old enough to know the consequences of their actions were to be applied with their future welfare in mind.[25]

The *Children & Young Persons (Scotland) Act 1932* came into operation on 1st September, 1934. The juvenile court was entrusted with the hearing and disposing of all children's and young persons' cases of offences against the law except such as were specially ordered by the Lord Advocate to be sent to the High Court of Justiciary or the Sheriff Court. Under the auspices of this Act the term "child" referred to a person under the age of 14; while "young person" meant a person who had attained the age of 14 but was under the age of 17. The age of criminal responsibility was raised by one year. It was no longer possible for children under the age of 8 to be brought before a court charged with an offence, but in proper circumstances they could be brought before the juvenile court as needing care or protection. The juvenile courts were also empowered to deal with school attendance cases, cases of juveniles needing care and protection and applications for child adoption orders. This meant that the juvenile courts were to deal with two distinct categories of children and young people - juvenile offenders and juveniles in need of care or protection (e.g., through exposure to moral danger or because of being beyond control).[26]

The application of section 1 of the Act of 1932 to an area by order of the Secretary of State meant that the juvenile courts of that area would take over practically all the work relating to children and young persons previously performed by courts of summary jurisdiction. These new juvenile courts were to be constituted exclusively of Justices of the Peace who had been entered on a "panel of justices specially qualified for dealing with juvenile cases." The *Juvenile Courts (Constitution) (Scotland) Rules 1933* contained no disqualification on the grounds of age, but the Secretary of State for Scotland advised that the panel of Justices would need the assistance of younger members of the Bench normally in close touch with young people and able to sympathize with their point of view. For the juvenile courts, certainly those in the

larger towns, the appointment of a chairman was considered essential to secure continuity of policy.

Under section 1(4) the new juvenile courts would be required to sit either in a different building or room from that used for the adult court. This meant it would no longer be possible to hold a juvenile court in the ordinary court room on the same day as the adult court as had been permitted by the Act of 1908. Large capacity accommodation was not required for the juvenile court as no provision was needed for the general public. Attendance would, in the main, be limited to members and officers of the court, the parties to the case and other persons directly concerned.[27]

The *Children and Young Persons (Scotland) Act 1932* instituted many changes in court procedure relating to juvenile offenders. In the first place the court was required to explain to the young offender the substance of the charge in language suitable to his or her age and understanding and then ask if the offender admitted the charge. If the juvenile did not admit the charge, the court might adjourn the case for trial to a future diet, giving notice to the offender and his parent or guardian; but the court might proceed with the trial immediately if this was considered advisable in the interests of the offender, or to be necessary to secure the examination of witnesses who would not otherwise be available. When a young offender was brought before the court on apprehension the court, by the new rules of procedure, had to inform him that he was entitled to an adjournment for not less than 48 hours.

At the close of the examination-in-chief of each witness called in support of the charge, the witness could be cross-examined by or on behalf of the juvenile offender. If the juvenile did not have legal representation, then his parent or guardian was allowed to assist him in conducting his defence. Failing the presence of either parent or guardian another relative or responsible person could give assistance. In any case where a young offender had no assistance or legal representation, he or she was permitted to make assertions which the court could put to the witness as questions.

At the close of the evidence of the witnesses in support of the charge if the court was of the opinion that a *prima facie* case had been made out, the young offender was to be told that he might give evidence or make a statement. At this stage of the proceedings the evidence of any witnesses for the defence was to be heard.

Where the juvenile offender was found guilty of an offence, whether after a plea of guilty or otherwise, he and his parent or other person assisting in his defence were to be given the opportunity of making a statement. Except where the case was of a trivial nature the court was to obtain information on the general conduct, home background, school record and medical history of the offender in order to enable it to deal with the case in his or her best interests. If such information was not fully available the court could remand the offender until the necessary enquiries were completed. The court had to consider any report from a probation officer, or from an Education or Poor Law Authority, and any written report from such a source or from a doctor could be received and considered by the court without being read aloud. The young offender was to be told the substance of any part of the report bearing on his character or conduct which the court considered to be relevant to the manner in which he should be dealt with, and the parent or other responsible person, if present, should be likewise informed with reference to the character, conduct, home surroundings or health of the young offender. Opportunity was to be given to the parent or guardian to produce further evidence with reference to the report; the court, if it thought the evidence essential, was to adjourn proceedings and, if necessary, order the person who made the original report to attend the adjourned hearing when the further evidence would be produced. If it considered it necessary the court could require the parent or guardian or the young offender to withdraw from the court.

Having considered the whole matter, the court, unless it thought such action undesirable, was required to inform the parent or guardian of the manner in which it proposed to deal with the young offender and was to allow the parent or guardian to make a statement. Thereafter the court could dispose of the case.

The procedure relating to a child or young person brought before the court in need of care or protection had to come before the court by way of petition and at the instance of the person or body making the application whether an Education Authority, a police constable, a parent or other party. Under the auspices of this Act the petitioner (except where the petitioner was the parent or guardian of the juvenile) was to serve a notice on the parent or guardian specifying the grounds on which the juvenile was to be brought before the court and the time and place of the court hearing. On opening the proceedings the court was required to inform the juvenile of the nature of the application and then hear the evidence for the petitioner. The juvenile was permitted either legal representation or assistance from his parent or guardian in opposing the petition, including the cross-examination of witnesses for the petitioner. Where the nature of the case or the evidence to be given was considered by the court to be such that, in the interests of the juvenile's character or conduct, should not be given in his presence, the court could absent him from the court, but his parent or guardian was required to remain. Where appropriate the court could exclude a parent or guardian while the juvenile gave evidence or made a statement, but if it did so it was required to inform the parent or guardian of the substance of any allegation made by the juvenile giving the parent or guardian the opportunity to come to terms with the allegation or confront it by calling evidence.

After hearing the evidence, the court, if it was of the opinion that a *prima facie* case had been made out, was required to tell the juvenile and his parent or guardian that they had the opportunity to give evidence or make a statement and call witnesses. In proceedings where the court was satisfied that the juvenile came within the description mentioned in the petition (e.g., a child or young person who is falling into bad associations through having no parent or guardian) all necessary information was to be obtained in regard to the juvenile and the court was to proceed in the same manner as in the case of a juvenile found guilty of an offence except as regards the method of disposal of the case. However, a juvenile in need of care or protection could, like a juvenile offender, be sent to an approved school or committed to the care of a fit person.

School attendance cases, complaints under section 70 of the *Education (Scotland) Act 1872* or under section 4 of the *Day Industrial Schools (Scotland) Act 1893*, which the juvenile court was empowered to hear, were to be brought before the court at the instance of an officer or other person authorised by an Education Authority to prosecute.[28]

The Act of 1932 also contained two new provisions to protect juveniles from undesirable publicity. Section 75 stipulated that the name, address, school or any other particulars e.g., photographs, possibly leading to the identification of any child or young person involved in proceedings in a juvenile court were not to be published by any newspaper. Where, in the interests of justice, it was necessary to make any disclosures, the court or the Secretary of State might give a dispensation. Under section 75(2) all other courts were given power to prohibit newspapers from publishing particulars relating to children or young persons in any proceedings arising out of any offence against, or any conduct contrary to decency or morality. In the latter case the Act did not make the prohibition absolute; it was left to the discretion of the court to give the necessary direction.[29]

The *Children and Young Persons (Scotland) Act 1932* and its attendant *Juvenile Courts (Procedure) (Scotland) Rules 1934* did much to safeguard and protect the interests of children and young persons in the courts. With the 1932 Act coming into force in Scotland a very definite step had been taken towards keeping the young offender apart from the mental and moral environment of the Police courts and association with adult offenders. "Protection and training" was the new dual concept of the 1930s securing for young offenders and children suffering from neglect and lack of guidance a sagacious and sympathetic treatment by the court which was more likely to set them on the right path in life than had the "let off" of the kindly judge or the severe punishment of the stern judge in former years.

However, this new and highly idealistic legislation was still permissive. The *modus operandi* of the system was still governed by the word "may" rather than the word "shall." [30] In 1935 the Glasgow Council of Juvenile Organisations expressed

anxiety at the continued delay in the setting up of juvenile courts in accordance with the 1932 Act. In the opinion of the Council the most important step for the purposes of the *Children and Young Persons (Scotland) Act 1932* was the provision of reconstituted juvenile courts under Part 1 of that Act. From various references in the press the Council had gathered that there was division of opinion among the Justices in certain areas as to the desirability of an order being made under section 1(6) and that insufficient progress was being made in preparing the way for the institution of juvenile courts under the Act of 1932.[31]

In Dundee at a meeting of a Committee of the Justices on 2nd March, 1934 it was stated - "the present system was all they could possibly need." In Glasgow at a meeting of the Quarter Sessions on 29th May, 1934 the Justices by 109 votes to 63 rejected a scheme for bringing into operation the new system of juvenile courts. The *Aberdeen Evening Express* of the 16th October, 1934 reported that in a letter signed by the six Bailies of Aberdeen it was stated - "We deprecate this expense which we regard as quite needless. The present system of the city magistrates sitting at the Children's Court is working well in Aberdeen, and certainly is working as well as any panel of Justices can possibly do." However, at a meeting of the Justices of the Peace in Aberdeen on 17th October, 1934 it was decided by 46 votes to 29 to ask the Secretary of State for Scotland to make an order for the institution of a juvenile court in the city.[32]

In their report to the Lord Provost and Magistrates of Edinburgh in 1937, the Bailies of the city expressed the following opinion - "In the peculiar circumstances of the city of Edinburgh, it is unnecessary and undesirable to set up a separate Justice of the Peace Court for the treatment of juvenile offenders involving the duplication of premises, of staff and of organisation." The Bailies of Edinburgh had their own proposals for reforms which would be unique to Edinburgh. Under the existing system in Edinburgh the courts of competent jurisdiction to deal with children and young persons under the *Summary Jurisdiction Act of 1908* were the Burgh Court and the Justice of the Peace Court. They had charge of all cases of children and young people involving dishonesty where the value of the money stolen or goods

misappropriated did not exceed £10, or where there were no previous convictions. The Sheriff Court handled cases where the value involved exceeded £10 or where there had been previous convictions. In Edinburgh there was concern that the Magistrates or Bailies who had previously presided over children's cases in the Burgh Court would not be eligible to preside in the new juvenile court. It was proposed that Edinburgh would be better served by extending the jurisdiction of the Magistrates' Court, i.e. the Burgh Court, to deal with all juvenile delinquents in the city. If the old Sheriff Court jurisdiction of the County of the City was revived and extended throughout the entire area of the city, the cases which could not be disposed of by the Magistrates in the Burgh Court could be presided over by the Magistrates sitting as Sheriff's Deputes. This would obviate the need to refer cases to the Sheriff Court. As far as the provision of separate accommodation for the juvenile court was concerned, it was believed that the arrangements already made by the Corporation were adequate in that a separate room had been provided in the City Chambers which was in a distinct building apart from that in which the adult Burgh Court was held.[33]

Despite the criticisms of bodies such as the Glasgow Council of Juvenile Organisations that the permissive approach allowed the more passive authorities to take little or no action, the Secretary of State for Scotland was firmly against the imposition of a mandatory insistence that Justices were required only to make arrangements to enable them to carry out duties to be imposed under the Act rather than to decide whether the section should be brought into operation.[34] The more gentle approach was clever politics and effective in heading off some of the initial resistance to a change in the *status quo* and hostility arising out of the internecine power struggles within the court systems of individual areas. In the opinion of the Secretary of State for Scotland, as expressed in a letter of 17th October, 1934, it was important to secure the willing co-operation of the Justices in any area to which the application of section 1 of the 1932 Act was proposed.

Furthermore, before the Secretary of State could make an order applying section 1 of the *Children and Young Persons (Scotland) Act 1932* to any area he required to be satisfied that the area in question was ready to administer the new system with

adequate Justice of the Peace Court accommodation at a sufficient number of centres and that the courts could be held frequently enough to enable the new system to work efficiently. If there was not an adequate number of suitably qualified justices, either men or women, in an area to facilitate court work under section 2 of the Act, the Secretary of State could invoke the powers of the Lord Chancellor to arrange for the appointment of additional justices.[35] All of this assessment procedure took time and further pressure was exerted on the Secretary of State by questions in the House of Commons in which it was pointed out that in 1935 in the Sheriff Courts of Glasgow scores of boys were being asked to plead before the court without legal representation because of lack of advice being given to them.[36] The slow pace of the implementation of reform meant that the safeguards built into the new system to protect the interests of children and young people were of no immediate benefit.

It took from 1866 to 1932 for it to be recognised that it depends largely on the attitudes and procedure of the courts whether the mentally weak, badly trained, or mischievous children who fall into the hands of the law are gradually to become the habitual criminals whose reform is seldom achieved, or are to be advanced on a new direction in life by being treated with understanding.[37] The juvenile court between 1908 and 1932 gradually became the hub of the system for the treatment of delinquent and potentially delinquent children and young people. The civil function of the court was considerably extended at the expense of its criminal function. Procedure was firmly established under which children and young people appearing before a court were not regarded primarily as offenders deserving punishment, but as wards of the state needing 'protection and training'.

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COURT PROCEDURE

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COURT PROCEDURE

1. REFORMATORIES AND INDUSTRIAL SCHOOLS

The Departmental Committee of 1896 defined reformatories and industrial schools as "schools in which boys and girls are ordered by a court of law to be compulsorily detained for a term of years. Such orders are authorised only in cases defined by statute, but which may be roughly described as those where an assessment of the criminality or incipient criminality of the child, its environment and antecedents reveals a probability that the child will grow up to be a criminal, and in the interests of the community it seems necessary to remove the child from its home for a term of years to be sent to a school to be reformed or trained, educated and on discharge placed out in life."[1]

The *Industrial Schools Act 1866* (29 & 30 Vict.Ch.118) defined three categories of children for whom industrial school treatment was appropriate. Section 15 empowered the courts to order that a child be sent to an industrial school when charged with an offence and under 12 years of age if, in such a case, the Court decided not to proceed to conviction and the child had no previous conviction on record. Children in need of care and protection, including those found begging; wandering; not having any home or settled abode; no proper guardianship no visible means of subsistence; those found destitute, orphaned or with a surviving parent in prison or penal servitude; those who frequented the company of thieves, were all appropriate cases for industrial school treatment under section 14. Refractory children under 14 years of age could be sent to an industrial school if brought before the court under section 16 of the Act and represented by the parent or guardian as being uncontrollable. Section 17 enacted that refractory children under 14 years of age maintained in a workhouse, pauper school or in a poorhouse could be brought by the Poor Law authorities before a court and ordered to be sent to an industrial school. The scope of the Act of 1866 was enlarged by the *Prevention of Crime Act 1871* (34 & 35 Vic.Ch.112) section 14 which added to the categories of children for whom industrial school treatment was appropriate, children under 14 years of age whose mother had been twice convicted of crime. The *Industrial Schools Amendment Act 1880* (43 & 44

Vict.Ch.15) made industrial school treatment appropriate for any child under 14 years of age found to be lodging, living or residing with common or reputed prostitutes, or in a house resided in or frequented by prostitutes for the purpose of prostitution or any child frequenting the company of prostitutes. By section 1 of the *Youthful Offenders Act 1901* (1 Edw.7 Ch.20) it was enacted that a child under the age of 12, who had previously been convicted but sentenced only to be whipped could be ordered by a Court to an industrial school if circumstances afterwards rendered such course desirable. Previous to this Act cases had arisen where a Court had been unable to commit a child to an industrial school merely because he had previously been birched for another offence.[2] The *Day Industrial Schools (Scotland) Act 1893* section 3(2) enacted that

> "Any child authorised by the *Industrial Schools Act 1866* and its amending Acts to be sent to a certified industrial school might, if the Court before whom the child was brought thought it expedient, be sent to a certified day industrial school."

In addition, the Act of 1893 empowered Courts of Summary Jurisdiction, in cases of complaints under section 9 of the *Education (Scotland) Act 1883*, to order a child to attend a certified day industrial school in the same manner and under the same conditions as such Court was empowered to order a child to attend a public or inspected school.

The following figures are from the Judicial Statistics 1894:-

Table 2(a)

SCOTLAND

	Number Admitted	Percentage of the Total Admitted
Industrial School Acts Cases:-		
Section 14:		
Found wandering	482	49
Destitute	85	9
Frequenting company of prostitutes	18	2
Frequenting company of thieves	139	14
Begging	137	14

Table 2(a) continued

	Number Admitted	Percentage of the Total Admitted
Industrial School Acts Cases:-		
Section 15:		
Charged with an offence	60	6
Section 16:		
Uncontrollable	24	2
Section 17:		
Refractory paupers	1	-
Education Act Cases:-		
Non-compliance with attendance order	2	-
Habitually wandering or in bad company	2	-
Not attending or disregarding rules of day industrial schools	29	3
Total admitted	979	

The figures for admissions to *industrial schools* showing age groupings for 1894:-

Table 2(b)

	Number Admitted	Percentage of the Total Admitted
6-8	111	12
8-10	185	19
10-12	329	34
12-14	330	34
Total admitted	955	

The *Reformatory Schools Act 1866* (29 & 30 Vict.Ch.117) defined cases suitable for reformatory training as offenders under 16 years of age convicted on indictment or in summary manner of offences for which penal servitude or at least 10 days imprisonment was the appropriate punishment. Generally reformatory school treatment was appropriate for offenders of between 10 and 16 years of age. An offender under 10 years of age could only be committed to a reformatory if previously

charged with serious crime or offences for which he was liable to penal servitude or imprisonment. The *Reformatory Schools Act 1893* (56 & 57 Vict.Ch.48) repeated the stipulation relating to the conviction of young offenders, but regulated the admissions to reformatories by setting the lower age limit at 12 years. The insistence on a term of imprisonment prior to admission to a reformatory was removed by the Act of 1893 and by the *Reformatory Schools Act 1899* (62 & 63 Vict.Ch.12).

The figures for admissions to *reformatories* showing age groupings for 1894:-

Table 3

	Number Admitted	Percentage of the Total Admitted
Under 10	3	1
10-12	30	14
12-14	91	44
14-16	83	40
Total admitted	207	

The *Reformatory Schools Act 1893* and the *Day Industrial Schools Act 1893* stipulated that a court order directing a child to be sent to a reformatory or an industrial school could only be made by a Sheriff, or by any two Justices of the Peace or by any Magistrate or Magistrates who had jurisdiction under the *Summary Jurisdiction (Scotland) Acts 1864 and 1881*. The procedure, therefore, if not conducted in the Sheriff Court had to be in open court before two Justices or a single bailie or two bailies presiding together.[3] In Scotland the Sheriff Courts, the Burgh Court (Edinburgh), the Police Courts and the Justice of the Peace Courts were all empowered to order the committal of youthful offenders to reformatory and industrial schools. There were variations in the legal procedure in the different courts relating to their degree of criminal and civil jurisdiction.

Reformatory cases were presided over in all courts under criminal procedure. The most serious cases involving theft, usually aggravated by two previous convictions for theft or theft by housebreaking or breaking and entering locked premises, were referred to the Sheriff Courts. In Edinburgh the Sheriff Court had jurisdiction over all such cases where the offence was committed outwith the Ancient

Royalty, but in cases where the offence was committed within the Ancient Royalty the presiding Court was the Burgh Court.[4] The Police Courts were concerned exclusively with police offences and the majority of reformatory school cases came within their jurisdiction. Justice of the Peace Courts were also empowered to apply the Reformatory Schools Acts under their powers of criminal jurisdiction.

Industrial school cases came within both criminal and civil procedure. Cases coming before the courts under section 15 of the *Industrial Schools Act 1866* involved criminal offences and such cases were subject in all courts to the same degree of criminal procedure as were reformatory school cases, but the Court did not proceed to conviction and the child could, therefore, be sent to an industrial school. With regards to cases brought into the courts under the *Industrial Schools Amendment Act 1880*, the procedure in the Police Courts and in the Burgh Court of Edinburgh was in form against the parent for keeping a disorderly house, but the child was sent to an industrial school. Cases coming before the courts under section 14 of the *Industrial Schools Act 1866* were presided over by the Police Courts where the offence, such as begging, constituted a police offence within the Municipal Acts. Other cases brought up under section 14 which were not categorised as police offences e.g., children in need of care and protection found wandering, destitute or orphaned, came under civil procedure in the Burgh Court of Edinburgh and the Justice of the Peace Courts. The majority of such cases were ordered to be sent to industrial schools, but where the surviving parent was in prison only for a few days, the child was usually referred to a poorhouse or industrial school shelter. The Burgh Court of Edinburgh and the Justice of the Peace Courts, within their civil jurisdictions, presided over the majority of cases under sections 16 and 17 relating to children represented as uncontrollable or refractory. Proceedings were never conducted under section 16 in the Sheriff Courts or the Police Courts except in rare cases where procedure under section 15 was rescinded, and in order to get an offender who was over the age of 12, but under the age of 14, into an industrial school the parent had to represent the child to the court as being incorrigible.[5] The *Day Industrial Schools Act 1893* empowered all Courts of Summary Jurisdiction to order, at their discretion, a child who had committed an offence within the meaning of section 15 of the *Industrial Schools Act 1866* to be sent

to a day industrial school instead of subjecting the offender to full time institutional treatment. The *Day Industrial Schools Act 1893* also made similar provision under civil procedure in the Summary Courts for neglected, necessitous and incorrigible children within the meaning of sections 14 and 16 of the Act of 1866: children over whom the School Boards were unable to exert any control under the *Education (Scotland) Act 1883.*

The Departmental Committee of 1896 was critical of the fact that court procedure relating to the administration of the Reformatory and Industrial Schools Acts in the courts under the *Summary Jurisdiction (Scotland) Acts of 1864 and 1881* did not require evidence to be taken down in writing. The members of the Departmental Committee were satisfied that no criticism could be directed at court procedure adopted both in proving the offence and the general circumstances of the child in reformatory cases and such industrial school cases as involved offences under the general or under the local law. The only exception was in the Glasgow Police Court where procedure was not so strict in one important particular; the proof of the child's circumstances was not given on oath. Procedure in the Justices of the Peace Courts was open to much more criticism in the opinion of the Departmental Committee. Too many procedural safeguards for justice had been dispensed with in industrial school cases which did not involve criminal offences: no written complaint was required; no complainant was recognised as such; no evidence was given on oath; as a rule there was no period of remand to permit investigation and no record of any kind was made, except in the 'criminal notebook', that a certain child had been sent to a specified industrial school on a particular date. There was no irregularity in this procedure since these safeguards were neither precluded nor required by law. However, it was the opinion of the Departmental Committee of 1896 that considering how strictly the law required an offence to be proved before conviction could take place, although the offender was only a child, it was irrelative that such lax procedure should be tolerated in cases where committal to an industrial school could mean that for four years a child was deprived of home and liberty; for four years a parent was deprived of his child and for four years the child's maintenance was a charge on the Treasury.[6]

Those who were responsible for administering justice under the Industrial Schools Acts between 1866 and 1908 were well aware of the many limitations in the Acts when applied to the complex problem of assessing cases for industrial school treatment. The *Industrial Schools Act 1866* permitted cases to be brought before the courts by "any person." In practice cases were rarely laid before the courts by private individuals because of the complexity of preliminary procedures.[7] The majority of industrial school cases were brought into court by various agencies, each with a direct interest in children coming within the scope of the industrial schools legislation and each with its own point of view on the problem - the Police; the Society for the Prevention of Cruelty to Children; School Boards; Parochial Boards or Parish Councils and the agents acting for the industrial schools.[8]

A meeting of the Chief Constables' (Scotland) Club held at Glasgow on 23rd February 1893 expressed the opinion that there was a considerable number of children, especially in large cities and towns, whom it was very desirable to rescue from the misery, privation and criminal contagion to which they were exposed, but who could not be dealt with by the police because the parents or guardians found it advantageous to shelter such children behind the legal control which the law gave them. In the course of their duties the police found many young boys and girls sleeping rough in common stairs, etc. In such cases the parents were generally found to be inebriates in a state where they were regardless of their families. On the first occasion of the children being found, the parents were warned by the police. In most of these cases the warning had little effect and the children, who were worse off at home than anywhere else, would again be found wandering. The children could not be dealt with under section 14 of the *Industrial Schools Act 1866* even though they were obviously neglected and wayward in behaviour because the parents had a "home." Such parents were often anxious to hold on to their children because they made money for them by selling newspapers or doing other casual work. In another case it was found that a woman was a known prostitute and carried on her business in a house taken by her for the purpose and in which her children lived with her. As long as the woman did not permit other prostitutes to frequent the house her children could not be taken from her under the *Industrial Schools Amendment Act 1880*. In such

cases the Police found that parents were occasionally willing to have their children sent to industrial schools, but difficulty was encountered when the case had to be presented to the court under section 16. The problem was a financial one. Children committed as "uncontrollables" were supported by the minimum Treasury grant of 2s. per week which required to be supplemented before the managers of an industrial school would accept a child under this section. It was the duty of the parents in such cases to contribute towards the maintenance of the child in the institution, but the regularity of parental contributions was unreliable and the industrial school authorities in Scotland complained that they had insufficient powers to enforce payments.[9]

The officers of the National Society for the Prevention of Cruelty to Children, Scottish Branch, were not immediately concerned with the Industrial Schools Acts because parental cruelty under the *Prevention of Cruelty to Children Act 1894* did not constitute a qualification for admitting a child to an industrial school. However, in the course of their duties these officers came across industrial school cases, and very often a child who had suffered treatment from its parents for which they were liable to punishment for cruelty, proved to be qualified on other grounds for an industrial school. In taking action to bring children before the courts under the Industrial Schools Acts the Society operated on three principles: firstly, the interests of the child had to be considered, and where it could clearly be shown that the child would suffer morally and physically if left in its present environment measures were taken to remove it; secondly, the Society believed that each child saved from degrading and harmful surroundings was a gain to the State and a reduction in the future numbers of the criminal classes; thirdly, the Society believed in preserving the sanctity of family life and only removed children from homes where the parents had clearly proved themselves incapable of raising their children as worthy citizens. On admission to the Society's shelter the necessary background information was obtained so that a schedule could be made out for the court and signed by the Inspector of Industrial Schools. The case was then brought before the Police, Burgh or the Sheriff Court. In 1895 the Eastern District of the Society for the Prevention of Cruelty to Children, Scottish Branch investigated 553 cases involving the welfare of 1,467 children. The number of children sent to industrial schools and training ships in 1895 at the

instigation of the Eastern District was 22. From their experience of dealing with cases where the Industrial Schools Acts had to be implemented, the officers of the Society were of the opinion that in cases where it was necessary and desirable to remove children of 7 years and upwards from the guardianship of their parents and commit them to an industrial school, it was equally essential that similar provision be made under the legislation for any younger children in the family who were above the age of infancy. Cases had been recorded in which the youngest child had to be returned by the Court to the home environment and, as a result of the intemperate habits of the parents, the child suffered accidental death.[10]

Further complications arose from the fact that section 38 of the *Industrial Schools Act 1866* made Parochial Boards liable for the maintenance in industrial schools of children who were chargeable to the Parish at the time of being committed to the institution or had been chargeable within the previous three months. The interest of the Parish Councils consequently varied: if the child was brought in from the streets by the officers of the National Society for the Prevention of Cruelty to Children or the Police, and was found not to be chargeable to a Parish, the Poor Law Authorities were content that the child should be sent to an industrial school; if, however, the child was chargeable to a Parish it was in the interest of the Parish Council that the child should not be sent to an industrial school, since boarding out by the Parochial Board was considered to be a cheaper and better method of disposal. Poor Law Authorities had no *locus standi* to oppose a court decision to order a child to be sent to an industrial school; the only action they could take was to complain. However, it was alleged that Parish Councils were manipulating behind the scenes and because of their parsimony children were being sent to reformatories in cases where industrial school treatment was appropriate. A child under the age of 12 and chargeable to a parish, if brought before a court as having committed a theft with a previous conviction for theft on record was, under the Acts of 1866, qualified for a reformatory. However, the child's age made him or her a suitable case for industrial school treatment and the previous conviction was no bar to this if the boy or girl was brought before the courts under section 14 of the *Industrial Schools Act 1866*. But, if sent to an industrial school, the Parish Council was liable for the maintenance of the

child; not so, if the boy or girl was sent to a reformatory. As a result a child in this situation was charged directly with a second offence of theft, convicted and the court had no option but to order the child to a reformatory.[11] It was not until the passing of the *Reformatory Schools Act 1893* that the lower age limit for admissions to reformatories was stipulated to be 12 years of age. The *Day Industrial Schools (Scotland) Act 1893,* section 3, gave permissive powers that the Order in Council to be made under the Act should provide that a child under the age of 12 might be punished by being sent to an industrial school rather than a reformatory, regard being given to his age and the circumstances of the case. The Departmental Committee of 1896 noted in their research that in 1894 only 33 out of the 207 children committed to reformatories in Scotland were under 12 years of age.[12]

The attempts of the Parochial Boards to evade their responsibilities under section 38 of the *Industrial Schools Act 1866* also created other irregularities in court procedure. Cases in which a parent requested that their child be committed by a court to an industrial school because the parent could no longer exist without parochial relief, and could not support the child, were normally referred back to the Inspector of Poor, since it was considered improper to regard committal to an industrial school as a form of relief for the parent. However, some Parochial Boards contrived to have the children placed in an industrial school or an industrial school shelter without warrant and held there until after the parent was formerly placed on the Roll of Paupers. The child could then be brought into court again and a court order made out committing him to an industrial school without any obligation being placed on the Poor Law Authorities, since it could be claimed that the child was in the school before the parent became chargeable to the parish.[13]

In Scotland each of the industrial schools employed an agent to scour the streets of the city or town for children who were in need of institutional care and protection. The School Agents were paid for their services and they operated in addition to, and often in collaboration with, the activities of the Society for the Prevention of Cruelty to Children and the School Board. The School Agents did not normally appear in court as the persons initiating proceedings; in most cases the child was brought before the

court by the officers of the School Board or the Society for the Prevention of Cruelty to Children. All these agencies were willing to make a concerted effort to ensure that appropriate cases were committed to industrial schools.[14]

The School Boards were responsible for bringing a considerable number of industrial school cases into court regardless of the fact that in Scotland, in these respects unlike England, School Boards were neither expressly empowered to appoint an industrial schools officer, nor were they under any obligation to take up industrial school cases referred to them by others. Truancy was a major problem for the new School Boards in the aftermath of the *Education (Scotland) Act 1872*. The *Education (Scotland) Act 1883* (46 & 47 Vict. Ch.56) section 9 empowered Courts of Summary Jurisdiction, on the application of a School Board, to make an attendance order in the case of a child whose parent, without reasonable cause, neglected to provide him or her with efficient elementary education. By section 10 the parent could be fined in the event of non-compliance with the order, but no power corresponding to that given in England by section 12 of the *Elementary Education Act 1876*, was given to send persistent truants to industrial schools.[15] In effect the Scottish School Boards did not have the power to control a class of children who rejected the compulsory imposition of school attendance either as a result of their own waywardness or the bad influence of their parents. It was firmly believed that persistent truants became habitual offenders and eventually criminals.[16]

Between 1872 and 1892 School Boards in Scotland were in a situation where, in their desperation to control truancy, they had to resort to an irregular use of the *Industrial Schools Act 1866* in order to have persistent cases of truancy committed to industrial schools. Because Scottish School Boards were unable to contribute to industrial schools they could not follow the procedure practised in England between 1870 and 1876 of bringing truants before the Courts under section 16 as "uncontrollables" and supplementing the Treasury allowance themselves. Under the *Education Act 1876* English School Boards were also given permissive powers to establish day industrial schools; but no great enthusiasm was shown for the implementation of these powers. In Scotland the School Boards could only secure

the admission of truants to industrial schools under section 14 by proving wandering and want of guardianship in order to claim the maximum Treasury grant for the maintenance of the child in the institution. The report of the Departmental Committee of 1896 blamed the Magistrates for the fact that this practice had come to be accepted as correct procedure. To check such irregular practices, in 1892 the Crown Agent issued instructions requiring Magistrates, in committing a child to an industrial school, to recite not only the section, but the sub-section, of the Act under which the child was proved to come. This measure stopped the use of section 14 in the case of truants to whom it was legally inapplicable.[17]

In 1878 Glasgow took independent action and passed the *Glasgow Juvenile Delinquency and Repression Act* (41 & 42 Vict. Ch.112) which amongst other things authorised that upon the request of the School Board of the city any child between 5 and 13 years of age, who was not being provided with elementary education, or was found habitually wandering or not under proper control, and who was brought with his parent by summons before the Sheriff, Magistrate, Judge of Police or Justice of the Peace, might be sent to a day industrial school. Section 30 further enacted that if a parent, resident in any parish, was unable to pay the sum for maintenance required by the order, the parent or the managers of the school were to apply to the Parochial Board of the parish and assistance was to be provided from the poor fund.[18] Although the day industrial schools were a joint effort on the part of the Glasgow School Board and the Glasgow Delinquency Board, and there was a recognition of the close links between truancy and delinquency, there was less concern in Glasgow with developing day industrial schools as a form of punishment than as educational establishments where children could be looked after. Social deprivation was recognized to be a major factor behind truancy. The Glasgow School Board took further initiative on these lines by providing a short-term residential truant school for very serious and habitual cases of truancy, who could be committed for an initial term of three months, a second term of four months and a final term of six months. Thereafter, if their school attendance did not improve, there was no option but to commit them to a long-term residential or boarding industrial school as incorrigible truants. The truant school, which was not established until 1905, provided for

Magistrates and the School Board a valuable interim step of coercion which could be applied for the control of truants of both Protestant and Roman Catholic persuasions, who were becoming more seriously misdemeanant and wayward, but for whom treatment within the control of the education system was seen to be appropriate. Glasgow generally contrived to do for itself, by subsidiary and supplemental measures, what the public generally had to quiescently hope for in a public Act.[19]

The Glasgow Courts operated their powers with regards to the day industrial school system in Glasgow with great success for 15 years in advance of the passing of the *Day Industrial Schools (Scotland) Act 1893*. Section 4 of the Act of 1893 empowered Courts of Summary Jurisdiction throughout Scotland to send children who were in breach of an attendance order within the meaning of the *Education (Scotland) Act 1883* to either day industrial schools or boarding industrial schools. On complaint being made by the School Board in the first instance of non-compliance with an attendance order the Court was empowered to impose on a parent, who failed to prove that all reasonable efforts had been made to comply with the order, a penalty not exceeding 20s. with expenses or a term of imprisonment not exceeding 14 days; but, if the Court was satisfied that the parent had made very effort to ensure the attendance of the child at school, the Court might, without inflicting a penalty on the parent, order the child to be sent to a certified day industrial school. However, the parents were made liable to contribute towards the maintenance of their children during their period of detention in breach of an attendance order. In the second or any subsequent case of non-compliance with an attendance order the Court had the option of sending a child to either a certified day industrial school or a boarding industrial school for a period not exceeding three years nor extending beyond the time when the child would, in the opinion of the court, attain the age of 14 years. If a truant child was ordered to a boarding industrial school a licence was to be granted after a maximum detention period of three months.[20]

The Departmental Committee of 1896 reported that these provisions in the Act of 1893 did not improve the situation relating to truant children in Edinburgh where there was no day industrial school, and no boarding industrial school was willing to admit a

child for so short a period as three months. In consequence, the Sheriff, finding that the statutory alternatives were not available, declined to act under the appropriate section of the 1893 Act which then became completely inoperative in Edinburgh. The Edinburgh School Board were in a position where they could make use neither of section 14 of the Act of 1866 nor of the provisions in the *Day Industrial Schools (Scotland) Act 1893*. In this situation the Edinburgh School Board decided to invoke section 16 of the Act of 1866, and in 1895 managed, in conjunction with willing parents, to have a number of truant children committed as "uncontrollables." Because the Act of 1893 conferred permissive powers by which School Boards could contribute to industrial schools, the Edinburgh School Board were able to make up from School Board funds the Treasury grant from 2s. to 5s. per child to meet the costs of their maintenance. There were unfortunate consequences in this line of action; namely, that a child committed under section 16 of the *Industrial Schools Act 1866*, for what was in reality a breach of the Education Act, was thereby committed for a period of three to four years or longer, probably until the age of 16; whereas, had it been possible to have proceedings for breach of an attendance order taken under the *Day Industrial Schools (Scotland) Act 1893*, the maximum term of detention would have been three months in a boarding industrial school.[21] Throughout Scotland local authorities were rather slow to provide day industrial school accommodation. When the Departmental Committee of 1896 produced its report there were only three day industrial schools in Scotland, all located in Glasgow; by the time the Departmental Committee of 1915 reported there were eight.[22]

The Departmental Committee of 1896 expressed criticism of the fact that there had undoubtedly been a number of irregularities in the administration of the Industrial Schools Acts. Looking at the problem from the official point of view, the charitable collusion on the part of all the agencies involved with these Acts was being indulged in at the expense of the Treasury and giving a certain class of parents an opportunity to get rid of their responsibilities to their children. Those connected with the Law Courts were unwilling to admit that orders had been made irregularly or to call in question the act of a Magistrate unless there was unequivocal evidence of a serious error in judgement. On the other hand, it had to be remembered that in Scotland the certified

industrial school took the place in a large number of cases of the pauper or union school in England. In Scotland many children were being sent to industrial schools really as an act of charity to be educated and trained as citizens at the public expense rather than because they were actually incipient criminals or likely to fall into crime.[23] Within the limitations of the legislation and within the limits of the facilities available to them all agencies in Scotland concerned in bringing these children before the Courts were persuaded in their own minds that what they were doing was in the best interests of the children.[24]

The operation of the Acts relating to reformatories also provided a source of controversy in Court procedure in the period 1866 to 1908. It became apparent that Magistrates were encountering difficulties in cases where they invoked the provisions of the *Reformatory Schools Act 1893* and attempted to commit offenders to reformatory schools without preliminary imprisonment. On 13th October 1894 the Crown Office in Edinburgh forwarded to all Sheriff Clerks, Procurators Fiscal, Clerks of the Peace, Clerks of Police Courts and reformatory schools a circular which drew attention to the fact that under the Act of 1893 the managers of these institutions still had the power of discretion to either receive or refuse cases sent to them by the courts. Before admitting any offender the managers required to be satisfied of medical fitness for the discipline and training of the school, and not infrequently other conditions were imposed on the admission of cases which varied in different schools. Except in cases where local authorities had made special arrangements with a particular school to receive cases direct from the court, juvenile offenders could not be sent direct to a reformatory, but under the terms of the *Reformatory Schools Act 1893* had to be subjected to a period of interim detention. In administering the Act of 1893 it was essential that the Magistrates select the reformatory and make sure that all the conditions of admission were fulfilled with particular reference to the medical certificate and the provision of information on the offence committed, along with details on the character and antecedents of the offender. If these matters were not attended to the managers were fully justified in refusing to admit an offender to their reformatory.[25] Offenders committed to a reformatory under the Act of 1893 had to be discharged if, at the end of their period of interim detention, no reformatory had

consented to admit them. Under the optional clause of the Act of 1893 the courts still retained the power to commit an offender to a short term of imprisonment prior to his detention in a reformatory. In such cases the Visiting Committee of the prison handled all the formalities required for the admission of the offenders to reformatories; but, if at the end of the term of imprisonment, no reformatory had consented to admit the youthful offenders, they had to be discharged. The Departmental Committee of 1896 recommended that in cases where an offender was found to be ineligible for admission on the grounds of health, he should not be discharged after his period of interim detention or imprisonment, but should be sent to a poorhouse for medical treatment until reported as fit by the medical officer of the poorhouse to the Magistrate or Court which had originally committed him. The Magistrate or Court should have discretionary powers to cancel his commitment or modify its terms if the obstacle preventing admission to a reformatory had been removed.[26]

By 1902 the *Reformatory Schools Acts 1866, 1893 and 1899* had become a dead letter with regards to Court Procedure in Edinburgh. At the heart of the problem lay the unwillingness of Edinburgh Town Council to pass a resolution to adopt the permissive powers of section 67 of the *Prisons (Scotland) Act 1877* (40 & 41 Vict. Ch.53). Had these powers been adopted the Town Council would have accepted liability for the maintenance of all Edinburgh boys committed to reformatories in any part of Scotland, and the sum contributed would have been charged on the municipal or police assessments.[27] It was the firm contention of Edinburgh Town Council that since reformatories were subject to government inspection and the recipients of government grants, they should be administered like the prisons, with the State defraying the cost for the maintenance of the inmates. In 1902 nearly two thirds of the total number of boys receiving board and training in Wellington Farm Reformatory, Midlothian, were from Edinburgh, but Edinburgh Town Council refused to pay the statutory grant of 2s.6d. per week for each boy, preferring to continue to give the reformatory an annual "free will offering" from the City Charity Fund. This donation was not intended to relate to the number of Edinburgh boys in the institution. Matters came to a climax when the directors of the reformatory applied to the Secretary of State for permission to discharge the Edinburgh boys on the grounds that they could not

afford to maintain them.[28] While the controversy raged between the Town Council and the directors, the Edinburgh Courts were in the position where the Reformatory School Acts were inoperative.

The background to this was that the financial situation of all reformatories and industrial schools throughout the country had been under increasing pressure for some time. The average cost per inmate had risen steadily since 1870 while the schools were under increasing demands to make improvements in conditions, facilities and staffing quality. In 1901 a deputation from the National Association of Certified Reformatory and Industrial Schools had requested an increased level of money and support from the Home Office. The Home Secretary, Ritchie, gave a negative response. The Chief Inspector of Reformatory and Industrial Schools, J.G.Legge (1896-1906), observed that the proportion of Treasury contributions towards the expenditure of these schools was steadily diminishing in proportion to local authority contributions. Legge tried hard to persuade his department to adopt an enlightened financial scheme. Decisions were postponed until responsibility for the Scottish schools had been fully transferred to the Scottish Office under the *Secretary for Scotland Act 1904*.[29]

In a Scottish Office circular of 10th June, 1903 Lord Balfour recognised the serious nature of the situation in Edinburgh. It was his opinion that the Town Council were failing to distinguish between the reasonable course of agitation for the amendment of existing legislation and what could be described as the unjustifiable step of refusing to make use of a successful method of reclamation because they did not entirely approve of the conditions under which it could be put in force. Edinburgh Town Council eventually bowed to pressure from the Scottish Office that in following their present policy they were incurring a very serious responsibility and taking an inadequate view of their duties to the youth of Edinburgh.[30] In 1904 the secretary of Wellington Farm Reformatory received from Edinburgh Town Council the grants due over the previous two years with the proviso that the Wellington School authorities agreed to take in during the subsequent twelve months all boys sent from Edinburgh Burgh and Police Courts.[31]

Under the Edinburgh Municipal Acts the Police Court had no jurisdiction to try cases of, *inter alia*, housebreaking or theft aggravated by two previous convictions. When such cases passed the Bar the accused had to be remitted to the Burgh Court if the offence had been committed within the Ancient Royalty; however, if the offence was committed outwith the Royalty but within the Municipal boundary then the case had to be remitted to the jurisdiction of the Sheriff Court. As a result of the arrangement made by the Town Council with Wellington Reformatory the Edinburgh Sheriff Court could only operate its powers relating to reformatories in the case of boys from Leith on whose behalf Leith Town Council contributed, or County boys who were paid for by the County Council. The Edinburgh Sheriff Court was unable to deal effectively with the majority of the male juvenile offenders being remitted for trial from the Police Court. The presiding Sheriffs were of the opinion that it was inadvisable to send boys under 16 years of age to prison, which meant that these offenders, who had demonstrated by their previous conduct that a term in a reformatory was their only chance of rehabilitation, had to be sentenced in the Sheriff Court either to an inadequate and merely temporary punishment such as whipping, or they had to be dismissed with an admonition because Edinburgh Town Council had renounced its obligations towards them.[32]

The reason that the Town Council had excluded the Sheriff Court from its reconciliation with Wellington Reformatory was that they did not consider the Sheriff Court to be one of the Courts of the city. The Sheriff of the Lothians and Peebles expressed difficulty in appreciating the grounds on which this argument was based. After all, there was hardly one of the Edinburgh Municipal Acts in which the Sheriff was not recognised and appealed to as the principal local judge and the Sheriff Court as a Court of the city.[33] It was not until the 12th April, 1907 that the Lord Provost of Edinburgh disclosed in a letter to Sheriff Maconochie that it was the intention of the Town Council to arrange for the admission to reformatories in Scotland of all juvenile offenders sent there by any of the Courts in the city - the Sheriff Summary Court, the Police Court and the Burgh Court. The Town Council had also agreed to pay the stipulated sum of 2s.6d. per week towards the maintenance of each offender. However, in making these arrangements, the Town Council were not admitting that

the present system was judicious, and they reserved full power to press the government for a comprehensive reformatory system on different lines without contributions from local authorities.[34]

However, Treasury officials proved resistant throughout 1906/07 to proposals that the Parliamentary Votes should bear the whole cost of bringing the schools up to the proper standard of efficiency. It was a bitter disappointment for the National Association of Certified Reformatory and Industrial Schools when the Treasury would only consent to a carefully controlled grant in aid being applied specifically to needy reformatories. Fixed grants to industrial schools were increased, but only where local authority grants reached a certain minimum level.[35]

By the early years of the twentieth century the operation of the Acts governing the committal of youthful offenders and children in need to the reformatories and industrial schools was very complicated. The whole problem required clarification by further legislation. The *Children Act 1908*, often referred to as the Children's Charter because of its comprehensive consolidation of English and Scottish measures relating to all aspects of child welfare, came into operation on the 1st April, 1909. Part IV of this Act consolidated and amended the numerous Acts of Parliament relating to the certified schools. It recognized and legislated for reformatories, industrial schools and day industrial schools removing the need to have separate Acts for each type of certified school.

Section 58 re-defined the categories of children for whom industrial school treatment was considered appropriate. It was the aim of Parliament to exclude children who could be more properly dealt with under the Poor Law and to include all classes whose circumstances and surroundings were such as to make it probable that in the absence of action by a public authority they would fall into criminal habits and modes of life.[36] Section 58(1) was concerned with drawing together from previous legislation all the groups of children who were in need of care and protection in industrial schools in consequence of being neglected or in moral danger. In order to have neglected children committed to industrial schools it was necessary for the Courts

to prove more than a single circumstance before such committal was competent. In the case of a child found wandering, the law required that it also be proved he or she had either no parent or guardian or a parent or guardian who did not exercise proper guardianship; in the case of a child found destitute and not being an orphan the Court had to prove that the child had either both parents or the surviving parent or, in the case of an illegitimate child, the mother undergoing penal servitude or imprisonment; where a child was found to be in the care of a parent or guardian who was unfit to have responsibility for the child, it had to be proved that this was by reason of either the criminal or drunken habits of the parent; in the case of a child brought before the Court as having been found begging, the law required the Court to prove that the child had been in any street premises or place for that purpose.[37]

Where a child was apparently in moral danger because of frequenting the company of a thief or of a common or reputed prostitute or was lodging or residing in a house or part of a house used for prostitution, the Court had to prove that the child was living in circumstances calculated to cause, encourage or favour the seduction or prostitution of the child. If, for instance, the only prostitute whose company the child frequented was his mother and she exercised proper guardianship and due care to protect the child, then the child could not be treated as coming within section 58(g) of the *Children Act*. This provision was passed by Parliament because it was believed that the child might be the only good influence left to the mother. While sympathising with this view, the Departmental Committee of 1915 were of the opinion that the interest of the child should be paramount. A repeal of the proviso would leave an absolute discretion with the Magistrate to take the character and circumstances of the mother into consideration in any case brought before the Court.[38] The 1908 Act demonstrated a wider concern on the part of the legislature for children in moral danger by making industrial school treatment appropriate for the daughters legitimate or illegitimate of a father convicted of an offence under section 4 or 5 of the *Criminal Law Amendment Act 1885* in respect of any of his daughters.

Section 58(2) referred to children under the age of 12 who were charged with an offence. In such cases, the Court, if satisfied that this was the most judicious form of treatment, was empowered to send the child to an industrial school. By section 58(3) a Court might, in special circumstances, commit to an industrial school a child apparently of age 12 or 13 who had not previously been convicted but was charged with an offence punishable in the case of an adult with penal servitude or a lesser punishment. If, having regard to the special circumstances of the case, the character and antecedents of the child were such that he or she would not exercise an evil influence over the other children in an industrial school, the Courts were empowered to order that such a child be sent to an industrial school, having previously verified that the managers of the school were willing to receive the child. The Departmental Committee of 1915 was critical of the fact that this provision related only to children who had not previously been convicted. A previous conviction for a child of 12 or 13 years of age was likely to have been of only a trifling nature, in which case it amounted to imposing an unnecessary adversity on the child for it to mean all the difference between a term of reformatory and a term of industrial school treatment. If the previous offence had been of a serious nature, implying that the child was of an unruly or depraved character, there was sufficient safeguard against the contamination of other children in the provision that required the court, before sending the child to an industrial school, to be satisfied that he or she would not exercise an evil influence in the school.[39]

Industrial school treatment was made appropriate for uncontrollable children by section 58(4) which enacted that where a parent or guardian proved to a Court that he was unable to control the child and that he desired the child be sent to an industrial school, the Court, if satisfied on inquiry that it was expedient so to deal with the child, and that the parent or guardian understood the consequences of this action, might order the child to be sent to an industrial school. The Court also had the option in such cases of invoking the powers of the *Probation of Offenders Act 1907* and placing the child under the supervision of a probation officer. In cases where the Guardians of a Poor Law Union or the Managers of a district Poor Law School could satisfy a Court that any child maintained in a workhouse or district Poor Law school was

refractory or was the child of parents either of whom had been convicted of an offence punishable with penal servitude or imprisonment, the Court was empowered to order that the child be sent to an industrial school under section 58(5).

It had been recognised that industrial school treatment was not really appropriate for mentally and physically defective children even if such children were neglected, uncontrollable or had committed offences. Section 62(2) made provision for the detention of defective children or young persons in schools where special provision was made for their training. In cases where a Court was satisfied that a youthful offender or child was incapable of gaining any benefit from training in an ordinary school, but was not incapable of being benefited by detention in a school where special provisions were made, the law required that any order of detention that was made must be for detention in an appropriate school.

The *Children Act* repealed the greater part of the *Day Industrial Schools (Scotland) Act 1893*. Under the provisions of section 58(6) as read with section 132 (18), if a complaint was made under section 4 of the *Day Industrial Schools (Scotland) Act 1893* for the purpose of enforcing an attendance order, and it appeared to the Court that the child came within one of the categories of children in need of care and protection in section 58(1) of the *Children Act*, the Court would proceed under section 58(1) and commit the child to a residential industrial school rather than proceed under section 4 of the *Day Industrial Schools Act*. Section 78 of the *Children Act* further provided that any child authorised by Part IV of the *Children Act* to be sent to an industrial school, might, at the discretion of the Court, be sent to a day industrial school. In operating the alternative of committal to a day industrial school under section 78, the Court had to be aware that under section 81 there was no obligation on a School Board to provide for the reception of a child in a day industrial school.

Section 118 was concerned with the problem of the children of vagrant parents who often escaped the requirements of the Education Acts. It was stipulated that if a person habitually wandering from place to place took with him any child above the age of 5 it had to be proved that the child was either totally exempted from school

attendance or was not, while accompanying the adult, being prevented from receiving efficient education, otherwise the parent was liable on conviction to be fined and the child became an appropriate case for committal to an industrial school. During the summer months this section did not apply to the children of showmen and itinerant traders who received proper education from October to March [section 118(3)].[40]

The conditions relating to committal to a reformatory were stipulated in section 57. Under the provisions of the *Children Act* reformatory school treatment was not appropriate for any child under 12 years of age. Youthful offenders over the age of 12 had to be convicted of an offence punishable, in the case of an adult, with penal servitude or imprisonment before they could be considered by the Courts to be reformatory school cases. The Departmental Committee of 1915 believed that it was not the absence or existence of previous convictions which should be the deciding factor between industrial or reformatory school treatment because there was very little difference in the character of the young inmates in both types of certified school. The Departmental Committee recommended that the requirement of conviction as a preliminary to committal to a reformatory should be abolished, especially in view of the fact that the Act of 1908 had repeated a provision in the *Reformatory Schools Act 1899* which had abolished the requirement for a prior term of imprisonment. The association of committal to a reformatory with at least one previous conviction was detrimental to the future career of a youthful offender.[41]

The problem of enforcing parental contributions towards the maintenance of their children in the certified schools was addressed by the provisions of section 75(2). At the time of committing a child or young person to a certified school, the Court was obligated to make an order on the parent to contribute such sum as may seem reasonable, unless the Court considered it was not in possession of all the necessary information. The Secretary for Scotland anticipated that there would rarely be difficulty in securing that the necessary information be available to the Court at the time of the hearing. In exceptional cases the order on the parents could be made subsequently by a Sheriff, Magistrate or two or more Justices of the Peace when the information became available. Section 75(9) assigned to every police constable the

duty, if so required by the Chief Inspector of Reformatory and Industrial Schools, of taking proceedings on behalf of the Chief Inspector for the enforcement of contributions by parents.

Section 74 was concerned with the vexed question of cases in which the Courts had been unable to commit a child to a certified school because, under the permissive powers of previous legislation, the local authority had chosen not to contribute towards the maintenance of the child in a reformatory or industrial school. To prevent this happening the *Children Act* imposed a duty on the School Board to provide for the reception and maintenance in a suitable school of any child residing in the School Board area who was ordered by a Court to be sent to a residential industrial school. Similarly, a duty was imposed on Councils of Counties and of a certain class of Burghs to provide for youthful offenders residing in their respective areas who were ordered to a reformatory school. To ensure that these provisions were effective the Courts were required to determine and specify in the order the area in which the child was resident. Under section 74(3) the youthful offender was to be presumed to reside in the place where the offence was committed, or in which the circumstances occurred which rendered the child liable to be sent to a certified school, unless residence in another area could be proved. Section 74(6) as read with section 132 provided that an order for the detention of a child in an industrial school could not be made by a Court unless the School Board which was responsible for the child had been given an opportunity of being heard in Court. With regards to offenders being ordered to reformatories, section 132(21) stipulated that this duty would rest upon the Town Council in every Royal, Parliamentary and Police Burgh which had, or was entitled to have, a separate police force. All other Burghs and Police Burghs would, for the purpose in question, be held to be within the County. Should a youthful offender reside in any such other burgh or police burgh the responsible authority was to be the County Council. As a safeguard provision was made in section 74(7) as read with section 132 (9) for an appeal to be made to the Sheriff by any local authority which was aggrieved by the decision of a Court as to a child's place of residence.[42]

Proceedings against young persons who were appropriate subjects for a reformatory, in terms of section 57 of the *Children Act*, were to be taken by the police in the ordinary course of their duties. Regarding children who were liable to be sent to industrial schools, section 58(8) as read with section 132(16) provided that it was to be the duty of the police authority - i.e. the Town Council in burghs and of the Standing Joint Committee elsewhere - to take proceedings unless the case was one within the jurisdiction of the School Board and the School Board decided to take proceedings, or proceedings were being taken by some other person, or the Police Authority were satisfied that the taking of proceedings was not in the best interests of the child. The statute apparently placed the duty of taking proceedings, firstly, on the School Board; secondly, on "some other person" and, in the last place, on the Police Authority.

Considerably more than half of the committals in Scotland under the *Children Act* were at the instance of the School Boards, which was in accordance with the aim of the legislature that the majority of proceedings should be taken by the bodies responsible for the maintenance of the children committed. In his evidence before the Departmental Committee of 1915 the Chief Attendance Officer of the Glasgow School Board stated that it was the duty of every member of the staff to report to him cases in which children were being neglected or were known to be living in immoral surroundings. Weekly meetings were held with negligent parents during each school session. All cases reported to the Chief Attendance Officer were, except in cases requiring immediate action, summoned before the School Board to decide if the children were to be brought before the Court with a view to having them committed to industrial schools. Since School Boards were responsible for the maintenance of children sent to industrial schools from their district, it was not in their interest to procure unnecessary committals because a child in an industrial school cost a School Board more than a child in a public elementary school.[43]

The normal practice when the police were involved in taking proceedings in industrial school cases was that, if a child misconducted himself seriously, the Chief Constable cautioned him; if he offended again the Court cautioned him; for the third

offence he became liable to be sent to an institution. On the whole there was no evidence that the Police were lax in carrying out their duties under the *Children Act*, and no evidence that they were over-zealous in their desire to catch criminals. The Chief Constable of Edinburgh stated that the Police only took action if a resident complained of nuisances by children which constituted offences within the meaning of the criminal law. The Chief Constable of Dundee took note of persons charged with offences relating to criminal or drunken habits and where such persons were in charge of children he procured reports from constables or others with the aim of taking action if he considered it appropriate under section 58 of the *Children Act*.[44]

When proceedings were instigated by "some other person" it meant, in effect, that some children were sent to industrial schools on the complaint of a parent or guardian, the Parish Council or the Scottish National Society for the Prevention of Cruelty to Children. The *Children Act* introduced changes in the law which clarified the respective responsibilities of the Parish Councils and the School Boards in this matter. In reformatory school cases under section 57 or industrial school cases represented as "refractory" under section 58(5) it was the duty of the Parish Council, and not of the School Board, to bring such children before the Court. The School Board had no interest in opposing these committals since they were exempt from compulsory contribution under section 74(5)(b). The Parish Council was required to meet the full cost of maintenance for "refractory" children because no government grant was paid. Since these costs were considerably more than the expense of boarding-out a child, the Parish Councils were reluctant to use those provisions in the *Children Act*. In other cases of neglected children or children in moral danger the Parish Council was authorised to the same degree as "some other person" to bring children before the Court without consulting the School Board. The School Board might exercise its right to be heard in Court and oppose the committal of certain children whom the Parish Council thought appropriate cases for industrial schools under section 58; but, the decision rested with the Court and not with the School Board. If the Parish Council secured such a committal the School Board was liable for the maintenance costs even if the child was chargeable to the Parish Council.

In most of the cases which were brought into Court on the complaint of "some other person" the source of the instigation of proceedings was the representative of the Scottish National Society for the Prevention of Cruelty to Children. In 1913 out of the total of 885 children committed to industrial schools, 265 were committed at the instance of this Society. The Secretary of the Edinburgh Branch claimed that the Society acted in consultation with the School Boards. In cases where it was mutually agreed that a child should be committed to an industrial school, schedules with particulars were drawn up by the Society and presented to the Clerk to the Burgh Court who made the necessary arrangements for the case being brought before the Magistrates. The Inspector of the Society attended in Court as a witness. The Society also worked in close co-operation with the Police.[45]

In terms of section 111 of the *Children Act* the procedure in juvenile cases was to be conducted in special courts in the manner provided in the *Summary Jurisdiction (Scotland) Act 1908*. The Secretary for Scotland was empowered to review all committals to reformatory and industrial schools and he could be appealed to both on the merits of a committal and on the grounds of irregularity in the procedure. There had been very few cases in which a discharge was ordered by the Secretary for Scotland on the grounds of the decisions taken by Judges and Magistrates. The Departmental Committee of 1915 reported that improper committals to the certified schools under the *Children Act 1908* were very few in number.[46]

The Departmental Committee of 1915 noted that there had been very little variation in committals to reformatories since 1906:-[47]

Table 4

Year	Number of Committals	Year	Number of Committals
1906	212	1910	185
1907	198	1911	199
1909	188	1912	192

The variation was greater in committals to residential industrial schools:-[48]

Table 5

Year	Number of Committals	Year	Number of Committals
1906	1,099	1910	792
1907	969	1911	926
1908	936	1912	892
1909	734		

In this period it also seems probable that many children of the type formerly sent to long term residential industrial schools were being committed to short term and day industrial schools:-

Table 6

Number of Committals

Year	To Short Term School	To Day Industrial School
1906	281	538
1907	252	653
1908	237	766
1909	208	808
1910	222	834
1911	248	762
1912	253	737

In framing the descriptions of children for whom committal to a certified school was appropriate the aim of the legislature in the *Children Act 1908* was to secure the proper treatment of children who were in imminent danger of drifting into disreputable or criminal ways of life. The danger had to be imminent before parliament sanctioned the removal of the child from the parental home. The Departmental Committee of 1915 pointed out that there were many neglected or uncared for children who were more appropriately objects for philanthropy than for action by the School Board or the Police Authority, but Scotland lacked the alternative facilities for dealing with such cases which existed in England.[49] This was an important point which was re-examined by the Departmental Committee of 1928. Comparing the committals to reformatories they noted that there had been a decrease from 227 in 1905 to 120 by 1925, and in 1926 the figure was 144. This general trend of decrease could not be accounted for by the number of children committed to industrial schools for punishable offences, which in 1905 was 161 and in 1925 was 151. An examination

of the statistics of the total admissions to industrial schools (children committed for punishable offences and those in need of care and protection) revealed that in 1905 the number was 1,011. By 1922 it had fallen to 299 with a slight upward trend to 401 in 1925, but by 1926 the number had decreased again to 361. The Departmental Committee of 1928 reached the conclusion that the reason for the considerable decline in the number of committals within the period 1905 to 1925/26 was that the attitude of the Courts had changed considerably in that twenty year period. By 1925/26 Magistrates were much more reluctant to remove a child from the home environment if there was a reasonable alternative. The difference in figures was not due to a decrease in the number of committals of juvenile offenders, but was the result of a marked decrease in the committals of neglected children. The Committee believed there had been a general improvement in social conditions. Twenty years previously the persistent truants formed a significant proportion of the children who were committed to industrial schools. Intermittent truancy still existed in the 1920s, but persistent truancy was a feature of the past. The proportion of children of school age on the rolls of all schools in Edinburgh in 1905 was 86%, leaving 14% unaccounted for; in 1925/26 the proportion of children on the school rolls was 96% and almost all of the missing 4% could be accounted for as being medically unfit. The *Education (Scotland) Act 1908,* section 4, provided for the medical examination of school children and for the employment of medical officers and school nurses. School Boards were given very definite powers regarding cases of neglect brought to their notice. Cases of incipient neglect were often detected and action taken where a child could not take full advantage of the education provided. In the twentieth century there was an increase in the activity of various voluntary agencies which were involved in detecting and dealing with the earliest signs of neglect. Compared with the situation in 1905 there were not nearly so many children in 1925/26 who were appropriate cases for committal to industrial schools under section 58(1) of the *Children Act 1908*. The extent to which the beneficent provisions of the *Children Act* in dealing with the whole scope of child welfare had been responsible for playing a considerable part in the decrease in committals to industrial schools could be clearly appreciated by 1925/26.[50]

The Departmental Committees which reported in 1915 and 1928 had indicated to the legislature that the distinction between "industrial" and "reformatory" schools retained in the *Children Act* was obsolete. The *Children and Young Persons (Scotland) Act 1932* completely abolished the distinction and grouped these schools together as "approved schools."

Where a child or young person was brought before Juvenile Court as an offender, or as needing care or protection, and appeared to require training in a residential school, it rested with the Court, after considering any representations made by the Education Authority concerned, to select an approved school.[51] The Scottish Education Department produced a list of schools approved for the purposes of the *Children and Young Persons (Scotland) Act 1932*, sections 36 and 37(1) and classified in terms of paragraph 7 of the First Schedule to the Act. The approved schools were divided into five categories. Senior schools for boys were intended for the admission of those who, at the date of admission, had attained the age of 14 years and were under the age of 17. The intermediate schools for boys admitted those who were 12 years of age and under 14. These schools were also to be regarded, in certain circumstances, as suitable for boys who had attained the age of 14 and were under the age of 15. The inmates of the junior schools for boys were to be under the age of 12 years at the date of admission, but these schools might also be regarded as suitable for certain boys who had attained the age of 12 and were under 13. For girls there were combined senior and intermediate schools intended for those who had attained the age of 13 years and were under the age of 17. The junior schools for girls admitted those who were under the age of 13 at the date of admission as well as certain girls who had attained the age of 13 and were under 14 years of age if there were special circumstances relating to the case.

A child under 10 years of age could not be ordered to be sent to an approved school unless, for any reason, the Court was satisfied the child could not suitably be otherwise dealt with (section 18). The approved schools were made available for young persons up to the age of 17 years. In the case of an offender of 16 years of age it was left to the discretion of the Court to consider whether the circumstances of the

case were such as to justify sending the offender to an approved school for training rather than remitting the case to the Sheriff Court under section 9 of the *Summary Jurisdiction (Scotland) Act 1908* with a view to Borstal training, or under section 8 of the *Probation of Offenders (Scotland) Act 1931*.

Paragraph 25 of the First Schedule to the Act stipulated that the managers of an approved school were bound to accept any person who was transferred to their school or their care unless the school was for persons of a religious persuasion different from that of the young person to be sent or transferred to them; or, unless the school was provided by an education authority or a combination of education authorities, no one of which was liable to make contribution in respect of the maintenance of the young person in question; or, the managers were able to satisfy the Scottish Education Department that there was already the maximum number of persons detained in the school as was desirable. An unfortunate consequence of this was that in cases where a Court ordered a mental defective to be sent to an approved school, the managers were frequently in the position of not being able to refuse entry in terms of paragraph 25. Having regard to sections 3(1)(c), 9 and 10 of the *Mental Deficiency and Lunacy (Scotland) Act 1913*, it was not the intention of the statutes that juveniles who were defectives within the meaning of that Act, and who were in need of care and protection or were guilty of offences, should be ordered to be sent to approved schools. However, a number of such juveniles and youthful offenders were being dealt with under the *Children and Young Persons (Scotland) Act 1932* and the Courts were ordering them to approved schools presumably because of a deficiency of accommodation in institutions which were specifically intended to deal with cases of mental deficiency,[52] and also because of a reluctance on the part of medical officers to certify borderline and high grade defectives. A few mentally defective juveniles had always been found in approved schools, but since the provisions of the Act of 1932 had come into force there had been a marked increase in the number of delinquent defectives, many of a lower grade than in former years, committed to the senior approved schools. Borderline and high grade defectives, if not assessed as such prior to their appearance in a Juvenile Court, were not in appearance and attitude very different from the generally dull and backward majority of the young persons

committed to approved schools. It was only after their first appearance in Court when handed over to a Probation Officer that it was discovered that they were unemployable, uncontrollable and anti-social in a normal environment. It was the Probation Officer who had to take action to have the young person certified, simply to encounter the further difficulty of being unable to find an institution willing to take the case, although it was recognised that the borderline and high grade defectiveness were the most difficult to deal with from the social point of view. The only possibility of having such cases placed under supervision and discipline, was to bring them back into Court and have them committed to the approved schools as delinquents or potential delinquents for a training which had been recognised in the *Children Act of 1908* as being totally unsuited to their needs, and which was detrimental to the availability of accommodation and supervision for those for whom approved school treatment was designed.[53]

In making an approved school order under the Act of 1932, the Court had no responsibility in fixing the period of training. The making of the order, in the case of a child, automatically authorised detention for a period of three years from the date of the order, and if, at the end of that period, the young person was still under the age of 15, then the order authorised a further period of detention until the age of 15 had been attained [section 25(1)]. In the case of a young person, the order gave authority for detention for three years or, if the young person was already over 16 when the Court made the order, then authority was given for detention to extend up to the age of 19 years [section 25(2)]. Within the periods of detention automatically set by the Court orders it was the responsibility of the managers of the schools, under the guidance of the Scottish Education Department, to watch and assess the progress of each boy or girl with a view to placing them out in life as soon as they were ready for that step. It was believed that this would, in effect, shorten the average period of detention. The Court, in making an approved school order was required, under section 24(2), to forward to the school on a prescribed form a record containing all material information relating to the case which was in the possession of the Court. This improved the communications between the Courts and the schools. Under section 23(8) the Court was empowered to select a Probation Officer or a Police Officer, or an officer of the

Education or Poor Law Authority to convey a child or young person to an approved school.[54]

The legislation governing the treatment of delinquent and neglected juveniles and young persons was consolidated in the *Children and Young Persons (Scotland) Act 1937*. The whole system became much more integrated, and the Juvenile Courts made increasing use of the alternatives to institutional treatment for the less difficult children and casual delinquents. Approved school treatment was no longer regarded as the panacea for all degrees of aberrant youthful behaviour. This treatment was increasingly reserved by the Courts for the recurrent and serious cases of delinquency. The Courts no longer took the attitude that in sending a child or young person to an approved school they were, without doubt, acting in the best interests of their present and future welfare. It was now required of the Courts that they balance their decisions on much finer lines of discretion relating to each individual case, always keeping in mind the danger that if committal of an appropriate case was delayed too long, the task of the approved schools was made much more difficult and the chances of training a delinquent or misguided young person to be a worthwhile citizen became more remote.

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COURT PROCEDURE:

2. IMPRISONMENT

In 1895 the Departmental Committee was able to report that the number of commitments to prison of offenders under 16 years of age had diminished considerably between 1861 and 1893, and they attributed this to the institution of industrial schools and reformatories.[1] While this assessment of the situation was basically correct, what had to be taken into account was the fact that the legislation of 1866, which governed the institution of industrial schools and reformatories, was permissive and did not entirely preclude the possibility of imprisonment.

The *Industrial Schools Act, 1866* (29 & 30 Vict. Ch.118) enacted in section 15 -

> "Where a child under 12 years old is charged before 2 Justices or a Magistrate with offences punishable by imprisonment or a less punishment, but has not been in England convicted of a felony, or in Scotland of theft, then at the discretion of the Justices or Magistrate, he may be ordered to be sent to a certified Industrial School."

By this Act, Justices and Magistrates were empowered to use industrial school treatment as an alternative to imprisonment in appropriate cases at their discretion. A short term of imprisonment continued to be obligatory in all cases where reformatory school treatment was appropriate. Section 14 of the *Reformatory Schools Act 1866* (29 & 30 Vict. Ch.117) stipulated -

> "Whenever any offender under 16 years old is convicted on indictment or in summary manner of an offence punishable with penal servitude or imprisonment and is sentenced to imprisonment for 10 days at least, he may, at the discretion of the court, justices or magistrates, be sent at the end of his term of imprisonment to a certified reformatory school to be detained for a period of not less than 2 years and not more than 5 years, provided that an offender under 10 years of age shall not be so directed to a reformatory school unless he has been previously charged with some crime or offence punishable with penal servitude or imprisonment, or is sentenced by a Judge of Assize or a Court of General or Quarter Sessions in England; or a Circuit Court of Justiciary or Sheriff in Scotland."

Reformatory school treatment was, therefore, merely a sequel to a short term of imprisonment in appropriate cases and at the discretion of the court for offenders over 10 years of age. For offenders under the age of 10 years who had committed similar

offences, but had not been previously charged, the implication of the Act was that a short term of imprisonment was sufficient.

Between 1871 and 1880 the number of offenders under 16 years of age committed to prisons in Scotland totalled 11,333 (9,785 males; 1,548 females). In the decade 1881 to 1890 the total of such commitments dropped to 9,768 (8,729 males; 1,039 females).[2]

Table 7(a)

SCOTLAND

Return of numbers of juvenile offenders under 16 years of age committed to prison from 1871 to 1890 inclusive

Year	Males	Females	Total
1871	913	181	1094
1872	970	166	1136
1873	998	201	1199
1874	1058	167	1225
1875	878	141	1019
1876	927	141	1068
1877	1051	158	1209
1878	970	127	1097
1879	964	133	1097
1880	1056	133	1189
Total	9785	1548	11333
1881	739	118	857
1882	914	104	1018
1883	968	120	1088
1884	1085	105	1190
1885	1079	95	1174
1886	854	82	936
1887	828	100	928
1888	855	114	969
1889	736	117	853
1890	671	84	755
Total	8729	1039	9768

The percentage reduction in Scotland of prison commitments for offenders under 16 years of age in the period 1871 to 1890 was 14% (as against a reduction of 34% in England).[3]

Table 7(b)

Juveniles Committed to Prison

	England				Scotland
	Under 12		Over 12 and Under 16	Total	Total
Decade 1871-1880	11,325	+	65,859	77,184	11,333
Decade 1881-1890	3,226	+	47,700	50,926	9,768
	Difference = 26,258				Difference = 1,565
	Percentage reduction 34%				Percentage reduction 14%

A statistical return of the youthful offenders committed to prison during the year 1889 revealed that of the total number of 853 imprisoned 40.33% or 344 (316 boys; 28 girls) were under 14 years of age. Of the 344 juvenile offenders committed to prison during 1889, the number removed to a reformatory on completion of their prison sentence was 29.07% or 100 (86 boys; 14 girls).[4]

Table 8(a)

Return of Children Committed to Prison During 12 Months, Ended 30th September, 1889

	Number Committed to Prison															Number Removed To a Reformatory on Completion of Their Prison Sentence		
	Under 10 Yrs.		10 Years and Under 11		11 Years and Under 12		12 Years and Under 13		13 Years and Under 14		Total							
Prison	M	F	M	F	M	F	M	F	M	F	M	F	T	M	F	T
Aberdeen			2		4		8		10	1	24	1	25	12	1	13
Ayr	1				1		3		2	2	7	2	9	3	2	5
Barlinnie (General)	1		8		11		14		19		53		53	2		2
Dundee			3		6		8		13		30		30	5		5
Edinburgh	9		7	1	14	4	23	2	17		70	7	77	20	5	25
Glasgow	6		14		21	1	16	2	24	7	81	10	91	35	5	40
Greenock	1		1	2	1		1	1	5	1	9	4	13	3		3
Inveraray	1										1		1	1		1
Inverness	2			1	2				4		8	1	9	5	1	6
Kirkwall																
Lerwick																
Lochmaddy																
Maxwelltown																
Perth (General)			2		1		2		1	1	6	1	7			
Stornoway																
Legalised Police Cells																
Falkirk							3			1	3	1	4			
Fort William							1				1		1			
Galashiels	3		3		1		2			1	9	1	10			
Greenlaw									1		1		1			
Hawick									2		2		2			
Kirkcaldy	1				1		1				3		3			
Lochgilphead			1								1		1			
Montrose	2		4								6		6			
Oban					1						1		1			
	27		45	4	64	5	82	5	98	14	316	28	344	86	14	100

The situation was slightly improved by the *Reformatory Schools Act 1893* (56 & 57 Vict. Ch.48). Known as Lord Leigh's Act this statute stipulated -

> "When a youthful offender who, in the opinion of the court, is less than 16 is convicted of an offence punishable by penal servitude or imprisonment and either (a) appears to be less than 12, or (b) is proved to have been previously convicted of such similar offence, the court may, in addition to, or in lieu of sentencing him, order him to be sent to a reformatory to be detained for not less than 3 or more than 5 years."

The Act of 1893 gave the courts the option of committing a young offender to a period of reformatory training without a prior sentence of imprisonment.[5] The general adoption by the Scottish courts of this option greatly reduced the number of youthful offenders imprisoned in Scotland.[6] The situation was further improved in 1899 when the *Reformatory Schools Act* (62 & 63 Vict. Ch.12) enacted that no offender should be sentenced to both prison and a reformatory.[7]

The Act of 1899 did not have an immediate impact in all Scottish courts dealing with juvenile offenders. On 14th November 1899, at the Sheriff Court in Rothesay, two boys were each sentenced to be imprisoned for 7 days and then sent to a reformatory for 5 years. The governor of Greenock Prison reported this sentencing to the Prison Commissioners. The Commissioners called the Sheriff Clerk's attention to the illegality: he replied on 17th November that the provisions of the Act of July 1899 had escaped notice. Crown Counsel directed that the warrant was to be carried out and after 7 days' imprisonment the boys were transferred to Stranraer reformatory.

On 12th December 1899 a circular was issued from the Crown Office bringing the provisions of the Act of 1899 to the attention of committing Magistrates. However, on 9th November 1903, a crippled boy was sentenced at the Ardrossan Police Court to 7 days imprisonment to be followed by detention for 5 years in a reformatory. Previously this boy had been sentenced to 14 days imprisonment in Ayr Prison on 25th September 1903 and had been released when his case came to the attention of the Inspector of Reformatories. On being admitted for a second time to prison with a sentence including detention in a reformatory, the illegality of the situation was again reported by the Prison Commissioners to the Secretary of State for Scotland. No reply was received although procedure was discussed in the Scottish Office. The boy was received into Rossie Reformatory on 16th November, having served his full 7 days in prison. At Fort William Sheriff Court on 30th November, 1903, a boy was sentenced to 10 days imprisonment to be followed by reformatory school detention. The Chief Constable of Invernesshire reported the illegality of the sentence to the Prison Commissioners. On the 4th December the Commissioners

reported to Crown Counsel. On 10th December Crown Counsel ruled that the sentence was bad and the boy should be liberated. The boy was liberated on 12th December.[8]

Between 1866 and 1899 the Industrial and Reformatory School Acts provided no more than an alternative to imprisonment for youthful offenders. It was entirely at the discretion of the courts as to whether a juvenile offender would be committed to a short term of imprisonment or a longer term of training in a reformatory or industrial school. The courts still tended to be conservative in their attitude towards change and to continue to favour punitive and deterrent methods of treatment to reformative measures. Magistrates often had difficulty in knowing what to do with juvenile petty offenders. For some offences committed by young male offenders, whipping or birching was appropriate as an alternative to imprisonment; but many Magistrates were more reluctant to order corporal punishment than they were to commit a young offender to a short term of imprisonment. Offences such as theft, breach of the peace and malicious mischief were often repeated by youthful offenders who could not be whipped more than once for the same offence. On a second conviction imprisonment was appropriate punishment under the statutes.

The option of whipping did not apply to girls who were simply committed to prison for similar offences. An analysis of female prisoners in Glasgow in October 1894 revealed that two girls of between 14 and 16 years of age were committed for 60 days for malicious mischief. One of the girls had been twice imprisoned within the previous 6 months for disorderly conduct.[9] The treatment of girls convicted of offences on the streets and who had begun a life of prostitution varied from fines to imprisonment. Under the *Burgh Police (Scotland) Act 1892*, section 381(22) the court was empowered to inflict a penalty not exceeding 40s. for each offence on any person who "being a common prostitute or streetwalker loiters about or importunes passengers for the purpose of prostitution." The Act did not apply to Edinburgh, Glasgow, Dundee, Aberdeen and Greenock; but the specific provision relating to prostitution applied, as the result of statutory adoption in Glasgow, Dundee and Greenock. In these burghs the primary penalty was, therefore, a monetary one with

imprisonment being inflicted only in default of payment of the fine. In Edinburgh under the *Edinburgh Municipal and Police Act 1879*, section 248(1) the court was empowered to impose a fine not exceeding £5, or, at its discretion might, without a monetary penalty being inflicted, commit the accused to imprisonment for 60 days. In Aberdeen under the *Aberdeen Police and Waterworks Act 1862* section 134, as amended by the *Aberdeen Municipality Extension Act 1871*, section 147, a fine not exceeding 40s. could be imposed, or, at the discretion of the court, the accused might be committed to prison for up to 14 days.[10]

From statistics on juvenile and young offenders received into Scottish prisons during 1906 it can be seen that of the total number of 66 young inmates 10.60% were under 12 years of age; 13.64% were 12 and under 14 years of age; while 75.75% were 14 and under 16 years of age. Of all offences committed, theft and assault constituted 62.12%; breach of the peace, assault and riotous behaviour equalled 18.18% and malicious mischief and minor police offences totalled 16.67%. A sentence of imprisonment without the option of a fine was ordered in 30.30% of the cases; for 48.48% of the offenders the appropriate sentence was considered to be fines with the alternative of imprisonment. From these statistics it is apparent that 15.15% of the cases were discharged or admonished and 6.06% were ordered to be sent to a reformatory subsequent to their appearance in court.[11] It must be understood that it was not, in 1906, illegal to remand children in prison awaiting trial or to use prisons as places of detention for young offenders until a reformatory could be found that would accept the offender as an inmate.[12] [Table 8(b)]

Imprisonment was made illegal for children under the age of 14 and for young persons of 14 and under 16 years of age by section 102 of the *Children Act 1908*. Such youthful offenders could no longer be committed to prison in default of payment of a fine, damages or costs unless the court certified that the offender was so unruly or depraved that he could not be detained elsewhere. It was ruled that age was to be determined at the time of conviction rather than at the time the offence was committed. Section 102(2) enacted that a young person could not be sentenced to penal servitude for any offence. Section 103 stipulated that "sentence of death shall not be

pronounced on or recorded against a child or young person."

However, under the 1908 Act, prisons could still be used as places of detention for children and young persons if the court certified that they were so perverted and uncontrollable that detention elsewhere was impossible. A Scottish Office Minute Sheet dated 14th February 1935 urged that this matter was one which ought to be kept under review. Three boys of 14 years of age had been committed by a court certificate to prison on remand for 10, 5 and 5 days respectively. There had been another instance where 5 boys received in prison on a certificate were, subsequent to their appearance in court, placed on probation. No fewer than 10 boys were known to have been admitted to prison on a certificate before committal to an Approved School.[13] The opinion was strongly expressed by the Inspectorate and the Headmasters of Wellington and Rossie Approved Schools that it was most undesirable for offenders, who were to be admitted to an Approved School, to be detained in a prison or in any way associated with a prison.[14] It was the opinion of the Scottish Office that only under the most exceptional circumstances, e.g., the possible absence of Remand Home accommodation, should a juvenile or young offender be sent to prison on remand.

The *Children and Young Persons (Scotland) Act 1937* (1 Edw. 8 & 1 Geo.6 Ch.37) section 41(1) enacted -

> Any court, on remanding or committing a child or young person who is not liberated on bail, shall, instead of committing him to prison, commit him to custody in a remand home named in the commitment, to be there detained for the period for which he is remanded or until he is liberated in due course of law.

By this section of the 1937 Act the imprisonment of children for the purposes of remand became illegal; but by the proviso to section 41(1) a young person who had attained the age of 14 years and was under the age of 17 years could be committed to prison on remand or for temporary custody if he was charged with committing an offence and certified as being of so unruly a character that he could not be safely committed to a Remand Home. Similarly, under section 73(2) in cases where an Approved School order did not take immediate effect, the young person concerned could be admitted temporarily to prison if, in the first place, the Approved School

Table 8(b)

Juvenile Offenders Received Into Prison During 1906

	Aberdeen	Ayr	Dumfries	Dundee	Edinburgh	Barlinnie	Duke Street	Greenock	Inverness	Perth	Galashields	Total
Total Number Received	1	8	1	13	20	4	7	4	1	5	2	66
AGES												
Under 12 years		4			1						2	7
12 and Under 14 Years		3		1	2		1			2		9
14 and Under 16 Years	1	1	1	12	17	4	6	4	1	3		50
OFFENCES												
Theft and Assault and Theft (etc.)	1	8	1	5	11	2	6	3	1	3		41
Fraud and Forgery (etc.)				1	1							2
Breach of Peace, Assault, Riotous (etc.)				2	4	2	1	1		2		12
Malicious Mischief and Minor Police Offences				5	4						2	11

Table 8(b) continued

	Aberdeen	Ayr	Dumfries	Dundee	Edinburgh	Barlinnie	Duke Street	Greenock	Inverness	Perth	Galashields	Total
SENTENCES												
Imprisonment Without Fine				3	7	2	4	1		3		20
Fine or Imprisonment	1	3	1	9	11	2		2	1		2	32
Discharged or Admonished		3		1	1		2*	1		2		10
Ordered to be sent to Reformatory		2			1		1					4

*One of these ordered to be whipped.

order was made in respect of an offence committed by the offender and, in the second place, that the offender was certified to be unruly (etc.).[15] The number of young persons committed to prison instead of to a Remand Home in the period 1934 to 1937 was as follows[16] -

Table 9

Admission of Children and Young Persons Under 17 Years of Age to Prison

(a) Ages

	14 Years and Under 15		15 Years and Under 16		16 Years and Under 17		Totals	
Years	M	F	M	F	M	F	M	F
1934	3	-	9	1	33	3	45	4
1935	3	-	11	-	25	5	39	5
1936	1	-	4	-	37	5	42	5
1937	1	-	4*	-	15	1	20	1

*Includes one individual twice.

(b) Disposal

	1935		1936		1937	
Disposal	M	F	M	F	M	F
Admonished			2	-		
Approved Schools	16(a)	3	6	1	13(d)	1
Birched			1	-		
Borstal	11	1	12	3		
Imprisonment			7	1		
Not Disposed of			2	-		
Probation	7	-	11	-	5	-
Proceedings dropped			1	-	1	-
Remand Home					1(e)	-
Sentence deferred	4(b)	1(c)			2	-
To Naval escort	1	-				

(a) Includes 2 boys also sentenced to be birched
(b) Includes 1 case of "finding deferred"
(c) Disposal in this case was "liberated at bond" to report to Sheriff Substitute on 20 Feb. 1936
(d) Includes 1 returned to Approved School
Includes 2 admonished and returned to Approved School
(e) Remitted to a Remand Home to be dealt with as a mental defective

Section 57 of the *Children and Young Persons (Scotland) Act 1937* stipulated that "sentence of death shall not be pronounced on or recorded against a person under the age of 18 years." In lieu of the death sentence, and in cases where a child or young person was convicted on indictment of an attempt to murder or of culpable homicide, or of wounding with intent to do grievous bodily harm, the child or young person was liable to detention in such place and under such conditions as directed by the Secretary of State. In such cases the possibility of imprisonment was not precluded for both children and young people.

The case for an alternative to imprisonment for juvenile adult offenders of 16 and under 21 years of age was taken up by the Departmental Committee of 1928 - "If as a nation, we persist in committing juvenile adult offenders to prison for offences which can be adequately dealt with in some other way, we are undoubtedly assisting in making the criminals of tomorrow."[17]

Repeated short sentences of imprisonment were condemned as a method of treatment for young persons by police constables, prison governors and by the Prison Commissioners. A special return was obtained by the Prison Commissioners showing the length of sentences and other particulars of juvenile adult offenders who were admitted into all prisons in Scotland during 1926 [Table 10].[18] The statistics reveal that 438 offenders of 16 and under 21 years of age were received into Scottish prisons for sentences of 10 days or less; 751 for 20 days or less; 998 for 30 days or less. Of the 1,293 juvenile adult offenders imprisoned 680 served sentences of imprisonment without the option of a fine, and 613 were given a prison sentence in default of paying a fine.

Sir E. Ruggles-Brise in the *English Prison System*, 1921 (p.82) commented -

> "That the principle of imprisonment and all that it connotes, both of shame and stigma, should depend upon the accident whether or not a small sum of money could be provided for payment of a fine at the moment of conviction, is obviously contrary both to reason and to justice."

The practice of almost automatic committal to prison in default of payment of fines became so much of a convention in court procedure that it was necessary to deal with

Table 10

Offenders of 16 and under 21 years of age admitted into all prisons in Scotland during 1926

Period	Edinburgh	Glasgow	All other Prisons	Legalised Police Cells	Total
18 months	1	-	-	-	1
15 months	-	1	1	-	2
12 months	-	1	-	-	1
9 months	1	3	-	-	4
8 months	2	-	1	-	3
6 months	2	11	5	-	18
4 months	1	2	5	-	8
3 months	12	51	12	-	75
2 months	6	14	8	-	28
1 month	1	35	9	-	45
90 days	-	-	1	-	1
60 days	7	61	7	-	75
42 days	5	8	2	-	15
40 days	4	9	5	-	18
31 days	-	-	-	1	1
30 days	25	126	27	-	178
28 days	1	5	-	-	6
24 days	3	-	-	-	3
21 days	10	41	8	1	60
20 days	29	110	23	2	164
15 days	-	12	7	-	19
14 days	7	91	16	15	129
12 days	1	-	-	-	1
10 days	20	128	42	17	207
7 days	3	82	14	6	105
5 days	17	83	16	10	126
Total	158	874	209	52	1293
Without option of fine	88	461	110	21	680
With option of fine	70	413	99	31	613

the matter under the *Criminal Justice Administration Act 1914*, section 42(2) (a) and (b). These clauses enacted that, on conviction, a court of summary jurisdiction should allow time for the payment of any sum pronounced by the court to be paid in respect of such conviction unless it was of the opinion that the offender had adequate means to pay the sum immediately; or, unless the offender refused the option giving him time to pay; or, the court found any other reason to prevent time being allowed. No less than 7 clear days were to be allowed for time to pay in appropriate cases. Section 42(2)(c) of the Act provided that where a person allowed time to pay appeared to the court to be not less than 16 or more than 21 years of age, the court was empowered to order that the offender be placed under the supervision of such person as may be appointed by the court until the required sum was paid.

The Departmental Committee of 1928 were of the opinion that no extensive use had been made of these provisions in Scotland. The reason why the "time to pay" option was not allowed in many cases was because an offender, living in a lodging house, failed to satisfy a court that he had a fixed abode within its jurisdiction; although the *Summary Jurisdiction (Scotland) Act 1908*, section 45 had previously empowered the Scottish courts to allow time for the payment of a fine even when the offender's fixed abode was beyond its jurisdiction. The Departmental Committee recommended that "time to pay" should be made mandatory with supervision for all juvenile adult offenders unless the court for some special reason considered supervision unnecessary. The court should always take into consideration the means of the offender as far as known to the court. If the fine remained outstanding after the appointed date the court should carefully consider a report on the conduct and means of the offender submitted by the person responsible for supervision and the offender should attend the court.[19]

There was no reasonable and adequate alternative to imprisonment in default of payment of a fine in the existing penal system. The system was shown to be particularly ineffective in deterring prostitution. The number of girls between 16 and 21 years of age convicted for prostitution in 1925 was 38; in 1924 the number convicted was 69. If given time to pay their fines the girls returned to prostitution as a

means of acquiring enough money to meet their obligations to the court. If no time was allowed, the fines were sometimes paid from a deposit left by the girl with a rather dubious landlady or a man whose motives were suspicious. If any person came forward and offered to pay a fine the prison authorities had to accept it and liberate the prisoner. Significantly over 36% of the fines of those committed to prison in default of payment were paid while the sentence was being served. The Departmental Committee of 1928 were of the opinion that the court should have power to commit female juvenile adult offenders direct to an Approved Home for both statutory offences, including solicitation and kindred offences, and offences against the common law such as theft and housebreaking.[20]

With regards to the 680 juvenile offenders committed to prison without the option of a fine in 1926, it was presumed that imprisonment was ordered because the offence was to some degree serious. All the evidence presented to the Departmental Committee of 1928 indicated that sentences of less than 2 months had little or no reformative effect and that Magistrates should use prison only as a last resort. It was recommended that when a sentence of imprisonment without the option of a fine was passed on any juvenile adult offender, the court should be required to state in the finding and sentence the reasons why the offender could not be adequately dealt with by any other available method of treatment.[21] The International Prison Congress, held in London in 1925, expressed the hope that every endeavour would be made to substitute other penalties in place of imprisonment with regard to offenders who had committed petty offences or offences which did not constitute a danger to public security. It was the recommendation of the Congress that the system of Probation should be extended to the utmost. The courts should be given wider powers to impose fines instead of imprisonment in suitable cases and the procedures for the payment of fines should be improved with the aim of eliminating, as far as possible, the need for imprisonment in default of payment.[22]

In court cases involving juvenile adult offenders where the proceedings were adjourned and bail was not granted, the offender had to be remanded in custody. This meant detention in a prison. All prisoners under 21 years of age remanded to one of

the largest Scottish prisons in 1926 totalled 76. Of the 76: 56 (or over 73%) were in custody for not more than 7 days. In virtually all the cases the governor submitted a report to the court regarding suitability for Borstal detention. The Prison Commission normally required one week in which to complete the necessary enquiries. While remanded in custody the *Prisons (Scotland) Rules 1923*, number 280 stated -

> "In order to prevent such prisoners from being contaminated by each other, or endeavouring to defeat the ends of justice, they shall be kept separate and shall not be permitted to communicate with each other."[23]

The remanding of unconvicted adolescents to prison was a negative element in the penal system. It made no contribution to the new concepts of 'protection and training'; instead, it gave the young remand prisoners an insight into prison life and conditions. It reduced the deterrent effect of imprisonment and also made it more difficult to deal with those who were put on probation subsequent to their appearance in court. This problem could only be removed by the provision of Remand Home facilities for offenders in the age group 16 to 21 years of age.

During the five years 1922 to 1926 inclusive, 13 juvenile adult offenders, all of them young men, were sentenced to penal servitude. One of them was 16; two were 17; one was 18; four were 19 and five were 20 years of age. Six were convicted of grave moral offence, three for culpable homicide, and one of assault by shooting. The other three were convicted of various offences, including theft by housebreaking, assault and robbery and embezzlement.[24]

With regards to capital punishment, since the beginning of the twentieth century there had only been 2 offenders under the age of 21 sentenced to death for murder; a young man and a young woman. Both were 19 years of age and in each case the death penalty was commuted. The Court of Criminal Appeal reviewed all such cases in Scotland and each case was also given consideration by the Secretary of State.[25]

There was no doubt that offenders in the age group of 16 to 21 years of age were capable of committing very serious offences, and, perhaps for this reason, the Departmental Committee of 1928 recognized that the imprisonment of juvenile adult

offenders could not be completely eliminated because imprisonment had value in its own sphere as the last resort of the state against those who broke its laws.[26] However, imprisonment could only be sustained as a 'last resort' if there was an adequate provision of alternative methods of treatment. A lack of Remand Home provision made a considerable contribution to the numbers of young offenders and juvenile adult offenders held in prison for assessment purposes. Entrenched attitudes in legal circles resulted in the courts being slow to turn to the less punitive alternatives of Probation and Borstal treatment. Presiding Sheriffs and magistrates gradually became more reluctant to use their powers of imprisonment as legislation, following in the wake of the Gladstone Report 1895, re-defined the population of the prisons. All the reformable and redeemable cases, among whom juvenile and young adult offenders figured prominently, were removed from the prisons. Imprisonment remained only as the ultimate sphere of coercion for serious or frequent offenders whose cases justified 'segregative' treatment within the new penal system.

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21. *Ibid.*, pp.141-142.

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COURT PROCEDURE:

3. BORSTALS

In the late years of the nineteenth century it was realised that the penal system made no special provision for offenders of 16 and under 21 years of age who had committed offences and were in danger of drifting into a life of crime, but who were possibly still reclaimable as worthwhile citizens. As part of a new strategy in the prevention of crime, the Borstal system was started experimentally on 16th October, 1902 at the village of Borstal near Rochester. It was not, however, until the passing of the *Prevention of Crime Act 1908* (8 Edw.VIII. Ch.59) that the Borstal system received parliamentary sanction.[1]

Under the court procedure established by the *Prevention of Crime Act 1908*, section 1(1), as amended by the *Criminal Justice Administration Act 1914*, section 42(8), there were two groups of offenders for whom Borstal treatment could be considered. It was enacted that persons not less than 16 and not more than 21 years of age convicted on indictment of an offence for which they were liable to be sentenced to penal servitude or imprisonment, or were convicted by the Sheriff summarily of an offence for which they were liable to be sentenced to imprisonment, might, in lieu of such sentence, be detained in a Borstal institution, if it appeared to the court that, by reason of their criminal habits or tendencies or associations with persons of bad character, such detention was expedient. Borstal training was also made an alternative to a sentence of imprisonment for persons of not less than 16, who after being committed to a reformatory, were convicted under any Act before a court of summary jurisdiction of the offence of committing a serious breach of the rules of the reformatory, of serious misconduct or of absconding. For both categories of offenders section 11(1) of the *Criminal Justice Administration Act 1914* made it lawful for the court to pass a sentence of detention in a Borstal institution for a term of not less than 2 years or for more than 3 years, thus increasing the minimum period of sentence by 1 year as enacted in 1908. By section 1(2) of the *Prevention of Crime Act 1908*, the Secretary of State (for Scotland) was empowered to extend the upper

age limit of Borstal training from 21 to 23 years of age at his discretion.

Problems arose with the changes in the definition of the term 'young person' and the consequent effects on the jurisdiction of the juvenile court. Section 131 of the *Children Act 1908* defined the expression 'young person' as "a person who has attained the age of 14 and is under the age of 16 years." From 1915 to 1932 there does not appear to have been any doubt that it was competent to send a person of over 16 years of age to Borstal. However, in 1932 the *Children and Young Persons (Scotland) Act* (22 & 23 Geo.V. Ch.47) altered the definition of a ' young person' to mean "a person who has attained the age of 14 years and is under the age of 17 years." The Act of 1932 also provided for the institution of special juvenile courts. The provisions of the 1932 Act were consolidated by the *Children and Young Persons (Scotland) Act 1937* (1 Edw.8 & 1 Geo.VI. Ch.37). Section 50 of the 1937 Act deals with the jurisdiction of juvenile courts and by this section it was implicit that a juvenile court when dealing with a young person of over 16 years of age was not empowered to pass a sentence of Borstal detention. This restriction also applied, by section 50(5) to any court of summary jurisdiction sitting as a juvenile court in any area where a special juvenile court had not been constituted. Under the auspices of the 1937 Act section 50, relating to a young person who had attained the age of 16 but was under the age of 17, it was stipulated - "A charge made jointly against a child or young person and a person who has attained the age of 17 years shall not...be treated as a charge against a child or young person." Accordingly it was competent for a young person over 16 years, when charged jointly with an adult, to be brought before a court of summary jurisdiction which was not a juvenile court. In serious cases proviso (2) to section 50 of the 1937 Act empowered the Lord Advocate to order proceedings in such cases to be taken in the High Court of Justiciary or the Sheriff Court. If the case was of a sufficiently serious nature to be brought before the Sheriff 's Summary Criminal Court, a young person over 16 years of age might be sentenced to Borstal detention provided the joint offence committed with an adult was one for which he could competently have been sentenced to imprisonment had he been over 17 years of age (section 8, *Criminal Procedure (Scotland) Act 1938*). Circumstances suggest,

therefore, that in some cases where a young person was unfortunate enough to have been associated with an adult, he might have been sentenced to Borstal detention for an offence which could not have been so punished if he had committed it alone and had been brought before a juvenile court. It is doubtful if this was the intention of the 1937 Act.

It was suggested that the anomaly might be removed by giving power to the juvenile court to remit to the Sheriff for sentence young persons over 16 who were considered suitable for Borstal detention. This measure had the appearance of being a retrograde step for the new juvenile courts, and it was proposed, as an alternative means of clarifying the situation, that the lower age for Borstal training be raised to 17 years.[2]

In Scotland there was strong resistance to any proposed variation in the upper age limit for Borstal training. The Departmental Committee of 1928 stated in their report that if the Secretary of State for Scotland used his powers under the *Prevention of Crime Act 1908*, section 1(2) and by direct order raised the maximum age for committal from 21 to not exceeding 23 years of age, it would be necessary for these more mature young men to be trained in a separate institution. Otherwise, a boy of 16 or 17 would be in the same institution with a young man, who, after 2 years of Borstal training, would be almost 25 years of age before being released on licence.[3] In England and Wales in 1936 the upper age limit was extended in certain cases to 23, but similar action was not taken in Scotland. There was no suitable surplus accommodation in Scotland. The Scottish Prison Governors with special experience of Borstal cases, the Barlinnie Visiting Committee and the Prisons Department for Scotland were of the same opinion as the Departmental Committee of 1928, namely, that the age limit should not be raised in Scotland.[4]

'Suitability' was the criterion which governed the application of Borstal treatment to the case of any young offender. The law required that in all cases the court had to be satisfied that the character, state of health, mental condition of the

offender and the other circumstances of the case were such that the offender was likely to benefit from Borstal training and discipline. The court was required to consider any report or representations made to it by or on behalf of the Prison Commissioners. It was the duty of the Prison Governors and staff, on behalf of the Prison Commissioners, to inform the court through the Procurators Fiscal of the suitability or otherwise for detention in a Borstal of every prisoner between the ages of 16 and 21 who was committed to their prison for trial by a Sheriff or the High Court. A copy of all such reports was also to be sent to the Prison Commissioners.

The successful operation of the *Prevention of Crime Act 1908* in Scotland was very dependent on the care and judgement with which the Prison Service discharged the statutory duty imposed on them. The Prison Commissioners issued guidelines defining the most important matters with which such reports were to be concerned and the parameters to be applied in assessing the suitability of a case for Borstal treatment. The three most important matters which the reports were required to concentrate on included the previous history of the offender, his physical health and mental state. Details given on previous history were to include previous convictions (including committals to an industrial school or reformatory and conduct there); the habits of life; occupation; religion; whether living at home or in lodging houses; the character of parents or other home influence. With regards to physical health, the Medical Officer's opinion was required on fitness for physical drill and steady work at trades. On the matter of mental state a medical assessment of whether the offender was intelligent or mentally deficient was essential, since it was pointless to send a mental defective to a training place where school work formed a large part of the training programme.

In making an assessment of a case for committal to a Borstal the guidelines advised that in cases with a previous history of reformatory or industrial school training careful enquiry should be made. If it was found that the conduct of the offender had been really bad when an inmate of these schools, it was not considered desirable to send him to Borstal. The assessment of the suitability of first offenders

was a more difficult matter. In cases where the parents were respectable, the home was good and there was no association with bad characters, a moderate sentence of ordinary imprisonment might be better since it would be shorter than a term of committal to a Borstal institution. The principle behind this was to avoid the risk of a relatively inexperienced offender being contaminated by a lengthy period of close association with others of more advanced criminal habits. If, on the other hand, the crime was such that it required a long sentence of imprisonment or a sentence of penal servitude, Borstal treatment was considered to be the better option. The reports were based on the personal knowledge that the Prison Governor had of the offender, the expertise of Prison staff and the Medical Officer, and on reliable information from the Police, relations or friends.[5]

The Departmental Committee of 1928 investigated the important question of 'suitability' for Borstal training. In their report they reproduced a statistical table abstracted from the Annual Report of the Prison Commissioners for Scotland 1925 (Cmd. 2689) which covered the suitability of 243 persons for Borstal training in 1925. [Table 11]

From this table it is apparent that 60 or 24.69% of the total were assessed as not being 'of criminal habits (etc.)'; that 20 of them served a term of imprisonment and one, a term of penal servitude. Only one was committed to a Borstal institution. It was the intention of parliament to prevent the contamination of first offenders by those who were further advanced in criminal habits. However, it was the opinion of the Departmental Committee that it was illogical to make Borstal training an alternative to a long term of imprisonment or penal servitude for a youthful offender who had committed a very serious offence, but to presume that a short term of imprisonment would be more beneficial for a first offender who had committed a serious offence, but whose criminal tendencies were believed to be less advanced than were those of the general run of Borstal inmates. The fact that a serious offence was committed by a person in the age group 16 to 21 indicated a need for Borstal training. The words "by reason of his criminal habits or tendencies, or associations with persons of bad

Table 11

	Total Reported On	Sent to Borstal Institutions	Penal Servitude	Imprisonment	Fine	Caution	Admonished	Placed on Probation	Sentence Deferred	Not Proven, Proceedings Dropped (etc.)	Insane Removed to Asylums (etc.)
Reported Suitable	120	86	-	17	4	1	-	4	7	1	-
Reported Unsuitable:											
(a) Physically unfit	47	-	-	22	3	-	6	4	4	8	-
(b) Mentally unfit	9	-	-	1	-	-	1	2	1	2	2
(c) Not of criminal habits (etc.)	60	1	1	20	4	1	1	15	4	13	-
(d) Ex-Borstal (etc.) cases and others not likely to benefit by Borstal treatment	7	-	-	5	-	-	-	-	1	1	-
TOTAL UNSUITABLE	123	1	1	48	7	1	8	21	10	24	2
GRAND TOTAL	243	87	1	65	11	2	8	25	17	25	2

character" were not a worthy criterion by which a case should be assessed for Borstal treatment. A new definition was required placing emphasis on the need for training in a Borstal institution.

Out of the total number reported on 47 or 19.34% were considered to be physically unfit for Borstal training. Lads who were unable to take part in the normal routine including physical drill and free gymnastics were a serious hindrance to the work of a Borstal institution. The unsatisfactory nature of repeatedly committing physically defective lads to short terms of imprisonment was recognized. After 1925 the Prison Commissioners had, in fact, relaxed the regulations on physical fitness in the case of those who were otherwise fit for Borstal training. Medical Officers were required to report on whether an offender was fit for (a) trade, farm or labouring work; (b) work at a sedentary trade; (c) free gymnastics; (d) ordinary physical drill. Varicose veins, extensive cicatrices, loss of limb (etc.) were no longer in themselves a disqualification. The statistics also revealed that 9 offenders were reported as unsuitable because they were mentally unfit.[6]

In the years 1929 to 1931 the number of female offenders reported on as regards suitability for Borstal training was as follows -

Table 12

Year	Total Reported On	As Suitable	As not Suitable	Sentenced to Borstal
1929	17	12	5	10
1930	15	6	9	5
1931	16	6	10	5

Of the 48 females reported on only 24 were assessed as suitable and only 20 of these were sentenced to Borstal treatment. While the annual number reported on was steady, a diminishing number received Borstal detention. The explanation for this was that, besides those unfit for medical reasons; 3, 6, and 8 respectively in each of the three years noted were not of criminal habits or tendencies, and consequently, not considered suitable for Borstal.[7]

By section 11 (1) of the *Criminal Justice Administration Act 1914* courts were empowered to commit an offender to Borstal detention for a minimum of 2 years and a maximum of 3 years. In practice courts rarely committed offenders to Borstal for less than 3 years. During 1926 the number of persons committed to Borstal institutions was 126 of whom 118 were ordered to be detained for 3 years. In 1925 there were 88 committals to Borstals of whom 87 were detained for 3 years. If an offender was committed for 2 years, the total period under care in the institution and under supervision on licence was only 3 years, which in certain cases was not long enough. The Departmental Committee of 1928 were of the opinion that it was safer if the period of detention ordered by the courts was for 3 years in every case, because in practice this meant that an offender could only obtain a release on licence after about 20 months.

The Departmental Committee was aware that this recommendation was for a long period of detention, but this was not inappropriate in view of the more serious nature of the offences committed by those sent to Borstal institutions.[8] Theft and damage to property were the most common offences committed by Borstal inmates and in many cases the offenders had been brought before a court on two or three occasions prior to being sent to Borstal. Of the 10 girls received for Borstal training in Scotland in 1926, 6 were convicted of theft; 2, of fraud; 1 was convicted of theft by house-breaking, and 1 of theft by opening lockfast premises.[9] The pattern whereby the majority of Borstal detentions ordered by the courts were for the maximum period of 3 years continued. In 1936 (up to the 15th December) there were 32 sentences of up to 2 years; 1 sentence of over 2 years and under 3 years and 77 sentences of 3 years. Of the 110 persons received into Borstal institutions between 1st January and 15th December 1936, 42% had been previously convicted on 3 or more occasions; 17 (15.5%) of the 110 had no previous convictions, but some of the 17 had been before the courts on other occasions and had been placed on Probation.[10]

The Borstal system is an example of the twentieth century change by which prevention of crime through measures of rehabilitation and protection and training,

under the 'correctional' sector of the re-structured penal system, grew in importance at the expense of punitive measures. The introduction of the Borstal system into the penal code necessitated the extension of court procedure to take cognizance of offenders in the age group of 16 to 21 who could no longer be regarded simply as numbers within the adult criminal mass for whom imprisonment was the only treatment available to the courts. Much depended on the skill and judgement of the courts in their assessment of individual cases for Borstal detention.

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3. BORSTALS

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COURT PROCEDURE:

4. DETENTION AND REMAND

In the *Children Act of 1908* it was the aim of the legislature to abolish the use of prisons for the purposes of detaining children and young people in custody. Section 132(14) provided that, in cases where a person under the age of 16 was apprehended and could not be brought immediately before a court, the police, in all but certain cases, were empowered to liberate the youthful offender pending trial. Where a child or young person was not released on bail when apprehended and could not be brought immediately before a court of Summary Jurisdiction, section 95 made it the duty of the police to cause the offender to be detained in a "place of detention" until brought before a court, unless the police could certify such detention was impracticable; or, that the offender was so unruly that he could not be safely detained; or, that owing to the mental or physical condition of the child or young person such detention was inadvisable. When such a certificate was issued detention could take place in a police cell but the certificate had to be produced to the court before which the offender was brought.

If, after appearing before a Court of Summary Jurisdiction, a child or young person was remanded for trial and was not released on bail, the court was obligated under section 97 to commit the youthful offender to custody in a place of detention instead of committing him to prison. Such detention was not obligatory in cases where the court took the step of certifying that a young person was so unruly that he could not be safely committed to a place of detention, or that the offender was so depraved that he was not a fit person to be so detained. A commitment to a place of detention made by a court under this section could be varied, or, in the case of a young person who proved to be unruly or depraved while under detention, it could be revoked, and if so revoked the young person might be committed to prison.

Section 106 enacted that where a child or young person was convicted by a court of an offence punishable in the case of an adult with penal servitude or imprisonment,

or would, if he were an adult, be liable to imprisonment in default of payment of any fine, damages or costs, the court was empowered, in lieu of sentencing the youthful offender to imprisonment, to order that he be committed to custody in a place of detention for a period not exceeding one month. A child or young person was to be committed to a place of detention on conviction of an offence only when the court considered that none of the other methods of treatment were suitable.[1]

With regards to juvenile adult offenders of between 16 and 21 years of age the *Summary Jurisdiction (Scotland) Act 1908* section 14 enacted that if such an offender could not be released on bail or liberated without bail he had to be detained in police cells until brought before the court.[2] The *Criminal Justice Administration Act 1914* discouraged very short terms of imprisonment by enacting that no person could be sentenced to imprisonment by a Court of Summary Jurisdiction for less than five days (section 13 (1)). In appropriate cases the court was empowered to order the offender to be detained in a suitable and certified place for a period not exceeding four days (sections 13(2) and 13 (4)).[3]

The obligation to provide places of detention did not become absolute until lst January 1910 under section 111(6) of the *Children Act*. Section 108 placed the duty of providing the necessary places of detention in the hands of the Police Authority (i.e. the Standing Joint Committee of the County, or the Town Council of a Burgh where a Burgh or Police Burgh maintained a separate police force). The Police Authority was required to keep a register of the places of detention within its control and no child or young person could be detained in any place which was not registered. It was expected that the nature of the premises used as places of detention would vary among localities according to the number of children likely to be arrested or charged. For many reasons, including that of economy, the Secretary of State advised that it was desirable to avoid establishing separate institutions for this purpose, and he did not anticipate that new institutions need be opened except, perhaps, in some of the largest cities. It was anticipated that it would generally be possible for the Police Authority to make arrangements with existing institutions for the reception of children who had to

be detained on remand or awaiting trial. In areas where the need for places of detention would be a rare occurrence it was thought sufficient to arrange with a police officer and his wife to receive children in their house. When, contrary to the general intention of the *Children Act*, it was necessary for a child or young person to be detained on arrest in a Police Station, it was, by section 96, the duty of the Police Authority to make arrangements for preventing the person so detained from associating with an adult, other than a relative, charged with an offence.[4] Section 109(2) empowered the Secretary for Scotland to arrange for the inspection of places of detention and for the drafting of rules governing their internal arrangements and control of the children and young persons so detained.[5] The provisions of the *Children Act* prohibiting the committal of children or young persons to prison (section 102) did not come into operation until lst January 1910, but in March 1909 the Secretary for Scotland, under the powers recently conferred on him, gave permission for Scottish courts, in areas where any place of detention had already been provided, to so commit a child or young person in advance of section 102 coming into force.[6]

In practice many local authorities did not find it necessary to provide places of detention for children and young persons; little use was made of these facilities except in some of the large centres of population e.g., Glasgow. Chief Constables expressed strong objections to detaining a juvenile offender in a police station under section 96, and were reluctant to issue a certificate that an offender was of so unruly a character that he could not be safely detained elsewhere.[7] For juvenile adult offenders who could not be released on bail or liberated without bail as specified in the *Summary Jurisdiction (Scotland) Act 1908*, section 14, there was no option but to detain them in police cells and it was known that Chief Constables were reluctant to do this unless absolutely necessary.[8] The *Criminal Justice Administration Act 1914* did not improve the situation regarding the detention of offenders in the age group of 16 to 21 years because it did not impose any obligation on the Police Authorities to provide entirely new places of detention. Instead it empowered the Secretary of State, on the application of any police authority, to certify any police cells or bridewells as suitable places for this purpose and make regulations for inspection. The Departmental Committee of 1928 expressed no surprise that the Secretary of State had not certified

any police cells or other similar places for the purposes of detention since, in the majority of police stations, it was not easy to make provision for exercise and provide some form of employment for the detainees.[9]

The total number of new receptions of children and young persons in places of detention in 1924 was 296 (Glasgow having 245 of these) and in 1925 the number was 248 (of which 174 were in Glasgow). Outside Glasgow the total number of receptions in Scotland was very small. Only very rarely was it necessary for the courts to certify that a young person was of so uncontrollable a disposition that he could not be safely committed to a place of detention. For the years 1923 to 1926 the figures were 7, 6, 4, and 7 respectively. During 1924 the number of juvenile offenders received in places of detention on adjournment of court proceedings or for further examination was 221. In 1925 the number was 157 and the statistics for both years included a considerable number of children and young people previously detained on apprehension. In 1924 there were 4 juvenile offenders at places of detention on committal for trial after appearing in a Summary Court and in 1925 the number remained the same. The number of children in places of detention awaiting removal to an industrial school was 9 in 1924 and 8 in 1925.[10]

The Departmental Committee of 1928 was of the opinion that the committal of a child or young person to a place of detention on conviction under section 106 was a doubtful policy. It was stipulated that detention under these circumstances was only to be ordered when it was considered that no other method of treatment was suitable. However, the Departmental Committee considered it inadvisable to allow a juvenile offender, convicted of an offence which justified this punishment, to mix with others who were in the place of detention either on apprehension or on the adjournment of proceedings at the court. It was considered that there was little constructive in this method of treatment, but it had occasionally been useful to the courts as the ultimate means of enforcing a fine, particularly when an offender was in regular work but was reluctant to pay. During 1924 the courts committed 14 juvenile offenders to places of detention in default of payment of a fine and 5 were committed without the option of a

fine. In 1925 the statistics were 9 and 2 respectively. In such cases Magistrates rarely ordered detention for the maximum period of one month. With regards to offenders of 16 and not more than 21 years of age, the Departmental Committee recommended that the provisions of section 42(2)(c) of the *Criminal Justice Administration Act 1914* should be made mandatory, thereby placing juvenile adult offenders, whose fixed abode was either within or outwith the jurisdiction of the court, under the supervision of a person appointed by the court until a fine was paid, unless the court for some special reason considered that supervision was unnecessary. The Departmental Committee were of the opinion that if this recommendation was extended to all offenders from school leaving age to 21 years of age it would mean that detention in default of payment would largely cease.[11] It was also recommended that the option of bail be used to the utmost extent to obviate the necessity of detaining juvenile adult offenders in police cells in cases not involving fines.[12]

The *Children and Young Persons (Scotland) Act 1932* replaced the terminology "place of detention" by "remand home." Section 33 transferred the responsibility of providing remand homes from the Police Authority to the Councils of Counties and large burghs. It was hoped that within the remand homes local authorities would be able to provide adequate facilities for medical examination, because the absence of such facilities had been recognised as an impediment to the full provision of information for the courts. Owing to the change in definition of the term "young person" instituted by the Act of 1932 the remand homes were required to accommodate persons under 17 instead of under 16 years of age as previously, except in cases where the court certified that a young person was of so unruly a character that they could not be safely sent to a remand home, or were of so depraved a character that they were not fit persons to be so detained. In such cases the court was empowered to remand a young person to prison.[13]

The Act of 1932 made it obligatory for large burghs to provide a remand home. However, in 1937, a report prepared by the Bailies of Edinburgh revealed that while the juvenile court in Edinburgh was satisfactorily equipped in other respects, it was

unfortunate that this city lagged behind practically every other city in the provision of adequate remand home facilities. The existing remand accommodation at Queensberry House was not satisfactory. It merely provided living accommodation without safe custody or scope for observation. In 1936 there was a noted increase in the number of cases of serious juvenile crime in Edinburgh and the provision of a suitable remand home was a matter of urgency.[14]

The "places of detention" created by the *Children Act 1908* were not suitable, and were not intended for, the prolonged observation of youthful offenders. Between 1908 and 1932 there had been a considerable revaluation of the importance of a period of remand. It was realised that proof of admission of a deliberate offence should be followed by a remand in order to permit a complete investigation to be made into the offender's home surroundings, companions, etc. It was considered unfair to put a child on probation or to order the youthful offender to be sent to an approved school without full enquiry into environmental and background circumstances otherwise the chances of success were greatly diminished. Observation and medical examination in a remand home by skilled observers could reveal some physical or psychological defect which would not be apparent to a Magistrate in Court, and the remedying of which might obviate the necessity for further treatment.[15] One of the objectives of the new Act in bringing the local authority in closer touch with the work of the juvenile courts was to make it possible for the authorities to place the resources of their medical services at the disposal of the courts in respect both of physical and mental examination. The problem of providing suitable accommodation to serve as remand homes which would meet the requirements of the juvenile courts was not easy to solve since the financial circumstances of the 1930s necessitated that only those improvements involving little or no expenditure could be considered. The Secretary of State was of the opinion that an extension of the idea of co-operation among a number of authorities to share the costs of maintaining and providing remand homes for use by all courts over a wide area would be the best solution to the problem. Even with the raising of the upper age limit of "young persons" from 16 to 17 it was anticipated that in most areas cases of remand in custody would be relatively rare and the period of

stay would not usually exceed a few days or a week or two. Where a central remand home did not exist and could not be provided, accommodation for a few cases could perhaps be found in voluntary homes or private houses. The use of public assistance institutions for the purposes of remand was deprecated.[16]

By the 1930s it was clearly recognised that the provision of proper remand home facilities was an essential part of the process enabling the juvenile courts to decide on the most appropriate treatment for each case and by this means encourage the offenders to assist in their own reformation. It was unfortunate that the full development of the system required by the new juvenile courts was retarded by financial stringency.

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COURT PROCEDURE:

5. CORPORAL PUNISHMENT

For many years whipping, or birching, had a large body of support among legal practitioners on the grounds that it was the simplest, the cheapest and the most speedy method of punishment for cases coming before the judges in the inferior courts. In Scotland the courts were empowered both by common law and by statute to order that an offender be subjected to this form of corporal punishment.[1]

The *Prisons (Scotland) Administration Act 1860* (23 &24 Vict. Ch.105), section 74 stipulated -

> "In every case where it is competent for any judge or magistrate to award sentence of imprisonment or of fine with the alternative of imprisonment, it shall be lawful for such judge or magistrate, in the case of any juvenile offender, being a male, whose age in the opinion of the judge or magistrate, shall not exceed 14 years, to adjudge such offender, in stead of imprisonment, or of imprisonment and hard labour, to be punished by private whipping, in such manner and according to such regulations as have been or shall be made by the Lord Advocate of Scotland and approved by one of Her Majesty's Principal Secretaries of State."

The provisions made for whipping in the Act of 1860 were an extension on those in the repealed *Prisons (Scotland) Act 1851* (14 & 15 Vic. Ch.27). It was further enacted by the *Whipping Act 1862* (25 & 26 Vict. Ch.18) that -

> 1. "Where the punishment of whipping is awarded for any offence by order of one or more justices made in exercise of his or their power of Summary Conviction, or in Scotland by the Court of Justiciary or by any Sheriff or Magistrate, the order, sentence or conviction awarding such punishment shall specify the number of strokes to be inflicted and the instrument to be used in the infliction of them, and in the case of an offender whose age does not exceed 14 the number of strokes inflicted shall not exceed 12 and the instrument used shall be a birch rod."
>
> 2. "No offender shall be whipped more than once for the same offence, and in Scotland no offender above 16 years of age shall be whipped for theft or for crime committed against person or property."

In Scotland the Act of 1862 created confusion regarding the powers of a Sheriff or Magistrate to whip male offenders between 14 and 16 years of age. The *Prisons*

(Scotland) Administration Act 1860 had stipulated 14 as the upper age limit; but section 2 of the Act of 1862 seemed to imply a considerable extension on the powers conferred by the earlier statute. However, the legislature never intended to give general authorisation in Scotland to the whipping of offenders over the age of 14. Section 2 was added to the *Whipping Act* in Committee with the aim of assimilating the Scottish criminal law regarding whipping for certain offences to the English and Irish statutory law passed in 1861. The intention of the Act of 1862 was to limit the power to whip offenders over the age of 16; but, by the wording of the Act, the powers of the Sheriff or Magistrate were extended authorising them to impose a sentence of whipping on male offenders between the ages of 14 and 16 in respect of theft and of crime committed against person or property.[2]

For all other offences whipping was limited to males under the age of 14 by the *Prisons (Scotland) Administration Act 1860* and later by section 514 of the *Burgh Police (Scotland) Act 1892*. In Edinburgh this limitation was imposed on the Magistrates by the *Edinburgh Municipal Act 1879*, section 348. This led to a rather complicated situation whereby a Sheriff, while presiding in the Sheriff Court with jurisdiction over the County of the City of Edinburgh, was empowered to order whipping for offences of theft and crimes against person or property committed by male offenders under the age of 16; but the same Sheriff, when presiding as a Magistrate in the Burgh Court, could only punish such offences by whipping if the male offender was under the age of 14.[3] To resolve some of the confusion created by the operation of the statutes the powers of all courts to order whipping were later extended by a decision of the High Court of Justiciary in 1923 which determined that male juvenile offenders under 16 years of age might be whipped for common law offences of the more serious order.[4]

The ability of the courts to make use of whipping as a short and sharp punishment was limited by the intention of the legislature in the Act of 1860 to make the punishment of whipping competent as an alternative to imprisonment only where imprisonment was competent *in poenum*, but not where imprisonment was only *in default of payment* of a fine. For common law offences, such as theft, breach of the

peace, malicious mischief (etc.), imprisonment was in all cases competent *in poenum*. However, by 1900 there were many new police offences - being drunk and incapable, annoying passengers, causing an obstruction on the streets, offences against the Railway Acts (etc.) - for which the penalty was a fine with the alternative of imprisonment *in default of payment*. Many children were being brought before the courts for all these offences. When an offender under the age of 14 was brought before a Magistrate charged with any of these offences, the Magistrate could not order whipping because imprisonment was not competent *in poenum*. If a Magistrate did take the step of committing such a youthful offender to prison where payment of a fine was not forthcoming, the prison authorities would operate their rules of refusing to accept offenders under the age of 14 into their prisons. Furthermore, the Magistrate would be required to account to the Scottish Office for pronouncing such a sentence. In effect, the Magistrate was left in the situation of either allowing the offender to go free, or of inflicting a fine without an alternative. If the latter option were chosen it would be found that, in most cases, the young offender was either unable to pay or would refuse to pay even if he could, knowing, as well as the Magistrate, that the prison authorities would not accept him into prison. Parents usually refused to pay knowing the rule of the prison authorities and frequently taking the attitude of not being responsible for the sins of their children. In effect, a sentenced young offender could escape punishment and flout the authority of the law.[5]

In 1880 the Lord Advocate invited the opinion of Sheriffs and Sheriff-Substitutes regarding "the present state of the law concerning the treatment and punishment of juvenile offenders." From the replies it was clear that whipping as a form of punishment had its adherents among legal practitioners.[6] Sheriff Rutherford of the Police Court in Edinburgh found, that when he took his seat on the Bench in 1882, the law as to whipping had never previously been enforced in that court. He introduced the punishment believing it was better than sending boys to prison.

It was the firm conviction of the Departmental Committee of 1895 that more use should be made of whipping as an alternative to imprisonment and as a means of inflicting some form of punishment for minor offences. In Police Court cases

whipping would be a very appropriate alternative punishment in default of the payment of a fine for offences such as boisterous conduct on the streets or petty theft of coals. The Departmental Committee also recommended that in cases similar to those in which whipping was appropriate for boys, girls should be subjected to strokes on the hand with a leather strap or 'tawse'. This form of corporal punishment was considered to be preferable to the deplorable results of sending young girls to prison. These recommendations were supported by the Petty Offenders Committee of the Glasgow Association for Improving the Social Condition of the People, and by the Secretary of the Howard Association and Mr. Quarrier.[7]

Further controversy arose out of the framing of regulations governing whipping under the statutes of 1860 and 1862. The regulations of 1862 made it necessary for floggings to take place in prisons. The abolition of local prisons consequent on the Prisons Act necessitated a revision of the regulations. New regulations appearing in 1885 stipulated that whippings could take place "in prison, or in such police office or cell or other suitable place as may be approved by the Sheriff." These regulations could not be operated because it was held that there was no power to compel prison warders to administer the whipping. A subsequent revision of the regulations dated 11th June 1886 prescribed the place of whipping as "such police office or cell or other suitable place, if possible within or adjoining the court house as shall be fixed by the Sheriff." It was also stipulated that where the person named to administer the whipping "is a police constable, he shall be bound to act."[8] In attempting to comply with the Lord Advocate's regulations, the Sheriffs experienced great difficulty in finding any person to undertake the duty of administering the flogging. Police authorities disputed the right of the Lord Advocate to make a regulation ordering police constables to undertake this duty. County authorities also objected to the right of any officer of state to order the punishment to be carried out on their premises.[9] It was held that the regulation referring to the naming of a police constable for the purpose of administering the whipping was *ultra vires* and could not, therefore, be enforced.[10] On 5th December 1887 a letter was addressed to the Magistrates of Coatbridge by the Chief Constable of the County stating that "the right of any one to impose a penal duty, such as whipping, on the Constabulary officers in Scotland, would not be

assented to as such could only be imposed by an Act of Parliament." A letter dated 7th December 1893, from the Chief Constable of Ayrshire to the Sheriff Clerk of the County further enlarged on the attitude of the police. In the first place it was believed to be of vital importance to the efficiency of a County Constabulary that they be completely dissociated from any penal duty. The use of any part of the Constabulary precincts for the purpose of flogging would connect the police unequivocally with this corporal punishment. Secondly, to impose on a constable the execution of such sentences would attach a reprobation to Constabulary service bringing it into ridicule and contempt.[11]

The regulations, in accordance with the Act of 1862, stipulated that punishment in the case of an offender whose age did not exceed 14 years was to be applied with a birch rod and the maximum number of stripes to be applied to the breech was not to exceed 12 in number. For offenders over the age of 14 punishment was to be inflicted with either a leather tawse or a birch rod. The stripes were to be applied to the breech and were not to exceed 36 in number. The punishment was to be sufficiently severe as to cause a repetition of it to be dreaded. Prior to punishment the offender was to be examined by a medical practitioner or police surgeon. The prescribed number of stripes could be reduced if it was the professional opinion of the medical practitioner that the health of the offender was at risk. In cases where one half of the prescribed number of stripes could not be safely inflicted, the offender was to be deemed unfit for this mode of punishment. The medical practitioner was also given authority to stop the infliction of punishment in progress if a continuation would damage the health of the offender.[12]

Although the replies received by the Lord Advocate in 1880 had indicated a support for whipping as an alternative to imprisonment and as a short and sharp form of deterrence; there was, even at that time, a clear division of opinion. The reply received from the Sheriff Principal of Lanarkshire, dated 11th January 1881, expressed the strong opinion that "the very fact that the delinquent is flogged in the police cells, and the exaggerated accounts he probably gives on being discharged add to the popular disgust at this mode of punishment which is regarded as savouring of

the Inquisition."[13] The Departmental Committee of 1895 were aware that many Magistrates were reluctant to order the birch as punishment since it stirred up public ill feeling.[14] In Scotland there was a definite prejudice in the public mind against whipping, and a distinct unwillingness on the part of any officials to undertake the task of inflicting the punishment.

The deterrent effect of whipping was questioned. The Departmental Committee of 1928 asserted that whipping did not have the dissuasive effect claimed for it in the past. There were occasional cases where whipping had made an offender more defiant rather than penitent, merely teaching him to be more astute in avoiding detection.[15] The report produced by the Scottish National Council of Juvenile Organisations in 1923 gave particulars regarding 4 boys who had been ordered by one court in Edinburgh to be birched during 1921. They were all given 12 strokes and all of them reappeared in court later in 1921.[16]

Table 13

Date of appearance at court	Offence	Sentence	Next appearance at court excluding any appearance for minor offences	Offence for which charged on re-appearance at court
22 Jan.1921	Theft & H.B.*	12 strokes	6 Aug. 1921	Theft & H.B.
22 Jan.1921	Theft & H.B.	12 strokes	6 Aug. 1921	Theft & H.B.
5 Feb.1921	Shopbreaking	12 strokes	1 Aug. 1921	Theft
5 Mar.1921	Theft & H.B.	12 strokes	26 Mar. 1921	Theft

*H.B. = Housebreaking

The Departmental Committee of 1928 concluded that an increased use of whipping did not mean a decrease in juvenile delinquency. Magistrates were becoming disillusioned with the effects of whipping and over the years there had been a decline in its use.[17]

Table 14

Extract from the Judicial Statistics for Scotland 1905-1925

Number of Juveniles ordered to be Whipped

1905	457	1915	562
1906	450	1916	800
1907	371	1917	925
1908	467	1918	755
1909	328	1919	400
1910	268	1920	338
1911	450	1921	255
1912	413	1922	255
1913	407	1923	316
1914	499	1924	283
		1925	265

The Departmental Committee of 1928, while it fell short of advocating that whipping should be removed from the penal code, recommended it should be used very sparingly owing to the practical difficulty of determining in each case whether it would do more harm than good.[18]

While the opinion was still around that the power to whip should be retained, but sparingly used, because it increased the deterrent effect of court authority,[19] it was increasingly believed by Magistrates and Sheriffs that if the reform of the offender, not the vindication of the law, was the ultimate aim of Juvenile Courts, there was little room for this form of punishment. Birching was simply a means of the courts being seen to administer adequate punishment; but it failed in the objective of repressing in the offender a tendency that was bad. It was an axiom in dealing with young offenders that to get rid of a tendency that was bad, an interest or an ideal which was definitely good had to be put in its place. This was where whipping failed as a method of treating young offenders.[20] The importance of whipping as a method of treatment for young offenders faded into the background as the courts made more efficient use of admonition procedures and non-institutional alternatives such as Probation.

REFERENCES - CHAPTER 3 - COURT PROCEDURE

5. CORPORAL PUNISHMENT

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COURT PROCEDURE:

6. PROBATION

Probation gained legal recognition in Great Britain with the *Probation of Offenders Act 1887* (50 & 51 Vict. Ch. 25). The object of this Act was "to make provision for cases where the reformation of persons convicted of first offences may, by reason of the offender's youth, or the trivial nature of the offence be brought about without imprisonment." There were three indispensable conditions governing the application of the statute: firstly, it was required that the offender was convicted of larceny, or false pretences or other offences punishable with not more than two years imprisonment; secondly, the offender was not to have had any previous convictions proved against him; and thirdly, the offender, or his surety, were required to have a fixed place of abode or regular occupation within the territory of the court or at the place where the offender was likely to reside during the period of probation. It was left to the discretion of the court to say whether,

> "regard being had to the youth, character and antecedents of the offender, to the trivial nature of the offence, and to any extenuating circumstances under which it was committed, it is expedient that he should be released on probation of good conduct."

The *Probation of Offenders Act 1887* may have appeared to be a very humane advance in terms of the penal code. In effect its application was intended to be very limited. It was meant to be implemented in cases where there were only two alternatives - imprisonment or probation of good conduct. It was not intended for adoption in charges of trivial cases at common law which were usually punished with small fines or an admonition; nor was it intended to apply to contraventions of Acts of Parliament punishable by pecuniary penalties. In such minor cases where fines were imposed as an alternative to imprisonment offenders of all ages were still liable to be sent to prison if they failed to pay their fines. Neither did the Act of 1887 obviate a conviction being recorded against the accused; the offender was convicted of the offence even if he was released on probation. All it did was to avoid the moral degradation and social stigma

resulting from imprisonment.

The *Probation of First Offenders Act 1887* was framed without regard for Scottish legal procedure. Read in conjunction with the *Summary Jurisdiction (Scotland) Act 1881* section 6, the use of the Act of 1887 served no good purpose. Since the court could substitute a pecuniary penalty even where a statute prescribed imprisonment only, it was doubtful whether probation of first offenders was appropriate in any statutory convention. The Scottish courts already had powers of discretion which generally enabled them to prevent an offender, in appropriate cases, from being sent to prison in default of paying a fine which had been imposed as an alternative to imprisonment. The amount could be reduced, extra time allowed or payments could be made by instalments.[1]

In Scotland, fines or admonition, which still required a conviction to be recorded against the offender, were seen to be more effective than the operation of the *Probation of First Offenders Act 1887*. The structure of this Act was very poor; it did not attempt to inaugurate a probation system as such. While it permitted the conditional release of first offenders, it made no provision for the appointment of Probation Officers. This meant that, except where Police Court Missionaries or other voluntary social workers agreed to watch over the offenders, the court had no means of knowing whether they obeyed or broke the conditions under which they were released.[2]

Probation in Scotland really came into operation with the *Probation of Offenders Act 1907* as amended by the *Criminal Justice Administration Act 1914*.[3] The *Probation of Offenders Act 1907* came into force on 1st January 1908 and it represented two important advances on the Act of 1887. In the first place, it removed the limitation which confined probation to first offenders. Probation could now be applied to any reclaimable offender. Secondly, it provided for the appointment of salaried probation officers. This meant that if the mercy of the court, in giving an offender conditional freedom, was abused, the fact would be reported to the court by the Probation Officer. By introducing the Probation

Officer into the life of an offender the court was not returning him to the precise conditions in which his wrong-doing took place because the efforts of the Probation Officer were likely to be of benefit in correcting defects of character and surroundings.[4]

Section 1(1) of the Act of 1907 gave the court power to place an offender on probation when it was the opinion of the court that the charge was proved and without proceeding to a conviction. This method of treatment was to be applied to cases where the character, age, health or mental condition of the person charged, or the trivial nature of the offence, or the extenuating circumstances under which it was committed rendered release on probation desirable.

Probation was clearly defined as constituting three distinct methods of dealing with an offender, as provided under sections 1 and 2 of the Act of 1907 and in respect of conditions by section 8 of the *Criminal Justice Administration Act, 1914*. In the first place the court could dismiss the information or charge; secondly, the court might discharge the offender conditionally on his entering into a bond, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during a specified period, not exceeding 3 years. Thirdly, to a bond so entered into the court was empowered to attach the condition that during the period specified on the probation order the offender would be under the supervision of a probation officer named in the order.[5] Section 8 of the *Criminal Justice Administration Act 1914* stated that a recognizance under the 1907 Act might contain such additional conditions relating to residence, abstention from intoxicating liquor and any other matters the court considered necessary for preventing a repetition of the same offence or the commission of other offences.[6]

The Departmental Committees of 1915 and 1928 investigated various misconceptions in the application of the law relating to probation in the Scottish courts. The Departmental Committee of 1915 was concerned with allegations that probation was being regarded as a substitute for institutional treatment for young

offenders. They reported that the judicial statistics for Scotland for 1912 revealed that probation orders were made in the case of 345 persons below 14 years of age and in the case of 273 persons of 14 and under 16 years of age - a total of 618 probation orders. The total number of children under 16 convicted of offences in Scotland in 1912 was 11,172. There was no evidence that among the 5.54% put on probation there were any cases suitable for institutional treatment, or that Magistrates considered probation to be in any way a substitute for such treatment. A return provided by the Chief Constable of Edinburgh listed only 26 cases appearing in the Edinburgh Courts between 1909 and 1913 in which children who had previously been on probation were committed to industrial or reformatory schools. Rarer still were cases of children in the schools who had been on probation more than once.[7]

The Departmental Committee of 1928 revealed that there was among legal practitioners a mistaken impression of the nature and purpose of probation. In 1925 the number of offenders dealt with under the *Probation of Offenders Act 1907* was 3,078. The charge was dismissed in 964 or 31.3% of these cases. The court discharged 231 or 7.5% of the offenders on condition they entered into a bond to be of good behaviour with or without sureties. This meant that in 38.8% of cases disposed of in 1925 under the Act if 1907 there was no supervision by a Probation Officer.

The Committee understood that Magistrates disposed of cases in this way not only to admonish and dismiss an offender, but also to be able to do so without recording a conviction - very desirable in the case of juvenile offenders. It was, after all, one of the firmest recommendations made by the Departmental Committee of 1928 that convictions should not be recorded in the juvenile court, nor in the case of juvenile adult offenders of 17 and under 21 years of age who were admonished and dismissed in the ordinary adult court. Dismissal and binding over with or without sureties were essential factors in the judicial system. To clarify the situation the *Probation of Offenders Act 1907* required to be amended to confine the use of the world 'probation' to the release of an offender under the supervision

of a Probation Officer and so prevent a misconception of the law.[8]

The *Probation of Offenders Act 1907* section 2(3) provided that "the court by which a probation order is made shall furnish to the offender a notice in writing stating in simple terms the conditions he is required to observe."[9] Investigation by the Departmental Committee of 1928 revealed that few courts observed this provision, and instead simply gave a copy of the Probation Order to the offender. In the probation order and bond it was not always made clear that under section 9(a) of the *Criminal Justice Administration Act 1914* additional conditions could be inserted.[10] By this section it was enacted that the court before which any person was bound by a recognizance to appear for conviction and sentence might, on the application of the probation officer, summon the person bound by the recognizance to appear before it, and vary the terms of the bond by extending or diminishing its duration or altering the existing conditions or inserting additional conditions. Any extension of the period of the bond was not to exceed 3 years from the date of the original order. On the other hand, if the court was satisfied that on the application of the Probation Officer the conduct of the person bound by the recognizance was such that further supervision was unnecessary, the bond could be discharged.[11]

With regards to conditions of residence which could be inserted into a bond under section 8 of the *Criminal Justice Administration Act 1914*, the Departmental Committee of 1928 reported that the words "additional conditions with respect to residence" had resulted in a year's or two years' residence in a Home being occasionally made a condition of probation. What parliament had in view was the desirability of removing a young offender from surroundings which might be unsatisfactory; but it was not intended that an offender would be placed on probation with a condition of residence for a lengthy period in e.g., a Rescue Home. It was the opinion of the Committee that probation should be restricted to supervision by a Probation Officer either in the offender's own home, or approved place of employment, or, if necessary in a hostel - i.e. a place in which the offender was really a lodger going out to work daily. The place of residence

should be named by the court and altered only on application being made to the court by the Probation Officer.[12]

The investigations of the Departmental Committee of 1928 revealed that it was not generally realised that when a person was tried on indictment it was necessary for a conviction to be recorded before that person could be placed on probation under the *Probation of Offenders Act 1907*, section 1(2). The annual number of all cases in Scotland was small. In 1925 the number of all ages convicted after full committal was 22, the highest since 1917. It was the opinion of the Committee that this procedure conflicted with the principles of probation. It should not be necessary to record a conviction in any case before placing an offender on probation.[13]

Witnesses appearing before the 1928 Departmental Committee referred to three particular difficulties relating to breach of the conditions of probation. In the first place Probation Officers were required to report to the court any failure to observe the conditions of the bond. There had been instances where Probation Officers had hesitated since such a report invoked the powers of the court under the *Probation of Offenders Act 1907* section 6(5) to convict and sentence the offender for the original offence and to terminate the period of probation. In the second place there were problems in dealing with a young offender for breach of his bond if he kept out of the way until his period of probation had terminated. By the *Probation of Offenders Act*, section 6(3) an offender who had absconded might be brought on apprehension before a local court in another area of jurisdiction. The offender could be held in custody or admitted to bail until he could be brought before the court which had originally made the probation order. This cumbersome and costly procedure, coupled with the fact that such cases were relatively few, was the reason why, occasionally, no action was taken to penalise breach of bond. It was the opinion of the Departmental Committee that any court of summary jurisdiction in the area in which the offender was found should have power to vary the conditions of the bond and appoint a new probation officer, and should also have power to sentence for breach of the original bond. A third area

of difficulty centred around juvenile adult offenders who were sometimes placed on probation in the hope that Borstal treatment would not become necessary. If the probation imposed on such an offender broke down there was no difficulty in ordering Borstal detention if the probation order had been issued from the Sheriff summary court, because such a sentence was within the power of the Sheriff. If the probation order was made in another summary court e.g., the Police Court, the Magistrates in the latter court did not have the power to order detention in a Borstal even though this form of treatment was considered the most appropriate. The Departmental Committee recommended that in such cases courts should be able to remit an offender to the Sheriff Court for committal to a Borstal Institution.[14]

The *Probation of Offenders Act 1907*, section 1(3) enacted that in addition to making a probation order, the court was empowered to order the offender to pay damages for injury or compensation for loss. In a court of summary jurisdiction the amount could not exceed £10, except where a higher limit had been set by any enactment relating to a specific offence. The Departmental Committee of 1928 pointed out that the above amount had been increased to £25 in England by the *Criminal Justice Act 1925* section 7(2) as amended by section 1(1) of the *Criminal Justice Amendment Act 1926*, and that this provision should be extended to Scotland in order to enforce the principle of restitution. The position of the court and the Probation Officer would also be strengthened if the court had the power to impose a fine on the parent or guardian in addition to placing the juvenile on probation. The chances of probation being successful would be enhanced if a sense of direct responsibility could be impressed on the parents.[15]

The Departmental Committee of 1928 investigated the extent to which probation was being used in the Scottish courts -

Table 15

	1921	1922	1923	1924	1925
(a) Total number of persons under 21 convicted and total number of probation orders in respect of persons under 21	24661	24974	23476	24366	26473
(b) Total number of probation orders in respect of persons under 21 years	882	843	1053	1108	1244
Percentage of (b) to (a)	3.58	3.37	4.48	4.55	4.70

Even making allowance for the number of young offenders under 21 years of age who were admonished and dismissed and accordingly convicted, the percentage of those who were put on probation was surprisingly small. Adequate arrangements for a probation service just did not exist in a considerable number of courts, while in certain burghs of moderate population no probation officer had been appointed. The Departmental Committee were surprised by this finding in view of the fact that probation had a definite place in the judicial system and it was in a sphere of its own as a method of treating young offenders.

The investigations made by the Departmental Committee of 1928 and their recommendations had considerable influence on the *Probation of Offenders (Scotland) Act, 1931* (21 &22 Geo.V. Ch.30). Section 8 of this Act amended the Act of 1907 as to the powers of the courts. Section 8(3) enacted that where an order was made under section 1(3) of the 1907 Act a court might further order payments to be made by a guardian or parent where the court was satisfied such adult had conduced to the commission of the offence by neglecting to exercise due care of the child or young person. The parent or guardian could be asked to pay the costs of court proceedings, or such damages for injury or compensation for loss (not exceeding £10 in a court of summary jurisdiction or any higher limit fixed by enactment for that offence) as the court thought reasonable, or both such costs and damages or compensation. The court was also empowered to impose a

straightforward fine on the parent or guardian of a child or young person. Section 8(4) amended section 2(1) of the 1907 Act by fixing the minimum period to be specified in a probation order at 1 year. Section 8(5) of the Act of 1931 stipulated that a court before which an offender was bound by his bond to appear, if satisfied he had failed to observe any of the conditions of his bond, might without summoning the offender or his cautioners to appear in court, vary the terms of the bond by extending its duration, providing such extension did not exceed 3 years from the date of the original order and that the obligation of any cautioner should not be extended without his consent. On breach of bond the court had the option that instead of sentencing the offender for the original offence and without prejudicing the continuance of the bond, it could impose a penalty on the offender not exceeding £10, to be paid by the parent or guardian where the offender was a child or young person. Section 8(6) enacted that in cases where a young offender was not less than 16 or more than 21 years of age, and the court was satisfied the terms of bond had not been observed, the court was empowered to pass a sentence of detention for not less than 2 years or more than 3 years in an institution (i.e. Borstal Institution) established in Scotland under Part 1 of the *Prevention of Crime Act 1908*, provided the court was a Sheriff Court. All other courts of summary jurisdiction were required to refer such cases to the Sheriff Court under section 9 of the *Summary Jurisdiction (Scotland) Act, 1908.*

Section 7 of the *Probation of Offenders (Scotland) Act 1931* delineated the powers that courts could exercise with regard to offenders, thus giving authority to deal with the problem of change of residence or absconding. Any power exercisable by a court with regard to an offender bound by a bond to appear before such court for conviction and sentence or for sentence might be exercised by any court before which the offender was charged with the commission of another offence, or which had jurisdiction in the place where the offender was temporarily residing. Furthermore, it was enacted that any power which a court could exercise, on being satisfied that an offender had failed to observe any conditions of his bond, (other than a power to vary the terms of the bond or to nominate another probation officer) might be exercised irrespective of the fact that the period of

duration of the bond had expired.

Further reforms along the lines suggested by the Departmental Committee of 1928 followed in the *Children and Young Persons (Scotland) Act 1932*. By this Act the principle of probation was made applicable to children and young persons brought before the court as needing care or protection, or who were proved to be beyond the control of their parents or guardians. Sections 6(1) and 6(7) provided that in these cases a court might make an order placing the child or young person for a period not exceeding 3 years under the supervision of a Probation Officer or of some other person appointed for the purpose by the court. Sections 72(3) and 72(4) of the Act amended the provisions of the *Probation of Offenders Act 1907* regarding the insertion of residence conditions in probation orders. By the Act of 1932 it was provided that no person under 17 should be required to reside in an institution as a condition of probation bond unless the institution was subject to the inspection of the Secretary of State or unless, while residing in the institution he was to be employed, or was to seek employment outside it. The court was obliged to pass to the Secretary of State notice of any probation order requiring residence in an institution as a condition of a bond, and the Secretary of State might apply to the court for a variation of this order if, in his opinion, it was necessary in the interests of the young person concerned.[16]

Table 16

Extract from Judicial Statistics, Scotland

(Criminal Statistics) Table IV

Year	Number of persons proceeded against (Summary Courts)	Probation Orders Made	Percentage
1930	108,245	2,383	2.2
1931	102,516	2,404	2.3
1932	95,350	2,067	2.2
1933	95,072	2,313	2.4
1934	102,659	2,853	2.8
1935	116,434	2,884	2.5

Table 17

Extract from Judicial Statistics, Scotland (Criminal Statistics)
Probation Orders Made in Juvenile Courts

Table	Year	Number of persons proceeded against	Probation Orders Made	Percentage
XVI	1930	9,898	930	9.4
XVI	1931	9,728	993	10.2
XV	1932	9,709	950	9.8
XV	1933	9,179	1,225	13.3
XIII	1934	13,615	1,907	14.0
XIII	1935	15,062	2,132	14.2

Table 18

Extract from Judicial Statistics, Scotland
(Criminal Statistics) Table VI

Year	Persons with respect to whom Probation Orders were made (all courts)	Number who appeared for disposal after breach of Probation Bond	Percentage
1930	2,397	100	4.2
1931	2,436	84	3.4
1932	2,089	45	2.1
1933	2,335	40	1.7
1934	2,877	83	2.8
1935	2,918	68	2.3

From Table 16 it is apparent that the percentage placed on probation in all summary courts in the period 1930-1935 was constant, while from Table 17 it can be seen that in the same period the percentage in juvenile courts showed a gradual increase from 1932 when the *Probation of Offenders (Scotland) Act 1931* came into force. The value of probation as a method of disposal in suitable cases was being more generally recognised, and the courts were beginning to use the services of Probation Officers to a greater extent. In Table 18 the percentage of cases in which breach of Probation Order took place is revealed as having been very small and

fairly constant since the Act of 1931 became effective. The *Probation of Offenders (Scotland) Act 1931* was part of the same change in attitude towards the treatment of the juvenile and young offender which was epitomised in the *Children and Young Persons (Scotland) Act 1932*. Rehabilitation within the community now had a firm place in the judicial system thus diminishing the Victorian legacy of isolation from the community in institutions. It was only with the passing of the Act of 1932 that proceedings in separate juvenile courts assumed a tone favourable to the Probation Officer's subsequent efforts thus making the probation of juvenile and young offenders a really effective method of treatment.

REFERENCES - CHAPTER 3 - COURT PROCEDURE

6. PROBATION

1. *Scots Law Times*, 27th June, 1896, pp.46-47.
2. LEESON, Cecil, *The Probation System*, (1914), p.6.
3. *Protection and Training (Scotland) Report, 1928*, p.63.
4. LEESON, Cecil, *op.cit.*, p.7.
5. *Protection and Training (Scotland) Report, 1928*, p.64.
6. LEESON, Cecil, *op.cit.*, p.8.
7. *Report of the Departmental Committee on Reformatory and Industrial Schools in Scotland*, 1915 (Cmd. 7886), pp.24-25.
8. *Protection and Training (Scotland) Report, 1928*, p.64.
9. LEESON, Cecil, *op.cit.*, p.9.
10. *Protection and Training (Scotland) Report, 1928*, p.66.
11. LEESON, Cecil, *op.cit.*, p.9.
12. *Protection and Training (Scotland) Report, 1928*, p.70.
13. *Ibid.*, p.68.
14. *Ibid.*, pp.67-68.
15. *Ibid.*, p.66.
16. *Scottish Office Circular No.2793, op.cit.*

COURT PROCEDURE:

7. CARE OF A RELATIVE OR FIT PERSON

Among the measures introduced by the *Children Act 1908* for the non-institutional treatment of delinquent and potentially delinquent children, Courts were empowered under section 21(1) to commit to the care of a relative or other fit person any child or young person under the age of 16 in cases where the person having the custody had been convicted of certain offences in respect of such child or young person e.g., under the *Criminal Law Amendment Act 1885*; or, had been committed for trial for any such offence; or, had been bound over to keep the peace towards such child or young person. Such action could also be taken by the Courts with regards to any child under 14 or any young person of 14 and under 16 years of age who came within any of the descriptions of neglected or necessitous children in section 58(1) of the *Children Act*. Furthermore, any child under 12 who was delinquent or any child of 12 and under 14 years of age who was delinquent but not previously convicted, and any child under the age of 14 who was beyond parental control or who was truant within the meaning of sections 58(2) to 58(6) of the *Children Act*, might be considered by the Courts as appropriate cases for committal to the care of a relative or other fit person. The provisions of section 21(1) authorized the Courts to so commit children and young persons until they attained the age of 16 years or for any shorter period if it was the opinion of the Court that removal from parental control was required but the child or young person was not in need of training in an institution. Section 60 empowered the Courts to place a child or young person under the supervision of a Probation Officer in addition to any order for committal to the care of a relative or fit person. Such orders could be renewed, varied or revoked by the Court according to changing circumstances in the case.[1]

The investigations of the Departmental Committee of 1928 revealed that the Courts had made infrequent use of these powers. The main impediment was that no provisions had been made for a grant to be paid from public funds towards the

maintenance of the children and young persons to whom this provision was applied, and relatives and friends were consequently more reluctant to undertake the responsibility. In addition, no machinery had been provided under the *Children Act* for finding any persons outwith family circles who could be described as "fit persons" to take on the duties of guardianship.

It was the recommendation of the Departmental Committee that in cases where no relative or other fit person came forward as interested parties to assume the care of a child or young person, the Court should have powers to transfer guardianship to the Education Authority. It would then be the duty of the Education Authority to find a suitable person to take the responsibility. The Education Authority should also be required to bear the liability for the costs of maintenance with a grant being provided from public funds.[2] It was essential that Courts should be given the authority to order and to enforce parental contributions towards the costs of the maintenance of their children as was provided for in the case of committals to certified schools. Where the conduct of a child or young person proved to be unsatisfactory while in the care of a relative or other fit person, it was recommended that the Courts should be empowered to transfer the case from guardianship to a certified school on the application of the Education Authority.[3]

The *Children and Young Persons (Scotland) Act 1932* enlarged on the provisions of the *Children Act* on the lines recommended by the Departmental Committee of 1928. Under the provisions of the Act of 1932 a Court might commit a child or young person, whether an offender (section 12) or found to be in need of care or protection (section 6) to the care of any fit person whether a relative or not who was willing to provide care. If a child or young person had a suitable relative or friend who came forward and offered, to the satisfaction of the Court, to provide guardianship the Court could make an order committing the child or young person to his care.

The *Children and Young Persons (Scotland) Act 1932* provided for cases where no relative or friend came forward by declaring that an Education Authority should be deemed to be a fit person (section 20) and Court orders might consequently be made committing children and young persons to the care of the Education Authority if that authority was willing to bear the responsibility. It was the intention of Parliament that children and young persons so committed to the care of an Education Authority should be boarded out with suitable foster parents. The responsibility for drafting the rules governing the conditions under which boys and girls were to be boarded out by Education Authorities was that of the Scottish Education Department, to whom the powers of the Secretary of State in this connection were transferred. Under the new provisions children under 10 years of age could not be sent to approved schools unless they could not properly be provided for otherwise, and the system of committal to the care of an Education Authority was particularly suitable for such young children.

The boarding out expenditure incurred by Education Authorities was made payable out of local funds subject to a government grant. Under the provisions of section 27 power was conferred on the Courts to make a contribution order on the parents in respect of any of their children committed to the care of a fit person.[4]

REFERENCES - CHAPTER 3 - COURT PROCEDURE

7. CARE OF A RELATIVE OR FIT PERSON

1. *Protection and Training (Scotland) Report, 1928*, p.115.
2. *Ibid.*, p.116.
3. *Ibid.*, p.117.
4. *Scottish Office Circular, number 2793, op.cit.*

COURT PROCEDURE:

8. ENFORCEMENT OF PARENTAL RESPONSIBILITY BY FINES

By the early years of the twentieth century it had become apparent that a significant proportion of minor police offences, such as being drunk and incapable, causing an obstruction on the streets, offences against the Railway Acts, were being committed by children and young persons from reasonable home backgrounds. The aberrant behaviour of these youthful offenders could only be attributed to parental carelessness and failure to provide adequate supervision of their children. The attitude of the parents and guardians that they were not responsible for the misdemeanours of their children was encouraged by the fact that nineteenth century legislation had not made them legally liable to pay fines inflicted by a Court on their children when, as happened in most cases, the children were unable to pay. The parents were well aware that a term of imprisonment would not be imposed by the Court since by the early twentieth century the prisons were refusing to admit children or young persons under the age of 14 years. Whipping in many such cases was not a competent alternative. What was required was legal provision for some form of reprimand to be inflicted on the parents or guardians in order to ensure that they came to terms with their obligations in respect of their children.

The *Youthful Offenders Act 1901* empowered the Courts after imposing a fine, damages or costs on a child to order that payment be made by the parent or guardian in cases where the Court was satisfied that the parent or guardian had conduced to the commission of the offence by wilful default or habitually neglecting to exercise due care of the child. The parent or guardian could also be ordered to give security for the good behaviour of the youthful offender. These powers could only be exercised by a Sheriff or Stipendiary Magistrate in a Court of Summary Jurisdiction.

Section 99(1) of the *Children Act 1908* made these powers more generally available for the Courts by stipulating that in cases where a child or young person

was charged before any court with any offence for the commission of which a fine could be imposed, and the court was of the opinion a fine would be the most appropriate penalty whether with or without any other punishment, the court was empowered to order that the fine be paid by the parent or guardian instead of by the child or young person. These powers were permissive in the case of a young person, but they were mandatory in the case of a child. Under the same section of the Act, courts were also authorised to order the parent or guardian to give security for the good behaviour of the child or young person. The parent or guardian was thus made legally liable unless the court was satisfied that the said adults could not be found, or that they had not conduced to the commission of the offence by neglecting to exercise due care of the child or young person.

Unfortunately there was a misunderstanding among Magistrates regarding the operation of the proviso to section 99(1). It was apparently assumed that it was for the prosecutor to prove that the parent or guardian had conduced to the commission of the offence, and this proof was almost impossible to obtain. The Departmental Committee of 1928 insisted that the true construction of the proviso meant that the onus was placed upon the parent or guardian to satisfy the court that he had not conduced to the commission of the offence. If this interpretation was adhered to this sub-section would be given more frequent use by the courts and it would create a greater awareness on the part of parents and guardians of their responsibility. It was also the opinion of the Departmental Committee that under the *Probation of Offenders Act 1907* courts should be empowered to impose a fine on the parent or guardian in addition to placing the youthful offender on probation. On the question of liability for damages or restitution the Departmental Committee argued that the courts should have the authority to transfer this liability by direct order under the *Children Act* or the *Probation of Offenders Act* to the parents or guardians as having contributed to the commission of the offence by dereliction of their duty to exercise due care and supervision of the child or young person.[1]

These recommendations were reflected in the *Probation of Offenders (Scotland) Act 1931*. Under section VIII (3) the courts were empowered to order that the offender, being a child or young person, or the parent or guardian of such an offender, should pay the costs of the proceedings or such damages for injury or compensation for loss (not exceeding £10 in a Court of Summary Jurisdiction, or any higher limit fixed by enactment for that offence) as the court thought reasonable; or, both such costs and damages or compensation. In addition the court was authorised to impose a fine on the parent or guardian of a child or young person with the proviso that in all such cases the court had to be satisfied that the responsible adults had conduced to the commission of the offence by neglecting to exercise due care of the youthful offender.

The *Children and Young Persons (Scotland) Act 1932* as consolidated by the *Children and Young Persons (Scotland) Act 1937* enlarged on the provisions relating to parental liability in the *Children Act 1908*. The courts were granted authority to make an order against a parent or guardian who, having been required to attend at the court, had failed to do so with the proviso that the parent or guardian had to be given the opportunity of being heard before such an order could be issued by a court. Should any parent or guardian fail to pay any sums ordered by a court, or if he failed to forfeit the security required by the court for the good behaviour of the youthful offender, such payments could be recovered from the parent or guardian by civil action or imprisonment as if the order had been made on the conviction of the parent or guardian of the offence with which the child or young person was charged.

By making parents or guardians liable in law in appropriate cases for the fines, damages or costs incurred by the misdemeanours of their children, or for providing security for their future good behaviour, the intention was to reduce the number of re-appearances in court especially of children from normal working class homes. There was an opinion in legal circles that while this was an effective method of treatment in less serious cases, it was unfortunate that it involved a finding of guilt of the child or young person.[2]

REFERENCES - CHAPTER 3 - COURT PROCEDURE

8. ENFORCEMENT OF PARENTAL RESPONSIBILITY BY FINES

1. *Protection and Training (Scotland) Report, 1928*, p.79.

2. *Juvenile Delinquency*: Report by Bailies Contart, Stevenson, Gilzean and Falconer to the Lord Provost and Magistrates of the City and Royal Burgh of Edinburgh, 5th May, 1937, p.11.

COURT PROCEDURE:

CONCLUSION

Between 1866 and 1937 some of the most significant developments in the treatment of delinquent and potentially delinquent children were evident in court procedure. While there was legal recognition in the legislation of 1866 that the juvenile offender and the potential delinquent required separate treatment from the adult criminal population, the principle and practice of the law in the courts, even under summary jurisdiction, was such that juveniles were still at the mercy of a perfunctory court procedure which was essentially structured to deal with adult offenders. The major advance in the treatment of children and young persons appearing before the courts came with the institution of the juvenile court under the provisions of the *Children Act 1908*.

While the *Children Act 1908* can be proclaimed as a milestone, in that it introduced many worthwhile reforms into the treatment by the courts of children and young persons up to the age of 16, it must also be recognized that this Act did not go quite far enough. Juvenile courts were still essentially criminal courts regulated along with adult court hearings by the provisions of the *Summary Jurisdiction (Scotland) Act 1908*. Trial by jury and the charging of a child with, and finding him guilty or not guilty, of a specific offence was continued. A conviction had to be recorded against a youthful offender even when the boy or girl was simply being admonished or fined for a minor offence against police byelaws. However, in formulating the *Children Act 1908*, the reforming Liberal administration of 1906 swept away separate legislation for the treatment of delinquent and potentially delinquent children and incorporated it within legislation which covered the whole field of child welfare.

The continuing development of this new holistic approach was reflected in the *Children and Young Persons (Scotland) Act 1932*. This Act, along with its attendant *Juvenile Courts (Procedure) (Scotland) Rules 1934* did much to

safeguard and protect the interests of children and young persons up to the age of 17 in the courts. The civil function of the courts was extended at the expense of their criminal function; procedure was firmly established under which children and young people appearing in court were not regarded primarily as offenders deserving punishment, but as wards of the state in need of 'protection and training'. The legal criterion of 'guilt' was no longer the essential principle on which legal intervention was initiated. 'Remedial measures' were emphasized rather than 'punishment'; the words 'conviction' and 'sentence' were no longer to be used in relation to children and young persons dealt with summarily.

Judges in the juvenile courts were increasingly required to administer decisions based upon a consensus of expertise sought from doctors, psychiatrists, social workers, and other professional people in fields outwith the law, regarding the normality or pathology of 'characters', 'mental or moral states' and 'modes of life'. Children and young persons appearing before the courts were no longer simply subjected to a perfunctory judgement under the 'letter of the law' and the legal principles of 'guilt', 'responsibility', 'legal evidence' and 'proportionate punishment'. Gradually, the juvenile courts developed into centres of expertise where each case was 'diagnosed', rather than 'judged', and where a combination of wisdom, sympathy and perceptive discretion relating to the welfare of each individual case was employed.

It was no longer assumed that institutional treatment was a panacea for all forms of youthful wrongdoing. Reformatory and industrial school treatment (approved schools after 1932) was increasingly reserved for serious and recurrent cases of delinquency. Sentences of imprisonment were gradually restricted to juvenile adult offenders in the age group of 16 to 21 years of age as a last resort of the state against young persons who were capable of committing very serious offences. However, a lack of remand home provision made a considerable contribution to the numbers of young offenders and juvenile adult offenders held in prison for assessment purposes. The introduction of the Borstal system into the penal code necessitated an extension of court procedure to give specific

consideration to offenders in the age group of 16 to 21 years of age who could no longer simply be categorized as part of the adult criminal mass for whom imprisonment was the only treatment available to the courts. Many of the offenders in this age group had committed serious offences and were in danger of drifting into a life of crime, but were reclaimable as worthwhile citizens. Much depended on the skill and perception of the courts in assessing the suitability of individual cases for Borstal treatment. The use of corporal punishment faded into the background as the juvenile courts concentrated on the reform of the offender as their ultimate aim rather than the vindication of the law. For the less difficult children and young persons and the casual delinquents the juvenile courts made increasing use of non-institutional forms of treatment such as probation, custody in the care of a relative or fit person and the enforcement of parental responsibility by fines.

Under the provisions of the *Children and Young Persons (Scotland) Act 1937* the whole system of the procedure for dealing with the treatment of delinquent and neglected juveniles and young persons became much more integrated. Rehabilitation within the community had a firm place in the application of the judicial system to children and young persons thus diminishing the Victorian legacy of the comprehensive application of institutional isolation from the community.

Between 1866 and 1937 there was an increasing awareness that the future welfare of the youthful offenders and the disorderly, neglected or badly trained children and young persons who fell into the hands of the law, depended greatly on the decisions taken under court procedures with regards to their 'protection and training'. The preoccupation of the courts with a general concern for the vindication of the law was replaced by a particularized concern for the future of the 'wards of the state' as individual members of society.

CHAPTER 4

REFORMATORIES AND INDUSTRIAL SCHOOLS

Mr. Sydney Turner, the first appointed Inspector of Reformatory and Industrial Schools, described reformatories as "a species of juvenile houses of correction" and industrial schools as "houses of detention for the young vagabond and petty misdemeanant." In his final report of 1876 he commented, retrospectively, that when appointed thirty years previously he found in some reformatories

> "a routine scheme of regulations was enforced and the building enclosed within walls, the windows grated and the inmates clothed, confined and watched as they would have been in prison."

The Departmental Committee of 1896 commented to the effect that "some relics of the early restrictions survived either as rules savouring of repression or, more often, as general traditions without a name which insensibly affected the spirit of the management and the life within the reformatory or industrial school."[1] Much of the Victorian policy which had created these institutions to deal with the problem of juvenile crime in isolation from the rest of the community was continued into the twentieth century, imposing a regimen on the training and treatment of the inmates which became increasingly irrelevant in the light of changing social attitudes and industrial conditions.

The Departmental Committee of 1915 compiled a list of the reformatory and industrial schools in Scotland -

Reformatories: Boys

Kibble Reformatory
Parkhead R.C. Reformatory
Rossie Reformatory
Stranraer Reformatory
Wellington Reformatory

Reformatories: Girls

Dalry Reformatory
East Chapelton Reformatory

Industrial Schools: Boys

Aberdeen Industrial School, Oakbank
Arbroath Industrial School
Ayr Industrial School
Dumfries and Maxwelltown Industrial School
Dundee Industrial School, Baldovan
Edinburgh Original Industrial School, Liberton
"Empress" Industrial School Ship
Fechney Industrial School,Perth
Glasgow Industrial School, Mossbank
Glasgow R.C. Industrial School, Bishopbriggs
Greenock Industrial School
Kilmarnock Industrial School
Leith Industrial School
"Mars" Industrial School Ship, Dundee
Paisley Industrial School
St. Joseph's Industrial School for R.C.Boys, Tranent
Slatefield R.C.Boys' Industrial School, Glasgow.

Industrial Schools: Girls

Aberdeen Female School of Industry
Aberdeen R.C. Girls' Industrial School
Ayr Industrial School
Dalbeth Industrial School, Parkhead, Glasgow
Dundee Industrial School, Balgay Park
Edinburgh Original Industrial School
Glasgow Industrial School, Maryhill
Glasgow R.C. Girls' Industrial School
Greenock Industrial School
Newton Stewart Industrial School
Perth Girls' School of Industry
Perth Ladies' House of Refuge, Craigie
Stirling Industrial School
Victoria Industrial School, Leith
Waverley Park Industrial School for
Mentally Deficient Girls

According to the report of the Inspector of Reformatory and Industrial Schools for the year 1912, the 7 reformatories in Scotland had a total of 762 inmates (including those on licence); the 32 industrial schools had a total population of 4,250 inmates. In addition, 1,498 children were attending the 8 day industrial schools. There was also 1 short term industrial school in Scotland, established by the Glasgow School Board in 1905, and by 1912 it had 154 inmates. The daily average number of inmates in all the certified schools for the year 1912 was 6,500.[2]

1. Merger into Approved Schools

By the early years of the twentieth century the broad distinction created between reformatories and industrial schools was being questioned; namely, that committal to a reformatory involved criminal conviction, whereas committal to an industrial school did not. The *Children Act 1908* continued the distinction by defining the purpose of reformatories as the industrial training of youthful offenders, and that of industrial schools as the industrial training of children.[3] Looking across the spectrum of the certified schools informed opinion recognized a considerable degree of similarity in the training and treatment provided in reformatories and industrial schools, as well as perceiving that it was not possible to draw clear lines of classification between the inmates on the bases of "convicted" or "not convicted."

The Departmental Committee of 1896 concluded from various investigations that there was no substantial difference in the discipline and regime in reformatories as compared with industrial schools beyond what could be accounted for by the age difference. The model rules were practically identical in both cases, except that in reformatories the hours of labour were longer and the punishments more severe; but the only reason for this was the greater age of the inmates. Such differences affected the daily lives of the inmates but not the general character of the school. There was a tendency for the two classes of certified schools to compete with each other, particularly when it came to fund raising and to make the most or the least of the differences between them as best portrayed the character of each school under the scrutiny of potential subscribers. A notable example of this was the certificate of discharge issued by the industrial school ship "*Empress*" which described the training ship as being "established for the children of poor parentage: not a reformatory; therefore, no criminals are admitted or retained." However, evidence presented to the Departmental Committee of 1896 by managers and superintendents with experience in both reformatories and industrial schools indicated that there was essentially very little difference between the inmates of reformatories and those of industrial schools, except for the fact that those in the latter group were caught younger.[4]

In reviewing this question the members of the Departmental Committee of 1915 were aware of the degree of importance attached to shielding children from contaminating influences in the certified schools. The great majority of the inmates in reformatories were over 14 years of age and had all passed from incipient to actual criminality. However, evidence provided by many superintendents indicated that there were considerable moral differences between the individuals in the reformatory school population. What was referred to as the police record of a youthful offender was not necessarily an index to character, and inmates with bad histories were not always the most unsatisfactory individuals to deal with. The children in industrial schools, on the other hand, were of all ages up to 16. In general they were committed for causes for which not they but their parents or home circumstances were responsible. However, sections 58(2) and 58(3) of the *Children Act 1908* made provision for children who were actually criminal to be admitted into industrial schools. In industrial schools there was, therefore, a risk that comparatively innocent children might be detrimentally influenced by more vicious or perverted individuals within the population of these institutions. While the risk had to be admitted, the Departmental Committee of 1915 had no evidence of deterioration being caused in the moral character of any children by association with other inmates in an industrial school. The Committee recommended that where the danger existed it should be accepted as a counterpoise against the good which these schools were doing for the children in general.[5]

It was the opinion of the Departmental Committee of 1928 that any validity there might have been in categorizing the inmates as "convicted" or "not convicted", "criminal" or "not criminal", had slipped away as the type of cases found in reformatories and industrial schools became very similar. By 1928 it was clearly recognized that the connection between neglect and delinquency was distressingly close. The different names given to these institutions had perpetuated a greater distinction between them than had actually existed for a considerable period of time. Many witnesses expressed the view that the titles "reformatory school" and "industrial school" were obsolete and by 1928 conveyed a wrong idea of the real character of the schools.[6] In 1920 the connection between the Home Office and reformatory and industrial schools was severed and these institutions were aligned into the educational

system. The Departmental Committee of 1928 suggested the term "training School" to describe both types of school. Furthermore, it was the opinion of the Committee that the only valid distinction which could be made between the inmates was one of age.[7] The age factor was significant because there was a vast difference in the degree of criminality involved in an offence committed by a boy of 8 years of age and a lad of 15 years of age, and the degree of social training and rehabilitation required was also relative to age. Following the recommendations of the Departmental Committee of 1928 the *Children and Young Persons (Scotland) Act 1932* removed the "convicted" and "not convicted" distinction created by Victorian legislation for the sole purpose of reassuring the public that crime was being punished.

Under the enlightened provisions of the Act of 1932 the terms "reformatory school" and "industrial school" were replaced by the description "approved school" and classification of the inmates was on the basis of age. The list of schools approved by the Scottish Education Department for the purposes of sections 36 and 37(1) of the *Children and Young Persons (Scotland) Act 1932* was as follows -

Senior Schools for Boys:- who at date of admission had attained the age of 14 years and were under the age of 17.

1. The Kibble School, Paisley, Renfrewshire
2. Rossie Farm School, Montrose, Angus
3. Wellington Farm School, Leadburn, Midlothian
4. Westthorn School, Tollcross, Glasgow.

Intermediate Schools for Boys:- who at date of admission had attained the age of 12 years and were under the age of 14. In certain circumstances these schools were also regarded as suitable for particular boys who had attained the age of 14 and were under 15.

1. Oakbank School, Aberdeen
2. Kenmure, St. Mary's Boys' School, Bishopbriggs, Glasgow
3. Mossbank School, Millerston, Glasgow.

Junior Schools for Boys:- under the age of 12 years at date of admission. These schools were also regarded as suitable for certain boys who had attained the age of 12 and were under 13.

1. Balgowan School, Downfield, Dundee
2. The Dale School, Dale Cottage, Arbroath
3. Dr. Guthrie's Boys' School, Liberton, Edinburgh
4. St. Joseph's School, Tranent, East Lothian
5. Slatefield Boys' School, Gallowgate, Glasgow
6. Thornly Park School, Paisley, Renfrewshire.

Combined Senior and Intermediate Schools for Girls:- who at date of admission had attained the age of 13 years and were under the age of 17.

1. Dalbeth Girls' School, Dalbeth House, Tollcross, Glasgow
2. Dr. Guthrie's Girls School, Gilmerton, Edinburgh

Junior Schools for Girls:- under the age of 13 years at date of admission. In special circumstances these schools were regarded as suitable for certain girls who had attained the age of 13 and were under the age of 14.

1. Balgay School, Blackness Road, Dundee
2. Gilshochill School, Glasgow
3. Greenock Girls Home, Brachelston Street, Greenock
4. Kenmure, St. Mary's Girls School, Bishopbriggs, Glasgow
5. Nazareth House School, Claremont, Holburn, Aberdeen
6. The Newton Stewart Girls Home, Wigtownshire
7. Snowdon School for Girls, Stirling
8. Wellshill Girls School, Perth

2. Discipline:

With regards to the scheme of discipline operated in reformatories and industrial schools, the investigations of the Departmental Committee of 1896 identified two systems of controlling the young inmates in these institutions. The system of watching and repression secured obedience to the rules of the institution and was easy to operate; but mere rules and discipline did nothing to develop the character of an inmate far less bring about permanent reform. On the other hand, the more difficult system of applying patience, judgement and personal sympathy was more effective in gaining the confidence of an inmate, his co-operation in his own reform and encouraging in him a sense of responsibility. Both systems were applicable in all aspects of life within the walls of the certified schools and in the degree of freedom permitted outwith school premises. The Committee appreciated that a greater degree of supervision was required in reformatory and industrial schools in the early months of a period of detention and that relaxation must come by degrees. However, the extent to which successful rehabilitation of the inmates was achieved depended on the institution maintaining a policy of discipline which balanced the requirement for obedience with an awareness of the inmates as human beings.[8]

Generally, in these schools there was never a fear of there being too little discipline; but considerable risk of there being too much. Rules for obligatory silence

were carried much further than in ordinary schools. The Departmental Committee of 1896 recommended that at meals, instead of being compelled to eat in silence, the children should be allowed to talk to one another without making a noise. Severe application of restrictions for silence during the hours of work tended to incite small offences and consequent punishments. In the opinion of the Committee excessive discipline constantly enforced in small everyday matters was simply vexatious and did no good.[9]

While they recognized the necessity for solitary confinement in a room as a punishment, the Departmental Committee of 1896 regarded imprisonment in a cell as a punishment only appropriate to prisons and one that should no longer be permitted in a reformatory or an industrial school. Confinement in a room for two or three hours as a punishment to permit a child to recover its temper was governed by the rules of the certified schools; but seclusion of the penal kind, extending over several days during which time the secluded child was denied all association or communication, was not regulated by rules sanctioned by the Secretary of State. It was the opinion of the Committee that without this authority experiments of this kind should not be continued in certified schools.[10]

The young inmates of reformatories and industrial schools were completely at the mercy of the superintendent and staff. It was the official line that much punishment, with particular reference to corporal punishment, was the mark of inferior management. The Departmental Committee of 1896 noted that there was some security against abuse in that, to a reasonable extent, superintendents were complying with their obligation to record instances of corporal punishment in a book. Unfortunately, this was a security which failed in the cases where it was most needed.[11] Investigation of the Scottish reformatories and industrial schools in 1915 revealed that in boys' schools the more serious offences such as absconding, insolence, disobedience, breaking bounds, etc. were punished by the superintendent who inflicted strokes of the leather tawse upon the posterior of the culprit. The number of such punishments varied greatly in different schools throughout Scotland. The superintendent of the Kibble Reformatory stated that he had only two cases in one

quarter requiring such degree of punishment; while, in one of the industrial schools, with only half the number of boys, ten such punishments were recorded within one month. It was the assessment of the Departmental Committee of 1915 that, on the whole, these punishments did not seem to be excessive in number.

Boys were punished for schoolroom offences, such as inattention, carelessness, etc., by the head teacher and the assistant teachers. Punishment was inflicted by strokes of the leather tawse applied to the palm of the hand. From an examination of some of the books recording these punishments the Departmental Committee of 1915 concluded that they were not excessive either in number or severity. The same kind of punishment was effected in the elementary schools of Scotland.

It was the observation of the Departmental Committee, however, that there was a tendency for offences of varying gravity to be treated in the same way. There was a need for discrimination in regulating the severity of the punishments. In instances where an Inspector observed that punishments were becoming uniform in a particular school, it was recommended that the matter should be brought to the attention of the superintendent. Furthermore, it was advised that the Inspector should, at intervals, examine the tawse in use and make sure all such punishments were administered in private.[12]

Under the Home Office rules the corporal punishment of girls was forbidden, but in some schools, which were operating under rules approved at a much earlier date, this practice had been continued. The majority of witnesses appearing before the Departmental Committee of 1915 expressed the view that the superintendent of a girls' school should have the power to inflict moderate corporal punishment. The members of the Committee felt compelled to agree with this opinion in the light of the fact that there were girls for whom punishments such as confinement to bed, deprivation of privileges etc., had no terrors and who could only be deterred from misconduct by physical pain or the threat of it. One such inmate could have a most disruptive effect on discipline and be a bad influence on the other girls. The tawse was a recognized method of punishment in elementary girls' schools, and it was

recommended that the superintendents of reformatory and industrial schools for girls should be in a similar position to teachers in elementary schools with regards to its use, but that their power should be limited to the infliction of six strokes on the hand as a maximum. This power should be held, as far as possible, in reserve.[13]

The complete abolition of corporal punishment was not recommended in any of the Departmental Committee reports of 1896, 1915 or 1928, but it is to be noted that, under the guidance of the recommendations made in these reports, the place of corporal punishment in the scheme of discipline was severely restricted to that of the ultimate deterrent. In drafting the revised rules of punishment in 1930 the Scottish Education Department expressed the view that excellent discipline could be maintained where corporal punishment was resorted to in a very limited number of instances. In the ordinary exercise of their responsibility for general discipline superintendents were instructed to endeavour to reduce all forms of punishment to the minimum compatible with the welfare of the inmates and of the school. Corporal punishment was not to be inflicted, except in the case of grave moral offences, until other methods had been tried and had been seen to fail. The same punishment was not to be repeated more than once for the same offence. For administering corporal punishment only a light tawse was permitted; the use of a cane or any form of cuffing or striking was forbidden. In boys' schools corporal punishment was to be inflicted only on the hands or on the posterior over ordinary cloth trousers, and the number of strokes for boys under 14 years of age was not to exceed two strokes on each hand or six strokes on the posterior. For boys of 14 years of age or over the maximum was set at three strokes on each hand or eight strokes on the posterior; only in very exceptional cases were ten strokes on the posterior permitted, and in these cases a full report had to be entered in the punishment book and on the quarterly return which was forwarded to the Education Department. For offences committed in the course of ordinary lessons in the schoolroom, minor punishments might be administered by the principal teacher under the authority of the managers. In the case of boys only, the maximum of three strokes in all could be inflicted on the hands by the teacher. With this exception all punishments were to be administered by the superintendent or the acting superintendent and by no other person. In girls' schools corporal punishment could

be inflicted only on the hands, the number of strokes was restricted to a total of three and a report had to be made to the school managers. Except in the case of punishment in the schoolroom for a minor offence, no inmate was to receive corporal punishment in the presence of other scholars.

The revised rules of 1930 recognized that for certain types of children isolation for a period of time might be the best method of correction and reform, whether applied by itself or in association with some other form of punishment possibly involving loss of privileges. The application of this category of disciplinary action was governed by strict regulations to prevent a period of isolation becoming a period of penal seclusion. The maximum length of time during which an inmate could be held in isolation was six hours. The room had to be light, airy and safe for the purpose; it was not to be a cell or even a room definitely set aside for such punishments. The offender was to be provided with some form of occupation and visited by staff at frequent intervals. In addition a means had to be provided permitting the offender to communicate with the staff.

The necessity for severe disciplinary action such as corporal punishment or isolation was reduced by the introduction of the mark system into reformatories and industrial schools. By 1915 some of the schools had introduced this system by which marks were awarded to the children for good conduct which carried rewards or prizes in the form of small sums of money, leave to see parents or friends and sometimes, in girls' schools, a distinctive article of dress. The rules of punishment drafted in 1930 favoured these more enlightened methods. Punishment, where considered necessary, was to consist of loss of conduct marks, degradation in rank, forfeiture of privileges or rewards, recreation or liberty. It was stipulated that no scholar should be deprived of recreation for more than a day at a time; the loss of a game of football for a boy or a dance for a girl were likely to be sufficiently effective. The deprivation of outside leave was regarded as a harsh punishment to be resorted to only in the case of a serious breach of discipline.

The superintendents in all reformatories and industrial schools were officially required not only to keep a punishment book but to enter details of all punishments including those administered in the schoolroom. The punishment book was to be examined at each meeting of the managers and signed by the chairman. The medical officer was to draw the attention of the managers to any case of excessive punishment and the punishment book was to be open for the inspection of any authorized representative of the Scottish Education Department.

These rules came into operation in the reformatories and industrial schools of Scotland in March 1931. By that time it had been recognized that in all cases the form of punishment to be used should be determined not only by the gravity of the offence but also by the temperament of the offender. It was, at long last, understood that extreme punishment often did more harm than good.[14]

3. Standards Required of Superintendents and Teachers:

The Departmental Committee of 1915 recognized that it was more true of the superintendent of an industrial or reformatory school than it was of the headmaster of an ordinary residential school that the conduct, the contentment of the inmates and the degree of success achieved in turning them out with a reasonable hope of becoming good citizens depended to a considerable extent on the character of the head of the school and on the extent to which he could exercise a personal influence on the young inmates. The superintendent was required to deal with children who, on admission, were mentally and morally more difficult material than came into the hands of an ordinary schoolmaster. Such an office required an unusual combination of qualities such as tact, firmness, sympathy and enthusiasm for the work.[15]

The superintendent was also responsible for the moral tone of the school. Moral training and correction was an essential component in the programme of reform for children and youthful offenders who had been surrounded by a bad or degrading social environment. It was the opinion of the Departmental Committee of 1928 that the religious teaching and moral training of the inmates were indivisible and together they could invigorate the daily life of these institutions doing much to build character

in children who had previously not come under good influence.[16] As the natural complement to religious teaching, the purpose of moral training was to inculcate directly, and on lower grounds than the purely Christian, the duties of honesty, truthfulness, clean living and temperance; while such minor morals as politeness (unselfishness in small things), industry, order and tidiness could be taught. Perceptive commentators in the late years of the nineteenth century had been aware that moral training required more than teaching by precept and illustration; it required that the whole institution should be pervaded by a high moral code of conduct descending from those in charge of the institution and imperceptible except in its results. Success could only be secured by having as managers, superintendents, matrons and teachers men and women who were not merely institutional custodians strict in their adherence to the enforcement of the regulations of the Secretary of State; but who could "exhibit in themselves and encourage in those under their charge, the sweeter, brighter and softer sides of human nature."[17] The superintendent was the guiding light and the inspiration within the institution. It was the opinion of the Departmental Committee of 1896 that if the children committed to the care of the reformatories and industrial schools were to turn out well as ordinary members of the community, the superintendent had to be capable of the difficult task of motivating the young inmates with a sense of self-respect so that they could feel they were morally on an equality with others.[18]

4. Provisions for Social Training:

If a child or a youthful offender was to be properly prepared for life in the community it was essential that the certified schools provide the necessary amenities to aid social rehabilitation. It was difficult to create a homely atmosphere in an institution, but on visiting the reformatories and industrial schools the Departmental Committees of 1915 and 1928 were surprised by the bareness of many of the schools; the absence of pictures, plants and ornaments in the living rooms. It was believed that these things, no matter how simple and inexpensive would give a more home-like appearance to the institutions. The Departmental Committee of 1915 suggested that it would be worthwhile for more trouble to be taken to instruct the children in the elementary refinements of table manners, and to facilitate this aspect of training table

cloths should be provided at meals and crockery should be used instead of enamelled ware. In one school it was observed that the boys at dinner had no water on the table and were required to drink at a pipe after the meal. It was recommended that the teachers should sit down to meals with the children, but not necessarily eat the same food.[19]

The Inspectors of the Scottish Education Department, who visited the certified schools at the request of the Departmental Committee of 1915, reported that the whole life of the children was over-regulated. The individuality of each child was ignored. They were not allowed to do anything as individuals.[20] The Departmental Committee of 1928 stressed the particular importance in these schools of making every effort to avoid repression and lack of initiative. Many superintendents were aware that there was a great danger of creating a well run and efficient institution which, in reality, ignored the child for whom the institution existed. A dull and undisturbed routine was less common than in previous years, but there was still a tendency for the schools to adhere to an institutional rigidity in the organization of time.

If the schools were to succeed in their objective of making worthwhile citizens out of their inmates the timetable should allow for a child to follow his own interests, to have a hobby, to learn the proper use of leisure and the value of healthy and pleasant interests in order to prevent them returning to the habits of the street corner. Hours of leisure should not always be spent under supervision. The Departmental Committee of 1928 recommended that in every school there should be adequate accommodation specifically for leisure and recreation. It was not desirable that a dormitory should be the only place available.

In the opinion of the Committee one of the best ways of providing the children with healthy interests and a considerable measure of outdoor activity was for the schools to form local units of the Boys' Brigade, Boy Scouts and Girl Guides. Where possible these organizations should be staffed by voluntary workers from outside.[21]

The report of the Departmental Committee of 1915 praised the efforts made by some of the reformatories and industrial schools to give their inmates an annual holiday from the institution. Some of the schools took the children to the seaside or the country for two or three weeks; a few boys' schools went to camp. In a few schools a cessation of school and industrial work was arranged for some weeks and picnics, treats and outings were arranged for the children. A change of scene and a break from institutional surroundings were essential for these children. A holiday had excellent effects not only on the health but also on the whole attitude and demeanour of the children in reformatories and industrial schools.[22]

There was a need for the schools to increase the amount of freedom they permitted inmates to have outside the institution. No bad results were reported from schools where home visits were allowed at intervals; such visits were regarded as a prized privilege, and one of the most effective forms of punishment was for these to be cancelled. In schools where the greatest amount of freedom was permitted on an everyday basis there was no evidence of an excessive amount of absconding. The Departmental Committee of 1928 believed that a large measure of freedom could safely be given if the children were aware that the superintendent placed trust in them. With regards to girls' schools, particularly those in large towns, the question was more difficult. Certain schools prohibited girls from going outside the school grounds unless under supervision and visits to their parents were forbidden because of the possible danger of reviving the influence of an unsatisfactory home. While appreciating the reason for concern and realising the difficulties, the Departmental Committee, nevertheless, doubted the wisdom of making this a general policy. Careful discrimination was required rather than a total ban on short visits for an afternoon or for a limited period of leave. The policy of shielding an industrial school girl meant, in practice, that at 15 years of age she was not trusted to visit her home, but a few months later, and not in any case later than the age of 16, she could be trusted to take up employment in which situation there was no certain assurance that moral problems would not arise. Ultimately the only way to equip a child for the proper use of liberty was a measure of liberty.[23]

The recommendations of the Departmental Committees of 1915 and 1928 were reflected in the Statutory Rules and Orders of 1933 where it was stipulated that in all approved schools reasonable time was to be made for recreation and free time for an annual holiday away from the school, and, where practicable, for one or more short periods of home leave each year. Additional privileges were to be given for good behaviour. The proper use of leisure and the value of healthy interests must be taught, and for this purpose as great a measure of liberty as possible was to be allowed during free time. Additional freedom was to be allowed towards the end of the period of detention with a view to facilitating a return to ordinary life.[24]

5. Education:

Strictly speaking the authorities had a very good opportunity to make up the defects in the elementary education of the young inmates in reformatories and industrial schools. Under detention for three or four years, or perhaps longer, the regular attendance of these scholars could be guaranteed, which was not the case in many public elementary schools or half-time schools.[25] However, since these children were presumed to be of a class on whom the advantage of anything more than a practical education would be thrown away, and, as their parents or others responsible for them had not the means to give them even a modest start in life, it seemed obvious that there was a greater advantage in giving them a thorough training in some specific industry before they left the institution.[26] Consequently, in both reformatories and industrial schools, schoolroom education was of secondary importance to industrial training.

The investigations of the Departmental Committee of 1896 revealed that the curriculum taught in the certified schools was extremely limited. Reading, writing, arithmetic and dictation formed the major subjects taught in the schools. Under a directive of 2 June, 1893 from Mr. Asquith, then Secretary of State at the Home Office, attempts had been made by most of the schools to introduce at least one subject of general importance, such as history, English composition, geography, recitation, the elements of vocal music or free-hand drawing. Evidence presented to the Committee cast doubt on the degree of skill with which these new class subjects were

being taught and the extent to which they were merely being adopted as a matter of meeting the official requirements.[27] The Scottish Departmental Committee of 1915 reported that the scope of education in both reformatories and industrial schools was much more limited than that of the ordinary elementary schools. By restricting the amount of time and attention given to what were usually termed class subjects the certified schools were following a settled policy which had been considered and deliberately adopted. Although the children acquired what was taught, their minds moved in a narrower circle and they had much less general intelligence and initiative than children in ordinary elementary schools. The Inspectors of the Scottish Education Department were unable to discover that anything like a taste for reading had been created in any of the schools. Vocabulary was limited and the children had a small stock of ideas for their age. The young inmates of reformatories and industrial schools were not practised in arithmetical problems which required some thought. It was the opinion of the Education Inspectors that an intelligent study of subjects of general importance would make the school life of the pupils in these institutions more interesting and, if anything, would accelerate rather than retard an acquisition of knowledge in the three Rs. There was a danger that under the existing system the intelligence and imagination of the children were being stunted.[28]

Nevertheless, many managers still clung to the idea that a severely practical education was required since, on admission, nearly all the pupils were extremely backward for their years and to burden most of them with anything else was pointless since it would hardly be possible to make up the leeway in the fundamental subjects. The Royal Commission of 1884 observed that in the certified schools education often had to be begun at a very late age and it was not uncommon for the children to be very dull or very stupid.[29] The Departmental Committee of 1896 came to the conclusion that there was a larger proportion of children who were below average intelligence in reformatories and industrial schools and that on admission their standards of education were more backward than children of the same age in public elementary schools.[30] From the evidence presented to the Scottish Departmental Committee of 1915 it is apparent that on admission the children were classified for the purposes of education according to their knowledge and attainments. Consequently, the pupils in any one

class could be of very diverse ages. The maximum age range found in any of the classes was five years, so that children between the ages of 8 and 13, or from 10 to 15, might be found in the one class. The children were allowed to progress through the school at the rate of one standard per year. There was within this system a need for some kind of differential treatment and more rapid promotion of the older backward children if they were to make up for their former educational deprivation or neglect within the time limits of their detention.[31]

Not only was it obvious that the detrimental effects of educational neglect would not be remedied by a restriction of the subjects taught in the certified schools, but it was also apparent that the amount of time allocated to education was insufficient if these schools were to meet their obligation of helping their inmates, particularly those who were backward, to achieve a level of education equal to that of children outside with whom they would have to compete on going out into the world. The rules stated that education was to be provided for at least three hours daily. In practice the schools devoted $1\,{}^{1}/_{2}$ hours in the early morning and $1\,{}^{1}/_{2}$ hours in the evening to schoolroom work. The middle of the day was occupied with labour and education was relegated to the hours when the children were least likely to be alert and receptive to teaching.[32]

The Departmental Committee of 1915 was of the opinion that this part-time arrangement for schoolroom teaching in reformatories and industrial schools was detrimental to the general intellectual development of a young child, and it was very doubtful whether it had the compensating advantage of placing the child in a better position than other children for following a specific trade. Since the majority of the children in the certified schools were educationally deprived or backward it was essential that the schoolroom work should be assimilated to the conditions in ordinary elementary schools in Scotland. In industrial schools it was recommended that the children should, as a general rule, be full time in the classroom at least till the age of 13, subject to any exemptions in the case of children over 12 years of age approved by the managers and given the consent of the Inspectors. Inmates over the age of 13 should continue with half time education until their discharge. In this context half time education would be required to constitute a certain number of hours each day or each

alternate day in order to prevent a young inmate forgetting what had been learned. It was also essential that the hours of half time education should not be relegated to the early morning or the evening. With regards to reformatories, the Departmental Committee recommended the same rules should apply to children under 13 years of age, and older inmates should be required to be half time in the schoolroom up to the age of 16. The school hours of inmates beyond that age should be left to the discretion of the managers in consultation with the central authority. It should be noted that in reformatories the majority of youthful offenders were admitted after they had passed the age at which attendance at elementary schools was compulsory.[33]

The investigations of the Royal Commission of 1884 gave clear indication that the standards set by the Education Department for elementary schools were not being attained in the certified schools.[34] In pursuing the same line the Departmental Committee of 1896 reported that there had been no real or prolonged official encouragement to advance the children beyond standard V. This applied equally to Scottish certified schools which were required to work within the standards of the English Code.[35] In 1895 the Inspector of Reformatory and Industrial Schools was asked to compile a table showing the educational standards achieved before inmates were discharged from the institutions.[Table 19]

Children were able to leave elementary and half time schools obtaining their labour certificates at the average age of 13, but sometimes even earlier at ages 11 or 12. In reformatories inmates were, on average, 17 and in industrial schools age 15, when they left, but the highest level of education recorded was standard V. Even in rural elementary schools (except those of the smallest size) it was unusual for children not to be presented in standard VI. In town schools of the ordinary size it was the practice to present children in standards VI and VII and the children were rarely beyond the age of 14. For children who wanted to leave before age 13 the Education Department had set the minimum level of educational achievement at Standard V before full time exemption from education could be granted. Regret was expressed by the Departmental Committee of 1896 at the practice in some of the certified schools of

allowing children to "mark time" by causing those who had passed in one standard to remain in it without advancing.[37] A particular instance of this malpractice came to light when the Scottish Departmental Committee of 1895 visited a girls' industrial school in Dundee. In the highest class there were a number of girls going through the fifth standard as set under the English Code, of whom about half had already passed in that standard; about a quarter of the girls had already passed it twice and were doing it for a third time, while one girl had passed it three times and was doing it for a fourth time.[38] This clearly indicated that the reformatories and industrial schools did have pupils capable of doing standards VI and VII but they were deliberately held back to standard V. The certified schools aimed no higher than the minimum level required by the Education Department.

From the Scottish point of view it was absurd that the inmates of reformatories, industrial schools and day industrial schools should be taught according to the English Code and the rest of the community according to the Scottish Code. In the case of day industrial schools the anomaly of working under the English Code had a particularly bad effect since children were constantly being transferred between these institutions and Education Board schools. In addition to purely educational considerations, the use of the English Code identified former inmates of reformatories and industrial schools, who, though Scottish, had been educated to standards different from those familiar to the general Scottish population. The Departmental Committee of 1895 formed the opinion that anything which might identify the inmates of certified schools in later life should be avoided.[39]

The quality of the education provided in reformatories and industrial schools depended to a considerable extent on the professional abilities of the teachers. The Royal Commission of 1884 perceived that a strong and highly skilled teaching staff was required to cope with the educational problems associated with the generally inferior quality of the pupils. Their inquiries and observations convinced them that the teaching staff in these institutions was frequently insufficient in numbers and low in vocational calibre.[40]

Table 19

Summary of Educational Results in Reformatory and Industrial Schools Showing the Number Leaving from Each Standard in 1895

	Total	Passed VI	Passed V	V	IV	III	II	I	Total Above III	Total III and Below	% Above III	% III and Below
Reformatories (Scotland)												
Boys: Protestant	105	5	33	21	20	20	4	2	79	26	75	25
Roman Catholic	61	-	12	18	17	11	2	1	47	14	77	23
Girls: Protestant	12	-	6	-	2	2	-	-	10	2	83	17
Roman Catholic	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL	178	56		39	41	33	6	3	136	42		
PERCENTAGE	-	31.46		21.91	23.03	18.55	3.37	1.68	76.41	23.59		
Industrial Schools (Scotland)												
Boys: Protestant	625	-	365	123	85	36	12	4	573	52	92	8
Roman Catholic	91	-	39	32	13	5	-	2	84	7	92	8
Girls: Protestant	164	-	73	49	20	11	7	4	142	22	87	13
Roman Catholic	64	-	30	18	7	8	1	-	55	9	86	14
TOTAL	944	-	407	222	125	60	20	10	854	90		
PERCENTAGE	-	-	43.11	23.51	13.24	6.35	2.11	1.06	90.46	9.54		

The investigations of the Departmental Committee of 1896 revealed that there was no rule regarding qualifications. It was recommended that any principal teacher appointed in future should be certificated to teach in a school with more than 30 children. Unfortunately, the Committee did not recommend this as a hard and fast rule. Power was to be reserved for the Secretary of State to dispense with this rule in cases where he was satisfied that the teacher proposed possessed special qualifications for the post.[41] The Scottish Departmental Committee of 1915 reported that considerable numbers of uncertificated teachers were still employed in reformatory and industrial schools. Of 143 teachers working in these schools in Scotland only 94 were certificated. Some schools, even in 1915, had no certificated teachers at all although there was a strong inducement to managers to engage such personnel. Grants were paid varying from £15 to £20 for qualified male teachers and from £10 to £15 for qualified female teachers. It was the recommendation of the Departmental Committee of 1915 that in future no teachers should be employed in reformatories or industrial schools who did not possess qualifications recognized by the Scottish Education Department.

While it was possible that some uncertificated teachers in reformatories and industrial schools did excellent work in teaching the elementary subjects carefully, it was, nevertheless, an unavoidable fact that the instruction they provided could not be of the same quality as that given by qualified teachers to children in ordinary elementary schools. Yet the task of the teacher in a reformatory or industrial school was the harder of the two.[42] The methods of education in the certified schools had not kept pace with recent improvements introduced into elementary schools. There was an adherence to rigid methods which were out of date and deficient in variety for both pupils and teachers. The deficiency found in the methods of teaching and in the teachers was attributed to the isolation of reformatories and industrial schools from the national system of education.[43]

From their enquiries the Royal Commission of 1884 concluded that one of the main reasons preventing posts being filled in the certified schools by trained teachers, with the necessary force of personality and ability to instruct and discipline the young

inmates, was the lack of career opportunities. There was a complete separation between the careers of teachers in the certified schools and teachers in elementary schools. The pupil teachers of reformatories and industrial schools were not recognized for the annual examinations of pupil teachers. A teacher anxious to obtain the parchment after several years training in a college was unable to do so if they accepted a post in a reformatory or industrial school. If a teacher left an elementary school career for a post in a certified school, after having acquired the parchment, their future in teaching was severely disadvantaged by being barred from receiving the annual endorsement of the Education Department Inspector. By testifying to the ability and success of a teacher these endorsements made it possible for a second or third class certificate to be raised to a higher degree; in addition to which, the personal recommendation if the Inspector was often the best means of promotion to the higher ranks of the teaching profession. Service, even for only a few years, in a reformatory or industrial school could result in a teacher losing all rights to a pension.[44] This situation had not improved by 1915 because the Scottish Departmental Committee reported -

> "Teachers have the feeling that in giving themselves up to the work of certified schools they are casting themselves adrift from the main body of the profession and retarding their advancement."

The natural result was that teachers of inferior quality who lacked professional prospects were to be found in reformatories and industrial schools.[45]

Furthermore, the teachers in certified schools were, on the whole, paid less than teachers in elementary schools. They generally had board and lodging in addition to salary; but, in any comparison with teachers in elementary schools, this item represented no more than fair recompense for the amount of time they were required to devote to the needs of the institution and the supervision of the inmates outwith normal working hours.[46] It was recognized in the reports of the Royal Commission of 1884 and the Departmental Committees of 1896 and 1915 that long hours of work and minimal provision for leisure added a strain that was obviously diminishing the teaching power in these institutions.

In the opinion of the Departmental Committee of 1915 it was axiomatic that if the certified schools were transferred to the control of the Scottish Education Department, as proposed, the status of the teachers within these institutions would be improved. The certified schools would form one department of the service of national education and there would probably be a greater interchange of teachers between them and the elementary schools. The professional prospects and salaries of the teachers would be better and their interest would be kept alive and fresh by contact with wider educational ideas.[47]

The isolation of reformatories and industrial schools from the mainstream of education was, in large measure, attributable to the fact that that the Home Office Inspectors were given the responsibility of inspecting the schoolroom work. While the opinions of the Home Office Inspectors were respected by both the Royal Commission of 1884 and the Departmental Committee of 1896, there was dissatisfaction with what could be described as their degree of complacency with regards to education in reformatories and industrial schools. The Home Office Inspectors had a very heavy work load relating to the certified schools and they regarded education as merely one component within their vast area of responsibility. Their reports lacked really incisive comments with regards to education because they were designed to express a balanced tone between all the elements in the certified schools.

The Royal Commission of 1884, which sat in advance of the establishment of the office of the Secretary for Scotland, recommended that the educational work of the schools should be inspected by the Inspectors of elementary schools while the Home Office Inspectors should deal with industrial training and other aspects of daily routine and life within reformatories and industrial schools.[48] Certain members of the Departmental Committee of 1896 were in favour of the same course; while three members and the chairman recommended the transfer to the Board of Education of all the Duties of the Home Office except those relating to committals and discharges.[49] Representing the Scottish point of view on this question the Committee on Habitual Offenders (etc.) 1895 was of the unanimous opinion that the administration of the

certified schools in Scotland should be transferred to the Secretary for Scotland, but that the specific control and inspection of their educational requirements should be delegated to the Scottish Education Department.[50] While there was a recognition that the educational aspect of the certified schools required the expertise of specialists in that field, there was a strong undercurrent of opinion against making the Education Department totally responsible for children under committal and detention.

By an order made in 1905 under the *Secretary for Scotland Act 1904*, virtually all the powers and duties of the Secretary of State for the Home Department in respect of reformatory and industrial schools were transferred to the Secretary for Scotland. The power to appoint an Inspector and his staff was, however, reserved, and it was provided that the Inspector appointed by the Secretary of State for the Home Department would inspect all reformatory and industrial schools in Scotland and in England, but that he would report to the Secretary for Scotland on all matters which affected the schools in Scotland. Under the *Children Act 1908*, section 132(1), the Secretary for Scotland was substituted for the Secretary of State in that Act and in any local Act relating to reformatory and industrial schools, but the arrangements regarding inspection remained the same.

The Scottish Departmental Committee of 1915 recommended that the duties of the Secretary for Scotland, except those relating to committals and discharges, should be transferred to the Scottish Education Department. It was also recommended that the complete inspection of reformatory and industrial schools should be delegated to the inspectors of the Scottish Education Department.[51] Consequent to these recommendations, the *Education (Scotland) Act 1918*, section 19 made it lawful for the Secretary for Scotland, with the consent of the Treasury, to make an order transferring to the Scottish Education Department any powers relating to reformatory or industrial schools possessed by him under the *Children Act 1908* or any local Act. These powers, with two exceptions,[52] were transferred to the Scottish Education Department on 1 April, 1920 and the Scottish Education Department also became responsible for the inspection of all the activities of these schools.[53]

As from that date reformatories and industrial schools in Scotland were officially recognized as part of the education system of the country rather than a special aspect of the penal system, with the consequence that the educational treatment of the young inmates was greatly improved. Education could no longer be regarded as the "Cinderella" aspect of training in the certified schools.

6. Industrial Training:

The main idea of the social reformers who pioneered these institutions in the middle of the nineteenth century was that industrial labour was a necessity merely as a moral agent in character reformation. Hard labouring tasks involved in farm or outdoor work were preferred because they "sweated out" deviant patterns of behaviour and made the inmates much easier to manage. Where trades of a more sedentary character were taught the aim was to instil in the offender habits of concentrated application to quiet steady patient work, to produce a sense of responsibility and a desire for the approval of work well done. The ultimate purpose was to provide discharged inmates with a means of preventing themselves from relapsing into poverty and crime. All efforts were to be made to place within the reach of every inmate an occupation that would enable them to become useful members of society with reasonable prospect of being in a position to support and educate a family.[54] It was, however, perceived on a more pragmatic level that if properly managed the industrial work training could be extended so that the labour of the inmates would contribute to the cost of their maintenance while detained in the institution.[55]

Keeping in mind that the reformatories and industrial schools had, on the one hand, the ultimate welfare of the inmates in mind and, on the other, the need to find revenue from the industrial training, the Departmental Committee of 1896 identified three categories of work performed by the inmates of these institutions. In the first place, work training comprised the trades taught to the boys and the domestic service taught to the girls within the confines of the institution premises or land. A second category of work was that performed by inmates who were hired out by the institution to neighbouring employers to work in their mill, farm or house. It was only these two categories that the official statistics were concerned with because they showed a

financial return; no account was taken of a third category which included all the routine housework of the institutions, involving a considerable amount of work which had to be performed by the boys and girls.[56] Controversy regarding industrial work in reformatory and industrial schools centred on the practical value of such training, the extent to which the inmates were being exploited and the level of success achieved.

The principal trades taught to boys in reformatories and industrial schools included - farming, gardening, tailoring, shoemaking, carpentry, baking, printing and basket making. Each boy chose, or had assigned to him, a particular trade which he practised exclusively for his term of detention under a labour master. In most schools choice of employment was permitted as far as circumstances allowed. Some schools permitted inmates to change trades, but the limitations on such flexibility were very narrow.[57] Industrial training for girls aimed almost exclusively at placing them in domestic service as laundry maids, house maids and kitchen maids or, more frequently, as general domestic servants.[58]

In general the industrial training for boys in trades was failing to provide training up to the standard required for them to make a living. The daily repetition of monotonous elementary tasks for several years tended to make the boys dislike work and, as a result, they did not even acquire a general level of ability to use their hands or learn habits of industry. In addition the work was all done under strict supervision with talking being severely restricted. It was the opinion of the Departmental Committee of 1896 that to inculcate habits of industry which were to be maintained in working life, when a boy would not be under strict supervision, it was necessary to guide him to take an interest in his work and apply his mind so that he would work as well behind his employer's back as in his presence.[59] If outside custom could be gained from shops and private persons this would perhaps improve the opportunity of the boys to gain training in better and more varied work.[60]

By the last decade of the nineteenth century it was widely acknowledged that the industrial training in the certified schools for boys was out of step with the pace of the industrial world. Agriculture was no longer a profitable pursuit. The teaching of

skills such as tailoring and shoemaking as a whole trade had no practical value, since such trades in the working industrial world were sub-divided into specific processes, each of which formed a separate or "special" trade. The only way to provide the boys with an immediate prospect of earning a livelihood on leaving the institution was to introduce "special" trades instruction in conjunction with classes in general technical instruction based on City and Guilds standards. In making these recommendations the members of the Departmental Committee of 1896 were aware that, until great advances were made in equipment and facilities, the majority of the certified schools would be unable to provide effective training in "special" trades.[61]

The Scottish Departmental Committee of 1915 recommended further developments on these lines. It was the opinion of this Committee that there should be a distinction between the degree of industrial training given to the inmates of reformatories and that provided for boys in industrial schools. The reasoning behind this was that on discharge the inmates of reformatories were 18 or 19 years of age by which time, if they had not been detained in the institution, they would have acquired a certain proficiency in a trade; whereas, the inmates of industrial schools could not be detained beyond the age of 16 - the age about which the boys outside were beginning to learn the rudiments of a trade. It was, therefore, of paramount importance that lads in reformatories should be well trained in specific trades so that they would be able to compete in the labour market with others of the same age in the daily world outside the institution. It was equally important that the trades taught should be those in which there was a good prospect of employment for discharged inmates. There was evidence of much waste of time and effort on the part of instructors and of public money. The Committee recognized that the fluctuations in demand for labour could not be entirely foreseen or provided against, but reformatories should make the effort to improve the balance between supply and demand. It was recommended that managers should consult the Inspectors and the directors of the nearest Labour Exchanges at frequent intervals in order to form an estimate of the demands of the labour market, whether in the vicinity of the reformatory or in wider areas. The trades taught could then be regulated accordingly. However, the Departmental Committee of 1915 came across the same impediment to progress in the trades instruction as had the

Departmental Committee of 1896; namely, that the effective teaching of highly specialised trades, such as printing, engineering or building, required the installation of expensive plant.[62]

Since the boys in the industrial schools were in a younger age group, the Committee of 1915 questioned whether it was wise to devote so much time to training in trades which, in the circumstances, could not generally be very thorough and in the majority of cases was never taken advantage of. It was recommended that the average boy under the age of 15 would be better prepared for starting to earn a living if the industrial schools concentrated on a course of general technical instruction rather than attempting to specialize the inmates in trades.[63]

The Departmental Committee of 1915 investigated the occupations followed at the end of 1912 by boys who had been discharged during the years 1909, 1910 and 1911. [Table 20] At the end of 1912 of the boys discharged in 1909, 1910 and 1911 from industrial schools only 15 remained as shoemakers and 19 as tailors. At the same date there were 148 miners - a trade which could not be taught in an industrial school. A high proportion of both reformatory and industrial school former inmates were to be found in various forms of labouring and factory work of an unskilled nature. It is also apparent that the vast majority were being recruited into the Army.

Investigations into the training being given aboard the industrial school ships led the Departmental Committee of 1915 to conclude that if the objective of the ship schools was to prepare boys for a life at sea it was clear that this was not being achieved to any great extent. There was much waste of time and effort. Of the 343 boys who left the "*Mars*" in 1909, 1910 and 1911 only 100 went to sea, and of the 345 boys who left the "*Empress*" in the same years only 233 went to sea. Of 31 boys discharged to sea in 1910 only 20 were still in the seafaring life three years later in 1913. The Chief Inspector presented statistical evidence that of the boys sent to sea from the "*Empress*" in 1911, 1912 and 1913 only 35.7% were at sea in 1915. It was obvious from these figures that the great majority of the boys found their way into other occupations than seafaring - from the "*Mars*" immediately on discharge, and

from the "*Empress*" after a year or two.

The Departmental Committee of 1896 formed the opinion that girls were subjected to an excessive amount of drudgery in scrubbing and rough washing. This was the situation particularly in the few remaining mixed schools where the girls were made to do this work for the boys. Girls had always been unfairly treated in this way. In girls' reformatories or industrial schools work training was more likely to encroach on education. The objectives of the institution tended to become obscured for girls who were working so hard. Only towards the end of their detention did they receive any training in the slightly finer aspects of domestic work, but they certainly did not leave the institutions completely trained for good positions in domestic service. In general they were only capable of work very low down on the domestic service ladder.[64]

A progressive step in the training of girls was the introduction of cookery. Evidence given to the Departmental Committee of 1896 by the Inspector of Reformatory and Industrial Schools shows the extent to which cookery was being taught in the Scottish certified schools. In fact only four schools in Scotland had a special teacher employed to conduct classes in cookery; in most of the schools it was the matron and assistant teachers who were made responsible. The girls from the industrial school in Dundee who attended the local Y.W.C.A. courses in cookery for six months in the year probably received a more prolonged and consistent training than all the others, with the possible exception of the Edinburgh (Original) girls who were supposed to receive training over a period of twelve months. No regular courses were being attempted in the Ayr or Perth industrial schools. Most of the schools could only cope with a very small number of girls in the kitchen for short courses in the last few months of their detention. Only one school, namely Greenock, admitted to making no attempt at all to introduce cookery.[65] Although cookery had been introduced into the work training of girls, it was still not sufficiently organized by 1896 for girls to be trained up to a standard where they could make a career out of it.

Table 20

Occupations	Reformatories		Industrial Schools		Total
Army band	6		66		
Army special reserves	8	93	11	212	305
Army others	79		135		
Navy	-		21		21
Navy band	-		1		1
Mercantile marine	6		181		187
Coasting trade	3		15		18
Fishing	2		12		14
Bakers	4		25		29
Blacksmiths	2		21		23
Bricklayers, masons (etc.)	1		11		12
Butchers	7		6		13
Carpenters, wheelwrights (etc.)	12		55		67
Carters	9		58		67
Clerks	2		16		18
Dairymen	1		2		3
Factories, works (etc.)	13		98		
Factories, glass-workers	2	15	2	100	115
Farm	77		139		216
Footmen, pageboys (etc.)	1		11		12
Gardeners	5		11		16
Iron, steel workers (etc.)	18		134		152
Labourers, builders	3		4		
Labourers, docks	3		8		
Labourers, factory or mill	14		52		
Labourers, general	2	66	22	138	204
Labourers, ironworks	14		17		
Labourers, mechanics	5		5		
Labourers, shipyard	25		30		
Mechanics	12		66		78
Messengers and porters	7		61		68
Mill workers	3		52		55
Miners	22		148		170
Ostlers	3		-		3
Packers and warehousemen	5		16		21
Painters	2		14		16
Printers	-		2		2
Railwaymen	13		31		44
Scholars	-		6		6
Shoemakers	8		15		23
Shop assistants	3		35		38
Tailors	6		19		25
Waiters	4		11		15
Casual	11		67		78
Other regular employment	5		9		14
TOTALS	428		1,721		2,149

For girls the institutional nature of the schools made the teaching of all branches of housework difficult in the practical sense. School cookery was unlike family cooking; dormitories and schoolrooms were unlike rooms in a dwelling house. It was particularly difficult to give a really good training to individual girls in the larger institutions. The Departmental Committee of 1896 approved of the practice adopted by some schools of sending the girls to work in neighbouring houses. This improved the spirit, manners and good conduct of the girls. It was also advocated that the girls should attend public lectures on domestic activities to make up for practical training the school was unable to provide because of lack of facilities or trained personnel.[66] The Departmental Committee expressed awareness that there was a large diversity of occupations followed by women and it was suggested that some of them should be introduced to the certified schools. Gardening and poultry keeping were recommended even as subsidiary occupations to improve the health of the girls.

The Departmental Committee of 1915 investigated the occupations followed at the end of 1912 by girls who had been discharged in the years 1909, 1910 and 1911 -

Table 21

Occupations	Reformatories	Industrial Schools	Total
Assisting parents in housework	3	23	26
Clerks, typists (etc.)	-	-	-
Cooks	1	3	4
Dairymaids	-	3	3
Dressmakers (etc.)	1	9	10
Factories or mills	5	141	146
General servants	13	318	331
Housemaids	2	51	53
Kitchenmaids	-	24	24
Ladies' maids	-	-	-
Laundrymaids, private	2	19	21
Laundrymaids, public	1	14	15
Married	7	13	20
Nursemaids	-	15	15
Parlourmaids	-	4	4
Scholars	-	8	8
Shop assistants	-	16	16
Teachers	-	2	2
Waitresses	-	6	6
Casual (including charing)	7	30	37
Other regular employment	-	2	2
TOTALS	42	701	743

From this table it is apparent that more than half of the girls discharged from the schools went into domestic service and more than a third of the remainder went into factories or mills. Only 10 became dressmakers and 2 became teachers. The Departmental Committee of 1915 was of the opinion that more might be done for girls who were not inclined towards domestic work, and accordingly they supported a recommendation of the English Departmental Committee (1913) that a trade school should be established for the training of selected girls in higher cookery, dressmaking typewriting and commercial work.[67] It is evident that little action was taken with regard to these recommendations because the Departmental Committee of 1928 had to repeat the requirement for more variety in the training of girls, and to lay stress on the recommendation that, while it was necessary for every girl to have some training in domestic subjects, it was essential that each girl should be trained as far as possible for the occupation to which she was most suited.[68]

An efficient and effective industrial training programme required trade instructors who were acquainted with the current developments in industry. From the investigations of the Departmental Committee of 1915 it was apparent that trade instructors were often appointed because they were good workmen and less because they had any special capacity for teaching. The Scottish Committee agreed with the recommendations of the English Committee (1913) that the possession of a technical certificate should be a necessity in the conditions of a new appointment. Such a certificate should be of a kind that the central authority would accept as a guarantee of suitable character, qualifications and capacity to teach. If such recommendations regarding the qualifications of the industrial training instructors were to be implemented it was recommended that the managers should be prepared to increase the levels of remuneration. For more highly qualified people the former incentives of security of tenure, the possibility of board or lodging or a free house, holidays and the supply of a uniform, would be insufficient.[69] In giving evidence to the Departmental Committee of 1928 a superintendent of long experience expressed the view that in the past these schools had, due to lack of funds, often been in the position of having to be content with the men and women they could get rather than those they would have chosen.[70]

The inward looking attitude of the reformatories and industrial schools with regards to their industrial training programmes led, not only to doubts being expressed in the Departmental Committee reports of 1896, 1915 and 1928 as to their effectiveness in preparing their inmates for a working life, but also to the suspicion that the children and youthful offenders within their walls were being exploited as cheap labour.

Concern was expressed with regards to long hours of work which were considered to be detrimental to health and to encroach on the time that should have been spent in the classroom. Out of the minimum of a 14 hour day to the maximum of a $15\,^1/_2$ hour day timetabled under the Model Rules, industrial training in reformatories was to extend for not more than six hours or for less than 4 hours per day. In practice six hours were normally worked on each week day and four hours on

Saturdays. For industrial schools the Model Rules stipulated a time limit of neither less nor more than four hours per day for work training.[71]

The observance of the labour laws in reformatories and industrial schools with reference to the casual and full time employment of children under the age of 14 was specifically referred to the Departmental Committee of 1896. The purpose of the labour laws was to secure education, and the general law originated in the Education Acts. The *Elementary Education (Scotland) Act 1878* prohibited the casual employment of children under the age of 10. Children aged 10 to 14, who had not obtained a certificate of knowledge, were prohibited from being casually employed after 9 p.m. in summer or 8 p.m. in winter.[72]

Laws restricting labour for the purpose of securing education were necessary for children living at home in order to protect them from parental neglect of their education and from employers who might attempt to overwork them. The Departmental Committee considered that such laws should not be necessary in institutions under the jurisdiction of the Secretary of State who controlled the hours of labour through the Inspector of Reformatory and Industrial Schools. However, the Committee recommended that the general principle of the labour laws should be observed because there was a difference between little children returning home from public elementary schools to be employed in small domestic duties and those in industrial schools being sent to the school workshops where the methodical and continuous employment was more severe for them. In both reformatories and industrial schools there were young children for whom the hours of labour of the older children were not suitable. In practice this problem had been coped with by the superintendents making the adjustments they thought necessary, but only in a very few schools was there more than one timetable. The Committee came to the conclusion this important matter required to be formalized.

The question of full time employment had to be considered within the context of the certified schools. If the rules requiring three hours of education to be given daily in both reformatories and industrial schools were enforced, there was no need for

concern that a child had been employed full time without having attained a specific level of education as required by the labour laws. The Committee of 1896 had received reports in evidence that there were fairly frequent cases of children being employed full time in industrial training without having proceeded very far in their education. However, the absolute prohibition of full time industrial training might have the unfortunate consequence of prolonging the detention of a boy or girl until such time as they had gained a level of skill sufficient for them to be employable. As a result of this consideration the Departmental Committee recommended that any extension to the hours of labour should be under the strict control of the Inspector regarding the age below which it should not apply, the standards of education to be achieved and the amount of schooling to be given to prevent the child forgetting what had been learned.

The Departmental Committee of 1896 came to the conclusion that because of the unique circumstances relating to reformatory and industrial schools, the labour laws regarding the casual and full time employment of children should not be directly applied to these institutions. The conditions appropriate to the certified schools required to be governed by official rules and not by the local bye-laws of the districts within which the institutions were situated. The rules within the reformatories and industrial schools had been too much a matter of "use and wont" and they required revision on the lines of a careful adaptation of the spirit of the labour laws to make them more explicit so that individual cases could be considered in a reasonable manner and the children protected from the unfair imposition of excessive labour.[73]

Financial pressure on managers could force them to make decisions which distorted the purpose of industrial training resulting in the children being subjected to long hours of excessive drudgery in uninstructive but lucrative forms of labour. The Royal Commission of 1884 deprecated wood chopping, matchbox making, oakum picking and hair teasing as particularly tedious and stultifying forms of employment which were adopted by the certified schools simply because they yielded good profit margins and required minimum capital outlay.[74] By 1889 this situation had not improved to any great extent because the Inspector of Reformatory and Industrial

Schools noted in his report for that year that some of these employments were still being continued and, in addition, other useless labour activities were being conducted, such as nail straightening at Greenock. The making of matches was not discontinued at Aberdeen until 1895. From the evidence presented and from their observations the Departmental Committee of 1896 concluded that the adoption of uninstructive work purely for financial gain had considerably diminished as a result of constant pressure from the Inspectors; but there was still more of it than should be permitted and more vigorous action was required to suppress the practice completely. There was no doubt that the various ways in which undue use could be made of the labour of the children gave industrial training rather a bad image.[75]

By 1915 uninstructive work training activities, such as paper bag making, had become much less economically viable, and, consequently, had almost faded out of the work programmes of the certified schools. However, the Departmental Committee of 1915 was greatly concerned about the continuing possibilities for the exploitation of the labour of reformatory and industrial school inmates who were hired out. In certain schools the services of the children were hired out either at a fixed daily rate or according to the amount of work done. A ruling of 5 April, 1894 had attempted to reduce the financial incentive by restricting the Treasury grant for each child hired out to half of the full rate of 2/6d per week. To control the hours of such work it was also stipulated that each inmate hired out was to spend part of every day under instruction in the school. Nevertheless, this was a means by which some of the certified schools earned a considerable supplement to their income giving them an incentive to circumvent the rules. Stranraer Reformatory earned £357 in 1913 and £387 in 1914 from hiring out.

The training value of the system of hiring out depended entirely on whether the work was of a nature which furthered work experience. The hiring out of girls was approved because it provided domestic work experience not possible within the institutions. The hiring out of school bands was approved because the prospect of public appearances kept the young musicians keen and at a high level of efficiency. Many of these boys were destined for a career in Army and Navy bands. Kibble

Reformatory was mainly a farm school and from there boys, destined for an agricultural life, were sent out in squads with their instructors to local farms as a means of familiarizing the boys with their future working conditions. On the other hand, the managers of Stranraer Reformatory, which did not train boys in farming, sent out boys to do unskilled work of a rough labouring kind for local farmers. They were sometimes absent from the school for several days and nights if the distance and the type of work made it inconvenient for them to be brought back to the institution each evening. During the time that the enquiries of the Departmental Committee were in progress all the inmates of the Greenock Industrial School, the Slatefield School and the Kibble Reformatory were engaged in fruit picking on two adjacent farms in Perthshire. At the request of the Secretary for Scotland, whose attention had been called by question in Parliament to the condition and treatment of the boys, the chairman and other members of the Departmental Committee visited the farms and reported in the following terms -

> "On the whole we are against the hiring out of boys for this purpose. This work is monotonous though not perhaps exacting and the hours, especially in the case of the Kibble boys, much too long. It is in no sense educational. The sleeping arrangements are very unsatisfactory and there is always a certain risk of the boys coming into contact with the undesirable adult pickers."

The majority of the Committee of 1915 concurred in the recommendation that the hiring out of the labour of the inmates of reformatories and industrial schools should no longer be allowed. The only possible exception to this rule would be in cases where the work was of an educative kind and provided a good preparation for the occupations to be followed by the inmates when discharged.[76] The Departmental Committee had hardly completed their report in 1915 when the national demand for labour in the war effort added a new dimension to the hiring out of the inmates of reformatories and industrial schools.

The Secretary of State urged managers to allow older inmates to work outside the schools especially in farm work and munitions work. Munitions work was extensively opted for by many of the certified schools. The ruling of 5 April, 1894, which had attempted to restrict the hiring out of labour by penalizing the Treasury

grants paid to the schools, was revoked. The Secretary of State offered as a financial incentive the continuance of the full Treasury grant for inmates who worked out all day but returned to the institution at night and for those who were required to lodge away from the institution in pursuance of a special arrangement enabling them to be near a munitions works.

Awareness of the possibilities for exploitation led to the formulation of rules governing wartime work. With regards to age, it was stipulated that boys under 14 years of age should not be sent to work in factories unless the circumstances were exceptional and the consent of the Chief Inspector had been obtained. It was stressed that the managers and superintendents must recognize that it was most important that the physical condition of the boys so engaged should be maintained at the highest level possible in view of the fact that work in a factory was in general much more arduous than the occupations to which the boys were accustomed in the certified schools. It was required that special attention be paid to the diet of the boys. Working clothes should be supplied in order to prevent the inmates of the certified schools from being marked off from the other workers. Lads employed in factory work for nine or ten hours a day should not be expected to perform the domestic duties of the school and special care was to be taken to make Sunday a day of rest. Wages for the inmates of certified schools were to be on the same rates as for other boys of equal age and proficiency. At least one third of the wages earned were to be credited to an inmate and out of this a small sum was to be paid to him as weekly pocket money.[77]

It was through the vigilance of the Shop Committee at Messrs. Beardmore's Underwood Shell Works in Paisley that a flagrant contravention of these rules came to light. Between 80 and 90 boys from the Kibble Reformatory were employed in the factory, half the number on day shift and half on night shift. They were marched in military formation to and from the works accompanied by a warder who remained with them as supervisor throughout the day or night. It was claimed that all the boys had passed the statutory school leaving age of 14, and those on night shift were stated to be over 16; but so small in stature and so juvenile in appearance were they that the Shop Committee expressed scepticism and suggested proper inquiries should be

made. These "little fellows" were engaged in general labouring work throughout the factory, chiefly in transporting shells by trolley from the machines to the inspection tables and vice versa; one of the most laborious jobs, if not the heaviest in the works. A fully loaded truck weighed approximately 7 cwts.

For the mass of the workers night shift comprised 12 hours; toolsetters and plant engineers worked 12 ½ hours; the Kibble boys worked 13 hours (7 p.m. to 8 a.m.), they being employed for one hour after the rest of the night shift workers left to remove shell cuttings from the machines in preparation for the day shift. This was considered to be a particularly objectionable task. Similarly, on day shift a number of the boys worked 10 ½ hours and frequently 12 ½ hours against the 9 ½ hours worked by the other employees.

The Shop Committee were very aware of the strain that night work imposed even on adults, so that it was not surprising that the young lads were in an advanced state of exhaustion by the morning. It had, however, come to the knowledge of the Shop Committee that the Kibble authorities had no scruples about employing the night shift boys on other manual work during the day, possibly because they recognized the lads were not in a fit condition for study and they regarded unoccupied leisure as a waste of time. The day shift squad were required to spend part of their evenings at their studies.

The Kibble boys were paid at the rate of 4d per hour plus an output bonus. Their average total weekly earnings amounted to roughly 22s. day shift and 31s. night shift. Their wages were paid directly to the Institution and a proportion was laid aside to the credit of each boy to be refunded to him on leaving the institution. Each lad received only 6d. per week as pocket money.

In reviewing the facts of the case the Shop Committee were forced to the conclusion that the Kibble boys were being exploited for the purpose of relieving the war time strain on the finances of the Kibble institution, and that decided steps had to be taken to end this inhumane policy. A report was prepared on 16 July, 1918 and

copies were forwarded to the Directors of the Kibble Reformatory, the Prime Minister, the President of the Board of Trade, the Secretary for Home Affairs, the Secretary for Scotland, the Member of Parliament for Paisley, and to other trade unions and such organs of the press as were likely to be of service.[78]

There was a very swift response from official circles and an enquiry was opened in August 1918. It was concluded from the evidence that the apparent demand for munitions labour had completely distorted the concept of "training" in the Kibble Reformatory. The managers of the institution had, apparently from an excessive sense of patriotism, allowed the boys to work under conditions of pay and hours of employment which compared unfavourably with boys outside the school. The nature of the work was such that it was entirely unskilled and provided no training. The pay was lower than the normal rates for boys; the hours of employment longer; boys under the age of 14 had been allowed to work on munitions and boys of 14 and 15 had been put on night shifts. It was also probable that the boys were kept in the reformatory longer than was necessary so that they might continue working on munitions.

The enquiry noted the fact that the treatment given to the Kibble boys while doing munitions work was not typical of the arrangements made by other certified schools for their inmates. For instance, the conditions which governed the munitions work of the lads from Parkhead Reformatory in Glasgow were far more humane. While it was realised that the organisation of labour for munitions work in the country was, by August 1918, such that there was no longer a need for the certified schools to direct so much of their labour effort in that direction, the enquiry had revealed the necessity for an immediate reconsideration of the conditions under which this work could be permitted in the future. Rules of a more specific nature were required.

Managers were instructed that no boy who had been less than one year in a certified school and no boy under 14 years of age was to participate in munitions or similar work under any circumstances. No boy was to be detained in the institution for more than two years after he had started on munitions work. It was forbidden for

any boy under the age of 16 to be employed between the hours of 8 p.m. and 6 a.m. Day time work was to be restricted to eight hours a day or 45 hours per week inclusive of meal times. The pay should be at the Trade Union rates and the wages should be handed to the individual and not paid directly to the school. At least one third of their wages should be retained by the boys. Steps should be taken to apprentice the boys to skilled areas of the work with the advice of the local Trades Council. For the sake of their health the boys were to work on munitions only on alternate weeks, the other weeks being devoted to the ordinary school training. The boys were not to be required to attend educational classes on the days when they were out working. Aspects of institutional life, such as marching the boys to work and constant official supervision, were not to be applied when the inmates were sent out to work.[79]

In evaluating the general degree of success achieved by all the time and effort the reformatories and industrial schools expended on work training it is apparent that the more altruistic objectives were, to varying degrees, obscured by institutional pragmatism. The adherence of the certified schools to the vestiges of their Victorian regimen made them inflexible and slow to adapt to the changing patterns of industrial conditions within which their young inmates had to find a future.

Education and industrial training were the two most important elements in the programme of social reform for delinquent and potentially delinquent children in reformatories and industrial schools. The quality of treatment received by the inmates related, in large measure, to the balance between the relative importance of education and industrial training. Belief in the reforming power of early application to labour diminished as views on the value of education became enlarged. The *Statutory Rules and Orders 1933* stipulated that boys and girls under the age of 12 were only to be employed in light personal work, such as making their own beds, cleaning their boots (etc.). Boys and girls between 12 and 14 years of age were not to be employed for more than two hours on school days. For those who had attained the age of 14 suitable employments were to be found for a reasonable period each day, but were not to be of an amount that would restrict further schoolroom instruction if this was required or thought to be of benefit. Employment was not to restrict recreation or

reasonable allowance for leisure.[80]

7. <u>After-care</u>:

A system of after care was essential to the successful completion of the programme of training and social rehabilitation provided for the inmates of reformatories and industrial schools. The period spent on licence or under supervision placed a child or a young person in an intermediate position between the restriction of institutional life and the freedom of civilian life.

It was not intended by the legislature that a child or youthful offender should be detained in a reformatory or industrial school for the whole period of the detention stipulated in the Court order. Under the legislation of 1866 the period of detention was to be for no longer than was necessary for the good of the child and was to be determined by the managers exercising the discretionary powers with which they were entrusted to "license" a child to live with some respectable and trustworthy person. The statutes authorized that for the inmates of both industrial schools and reformatories a licence could be granted at any time after 18 months detention. The *Children Act 1908* introduced additional provision for the earlier release of children who had been sent to an industrial school at the instance of a local education authority, providing the managers of the industrial school could obtain the consent of the committing education authority. A period of supervision or licence was not to be applied in the case of children committed only for the enforcement of a school attendance order. The legislation of 1908 also empowered managers to initiate early release on licence in any other appropriate case providing the consent of the Secretary for Scotland was given.

The Treasury encouraged licensing by reducing the capitation grant for each inmate in a reformatory who was over the age of 16 and had been detained for three years; in an industrial school case a financial reduction was applied to inmates who were over the age of 15 and had been detained for four years. To give the schools a positive financial incentive to operate the licensing system the Treasury paid to reformatories an allowance of 2s. per week for the first 13 weeks and 1s. per week for

the next 26 weeks for each inmate licensed; industrial schools were paid an allowance of 2s 6d. per week for each child until the expiration of the licence, but only if the child was lodged in an auxiliary home. The effect of this provision as an incentive to industrial schools was nullified by the requirement that they had to pay the allowance of 2s 6d. to the auxiliary home.[81]

The investigations of the Departmental Committee of 1896 revealed that in Scotland there were 2 reformatories for girls; 11 industrial schools for boys and 7 industrial schools for girls in which the number of those on licence at 31 December, 1894 was equal to only 3% of the total number of inmates in the school. It was also apparent that in Scotland there were 7 industrial schools for boys and 5 industrial schools for girls which had no children at all on licence. The Committee requested that statistics be compiled showing for each of the previous 20 years the number of children on licence from each school. The following is a summary of the quinquennial periods -

Table 22

Percentage of those in reformatories and industrial schools to which the number of those on licence amounted

	Scotland			
	Protestant		Roman Catholic	
Years	Boys	Girls	Boys	Girls
Reformatories				
1875-1879	10.9	5.7	4.7	2.3
1880-1884	12.2	15.9	5.1	1.6
1885-1889	15.2	9.1	4.5	1.9
1890-1894	12.5	4.3	11.1	1.7
Industrial Schools				
1875-1879	4.4	6.4	12.0	3.4
1880-1884	6.0	5.6	32.9	2.6
1885-1889	4.5	4.5	26.3	1.0
1890-1894	4.4	5.1	23.5	4.5

Many reasons had contributed to this unsatisfactory state of affairs. No regulation on the proper age for release on licence had been laid down except that indicated by the rule for the reduction of the Treasury allowance. In the absence of a stipulated age, scope existed for differences of opinion as to what constituted the official view on the best age for starting a child in the world.[82] This was a matter which did not really concern reformatories since their inmates were, in almost all cases, of an appropriate age for placing out in work. For industrial schools, however, it was a matter of great concern because the inmates were younger. For boys, 14 was the age when under the labour laws they were free to be employed without restriction as to hours (factories and mines excepted) without obligation to attend school; 14 was also the age at which, by common law, a parent ceased to have control over his son. In general the majority of working class lads were in some form of employment by the time they had attained 14 years of age. There seemed to be no general reason, based on age, for detaining a boy beyond the age of 14 in an industrial school. However, it was unfortunately all too common for lads released from industrial schools at the age of 14 to be unable to support themselves if they were in the situation where they could not lodge with their employer and there was no relative or friend to take them in. The superintendents of some schools protested that in certain cases detaining a boy for longer gave him the opportunity of increasing his industrial training in order that he might obtain a better situation on release.

Superintendents of girls' industrial schools, especially those attached to religious communities, were particularly nervous at parting with the children. Industrial schools normally found girls situations in domestic service where they lodged in the household of their employers. This helped to deter parental interference and remove some of the dangers to which girls were particularly liable. There was a conflict of opinion as to the best age for girls to enter domestic service. Some superintendents believed there was a danger of the younger girls being used as drudges; but the Departmental Committee of 1896 formed the opinion that this was a danger which depended more on the character of the girl rather than her age, and above all it depended on the character of her employer. A hard mistress would make as much of a drudge of a dull girl of 16 as she would of a dull girl of 15 or younger. Assuming that

a suitable employer was selected there was no apparent reason why, at the age of 15, girls should not be placed out in work from industrial schools, as they would be from Poor Law Schools or by their mothers if they were at home.[83]

Account also had to be taken of the fact that in both boys' and girls' industrial schools there were fairly frequent cases where individual children required special treatment as a result of them being small for their age, backward or because they were particularly difficult cases. The Departmental Committee came to the conclusion that there were grounds for believing that some of the schools might have been over-protective out of a genuine sense of responsibility and disinterested kindness towards their young inmates.

However, all the evidence pointed to the cardinal fact that it was in the interest of the schools not to license. Parting with a child on licence meant the loss of local or government grants unless the vacancy was immediately filled. It also meant losing a profitable worker, since any replacement would be a beginner. While all superintendents claimed they were in favour of licensing as a system and stated it was their practice to license in all cases where it was possible, it was, nevertheless, true that all superintendents had an interest in the school funds being in a profitable condition. The policy of reducing the Treasury grant for inmates who, by age and length of detention, were appropriate cases for licensing was no deterrent to this malpractice because the continuing labour of a child more than made up for the official stringency. The Departmental Committee of 1896 commented that there could be nothing more demoralizing to the relations which should exist between a superintendent and the children for whom he was responsible than an awareness on both sides that the young inmates were being deprived of their liberty and opportunity to earn for themselves in order that they could be worked for the profit of the institution.[84]

This problem had been one of long standing. The protests of the Inspector of Reformatory and Industrial Schools in 1868, the rules of the Treasury and the comments of the Royal Commission of 1884 had no effect. The investigations of the

Scottish Departmental Committee of 1895 revealed that the situation was worse in Scotland than it was in England. In England approximately one fifth of the reformatory and industrial school population was out on license; in Scotland the corresponding proportion was only one ninth. The temptation of financial profit from extra labour was too strong for the managers and superintendents to resist it. It was the opinion of the Departmental Committee of 1896 that licensing should take place at the earliest moment the child was capable of leaving; every day the child was detained beyond this was wrong to the child and to the community at large.[85]

The *Children Act 1908* continued the policy of leaving a considerable degree of discretion in the hands of the managers and superintendents with regards to licensing. Furthermore, the provisions of section 68 required that children were to be discharged from industrial schools not later than the age of 16 and were to remain under the supervision of the managers until they were 18 years of age. It was also stipulated that youthful offenders could not be detained in reformatories beyond the age of 19 and this was also the maximum age which could be applied to their licensing or supervision. From this it was evident to the Departmental Committee of 1915 that, in the case of industrial school children, even if they were not released before the age of 16, there was provision in the statutes which gave them a minimum of two years supervision by the managers. During these two years they were normally placed under licence giving the managers the power to recall them to the school for a maximum period of three months in the event of something going wrong in their initiation to working life. Youthful offenders in reformatories had no such protection since they might be required to serve the full period of detention up to the age of 19 leaving no time to adjust to the outside world in the intermediate condition of licence or supervision. The Departmental Committee of 1915 was strongly of the opinion that it was essential the period of licence or supervision should be of some duration in order to give former inmates a fair chance to make a successful transition into civilian life.[86]

In the years 1910, 1911 and 1912 the total number of young persons who left the Scottish reformatories was 580. Of these 486 or 83.7% were licensed; the remainder, 94 or 16.21% were retained in the reformatory until their full period of

detention had expired at the age of 19. Of the total 580 -

16.55% were licensed over 12 months before their sentence expired.
10.86% were licensed between 9 and 12 months before their sentence expired.
16.72% were licensed between 6 and 9 months before their sentence expired.
17.07% were licensed between 3 and 6 months before their sentence expired.
22.59% were licensed within 3 months before their sentence expired.

The Departmental Committee of 1915 recommended that managers should be required to license inmates of reformatories twelve months or more before they attained the age of 19.

The total number of children who were discharged from the long term industrial schools in the years 1910, 1911 and 1912 was 2,725. Of these 1,436 or 52.69% were licensed; the remainder, 1,289 or 47.31%, were retained until their term of detention had expired at the age of 16 years. Of the total 2,725 -

6.53% were licensed over 12 months before their sentence expired.
4.73% were licensed between 9 and 12 months before their sentence expired.
4.73% were licensed between 6 and 9 months before their sentence expired.
9.14% were licensed between 3 and 6 months before their sentence expired.
27.56% were licensed within 3 months before their sentence expired.

These statistics confirmed statements made by the Chief Inspector of Reformatory and Industrial Schools to the effect that in England children were generally licensed from industrial schools at the age of 15, but in Scotland it was the practice to keep them in the schools until they were nearly 16 years of age. In the industrial schools administered by the Glasgow Juvenile Delinquency Board boys were not, as a rule, licensed until they were 15 years and 11 months of age; in some other industrial schools they were not licensed at all before the age of 16. It was recommended that inmates of industrial schools should be licensed at about the age of 15 unless the managers could prove that there was good reason for longer detention.

The Departmental Committee of 1915 found, in common with the Committee of 1896, that the discretion of the managers and superintendents, with regards to the practical operation of the statutory provisions for licensing their young inmates, was

governed by the financial requirements of their institutions rather than simply the good of the inmates.[87] Evidence presented to the Departmental Committee of 1928 indicated that this situation had not shown any marked improvement. Early licensing was still not common practice in the schools. By 1928 the prevalence of unemployment had caused difficulties which had to be taken into account, but the Departmental Committee did not think these difficulties would be less acute if a youthful offender or child were detained in the school until the statutory age for discharge or until a month or two before that date. To regulate the situation it was recommended that all cases should be reviewed after 18 months detention and every 6 months thereafter - provided that children were not placed out on licence before reaching the age of 14. Records of all case reviews should be made available for inspection by the Scottish Education Department whose duty it should be to keep this important matter constantly in view.[88]

This recommendation was incorporated into the Statutory Rules and Orders 1933, framed under the *Children and Young Persons Act (Scotland) 1932* in which it was stipulated that the circumstances of each inmate were to be reviewed by the managers after 12 months detention and at least every 6 months thereafter in order that the inmate might be placed out on licence as soon as ready. If there was reason to believe a boy or girl could be placed out during the first twelve months of detention, a report was to be made to the Scottish Education Department with a view to their consent being obtained.

The degree to which the training of the children and youthful offenders fulfilled or failed to fulfil its purpose depended to a great extent on the suitability of the employment in which they were placed on discharge. The disposal of the inmates was a very important part of the work of reformatories and industrial schools. Section 70 of the *Children Act 1908* empowered the managers of a certified school to place a child in any trade, calling or service including service in the Army or Navy. There was actually no legal obligation on the managers to find work for discharged inmates, but they all made the effort. In Scotland, most of these arrangements were left in the hands of the superintendents who took great care, by means of personal interviews and inspection, to see that the places proposed were suitable. In Aberdeen boys were

occasionally placed in work through the juvenile branch of the Labour Exchange, but there was no systematic use of this method for disposals. The "*Mars*" and the "*Empress*" industrial training ships employed licensed shipping agents at Liverpool, North Shields, Cardiff and Glasgow.[89]

The possibility of parental obstruction in the process of placing a child in employment was removed by the provisions of section 68(6) of the *Children Act 1908* which prevented the parents of a child under supervision from exercising their rights and powers in such a way as to interfere with the discretion of the managers.[90] However, the Departmental Committee of 1915 expressed the opinion that it was perhaps not desirable, in every case, to ignore the claims of parents and guardians when the future of a child was being determined.[91] The rights of parents to express an opinion were eventually established by the Statutory Rules and Orders of 1933, which required managers to consult the parents (or guardians), in every possible case, as to the disposal of a boy or girl and to endeavour to secure the written consent of both parents (or guardians) in any case where it was proposed to place a boy in the Navy, Army or Air Force, or in cases where a boy or girl was to be emigrated. Parental objection was not to be ignored unless circumstances were such that it was definitely in the interests of the boy or girl that the objection be suppressed.[92]

From the middle of the nineteenth century onwards emigration had featured as a means of disposal for the inmates of reformatory and industrial schools. It was a means of completely segregating them from undesirable parents and former associations and giving them a completely new start in life. In view of the large emigration from the ordinary population in Scotland to the colonies it was surprising that the number of children and young persons emigrated by the Scottish certified schools in the period 1854 to 1912 was very small in comparison to the number emigrated from the English schools -

Table 23

Reformatory Schools		Industrial Schools	
England	Scotland	England	Scotland
3,648	510	4,473	553

The Inspector's report for the year 1912 showed that only 29 Scottish children(15 from reformatories and 14 from industrial schools) were disposed of by emigration in that year; whereas the corresponding total for England was 214.

Under section 70 of the *Children Act 1908* it was provided that if a child or youthful offender had conducted himself well, the managers of a certified school were empowered, with the consent of the inmate concerned, to arrange for the young person to emigrate even if their period of detention or supervision had not expired, provided the consent of the Secretary of State had been given. To promote the use of emigration as a means of disposal the Departmental Committee of 1915 recommended that the full Treasury grant of £8 in aid of emigration should not be limited to children under 13 years of age, but should be applied to all cases in which emigration was officially approved as being desirable.[93]

The Departmental Committee of 1928 was unable to encourage emigration as enthusiastically as had the Committee of 1915. By 1928 public and official opinion in the Dominions was more critical with regards to the type of migrant who proceeded overseas. The Committee expressed the hope that the steady improvement in the standards achieved by reformatories and industrial schools would permit this question to be reconsidered in the future.[94]

The problem of dealing with inmates of the certified schools, who were discharged into a situation of employment which did not provide board and lodging and from which they did not earn sufficient wages to support themselves was best coped with by the provision of auxiliary homes. In such homes inmates were under sympathetic supervision and discipline, which was less strict than that of the schools but effective enough, and their wages were brought up to subsistence level or slightly above. These homes were half-way houses between the institution and the freedom of civilian life.

The report of the Inspector of Reformatory and Industrial Schools for the year 1912 recorded that in Scotland there were only six auxiliary homes and none of them

were used to full capacity. The four auxiliary homes for boys were authorized to accommodate 10; 60; 26 and 100 inmates respectively. The two auxiliary homes for girls were very small accommodating about 6 girls. There was very little demand for such provision for girls since the vast majority went into domestic service. In addition there was one small auxiliary home attached to the "*Mars*" training whip which could provide lodging for 6 boys in Cardiff.

Auxiliary homes were only economically viable in centres of population. Section 51 of the *Children Act 1908* permitted the managers of two or more reformatory schools or two or more industrial schools to jointly establish an auxiliary home with the approval of the Secretary of State. The Departmental Committee of 1915 proposed that when, as in the case of Mossbank Home, Glasgow, the accommodation in an auxiliary home was considerably in excess of the requirements of any one school, arrangements should be made to receive inmates discharged from other schools. Terms as to payment should be arranged between the managers of the schools using the auxiliary home. An arrangement desired by the Chief Inspector was for the auxiliary home of any nautical school at any port to be used by boys from other training ship schools. In places where there were no auxiliary homes established by reformatories or industrial schools, homes for working lads or brigade homes could provide similar accommodation and a more mixed population for the lads from the certified schools to associate with. Where no institutional or hostel accommodation of any kind was available, it was proposed that managers should find lodgings for discharged inmates in need of shelter and pay part of the cost. It was recommended that financial aid in the form of grants be provided to aid the managers of the schools to provide this form of accommodation in all cases where it was required.[95] The Departmental Committee of 1928 regarded auxiliary homes or the use of approved hostels as an integral part of any complete system of after care.[96]

The work of supervising and communicating with discharged inmates in Scotland was done, almost entirely, by the officers of the schools. The superintendents and, in some cases, the teachers and work masters visited the former inmates at regular intervals, sometimes travelling considerable distances and devoting

much time to this work. In comparison with the English certified schools, much less use was made in Scotland of outside agencies. In Scotland only one of the certified schools had approached the Society for the Prevention of Cruelty to Children with the request that the Inspectors visit some of their former inmates and report on their progress. Another school took advantage of the services of the Girls' Friendly Society. Very occasionally, a parish minister was asked to look after a former inmate resident in his locality, and the Roman Catholic schools utilised the services of the Society of St. Vincent de Paul in the work of after care. Employers, in some cases, attempted to take an interest in the young people they employed from the schools, but the relationship between employer and employee was necessarily of a more formal nature.

Providing a discharged inmate was placed in work near the school, supervision by means of frequent visits and discussions between the former inmate and the superintendent or teachers worked well. It was frequently the case, however, that discharged inmates had friends and relatives whose influence would have been detrimental to the final stages of rehabilitation, and for good reason employment had to be found at some distance from the school and former home area. Young people in this position were in need of a far greater degree of help and guidance than the ordinary adolescent but, being distant from the school, visits from superintendents tended to be much less frequent and of shorter duration. There was a lack of continuity in the relationship which could not be entirely compensated for by regular letters, since boys and girls might well be reluctant to write down everything about their real circumstances.[97]

The Departmental Committees of 1895 and 1915 expressed dissatisfaction with the system of after care in Scotland. The percentage of convictions of all classes of former inmates of reformatories and industrial schools was sufficiently high to indicate that something was wrong with the existing provisions for after care. Concerning themselves only with former inmates on whom there was a positive report the Departmental Committee of 1895 produced the following statistics -

Table 24

Former Inmates of Reformatories

Males				Females			
Year	Number Reported On	Doing Well	Convicted	Year	Number Reported On	Doing Well	Convicted
1889	549	441	84	1889	92	65	2
1890	529	414	84	1890	106	73	3
1891	522	411	72	1891	136	100	6
1892	567	413	102	1892	62	33	3
1893	588	440	130	1893	58	41	2
Totals	2,775	2,119	472	Totals	454	312	16

Of the boys 76.9% were reported on and doing well and 17.13% were convicted within three years of their dismissal from reformatories. Of the girls 68.7% were reported to be doing well and 3.5%were convicted within three years of their release from reformatories.

Table 25

Former Inmates of Industrial Schools

Male				Female			
Year	Number Reported On	Doing Well	Convicted	Year	Number Reported On	Doing Well	Convicted
1889	2,208	2,009	84	1889	665	608	7
1890	2,264	2,056	101	1890	673	620	8
1891	2,232	2,053	106	1891	671	617	6
1892	2,222	2,022	111	1892	625	571	10
1893	2,106	1,888	91	1893	613	564	10
Totals	11,032	10,028	493	Totals	3,247	2,980	41

Of the boys who were former inmates of industrial schools 90.9% were reported on as doing well and 4.46% as convicted within three years of their discharge. Of the girls 91.7% were reported on as doing well and 1.26% as convicted within three years of their release.

According to the reports of the Inspector of Reformatory and Industrial Schools the number of prisoners in the Scottish prisons who had been identified as former inmates of reformatories was as follows -

Table 26

Year	Males	Females	Total
1889	127	6	133
1890	142	11	153
1891	204	11	215
1892	202	15	217
1893	178	13	191
Totals	853	56	909

This trend was moving upwards as confirmed by the independent returns of the Secretary to the Scottish Prison Commissioners for the year 1894. These returns showed that 248 of the prisoners received in Scottish prisons during 1894 were recognized as former inmates of industrial schools.[98]

The following table illustrates the different results provided by the ratio of imprisonment to living population in the case of males and females and of the former inmates of reformatories and industrial schools respectively -

Table 27

	Ex-Reformatory	Ex-Industrial School
Population in 1895 Actuarily Estimated or Actual		
Male	6450	16,138
Female	1614	5,109
General Population, Scotland in 1893: Male 1,976,487		
Female 2,117,472		
Number of Individuals Committed 1894		
Male	231	282
Female	17	35
General Population, Scotland in 1893: Male 24,588		
Female 11,665		
Number of Commitments During 1894		
Male	315	367
Female	39	77
General Population, Scotland in 1893: Male 32,088		
Female 18,660		
Percentage of Individuals Committed to Population		
Male	3.58	1.74
Female	1.05	0.68
General Population, Scotland in 1893: Male 1.24		
Female 0.55		
Percentage of Total Commitments During 1894 to Population		
Male	4.9	2.27
Female	2.4	1.5
General Population, Scotland in 1893: Male 1.62		
Female 0.88		
Average Total Number of Commitments per Individual Recorded		
Male	7.4	4.4
Female	14.0	27.0
General Population, Scotland in 1893: Male ...		
Female ...		

This table demonstrates that the percentage of individuals committed to population from among the former inmates of reformatories was largely in excess of the normal ratio of commitments to population, while that of the former industrial school inmates was fairly approximated to it.[99]

From statistics collected by the Departmental Committee of 1915 it was apparent that of the 503 boys discharged from reformatories between 1909 and 1911 the number recorded as convicted at the end of 1912 was 59; of the 65 girls who left reformatories during the same period 3 were known to have been convicted. During the three years between 1909 and 1911 the number of boys discharged from industrial schools was 1,922 and by the end of 1912 the number convicted was 127; of the 741 girls discharged from industrial schools in these years 8 were recorded as having been convicted by the end of 1912. The Master of Polwarth submitted evidence to the Departmental Committee indicating that during the first eight months of 1914, out of the persons committed to prison who were under 25 years of age at the time of committal, 93 had formerly been in reformatories and 223 in industrial schools. In Polmont Borstal Institution at the same period there were 6 former inmates of reformatories and 39 who had an industrial school history; while 7 of the former group and 33 of the latter had left Polmont Institution on licence. Of the total number of 276 youths admitted to Polmont since its opening in 1911 a total of 85 of the inmates had a reformatory or industrial school background.

With regards to the efficacy of the system of after care it was, in the opinion of the Departmental Committee of 1915, disturbing to realise that the number of discharged inmates remaining in regular employment at the end of their fourth year of liberation was less than satisfactory. Only 82.90% of the 503 boys discharged from reformatories between 1909 and 1911 were in regular employment at the end of 1912; while only 53.84% of the 65 girls who left reformatories in the same period were regularly in work by the end of 1912. Out of the 1,922 boys discharged from industrial schools 86.06% were recorded as continuing in regular employment over the four year period; of the 741 former industrial school girls 90.55% were in regular employment at the end of 1912. It was realised that superintendents were not always

in a position to have accurate and up-to-date knowledge of the results of the disposal of the inmates. In preparing the official returns the information relied on was not always first-hand. Reliance sometimes had to be placed on communications from employers and from the children themselves, or on even less reliable sources.[100]

Furthermore, concern was expressed at the proportion of children simply recorded as being "returned to friends" on discharge. Of the 503 boys discharged from reformatories between 1909 and 1911 a total of 38% were returned to friends; of the 65 girls who left the reformatories 35% were similarly disposed of. Out of the 1,922 boys discharged from industrial schools, the proportion returned to friends was 42%; and of the 741 girls similarly discharged 16% were sent to live with friends. In the opinion of the Departmental Committee of 1915 these statistics were surprisingly high in view of the fact that unsatisfactory home conditions featured in the majority of industrial school cases as being the reason for removing the child to a certified school. A comparison of these figures with those for England for the same years revealed that in Scotland the percentage of boys returned to friends from reformatories was higher by 2%, and the percentage of girls in Scotland was higher by 6%. With regards to industrial schools the percentage of boys was higher in Scotland by 14% and the percentage of girls returned to friends was higher by 7%. There was a requirement for the statistics produced by the schools on their after care work to distinguish between the number of inmates for whom employment was found by the school and those who went into employment found for them by friends. In cases where employment was found by friends the statistical returns should clearly indicate in how many cases the school authorities had satisfied themselves by proper investigation, before discharging a child, that a suitable and legitimate occupation had been provided.[101]

Another concern related to the number of former inmates listed as "unknown." The statistics produced by the Departmental Committee of 1895 revealed that the percentage of females reported as "unknown", i.e. as having escaped from surveillance during their three years supervision after discharge was, in the case of reformatories 20%. With regards to industrial schools the ratio of the female "unknowns" was slightly under 5%.[102] The investigations of the Departmental

Committee of 1915 disclosed that 1.79% of the boys released from reformatories in the period 1909 to 1911 were in circumstances "unknown" by the end of 1912; of the girls similarly released 29.23% were "unknown." The proportion of boys who had escaped surveillance on release from industrial schools in the same period was 2.75% and the proportion of girls reported as "unknown" was 2.02%.[103]

It was the opinion of the Departmental Committee of 1915 that to make after care really effective in Scotland what was required was a more systematic, though not necessarily more obtrusive, system of supervision. For this work the Committee recommended that there should be an appointed officer for every school or group of schools who would not only visit all discharged inmates and look after their material and moral welfare, but would also be responsible for finding employment and for the general supervision of the disposal of discharged inmates, the preparation of official returns and for reporting regularly on the conditions and prospects of the children. It was hoped that organized bodies of social workers would co-operate in the supervision of former inmates and that their efforts could be regulated by the officially appointed officer. It was considered preferential for this work to be retained in official hands rather than for it to be completely handed over to philanthropic groups or societies.[104] The Departmental Committee of 1915 was also of the opinion that in cases where children were placed under supervision on being discharged from a day industrial school it should be recognized that their needs were as great as those of the others discharged from the long-term schools and that the same provision for disposal and after care should be made.[105]

Evidence presented to the Departmental Committee of 1928 indicated that it was asking the impossible to expect a superintendent to combine the demanding task and responsibilities of organizing the daily operations of a reformatory or industrial school with all the arrangements required for the effective after care of former inmates, many of whom might be in distant parts of the country. Young persons starting in life after a period in an institution, and possibly without any home influence or support, required someone on the spot who was ready to befriend them. It was recommended that no boy or girl should leave any certified school before arrangements were made for

someone to befriend them in the locality where work had been found. Such arrangements were also considered to be necessary for children who were returned to their homes.

The idea of inviting probation officers to act unofficially in this capacity originated in a Home Office circular dated 30 July, 1923. The Departmental Committee of 1928 recommended that this proposal would work effectively in Scotland when a national probation service was constituted.[106] In a circular issued by the Scottish Education Department on 16 January, 1929 it was stated that under section 3 of the *Probation of Offenders (Scotland) Act 1931*, while it was not a normal part of the duties of a salaried or voluntary probation officer to assist in the after care work of reformatories and industrial schools, it might be found possible to make arrangements with probation committees in various areas whereby salaried or voluntary probation officers would assist the schools in their duties under the *Children and Young Persons (Scotland) Act 1932*. Arrangements had also been made by which the Scottish Juvenile Welfare and After Care Office in Edinburgh would be available to give assistance in cases where difficulty might be encountered in finding an experienced social worker resident in the district in which a former inmate had been placed.[107] The extent to which probation officers were involved in the work of after care was left as a matter of local arrangement between the approved schools and the probation committees.

All the public money and the time and effort devoted to the training of youthful offenders and children in the reformatories and industrial schools counted for nothing if they failed to justify that training through the lack of adequate after care. As the reformatories and industrial schools cast off the last remnants of the penal identity and institutional isolation bestowed on them by Victorian attitudes and legislation, the critical importance of providing sufficient time and supportive guidance for former inmates to re-adjust to civilian life gained recognition.

The penal image of the reformatories and industrial schools receded as these institutions were placed in the 'correctional' sector of the restructured penal system in

the early years of the twentieth century. This initiated a considerable change in the concept of 'training' in the context of reformatories and industrial schools, which was further advanced when these institutions were moved out of the penal system altogether and absorbed into the education system of the country. Inmates were no longer regarded as mere potential cogs in the mechanism of industrial society to be disciplined into habits of 'rectitude and industry', but as children and young people for whom the state had assumed parental responsibility. By the time they had become the 'approved schools' the reformatories and industrial schools were concerned to provide education in its widest sense as a training for life, the purpose of which was to form the mind and character of their young inmates as responsible citizens in a more democratic and technologically advanced age.

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CHAPTER 5

THE BORSTAL SYSTEM

From its inception the Borstal system had built into it by statute two conflicting elements each of which had a crucial influence on the training and treatment received by the inmates. Section 1(1) of the *Prevention of Crime Act 1908* made it lawful for a Court to pass a sentence of detention under penal discipline in a Borstal Institution. This created the understanding that prison methods were to be employed in Borstal training. In contrast, section 4(1) of the same Act defined Borstals as

> "places in which young offenders whilst detained may be given such industrial training and other instruction and be subjected to such disciplinary and moral influences as will conduce to their reformation and the prevention of crime."

The formulation of the Borstal system was, therefore, dependent on the point of view of those responsible for its administration; whether they regarded Borstals as junior prisons or as senior reformatories.

The Borstal system in Scotland followed the lines of policy established in England. Both north and south of the border Borstals were placed under the administrative control of the Prison Commissioners for each respective country. It was not until 1910 that the Borstal system was introduced into Scotland. The Prison Commissioners for Scotland, with the sanction of the Treasury, purchased the property formerly known as Blairlodge School, a large private school for the sons of gentlemen, situated near Polmont, Stirlingshire. The first party of boys was transferred to the Polmont Institution on 18 December 1911. In order to accommodate girls sentenced under the *Prevention of Crime Act 1908*, a portion of the buildings at Dumfries Prison was set aside as Jessiefield Institution which was established by order of the Secretary for Scotland on 1 October, 1911.[1] It was realised that separate accommodation was required for particularly difficult cases or those requiring observation and special care as a result of poor health, mental deficiency, insanity or suicidal tendencies. Facilities were also required for inmates whose licences were forfeited or revoked and whom it was not desirable

to return immediately to Polmont or Jessiefield. Consequently the secretary for Scotland approved the appropriation of E Hall in Barlinnie Prison, Glasgow for males as from 20 June, 1914. Similarly, a small section of Duke Street Prison, Glasgow was set apart for females from 29 July, 1914 in order to permit the segregation of special cases while giving them the benefits of the Borstal system.[2] By August 1920 pressure on accommodation at Polmont and Barlinnie necessitated that one block of the new prison at Saughton, Edinburgh be set aside as a Borstal Institution for boys.[3] A similar increase in the number of females sentenced to Borstal detention necessitated that the portion of Greenock Prison which had been reserved in 1917 for the purpose of providing Borstal training for 19 girls was taken into use. The Prison Commissioners for Scotland were aware that a separate Borstal Institution for females with no connection to any prison was required.[4] Surprisingly, the Departmental Committee of 1928 considered they could not recommend the establishment of a separate institution since the daily average number of female Borstal inmates during the five years 1922 to 1926 inclusive was 31, 27, 29, 23 and 18 respectively. They recommended that if the daily average increased to 40 then separate accommodation should be provided.[5] It should also be noted that, in Scotland, Polmont was the only Borstal Institution for boys which was not within the confines of a prison. In Scotland there appears to have been a greater tendency than there was in England for Borstals to be instituted within the confines of prisons.

1. Categories of Inmates and Their Discipline:

Until 1922 the development of the Borstal system was dominated by the ideas of Ruggles-Brise, Chairman of the Prison Commission for England and Wales. He promoted the Borstal system as an expression of his belief in the 'regenerative' aspects of imprisonment. Consequently, Borstals were placed in the 'correctional' sector of the re-structured penal system.[6] They were designed as a special measure for the allegedly 'dangerous criminal' between the ages of 16 and 21. Initially they carried over from the prison system a military style of discipline.[7]

Prior to the opening of the Polmont Institution in Scotland, the Deputy Governor of Barlinnie Prison, Glasgow visited the Borstal Institution near Rochester and reported that the whole system of discipline seemed to be formed with the idea that the punishment for offences should be very severe in order to immediately stop the insubordination which almost invariably appeared when a lad was first admitted to the Institution. On parade there was silence and steadiness, with the boys marching to and from their work as though trained in a battalion. To provide the required degree of control and discipline the warders were almost exclusively drawn from convict prisons and their number was numerically high in proportion to the inmates; approximately one warder to every 5 boys. The regime frowned upon the fact that the thirteen tradesmen employed to supervise the work training tended to treat the boys as fellow workmen.[8]

To understand how this system was applied in Scotland it is first necessary to consider the nature of the 'dangerous criminal' population in the Scottish Borstal Institutions from the following statistical information -

Table 28

Summary of offences of inmates received in Polmont Institution during the year 1912 with periods of detention ordered[9]

Offence	3 Years	Under 3 Years and Over 2 years	2 Years and Over 18 Months	18 Months and Over 12 Months	12 Months and Under	Total
Crimes against the person:-						
Assaults			1			1
Rape	1					1
Crimes against property with violence:-						
Theft by house-breaking	30		11		1	42
Theft by opening lockfast premises	8					8
Housebreaking with intent to steal	4					4
Robbery, Assaults (etc.)	4		2		2	8
Crimes against property without violence:-						
Theft	29		3			32
Fraud	1					1
Post Office offences by officials					1	1
Attempts to steal	3					3
	80		17		4	101

Of the 101 admissions to Polmont Institution in 1912 the number who had previously been imprisoned was 71; only 30 had never been in prison before; 8 had served periods of detention in reformatories; 8 were former inmates of training ships; 15 had previously been in industrial schools and 7 in day industrial schools.[10]

The Governor of Jessiefield Institution reported that of the 7 girls admitted as Borstal inmates in 1912 all of them had been convicted of theft of property without violence; 5 were detained for 3 years; 1 received a sentence of 2 years and over 18 months and 1 inmate was required to serve a term of 12 months and under.[11]

By 1920 the composition of the Borstal population was as follows:-

Table 29

Summary of offences of inmates received during the year 1920
(new cases and revoked or forfeited licence holders)
with periods of detention ordered[12]

		Period of detention ordered								
	Number of Persons	3 Years		Under 3 Years and Over 2 Years		2 Years and Over 18 Months		18 Months and Over 12 Months		
Offences	M F	M	F	M	F	M	F	M	F	
New Cases:-										
Unnatural crimes	1 -	-	-	-	-	1	-	-	-	
Lewd and libidinous practices	3 -	3	-	-	-	-	-	-	-	
Theft by housebreaking	49 6	49	4	-	-	-	2	-	-	
Theft by opening lockfast premises	3 -	3	-	-	-	-	-	-	-	
Housebreaking with intent to steal	9 -	9	-	-	-	-	-	-	-	
Robbery and assault with intent (etc.)	3 -	2	-	-	-	1	-	-	-	
Theft	56 15	54	13	-	-	2	2	-	-	
Breach of trust & embezzlement	1 -	1	-	-	-	-	-	-	-	

Table 29 continued

	Number of Persons		Period of detention ordered							
			3 Years		Under 3 Years and Over 2 Years		2 Years and Over 18 Months		18 Months and Over 12 Months	
Offences	M	F	M	F	M	F	M	F	M	F
Falsehood, fraud, wilful imposition	5	1	5	1	-	-	-	-	-	-
Totals	130	22	126	18	-	-	4	4	-	-
Revoked or forfeited licence-holders:-										
Assault	1	-	1	-	-	-	-	-	-	-
Indecent assault	1	-	1	-	-	-	-	-	-	-
Theft by housebreaking	32	2	32	2	-	-	-	-	-	-
Theft by opening lockfast premises	1	-	1	-	-	-	-	-	-	-
Housebreaking with intent to steal	6	-	6	-	-	-	-	-	-	-
Theft	18	12	18	12	-	-	-	-	-	-
Falsehood, fraud, wilful imposition	4	3	4	3	-	-	-	-	-	-
Malicious mischief	1	-	1	-	-	-	-	-	-	-
Totals	64	17	64	17	-	-	-	-	-	-
Grand Totals	194	39	190	35	-	-	4	4	-	-

*There were no cases for which detention of 12 months and under was ordered.

What must not be underestimated is the fact that the Borstals were dealing with the most difficult and the most advanced group of young offenders. The vast majority of them were recidivists who had experienced other forms of institutional

treatment and all of them had committed serious crime. While the vast majority of the inmates, male and female, detained in Borstal Institutions in Scotland were convicted of theft or theft by housebreaking, there was a minority who had committed crimes of violence. Controlling Borstal inmates was no easy matter. In 1913 the Governor of Polmont Institution recorded the fact that with an average of 134 inmates 164 dietary punishments had been administered. In 1914, with a daily average of 164 inmates the dietary punishments had reduced to 138. The larger percentage of those punished were a minority who were described by the Governor as being of the 'hooligan type' requiring strict and firm discipline. During 1914 there were 7 inmates who had to be transferred to prison because of persistent misconduct; 2 were revoked licence-holders, one of whom was considered for treatment under the *Mental Deficiency and Lunacy (Scotland) Act 1913*; 2 were insubordinate; 2 had attempted escape and 1 had assaulted a warder. The punishment of being sent to prison was believed to have acted in a very salutary manner in steadying the other inmates.[13]

In 1920 the Scottish Prison Commissioners reported that although the number of girls sentenced to Borstal detention was small compared to the number of boys similarly detained, proportionately more of them were intractable and generally more difficult to manage. It had been found necessary to prevent the few girls who were not of a vicious disposition, and had got into trouble through impulsive acts, or through being led by the 'criminal counsels' of others, from association with those who had a record of vice and crime. It was the opinion of those in charge of their discipline that members of the latter group were capable of causing so much disturbance and exercising such a bad influence on others that it was necessary to segregate them until they began to conform to the system.[14]

However, in Scotland, there was an awareness that adverse social and economic conditions were major causal factors in behavioural maladjustment. The Governor of Jessiefield Institution reported that of the twelve new admissions in 1912 only 3 of the girls had both parents alive; 4 had lost their fathers and 5 their mothers. With one exception all of them were known, or suspected, to have

started immoral courses of living. Only 2 were of respectable parentage. The remainder were the off-spring of drunken parents with, in some cases, a criminal history.[15] In their report for the year 1918 the Prison Commissioners for Scotland attributed the marked increase in the statistics of admissions to Borstal Institutions in the period following the Armistice to the fact that during the war some of the young people leaving school took employment under conditions that were not favourable to their healthy social development. They were neither taught to work wisely nor to spend wisely the high wages they received. The boys developed expensive tastes and continued to seek the means to gratify their requirements. With most of their fathers enlisted in the Army, the lads became used to a considerable degree of free will which engendered in them an unwillingness to submit to control. Since many of them had taken the places of men in industry it was not entirely surprising that they should develop men's vices and commit crime. There was no reason to suppose that under more settled conditions of life the increase of crime on the part of young people would continue. It was the opinion of the Scottish Prison Commissioners that the remedy lay not in repression but in the provision of healthy and legitimate outlets for their surplus energy and their desire for recreation.[16]

In Scotland dissatisfaction with the severity of the system instituted by Ruggles-Brise was expressed by the Governor of Polmont Institution in his annual report for 1921 -

> "We seek to develop the lads along sane and healthy lines, remembering that repression is not the only nor the most desirable way of dealing with youths who have gone wrong, very largely from want of guidance. There must be strict discipline to ensure order, but nagging and harrying, which usually result in irritation are not allowed here; our business is not to break their wills, a cruel and stupid operation, but to develop them by encouragement of every sign of effort on their part. Their standard of honour, in most cases is very low, and it is our business to place a higher one before them; this calls for patience and forbearance on the part of all those working with them."[17]

Borstals were developed for the purpose of saving offenders in the age group of 16 to 21 from prison, the prison atmosphere and the danger of permanently identifying themselves as criminals. It was this line of argument that the Borstal Association, the Howard Association and various other semi-official and unofficial groups in England followed in their reforming zeal to have the development of the Borstal system directed away from its penal origins.[18] The campaign in England reached a successful climax when the guidelines of official policy changed in 1922 with the appointment of Alexander Paterson who was given almost sole responsibility to develop the Borstal system under the authority of Waller, Chairman of the Prison Commissioners for England and Wales. Under Paterson's direction Borstals were brought out from under the shadow of the prisons to be viewed as a special form of training and educational institution.[19] The new principle of individualization was introduced as a reversal of the former policy under which inmates were regarded and treated as an homogeneous criminal type.[20] The principle of individualization governed the formulation of a new system of discipline, social and moral guidance, education and work training. What was aimed at was the provision of an integrated system of training for an honest and industrious life.

Penal discipline and its allied grades system, which had forced inmates to conform to an institutional standard of behaviour with a total disregard for the development of the qualities of initiative and self-reliance, was replaced by a system which was designed to develop in each inmate a sense of self-discipline and norms of social behaviour and morals which would be internalized by the offender as a permanent influence on his life after release.[21] Under the new progressive grades system there was less concentration on punishment and more emphasis on incentive and reward to encourage improvement.

On admission to Polmont Institution an inmate started to earn marks. With a good standard of conduct and industry 12 marks could be earned each day - 6 at work; 2 at drill; 2 at school and 2 for the cleanliness of an inmate's room and person. Marks were awarded daily and totalled weekly by the officers in charge.

A bi-weekly check was made by the Head Warder or Class Warder of the marks sheets and reasons for withholding marks were investigated. At the end of a month marks were entered into the Marks Register. In a four week month a maximum of 336 marks could be earned and a five week month offered the opportunity to earn 420. The Institution Board (Governor, Chaplain, Medical Officer, Head Warder and Schoolmaster) reviewed the marks monthly and could award up to 64 additional merit marks for a four week month and up to 80 for a five week month. Merit marks, like all other marks, could be withheld for misconduct.

On admission each lad was placed in the second class and remained there until he had earned 3,600 marks - a minimum period of 36 weeks. He was then promoted to the first class. For every three months in first class an inmate was awarded a good conduct badge providing he maintained a 90% standard of marks. A financial gratuity of 2s. was awarded for the earning of a first good conduct badge and 3s. for each subsequent badge. Badge money could be spent on articles of food, sent to friends or reserved for disbursement on liberation. On liberation an extra gratuity was assessed at one penny for every 25 marks credited in second class and one penny for every 20 marks gained in first class.

When an inmate with a three year sentence had earned his third good conduct badge, possible after a minimum period of nine months in first class, he was eligible to be considered for liberation. In the case of a two year sentence the possibility of liberation could be considered after the attainment of a first good conduct badge with a minimum of three months in first class.

Even under the new system provision had to be made for instances where a more severe degree of discipline would be required. Polmont Institution had a penal class to which inmates could be reduced by order of the Governor for persistent idleness or misconduct. While in this class inmates were deprived of association and earned no marks or gratuities. No inmate was retained in this class for longer than the Governor deemed necessary in the interests of the inmate or of

the general tone of discipline. Transfer to prison by order of the Secretary of Scotland under section 7 of the *Prevention of Crime Act 1908* remained the ultimate disciplinary action that could be taken in cases where inmates proved to be thoroughly incorrigible under Borstal discipline and were exercising a bad influence on other inmates.

In Barlinnie Borstal Institution the marks system was similar to that of Polmont but complicated by the fact that inmates usually had an imprisonment sentence to serve as well as a balance of their Borstal sentence; both served concurrently in the Borstal section. Marks earned did not govern date of liberation nor did they entitle inmates to gratuity except in special cases approved by the Prisons Department.[22]

Privileges were also attached to the progressive grades system. On admission to Polmont Institution the following concessions were granted:-

> association at work, school, drill, exercise; writing and receiving a letter every four weeks; receiving a visit of twenty minutes duration every four weeks (provided 400 marks had been awarded since the dates of the previous letter and visit respectively); change of library book twice a week; occasional attendance at concerts, lectures and entertainments.

After a minimum of two months the following additional privileges were earned:-

> association in dining hall at meals; attendance at all concerts, lectures and entertainments; access to daily newspapers and weekly or monthly periodicals after first class inmates; outdoor games (football, cricket, putting) in summer evenings; participation in sports competitions in summer evenings; participation in boxing competitions on Christmas and New Year weeks.

On promotion to first class privileges were further augmented as follows:-

> writing and receiving a letter every three weeks and receiving a visit of thirty minutes every three weeks (provided 300 marks had been awarded since the date of the previous letter and visit respectively); access to daily newspapers and weekly or monthly periodicals on delivery; field games on Saturday afternoons; indoor games (billiards, scrimage ball, draughts, etc.) on winter evenings; attendance at handcraft and technical classes in winter evenings (all first class inmates were expected to attend one or more of these classes).

In July 1937, thirty selected inmates of Polmont Institution were allowed to spend eight days at a camp conducted by a member of the Visiting Committee. Similar camps were conducted under the auspices of the Rover Scout organisation for inmates of the Edinburgh Borstal Institution in 1933, 1934 and 1935. The Prisons Department had come to regard such camps as some of the regular privileges for inmates. A rule made by the Secretary of State for Scotland extended special privileges by authorizing unescorted parole for trustworthy inmates wishing to visit a seriously ill or dying relative.

Privileges were withheld in whole or in part for breaches of discipline in any form. The period of forfeiture was determined by the gravity of the offence. The suspension of privileges was entirely at the discrimination of the Governor with the exception of recreational privileges which could be summarily withheld by the schoolmasters.[23]

The progressive grades and privilege scheme of incentives was valuable from the administrative point of view in that it charted the progress of an inmate through the Institution, and from the point of view of the inmates it encouraged achievement by making privileges, date of liberation and gratuities all dependent on the capacity of the inmate to earn marks and maintain a standard of good behaviour. This scheme was also designed as a means of conveying social and moral training. For this purpose the house system was introduced. The division of the Borstal Institutions into houses was intended to facilitate the assessment of individual inmates and give greater opportunity for members of staff to gain a more effective personal influence over the moral training of inmates. Within each house it was also intended to utilise the public opinion of the inmates as another means of conveying discipline and moral training.[24]

Polmont Institution was divided into five houses named simply as Red, White, Blue, Green and Brown.[25] In Scotland, however, the house system was not put fully into effect in as far as housemasters were not employed in Scottish Borstal Institutions in the period 1922 to 1937.[26] Consequently, the two

schoolmasters at Polmont Institution had delegated to them the responsibility for the moral improvement and development of the inmates; a duty which, in England, devolved on Housemasters.[27] Polmont Institution experimented for twelve years with the idea of giving the inmates some responsibility for the discipline of their fellows. This was referred to as the prefect system, and it did not work well. Lads were averse to exercising control over their comrades. What had not been taken into account was the fact that 40% of the Borstal population were acquainted with each other outside the Institution. Owing to the difficulties experienced and the gang warfare resulting, the prefect system was abolished and a modified system of house captains introduced. Each house selected a captain and vice-captain who were responsible for the selection of teams for recreation, for the order and cleanliness of their respective houses and recreation rooms and for the marching of their houses to and from recreation, dining hall (etc.). They had no disciplinary powers.[28]

2. Training System:

The three major components timetabled into the fifteen hour daily routine of the Borstal system were work training, education and physical training. The priority of seven and a half hours was given to work training, while education and physical training were allocated only one hour respectively per day. From 1913 Polmont Institution had recognised the need to assess the capabilities of individual inmates with regards to these three important elements in their training. A recruits' class was formed in which every inmate spent the first three months of his detention and in which he was specially treated with regards to education, gymnastics and work. At the end of the three months reports on each recruit were submitted by the schoolmaster and the chief drill instructor to the monthly meeting of the Institution Board. The inmates were then transferred to the school class, gymnastics class or work group to which they were suited. This innovation proved to be a success; the inmates looked happier, they tried very hard to do well and the reduction in reports for misconduct in recently admitted inmates was extraordinary.

(i) *Education and physical training programme:* For the purposes of school teaching the inmates were divided into six school classes. The first four classes received their one hour of education in the early evening before 8 p.m. each day. The first and second school classes of inmates, whose education could be described as good, attended two lectures each week delivered by a teacher from the local High School. On alternate nights the same visiting teacher gave classes in history and geography and the pupils were required to write an essay on their work once a week. Inmates from the first and second school classes also attended special educational courses on subjects such as woodwork, building construction, technical drawing, sanitary engineering, leatherwork, tailoring and cutting, cooking, gardening. These special classes were ancillary to the trades taught in the Institution and were intended to provide the better educated inmates with more technical background.

Inmates who could read and write fairly well were placed in the third and fourth school classes. For one hour on five nights of the week they were taught reading, writing, geography and arithmetic by the institution Schoolmaster and his assistants. The fifth school class consisted of illiterate and very backward boys who were given ten hours of education during the week; five hours of this teaching was conducted during the day. The new recruits were all placed in the sixth class and for their first three months in the Institution they were educated in the same manner as the fifth class.

Polmont Institution introduced this scheme to give the better educated a chance of learning something more advanced than they had at school. The moderately educated were given an incentive to study in order to be promoted to the lectures and the backward were given an inducement to get away from the requirement to attend extra hours of schooling during the day.

All inmates received gymnastic and physical training on five days of the week in the early morning or in the evening to avoid encroaching on the working hours in the Institution. The only exceptions to this rule were inmates excused on

medical grounds and the most backward of the boys. The recruits' class were given physical training at other times. The first and second school classes were given extra drill and gymnastics on Saturday evenings. This drill was made more interesting than the usual routine and was much appreciated as Saturday evening recreation.[29]

The provision of education for female Borstal inmates was on a rather minimal level. In Jessiefield Institution this duty was taken on by one of the lady visitors who was an educationist. A small library was established and the inmates were encouraged to cultivate the habit of reading healthy literature as a recreation. Spare hours in the evening were occasionally devoted to the discussion of what they were reading.[30] The inmates of the Borstal section of Duke Street Prison for women received education from a teacher on five days of the week and were also provided with facilities for self-improvement in their own rooms in the evenings.[31] Borstal inmates in both Jessiefield and Duke Street attended educational lectures arranged in the main prison buildings for the women who were serving sentences of imprisonment. By 1928 the Departmental Committee could report that with the co-operation of local education authorities classes were being provided for female Borstal inmates in domestic science and hygiene.[32] Physical exercise for female Borstal inmates consisted of a course of Swedish drill for which classes were arranged on three days of the week. On other days attempts were made to provide prolonged exercise in the open air.[33]

Intellectual and physical training were not included in the Borstal system for their aesthetic value only, but for the practical contribution they made towards training the attitudes of the inmates to conform to the discipline of working life. In this, according to the assessment of the Departmental Committee of 1928, success was more probable among the lads. Many of the girls were more difficult to influence in so far as they were less likely to be inspired by a sense of team spirit which the Borstal system sought to inculcate.[34]

(ii) *Work training programme*: In their work training programme the Borstal Institutions were not aiming at production on any commercial scale; their purpose was to provide training which would equip their inmates to earn their living in civil life.[35] Until August 1937 inmates at Polmont Institution were engaged only in the domestic services of the Institution, including cleaning, until they had completed their three months in the recruits' class. In allocating inmates to a trade group consequent to their assessment in the first three months, the governor gave careful consideration to certain factors. While account had to be taken of an inmate's preference for a particular trade, or any particular experience he may have gained in former employment, the Governor had to balance this with the probability of the lad following a particular trade on liberation. Inmates very often expressed preferences based on a desire to pass their period of detention as agreeably as possible, which usually meant in outdoor working groups. Standard of intelligence, assessment of personality and physical capacity were ascertained by intelligence and vocational guidance tests. Even if all other factors indicated a particular trade as being suitable for an inmate, the final selection depended on the existence of vacancies in the training class. It was important, from the administrative point of view, that workshop accommodation, available machinery and land were utilised in a balanced way.

Despite all care taken in selection some inmates proved to be misfits in their trade instruction class. In order to detect them as soon as possible a progress record was kept on each member of the class by the instructing warder. There was a monthly review of these records, but the instructor could bring any case to the attention of the Governor at any time. Changes from one trade to another were not readily made at the whim of inmates. Applying themselves to a settled occupation was not easy for youths used to the variety and the excitement of city streets. Seven and a half hours on five days of the week and a half day on Saturday were devoted to work training during which time an attempt was made to teach inmates the value of sustained application to work tasks. This had to be insisted on if anything worthwhile was to be made of them.

In August 1937 the Scottish Prisons Department ordered that assessment for allocation to a trade group on Polmont Institution must be completed within ten days of admission. The reasoning behind this was that the actual length of detention for a three year sentence was about twenty or twenty-one months, and for a two year sentence it was about fourteen months; all too short a time for any of it to be taken up by work activities which were not likely to prepare the lads to earn a living. Domestic services were to be performed only by inmates not likely to benefit by any category of formal trade instruction.[36]

One of the major problems which burdened the development of the Borstal system was the impossibility of ensuring that on liberation former inmates would follow the trade in which they had been trained during their period of detention.[37] The following table lists the trades that were being taught in Polmont Institution and in the Borstal section of Saughton Prison from 1932 to 1936.[38][Table 29]

It is apparent from these statistics that out of the total of 510 male inmates trained only 81 or 15.88% were placed in employment in their trade. Several factors were held to be responsible for this disappointing return.

Grave doubts were expressed by the Committee on the Employment of Prisoners regarding the quality of trades instruction. Reports were frequently received from employers to the effect that former Borstal inmates were not good workers unless they were under regular supervision. The system of training in the Borstal Institutions had not inspired them with the desire to work. What seemed to be required was a more intensive system of work training coupled with more stringent demands for the attainment of a high standard of individual production. Trade instruction had to relate realistically to current manufacturing and production methods.[39] To remedy the situation the Scottish Prisons Department recommended that, in line with the operation of the English Borstal Institutions, the quality and the quantity of work turned out by individual inmates should be assessed by means of periodic tests.[40] It was further realised that the policy of entrusting trades instruction to warders with trade qualifications was open to criticism on the

Table 29

Summary of Training Given to Lads in Borstal Institutions and How They were Placed During 1932-1936

Occupations	1932				1933				1934				1935				1936				1932-36		1932-36		1932-36	
	Polmont		Saughton		Polmont		Saughton		Polmont		Saughton		Polmont		Saughton		Polmont		Saughton		Polmont		Saughton		Summary	
	NT*	NP*	NT	NP	NT	NP	NT	NP	NT	NP	NT	NP	NT	NP	NT	NP	NT	NP	NT	NP	NT	NP	NT	NP	NT	NP
Joiners	11	1	-	-	14	2	-	-	11	1	-	-	19	3	-	-	14	1	-	-	69	8	-	-	69	8
Bricklayers	1	-	-	-	4	1	1	-	6	1	-	-	9	1	-	-	11	-	-	-	31	3	1	-	32	3
Plasterers	2	-	3	-	9	2	8	-	1	-	6	-	4	-	6	-	3	-	3	-	19	2	26	-	45	2
Blacksmiths	4	-	-	-	3	-	-	-	1	-	-	-	3	-	-	-	2	1	-	-	13	1	-	-	13	1
Painters	3	1	1	-	4	1	-	-	8	2	-	-	9	3	-	-	5	-	-	-	29	7	1	-	30	7
Bootmakers	4	1	2	-	9	3	1	-	8	-	-	-	11	3	-	-	10	-	-	-	42	7	3	-	45	7
Tailors	7	1	-	-	9	-	-	-	11	-	-	-	9	-	-	-	12	-	-	-	48	1	-	-	48	1
Bookbinders	-	-	-	-	-	-	-	-	3	-	-	-	-	-	-	-	1	-	-	-	4	-	-	-	4	-
Farmers	10	8	-	-	11	10	1	-	9	7	1	-	12	7	-	-	12	6	-	-	54	38	2	-	56	38
Gardeners	9	3	14	1	16	1	19	1	8	2	18	1	14	2	12	1	9	-	2	1	56	8	65	5	121	13
Bakers and Cooks	4	-	-	-	3	1	-	-	4	-	-	-	3	-	1	-	2	-	-	-	16	1	1	-	17	1
Plumbers	1	-	-	-	2	-	1	-	3	-	-	-	3	-	-	-	4	-	-	-	13	-	1	-	14	-
Brushmakers	3	-	-	-	4	-	-	-	7	-	-	-	-	-	-	-	1	-	1	-	15	-	1	-	16	-
TOTALS	59	15	20	1	88	21	31	1	80	13	25	1	96	19	19	1	86	8	6	1	409	76	101	5	510	81

*NT - Numbers Trained
NP - Numbers Placed

grounds that tradesmen who became warders gradually lost touch with industrial trade conditions. There was concern that if civilian instructors were employed they would expect trade union wages and conditions and would not be available for the unsocial hours imposed by the requirement of early, late and weekend duties.[41] The Scottish Prisons Department recommended that a trial should be given to a proportion of outside civilian instructors who knew how to teach.[42] In 1937 a trial was conducted at Polmont Institution with a civilian instructor teaching electric welding; a trade, which at that time, was not restricted by trade union rules.[43]

The Prisons Department for Scotland expressed the opinion that the percentages of successful employment would be raised if the Borstal system could train the inmates to a higher standard of good manners and deportment in order to make a better impression on employers.[44] In 1937 Polmont Institution initiated a policy with the schoolmasters, gymnastics instructors and teaching warders regularly instructing inmates in manners and deportment. All inmates were watched and corrected at meals and other times. The technique of applying for and keeping employment was a regular exercise, both written and oral. Instruction was given on how to approach guardians and employers in a respectful manner.[45]

Economic conditions dictated the employment opportunities for former Borstal inmates. Work was most readily found for them as farm labourers, carters, gardeners, seamen, soldiers, or labourers. While a large percentage of them were only suitable for general labouring work in quarries, on the roads, in engineering shops and shipbuilding yards, there were those who were forced to opt for 'blind alley' occupations on the basis of the economic reality that labouring jobs were more immediately remunerative than any occupation in which a recognised trade apprenticeship was required.[46]

It was realised that much of the occupational training in Polmont Institution was, in effect, an expensive waste of time, and that there had to be a correlation between the trades taught in the Institution and the prospects of employment in

civil life. Training in bookbinding, basket making and brush making was recognised to have little long term value for employment opportunities. In the industrial world shoemaking and tailoring had become factory employments based on division of labour and it was not practicable for Polmont Institution to prepare its inmates for production methods on such a scale. It was the assessment of the Scottish Prisons Department that the only major trades to be taught should include - building (bricklaying); cabinet making and joinery; agriculture (farm and garden); electric welding.[47] The system had to be constantly aware of the fluctuations in the prospects of employment in any one trade and sufficiently flexible to either permit the introduction of a new trade to the training programme or concentrate efforts on an existing trade based on a prognosis of work opportunities. The introduction of this new policy between 1937 and 1938 was delayed by the internal administrative problem that there had been a sharp rise in the number of inmates in custody coincidental with the situation where no further building work was required to extend Polmont Institution. Consequently, the trades which were to be made obsolete had to be retained to employ the inmates until vacancies arose in the more useful trades. Furthermore, owing to the need to carry on the domestic services of the Institution and maintain the fabric of the buildings in good repair, a number of trades in which the prospects of subsequent employment were not particularly good had to be continued - baking; cooking; plastering; painting; plumbing; blacksmithing. The numbers being instructed in these trades were strictly controlled.[48]

No matter how good the trades training programme was there could be no absolute guarantee of employment. The training necessary to produce a fully qualified tradesman took longer than the period for which a lad was detained in the Institution. It had been the hope of the Departmental Committee of 1928 that organised bodies representing industry would make their regulations more flexible to secure suitable employment for the more able of the Borstal licensees in trades at which they had served 18 months or more in the Institution. Such action on the part of the trade unions and other bodies would be a valuable public service in that it would ensure that former Borstal inmates, who were capable of earning a living

in a skilled trade, were not forced to turn to 'blind alley' employment which would reduce the chance of them becoming honest and steady citizens.[49]

Periods of economic depression and unsettled conditions in the industrial world made it very difficult to find even labouring work for licensees. World War I had absorbed many former Borstal inmates into the army, and the Prison Commissioners for Scotland had expressed the hope that the army would always provide a career for some of these lads.[50] With the cessation of hostilities the military career opportunities for Borstal inmates dwindled. By 1920 only a very few Borstal licensees could be placed in the army.[51] On discharge from the forces at the end of the war the Prison Commissioners for Scotland reported that a number of Borstal licence-holders had proved difficult to employ. When they came out of the army they mistakenly presumed they would be able to draw unemployment benefit for as long as possible. Furthermore, their expectations as to the wages they should be paid for work were very high and doomed to disappointment in the general depression of trade. To get them to take available work it was necessary to threaten to revoke their licences.[52] The conduct of many of the Borstal inmates after liberation on licence in 1920 proved most unsatisfactory; a general spirit of restlessness seemed to prevail causing the lads to leave their situations without notice. In consequence their licences were revoked and the disillusionment of their employers meant that it was frequently found to be impossible to place another lad in the same situation.[53] In the industrial depression of the 1930s the Committee on the Employment of Prisoners suggested that a partial solution to the problem of finding labouring work for Borstal licence-holders might lie in the creation of a scheme under which public contractors engaged in government schemes should be asked to take a small quota of Borstal licence-holders. It was believed that it would also be an incentive to other employers if the appropriate government departments employing labour would also take action on the same lines. Under the existing regulations Borstal lads were not eligible as trainees under Ministry of Labour schemes because the rules insisted that eight stamps were required on insurance cards in the previous six months before any young man could be considered for such schemes.[54]

For girls work training was limited to all forms of general domestic work, cookery, laundry work, knitting, sewing, gardening and looking after poultry.[55] The sector of the employment market in which they were placed was that of domestic service in private houses, farms, institutions, hotels and guesthouses.[56] There was never a shortage of situations for girls, but the problem was that the girls were very unsettled and unwilling to remain in their places for any length of time. It was believed by the Prison Commissioners for Scotland that the elements of 'vanity and indolence' had a great deal to do with their revolt against the conditions of work and guardianship in which they were placed on licence.[57]

From the evidence on the work training programme in the Borstal Institutions in Scotland, it is apparent that a genuine attempt was being made, in the case of male Borstal inmates, to give as many of them as possible the opportunity to become more than simply 'hewers of wood and drawers of water.' The full achievement of this ideal was thwarted, in the first place, by internal administrative problems relating to the quality of instruction, and, in the second place, by economic conditions to which the system had, in part, not been sufficiently sensitive and, in the main, had no control over. While under detention in the Borstal Institutions the work training raised the sights of many of the inmates; a factor contributing to their disappointment and disillusion with the available work opportunities in the economic slumps between the wars. Regarding the girls, it is probable that their discontent was aggravated by the fact that the training system imposed on them a life of domestic drudgery in an era when female acceptance of domestic service as a career was rapidly changing.

3. <u>After-care:</u>

The final factor relating to the rehabilitation of Borstal inmates as contented and successful working members of society was after-care. After-care was, in effect, a catalyst through which Borstal inmates made the transition from institutional to civil life. When the Borstal system was initiated in Scotland it was not possible to obtain the services of a sufficient number of voluntary helpers willing to find work for inmates licensed out from these institutions and provide

kind but firm supervision. In Scotland, to cope with this aspect of the system, the Prison Commissioners added one member to their staff who was qualified by experience to find employment and supervise licence-holders.[58] This situation was improved on with the creation of the Scottish Central Association for Discharged Prisoners' Aid which was constituted by the Secretary for Scotland in June 1919 under section 8 of the *Prevention of Crime Act 1908*. One of the main functions of this Association was the supervision of Borstal licence-holders.[59] The supervision of Borstal licensees was combined with the supervision of convicts and made the responsibility of a superintendent and assistant superintendent of licence-holders who were Prisons Department staff. To supervise girls on licence from Borstal Institutions and women released from prisons, the Central Association employed a female member of staff. The Association also had power to employ agents in other places and a full-time agent was appointed in Glasgow and a part-time one in Aberdeen.[60]

When there was a reasonable probability that an offender would lead an honest and industrious life, the procedure in Polmont Institution prior to 1930 was that the Governor brought the case before the Visiting Committee for consideration. If the Visiting Committee were satisfied then a recommendation for liberation on licence was forwarded to the Prison Commissioners for their determination. The Prison Commissioners made it a rule that no inmate was released on licence unless work was available. When a situation was found guardianship was arranged. The licensee was required to fulfil certain conditions of licence relating to place of residence and employment. Above all licence-holders were required to abstain from any violation of the law or association with persons of bad character. They were required to satisfy their guardians that they were leading a sober and industrious life. Monthly reports on licensees were submitted by the guardians to the Central Association. In cases of unsatisfactory conduct the Prison Commissioners were empowered by section 6(2) of the *Prevention of Crime Act 1908* to revoke a licence and recall the offender to the Borstal Institution for a maximum period of one year from the date of his return.[61]

The Departmental Committee of 1928 expressed a degree of dissatisfaction with the system of after-care. It was their understanding that the connection between the Central Association and the Prison Commission had become closer than was originally intended. In practice the monthly reports on the conduct of licence-holders were being considered by the Prison Commissioners and all action taken in consequence of the reports was taken directly by them. The Departmental Committee was of the opinion that the Prison Commissioners should only be called on if a licence had to be revoked in consequence of a conviction or as a result of evidence that the licensee had failed to observe the conditions of the licence. It was thought preferable for the finding of employment and the supervision of licence-holders to be carried out by a voluntary association on behalf of the Prison Commissioners. They recommended that the Central Association be replaced by an association similar to the Borstal Association in England. What was required was a separate association for Borstal licensees with strong local committees in some large towns and a network of social workers in various parts of the country to find suitable employment and provide the friendship and confidence needed by all former inmates on release. This wider network of guardians would have more opportunity to help licensees to settle down at their work, dealing with their problems at an early stage to avoid the revocation of licences and prevent the loss of situations for future licence-holders.[62]

It was also the opinion of the Departmental Committee of 1928 that the term of supervision on licence was too long. The existing rules required that all offenders released on licence should remain under supervision until the expiration of the term of sentence and for one year thereafter. The majority of offenders were committed for three years and were released after two years training. This meant these licensees had to be under supervision for a period of two years. For Borstal inmates who were released earlier on licence the total period of supervision was proportionately longer. The Secretary of State did have the authority under section 6(4) of the *Prevention of Crime Act 1908* to order supervision to cease after the expiration of the term of sentence, but this power had been very rarely used. The Departmental Committee decided to recommend that the period of supervision

should be for the remainder of the sentence or for one year, whichever was the longer.[63]

On 1 April, 1930 the Scottish Juvenile Welfare and After-Care Office took over the functions of the Scottish Central Association for Discharged Prisoners' Aid, and the offices of Superintendent and Assistant Superintendent of Licence-Holders ceased within the Prisons Department.[64] Within the Scottish Juvenile Welfare and After-Care Office the responsibility for Borstal licensees was delegated to the Scottish Central After-Care Council. The Council was required to report to the Prisons Department for Scotland on the prospects available for persons proposed to be licensed; it was required to find suitable employment and lodgings where necessary; obtain and consider periodic reports on the conduct and progress of licensees; maintain records on licensees; bring to the notice of the Prisons Department cases which required the Department to exercise its power to revoke licences and in general endeavour to promote the welfare of persons formerly inmates of Borstal Institutions.[65]

The important task of finding work for licence-holders was delegated to one of the under-secretaries of the After-Care Council. Newspapers were scanned and contacts developed with possible employers directly or through agents. Three full-time male agents were employed in the After-Care Office; one was attached to the headquarters office; two were employed in Glasgow, one of whom had specific responsibility for the care of Borstal lads whose licences had been revoked. There were part-time agents at Ayr and Aberdeen. The duties of the agents from the Edinburgh and Glasgow offices included attendance at Borstal Prison Committee meetings - monthly at Polmont, quarterly at Glasgow and Edinburgh.[66]

Under the new procedures the Prisons Department informed the After-Care Council when a Borstal Governor proposed to recommend to the Visiting Committee of his Institution that certain inmates be liberated on licence. Before the date of the meeting of the Visiting Committee, members of the Council's staff interviewed the inmates at the Institution, visited their homes and arranged for

suitable guardianship to be available. A report was submitted by the Council to the Visiting Committee on home conditions, employment prospects and arrangements for guardians. If so advised by these reports the Visiting Committee submitted a recommendation to the Prisons Department that the inmate in question be liberated subject to work being available. As soon as employment was secured the inmate was liberated and conducted by a member of the Council's staff to his home or place of residence. The licensee was also introduced to his guardian to whom the Council had sent an explanatory letter beforehand. Much importance was attached to finding suitable guardians. Another department of the office was directly connected with voluntary social service throughout Scotland, and it was possible to obtain the services of guardians who were experienced social workers willing to give lads help towards a new start in life.[67]

A woman agent was employed in the headquarters office for the after-care of delinquent girls. The number of girls on licence from Borstals at any one time was small and accommodation was provided in institutions pending employment being secured for them. The guardian system did not work well with girls, so the Council agent looked after her charges closely and assisted them, where necessary, from a 'private fund' administered in the office.[68]

The criterion by which the validity of the Borstal system was judged was the extent to which it was able to rehabilitate its inmates as worthwhile members of society. Did the Borstal system achieve its idealistic aim of correcting criminal tendencies in the nation's youth, or were these institutions, as portrayed in the popular press, merely 'coming out colleges for crooks'; centres where aspiring criminals had the opportunity to augment their illicit skills?[69]

The Departmental Committee of 1928 investigated the particulars of the first 1,000 lads liberated on licence from Borstal Institutions in Scotland between 1912 and 1925. Their findings were as follows -

191 (19.1%)	had never been convicted before committal to a Borstal but were reported to be of criminal tendencies (etc.)
809 (80.9%)	had been convicted before committal to a Borstal

Of the 809 offenders who had been convicted before committal

246 (30.4%)	had been convicted once
219 (27.1%)	had been convicted twice
143 (17.7%)	had been convicted three times
201 (24.8%)	had been convicted four times or over

Of 1,000 offenders liberated on licence

627 (62.7%)	had, as far as was known, never again been convicted
373 (37.3%)	were known to have been again convicted

Of the 627 offenders who, as far as was known, had never again been convicted

548 (87.4%)	completed their period of supervision without revocation of their licences
79 (12.6%)	had their licences revoked during their period of supervision for absconding or other misconduct, but without any conviction in the courts for a new offence

Of the 373 offenders who had been convicted since their liberation from Borstals

147 (39.4%)	had been convicted once
93 (24.9%)	had been convicted twice
44 (11.8%)	had been convicted three times
89 (23.9%)	had been convicted four times or over

A number of these convictions related to minor offences and a certain proportion of the 373 offenders convicted since liberation went on to do well.

The last licence under view by the Departmental Committee expired in February 1927. What had to be understood was that 80.9% of the lads had already been convicted on one or more occasions before committal to a Borstal Institution. The Departmental Committee were of the decided opinion that since the proportion of those never again convicted after Borstal training was 62.7% as against 37.3% again convicted, there was every reason to believe that the Borstal system of training had proved successful and had justified its continuation.[70]

Statistics of the success and failure rates in the period 1925 to 1933 were compiled by the Scottish Central After-Care Council -

Of the 1,000 offenders liberated on licence between 1925 and 1933

147 (14.7%)	had never been convicted before committal to a Borstal Institution, but were reported to be of criminal tendencies
853 (85.3%)	had been convicted before committal to a Borstal Institution

Of the 853 offenders who had been convicted before committal

289 (33.9%)	had been convicted once
262 (30.7%)	had been convicted twice
150 (17.6%)	had been convicted three times
152 (17.8%)	had been convicted four times or over

Of the 1,000 offenders liberated on licence between 1925 and 1933

557 (55.7%)	had, so far as was known, never again been convicted
443 (44.3%)	were known to have again been convicted

Of the 557 offenders who, so far as was known, had never again been convicted

510 (91.6%)	completed their period of supervision without the revocation of their licences
47 (8.4%)	had their licences revoked during their period of supervision for absconding or other misconduct, but without any conviction in the courts for a new offence

Of the 443 offenders who were convicted subsequent to their liberation from Borstal Institutions

215 (48.5%)	were convicted once
110 (24.8%)	were convicted twice
62 (14.0%)	were convicted three times
56 (12.7%)	were convicted four times or over

The important fact conveyed by these statistics is that 85.3% of the 1,000 lads reviewed had been convicted once, or more often, before committal to a Borstal Institution, but, so far as was known, 55.7% were never again convicted subsequent to their liberation on licence as against only 44.3% who were again convicted. The first licence under review in the period 1925 to 1933 expired in February 1927 and the last in May 1936. Any known conviction of any former Borstal licence-holder up to the end of May 1936 was included in these statistics. The Prisons Department for Scotland held the records of all former Borstal licence-holders known by them to be re-convicted. The possibility of any such re-convictions escaping the notice of the Department was negligible. The Scottish Central After-Care Council received direct notification of the re-convictions from the Prisons Department.[71]

The popular press in its search for sensationalism had directed public criticism to concentrate on the failures of the Borstal system. Considering the previous convictions or criminal tendencies manifested by most of the inmates, the

success rate of Borstal training was remarkable. The minority who ultimately failed to benefit from the system were those for whom the probability of improvement was remote because of either their inability or their unwillingness to escape from the influence of the social and economic deprivations from which their maladjusted behaviour derived - but had they been committed to prison in the impressionable age group of 16 to 21 years they would have been denied even the possibility of a chance to improve their future prospects.

4. Conclusion:

Between 1910 and 1937 the Borstal system in Scotland, in step with that of England, had formulated ideals and methods of dealing with young and malleable offenders which constituted a complete departure from the punishment and repression of the prison system. By the training of body, mind and character the Borstal system sought to inspire alienated and maladjusted youth with an *'esprit de corps'* which would stimulate in them the desire to conform willingly and constructively to the obligations and restrictions of the social system.

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CHAPTER 6

THE 'YOUTH PROBLEM'

The 'youth problem' was not a new phenomenon in the nineteenth century. Public commentators in almost every period of history from ancient times have expressed concern and anxiety regarding the behaviour of young people in general. In the nineteenth century a great deal more was written about the problem than in any previous age. In the early and middle decades of the century middle-class anxieties and fears were focused on the precocious juvenile delinquent. While young people of adolescent age were part of the overall problem, no separate consideration or recognition was given to wayward adolescents. The term 'adolescence' had no significance in the Victorian descriptions and understanding of youth. Contemporary sources claimed that while youth constituted only one-tenth of the population, it represented one quarter of its criminals.[1]

1. Mid-Nineteenth Century Perceptions of Youth and Crime

Until about the 1870s the wayward behaviour of youth was perceived as a potentially threatening aspect of crime and lawlessness and, as such, it was dominated by the middle-class conviction that all forms of social inadequacy and failure were a manifestation of moral defect in the individual. Crime was correlated with poverty as a consequence of the prodigality and laziness of the lower orders of society. The pervasion of the self-help philosophy left little room for an appreciation of the function of the economic and social system in the creation of social casualties.

Margaret May has traced the emergence of fear of the youthful criminal to an indiscriminate use of statistics which apparently indicated that the greatest proportion of the accelerated increase in crime figures related to violation of the law by the young. Although the introduction of the Home Office Returns in 1805 provided information of

a more definite form on the extent and nature of crime, these statistics did not distinguish between juveniles and adults. What they did indicate was an apparently rapid increase in the rate of crime. Witnesses appearing before Select Committees in the first two decades of the nineteenth century attributed this escalation in crime to an increase in the number of juvenile offenders. This impression was apparently corroborated by local enquiries conducted in London in 1816 and in Surrey and Warwickshire in 1828 which indicated a shocking increase in crime committed at a much earlier age than previously. It was not until 1834, however, that information on the age of offenders was entered into national returns and prison returns.[2]

In Scotland, according to the research of A.G.Ralston, there were very few criminal statistics in the period 1812 to 1840. There was a confused interpretation of the available figures and public perceptions were misled by reports which failed to distinguish between serious crime committed by hardened criminals and petty offences committed by youthful offenders.[3] In Scotland it was not possible to assess with any accuracy the amount of known juvenile crime until the 1850s. Prior to that date the statistics were inadequate and the widespread belief in the prevalence of juvenile crime was based mainly on contemporary assumptions.[4] Although, as Ralston explains, *Returns of Committals for Trial* were available for the Scottish Courts from 1836 onwards, they did not include statistics relating to the Police Courts. In effect, this meant that only the serious crimes committed by young offenders and tried before the Sheriff Courts or the High Court of Justiciary were revealed, while the vast majority of juvenile crime, constituting petty theft, malicious mischief and offences against local byelaws, treated summarily in the Police Courts, went unrecorded.[5] Furthermore, it may seem apparent, in the *Reports of the General Board of Directors of Prisons in Scotland* from 1844 onwards, along with the *Reports of the Prison Inspector* from 1836, that there was a fairly steady decline in the commitments of juvenile offenders

under 16 years of age in the period 1848-1861; but, as Ralston has concluded, these national statistics for Scotland did not present detailed information on crime in particular areas. In addition, the prison returns did not give a complete picture of the number of juveniles who passed within their walls. Many young offenders who were only sentenced to a few days in prison were not included in these statistics. Vast numbers of petty offenders were sentenced to one night or just a few hours imprisonment, for the duration of which time they were often held in cells attached to local police offices. No statistical record was kept of children treated in this way.[6] Local sources, such as the admissions registers of Bridewells and gaols and reports of Police Superintendents, were liable to inconsistencies or local administrative changes. The opening of a new gaol or the amalgamation of police forces and the extension of jurisdiction boundaries could alter the way statistics were compiled, perhaps conveying a false impression of increase or decrease in the crime rate.[7]

It is apparent that in both Scotland and England the statistics from which information on juvenile crime could be abstracted in the first half of the nineteenth century were conflicting and confusing. The fear which resulted from the distorted picture created by the misuse and the misinterpretation of the available crime statistics stimulated, as Margaret May has pointed out, a great many unofficial enquiries in the 1830s and 1840s which gradually accumulated information concentrating on the problem of youthful delinquency rather than crime in general. These investigations were conducted by people of professional status - sheriffs, magistrates, ministers of religion and teachers, as well as others who came into contact with deprived, destitute and delinquent children in the course of their daily work or charitable activities.[8] Fired by their evangelical conviction to save the children of the streets from the moral decay of their social class, the 'child savers', through their prolific writings and vociferous enthusiasm, presented a picture of delinquency which was widely accepted both north

and south of the border; but, inevitably their observations, their conclusions and their way of presenting the subject were biased by their own middle class values and prejudices.[9] The style of their writing tended to be subjective and impressionistic. The children of the streets were described in pejorative terms as 'human vermin', 'ownerless dogs'.[10] Even the very influential books written by Mary Carpenter and published in both London and Edinburgh, categorized delinquent and potentially delinquent children as the 'dangerous class' and the 'perishing class'.[11] In his widely disseminated *First Plea for Ragged Schools* (1847), Dr. Guthrie coined the terms 'street urchins' and 'Arabs of the city'. While such emotive language was, in all probability, used as a propaganda device to galvanize middle class support and charity in the cause of gaining social control over the youthful 'flotsam and jetsam' of the cities; it is also equally probable that such powerful rhetoric contributed to the abnormalization of the children of the streets in the perception of the Victorian middle classes.

The extraneous aspects of delinquent youth were further reinforced by influential statements made to the Select Committee of the House of Lords on the Present State of the Several Gaols and Houses of correction in England and Wales (1835), indicating the existence of an identifiable criminal class within the lower orders of society. Particular reference was made to a

> youthful population...devoted to crime, trained to it from infancy, adhering to it from education and circumstances, a race...differing from the rest of society not only in thoughts, habits and manners but even in appearance.

These perceptions were reinforced by the research of investigators whom Margaret May has described as the 'self-styled moral statisticians'. They were members of various statistical societies and their work was of great importance in creating a scientific approach to criminology. Particular attention was given to the age of offenders, and from this Joseph Fletcher, a prominent member of the London Statistical Society,

concluded in 1843 that since over half of those sentenced were under the age of 25 'there was a population constantly being brought up to crime'.[12] In similar vein, while advocating the cause of industrial feeding schools in Scotland in his *Second Plea for Ragged Schools* (1849), Dr. Thomas Guthrie stated '...politicians may be assured that when this rapidly growing body of ignorance and crime has reached full strength they will have a giant to contend with'. As Margaret May has argued, evidence given by Mary Carpenter to the Select Committee of 1852 segregated the delinquent, irrespective of his degree of destitution, from the pauper child. It was Mary Carpenter's opinion that 'the victims of misfortune should not be tainted by association with the victims of vice however similar their situation might appear'.[13] From influential statements and research of this nature the juvenile delinquent was stigmatized and alienated in the perception of the Victorian public as an apprentice member of a criminal class which could be identified within the impoverished and destitute lower orders of society. Victorian perceptions were focused on the attributes of delinquent youth which were most in contrast with notions of respectability.

Although awareness of the delinquent and potentially delinquent child as a victim of his environmental, social, educational and moral deprivation was expressed in the reports produced by William Beaver Neale in Manchester,[14] Dr. Thomas Guthrie in Edinburgh, Sheriff William Watson in Aberdeen and Mary Carpenter in England, and the same ideas were reflected in evidence given by witnesses before the Select Committee of the House of Lords on the Execution of the Criminal Law (1847) and the Select Committee on Criminal and Destitute Juveniles (1852), no challenge was made to the social order and no attempts were initiated to pursue the elimination at source of the social and material deprivation and inequality which trapped delinquent and potentially delinquent children into a life of immorality and crime. The lines of action, which were developed as rescue operations, were designed to remove children from the

contamination of their social and physical environment. Such operations were in line with the general spirit of Victorian charity in aiming to reform society by means of inculcating in the individual a desire for moral improvement and social conformity to middle class attitudes and values of self-help and independence. It remained the Victorian conviction that the solution to the problem of delinquency lay within the reform of the individual rather than the reform of the social order.

2. The Discovery of the Concept of Adolescence

Between 1880 and 1900 the mid-nineteenth century concentration on wayward children was being replaced by a new convergence of attention on disorderly adolescents.[15] This shift in the focus of attention indicated that the dimensions of the problem of delinquency had been reshaped by other factors.

The following statistical evidence demonstrated that between 1898 and 1903 in the twenty-two cities or burghs of Scotland with an estimated population of over 20,000 the total number of convictions of offenders under 16 years of age showed a downward trend in sixteen burghs, the total falling from 6117 to 5461, a drop of about 10%; only in six burghs was there an increase. About 25% of the total number of juveniles convicted in all burghs were under 12 years of age in 1898, while the corresponding proportion for 1903 was 21%. The vast majority of convictions related to those who were 12 and under 16 years of age, varying from about 74% in 1898 to almost 79% in 1903.[16] [Refer to Table 30].

Unfortunately, there are no earlier statistics which are exactly comparable to those compiled for the years 1898 and 1903, so it is not possible to make any long-term examination of the proportion of children as against adolescents appearing before the summary courts of Scotland. However, with specific reference to the city of

Table 30

Juvenile Offenders: Statistics 1898-1903 Showing Number of Juveniles Under 16 Years of Age Convicted Summarily in 1898 and 1903 in the Twenty-Two Cities or Burghs of Scotland Which had in 1898 an Estimated Population of over 20,000

City or Burgh	Year	Juveniles Convicted			Under 12 Years		12 Years & Under 16		Convictions Per 10,000 of Population	Ordered To Be Whipped
		Male	Female	Total	Male	Female	Male	Female		
Aberdeen	1898	478	23	501	18	0	460	23	40.1	9
	1903	422	17	439	27	1	395	16	28.6	16
Airdrie	1898	62	3	65	33	1	29	2	34.0	-
	1903	20	9	29	6	6	14	3	13.0	-
Arbroath	1898	47	-	47	12	-	35	-	20.6	-
	1903	26	2	28	6	2	20	-	12.5	-
Ayr	1898	103	3	106	29	1	74	2	42.7	-
	1903	94	17	111	51	4	43	13	38.7	-
Coatbridge	1898	141	11	152	69	6	72	5	50.6	-
	1903	106	23	129	53	11	53	12	34.9	-
Dumbarton	1898	88	3	91	19	1	69	2	53.8	-
	1903	62	1	63	4	-	58	1	35.1	-
Dundee	1898	234	10	244	22	-	212	10	16.0	-
	1903	175	5	180	28	-	147	5	11.2	-
Dunfermline	1898	44	2	46	19	-	25	2	20.8	3
	1903	17	1	18	3	-	14	1	7.1	1

City or Burgh	Year	Juveniles Convicted			Under 12 Years		12 Years & Under 16		Convictions Per 10,000 of Population	Ordered To Be Whipped
		Male	Female	Total	Male	Female	Male	Female		
Edinburgh	1898	384	24	408	111	4	273	20	15.0	42
	1903	800	62	862	138	6	662	56	27.2	136
Falkirk	1898	59	6	65	31	3	28	3	37.5	8
	1903	68	16	84	44	8	24	8	28.7	2
Glasgow	1898	2318	170	2488	483	14	1835	156	37.8	46
	1903	2054	155	2209	386	9	1668	146	29.0	42
Govan	1898	315	12	327	120	3	195	9	53.3	53
	1903	164	10	174	35	2	129	8	22.7	8
Greenock	1898	361	20	381	125	-	236	20	60.4	30
	1903	192	9	201	32	2	160	7	29.5	21
Hamilton	1898	108	5	113	44	3	64	2	45.5	-
	1903	91	10	101	36	3	55	7	30.8	-
Inverness	1898	120	4	124	47	2	73	2	62.5	12
	1903	47	5	52	15	2	32	3	24.5	3
Kilmarnock	1898	72	2	74	26	-	46	2	26.0	-
	1903	101	5	106	39	3	62	2	31.0	-
Kirkcaldy	1898	80	4	84	18	1	62	3	31.0	-
	1903	41	9	50	12	6	29	3	14.7	5

City or Burgh	Year	Juveniles Convicted			Under 12 Years		12 Years & Under 16		Convictions Per 10,000 of Population	Ordered To Be Whipped
		Male	Female	Total	Male	Female	Male	Female		
Leith	1898	375	9	384	160	3	215	6	55.9	7
	1903	283	10	293	84	2	199	8	37.8	21
Motherwell	1898	58	6	64	22	1	36	5	34.2	3
	1903	92	13	105	20	4	72	9	34.5	3
Paisley	1898	97	3	100	22	3	75	-	15.1	-
	1903	103	3	106	28	1	75	2	13.4	-
Partick	1898	205	13	218	91	7	114	6	59.7	25
	1903	101	3	104	31	1	70	2	19.2	3
Perth	1898	30	5	35	6	-	24	5	11.7	-
	1903	16	1	17	2	-	14	1	5.2	10
TOTALS	1898	5779	338	6117	1527	53	4252	285		
	1903	5075	386	5461	1080	73	3995	313		

Edinburgh, a rough comparison can be made from statistics quoted by A.G.Ralston relating to the number of juveniles convicted at the Police Court in the period 1852 to 1868.[17]

Table 31

Number of juveniles convicted at the Police Court (in Edinburgh) or remitted to a higher court 1852-1868

Year	Total Convicted	Under 14		14-16	
		Number	% of Total	Number	% of Total
1852	370	226	61	144	39
1853	360	227	63	133	37
1854	343	222	64	121	35
1855	328	190	58	138	42
1856	305	185	60	120	39
1857	225	132	58	93	41
1858	206	108	52	98	47
1859	168	93	55	75	44
1860	175	123	70	52	29
1861	162	115	71	47	29
1862		Information missing			
1863	201	132	65	69	34
1864	223	150	67	73	32
1865	188	117	62	71	37
1866	239	155	64	84	35
1867	160	102	63	58	36
1868	191	123	64	68	35

From the percentage calculations, which have been added in to the foregoing table, it is apparent that the highest proportion of convictions among juveniles at the Edinburgh Police Court in the period 1852 to 1868 related to those under the age of 14. It is probable that the general tendency in these statistics also related to the pattern of juvenile crime in other Scottish cities. What must also be taken account of is that the type of crime committed by the younger group of offenders would have been the more obvious forms of petty crime, 'survival crime' and street offences; whereas, that perpetrated by the older, and presumably more hardened, group of offenders would

have tended towards the less obvious type of crime which would have been more difficult, in general, to detect.

The statistics for juveniles under 16 years of age convicted summarily in Edinburgh in the years 1898 and 1903 are as follows:

Table 32

Year	Total Convicted	Under 12		12 years and under 16	
		Number	% of Total	Number	% of Total
1898	408	115	28	293	72
1903	862	144	17	718	83

It is apparent that from these statistics relating to Edinburgh, and from those covering all the main urban areas of Scotland for the years 1898 and 1903, the general trend had changed and the greatest proportion of juveniles convicted by the late years of the nineteenth century were 12 and under 16 years of age. There is evidence that this trend continued. The Report of the Scottish National Council of Juvenile Organizations[18] included an investigation of the ages of children and young persons appearing before the juvenile courts in Edinburgh including Leith and Portobello, as far as this information was definitely available, during the year 1921.

Table 33

Age of offender	Number of cases	Age of offender	Number of cases
7 years	6	12 years	136
8 years	18	13 years	162
9 years	46	14 years	142
10 years	60	15 years	169
11 years	106		
Total: 7 to 11 years	236	Total 12 to 15 years	609

Out of the total of 845 children and young persons appearing before the Edinburgh juvenile courts in 1921 there were 236 (28% approximately) under the age of 12, while 609 (72%) were between 12 and 15 years of age. Statistics provided in the English report (Board of Education, Juvenile Organizations Committee: *Report on juvenile delinquency in four towns in England (1920)* provided corroborating evidence that the number of offences rose progressively with age and the incidence of delinquency was at its greatest between 15 and 16 years of age.[19]

(i) *Education*: Education is an important factor to be considered in the new convergence of attention on disorderly adolescents, which became apparent within the last three decades of the nineteenth century. In considering the situation in England, John Clarke has concluded that the reduction in the proportion of juvenile crime committed by the younger children could be attributed, in large measure, to the implementation of the Education Acts which considerably restricted the free will of children who would otherwise have roamed the streets.[20] In the Scottish context the *Education (Scotland) Act 1883* raised the school leaving age from 13 to 14, but a child could gain exemption from further schooling at the age of 13 on proof of proficiency by examination in the fifth standard. This Act also permitted a child to have only half-time education between 10 and 14 years of age. The *Education (Scotland) Act 1901* abolished exemption from schooling by examination at the age of 13, thus virtually raising the school leaving age to 14 throughout the country. Exemption might, however, be granted to children of 12 years of age for compassionate or other similar reasons. The *Education (Scotland) Act 1908* gave School Boards discretionary powers to make such exemptions between the ages of 12 and 14 subject to part-time attendance at continuation classes up to 16 years of age. Provision was made under the *Education (Scotland) Act 1918* for the school leaving age to be raised to 15, but this did not happen because of the economic difficulties in the 1920s and 1930s. It must, however,

be understood that the full implementation of the Education Acts was a gradual procedure and it was unlikely that there could have been any immediate impact on the incidence of juvenile delinquency. After the passing of the *Education Act 1872* in Scotland, the new school boards faced an enormous task. The school board era coincided with large-scale unemployment, low wages and extreme poverty, and it was the children of such destitute parents who had to be corralled into the schools.[21]

In Glasgow, where the problem was on a massive scale, school attendance officers mounted daily operations against wandering or truant children in the streets, docks, fairs and markets. In 1879 the average daily catch was 350. The law of Scotland put the responsibility of schooling on the parents, and it was with the parents that the school board had to deal.[22] Many of the reasons for irregular attendance included - habitual truancy; lack of parental control; 'fecklessness' on the part of parents; girls kept at home to 'mind the baby'; boys sent on errands without any regard to the loss of a day or half a day at school. However, the whole problem of improving the attendance of children in a situation of neglect or destitution was overshadowed by the poverty of the times. William Mitchell, Vice-Chairman of the Glasgow School Board from 1888, recognized that the problem was more of a social nature than an educational one. In the *Report of the Glasgow School Attendance Committee 1896*, William Mitchell expressed his opinion that the required small fine or short-term imprisonment of parents who would not comply with the law was, if anything, likely to result in the family becoming even more degraded, which meant that the children lost more than they gained from such action being taken.

Glasgow sought a humane solution to its truancy problem in day industrial schools. The day industrial school system of the school board era was established initially in England under the *Education Act 1876*. English authorities showed no great

enthusiasm, but the Glasgow School Board, under Mitchell's direction recognized that the establishment of such schools facilitated the removal of children, who persistently absented themselves from the school board schools, from squalid and potentially morally contaminating environments to the care of kindly female teachers, to be trained in the regular habits of school attendance, respectful manners, good conduct, the Bible and moral lessons. The Glasgow School Board acquired powers under the *Glasgow Juvenile Delinquency and Repression Act 1878* permitting the establishment of day industrial schools in the city. Other areas of Scotland did not get these powers until the *Day Industrial Schools (Scotland) Act* was passed in 1893.

In Glasgow these schools operated as both an educational and a social service. It is true that day industrial schools were a mildly coercive measure in that persistent truants had to be brought before a magistrate by the school board to be committed. Such children were frequently found to have been committing minor misdemeanors while roaming the streets - breaking windows, minor theft (etc.) - offences hardly worthy of committal to a boarding or residential industrial school up to the age of 16. Such children had often become truant because long hours of parental work, particularly in single-parent families, resulted in an unavoidable lack of parental control and supervision. Although there was a recognition of the close links between truancy and delinquency, the Glasgow School Board was less concerned with developing day industrial schools as a form of punishment than as educational establishments where children could be looked after; in other words, these schools were instituted as an adjunct to the education system rather than the penal system, although these schools were a joint venture between the school board and the Glasgow Delinquency Board. Consequently, the schools opened at 6 a.m. and did not close until 6 p.m. On Saturdays they operated until 1 p.m. The children were provided with three meals a day. Clothing was regularly provided by charity organizations for those children

whose absence from school attendance had been occasioned by lack of shoes or respectable garments. Parents were supposed to contribute 1s. per week, but in practice were often unable to do so and parish assistance had to be sought. Glasgow also made similar provision for its vast numbers of poverty-stricken Roman Catholic children by opening Govan Street day industrial school. It can be argued that Glasgow attempted to deal with the social deprivation causes of truancy in the school board era by a return to Sheriff William Watson's principle of non-residential day industrial feeding schools.

However, near the turn of the century, truancy was still so prevalent in Glasgow that the school board was forced to establish a truant school in 1905 which operated on a short-term residential basis for those who persistently and systematically absented themselves from school. Again Glasgow took a unique step in that it operated its residential truant school for both Protestants and Roman Catholics, who were committed for an initial term of 3 months, a second term of 4 months and a final term of 6 months, following which, if their attendance at ordinary day school did not improve, they were committed to a long-term residential industrial school as incorrigible truants.[23]

Under Mitchell's influence the Glasgow School Board conscientiously and humanely struggled to increase the school attendance ratio. Improvement gradually came, in the first place, from the abolition of school fees. The first move towards free education came in 1889 and within two years all children between five and fourteen were entitled to free schooling. There had undoubtedly been many parents who had hardly been able to afford even the smallest contribution to the education of their children, but who were too proud, or too fearful of authority, to ask for the public assistance to which they would have been entitled from a Parish Council.[24] In the

second place, the increasing pace of social welfare for children and for families in the early years of the twentieth century gradually ameliorated many of the problems which kept children out of school.[25]

(ii) *Psychology*: A very important contribution to the evolution of the 'youth problem' came from the science of psychology, with particular reference to the discovery of the 'concept of adolescence'. From the 1890s there was also a growing interest in child psychology, inspired, to some extent, by the publication of *Studies in Childhood* (1895) by James Sully, founder of the British Psychological Society. The introduction of free compulsory education facilitated the bringing together of large numbers of children providing the ideal opportunity for scientific enquiry. For instance, in 1888 the British Medical Association established a committee to enquire into the 'average development and brain power' among pupils. The British Child Study Association was founded in 1894 as the result of a meeting between a group of women teachers, who were the British delegates to the International Educational Conference in Chicago in 1893, and Dr. G. Stanley Hall, the American psychologist. The first branch of the British Child Study Association was founded in Edinburgh, with the support of Sir Thomas Clouston. Following this, a London branch was opened under the chairmanship of James Sully. Under Hall's influence the Association concerned itself with the natural development of individual children rather than the condition of the child population as a whole. In 1896 a separate Childhood Society was formed to investigate physical and mental retardation among children, and in 1907 it merged with the Association to become the Child-Study Society publishing a new journal entitled *Child Study*.

Most of the important research was apparently carried out in the United States, while the British affiliations were mainly active in publicizing and popularizing the

findings of Stanley Hall and his colleagues. There was, from the beginning, a definite link between child psychology, education and the work of Dr. G. Stanley Hall. Those involved in education and social welfare, in the closing years of Victoria's reign and in the opening years of the Edwardian period, were aware that child and social psychology were providing a re-definition of old problems and formulating new perceptions of youth.[26]

In 1904, Hall published his two-volume work - *Adolescence: its Psychology and its Relations to Physiology, Anthropology, Sociology, Sex, Crime, Religion and Education*. The full title is, as Hendrick has pointed out, indicative of the breadth of his conception of adolescence as a 'stage of life'.[27] There were three particularly influential themes in Hall's theory of adolescence: the concept of adolescence as a 'separate stage of life' with its own requirements; the psycho-medical features of the concept; and, the psycho-social behaviour that was said to characterize it. Hall presented young people as being imprisoned by their own physiological and psychological development. Lacking self-knowledge and self-control, they were vulnerable to the 'dangers of modern life' which, he alleged, posed a tremendous struggle for youth between 'sin and virtue'. Hall's concept of adolescence gave expression to many contemporary anxieties and appeared to confirm what observers already believed; namely, that 'modern life is hard, and in many respects increasingly so, on youth. Home, school, church fail to recognize its nature and needs and, perhaps most of all, its perils'.

While Hall's message gained tremendous popularity in the meetings of parents, teachers, youth workers and fellow social scientists which he addressed, his writings remained generally impenetrable and difficult to read. It was as an attempt to remedy this situation that J.G.Slaughter popularized Hall by writing his more matter-of-fact

book entitled - *The Adolescent* - the aim of which was to familiarize a lay audience with a psycho-social approach to young people. By making the fundamentals of Hall's views comprehensible for the general public, Slaughter provided an added impetus to the growing importance of psychology in Edwardian age relations.

The aspects of adolescence on which Slaughter laid emphasis included - emotionalism, confusion, mental instability and a 'perpetual inclination to rebel against established order' which he attributed to an impatience with restriction and a desire for freedom. He stressed that the source of all outbursts of anti-social or criminal behaviour originated in 'the general psychological condition...when new emotions and impulses bring about an upheaval and re-formation of the whole moral situation'. This condition was inescapable because it was inherent in the nature of adolescence - a time when 'degenerate tendencies of all kinds assert themselves', and even a normal tendency or characteristic could easily lead to crime. Years of 'discipline' were required before 'the newly made character' possessed sufficient stability to prevent it being unbalanced in any one of many possible directions.[28]

Sir Thomas Clouston was, along with J.G.Slaughter, equally responsible for the popularizing of Hall's theory. Clouston, a respected Edinburgh pathologist and author, expressed his views before the 'progressive' members of Child-Study circles, which gave them a special relevance. He described adolescence as a time of 'perversions of the moral sense, of volition, uncontrollable impulsiveness, tendencies to law-breaking and crime, unteachableness, stupidities, morbid pessimism and melancholy'. Every normal adolescent 'showed a want of respect for law, a contempt for age and a restiveness to routine'. The unpredictability and the vulnerability of youth gave reason for imposing education, discipline and control on young people. Physiological and psychological fact appeared to confirm the importance of regulating

both their environment and their behaviour, and this provided an active role for teachers, parents, youth workers and social administrators.[29]

There can be no doubt, as Hendrick has argued, that youth was defined in a series of pejorative images. Middle-class observers associated youth with 'unreliability, unreasonableness, emotionalism and often neurosis'. Adjectives, such as 'fickle', 'puzzling', 'thoughtless', 'volatile', 'depressive', 'difficult', 'inarticulate', 'unfathomable', 'reckless', were used. Anti-social behaviour was seen to be a 'natural' clinical symptom of adolescence, which was transitory provided the individual escaped permanent mental and moral injury. It was at this point of the analysis that environmental and social influences were deemed to be of paramount importance.[30]

G.S.Hall's 'concept of adolescence' was not purely 'scientific'. His psychological research encompassed a vast social dimension which appealed to a wide spectrum of middle-class youth workers, sociologists, educationalists and moralists. They tended to ignore the theoretical applicability of Hall's concept to youth *per se* as a universal 'stage of growth' irrespective of social class. They directed it towards young workers, youth in the streets and delinquents,[31] thus creating a convergence of attention on disorderly working-class adolescents. Social class, as a conditioning and often determining factor, was inherent in Edwardian age relations. In their examination of the adolescent personality, commentators were very aware of the influence of 'station in life'.[32]

In the 1890s there was a degree of panic regarding 'hooliganism' which was reinforced by psychologists who perceived adolescence as the most vulnerable period for criminal behaviour. Furthermore, the criminal statistics showed a high proportion of convictions for adolescents. The majority of commentators, however, agreed that

the 'hooligan' and the 'delinquent' were comparatively rare. In writing *Studies of Boy Life in Our Cities* (1904) E.J.Urwick referred to them as 'the exceptions' and contrasted them with the 'average boy'. Rev. H.S.Pelham in *The Training of the Working Boy* (1908) remarked that the same offences committed by a public school boy would be dealt with and kept quiet by his house master. Alexander Paterson, author of *Across the Bridges* (1911) and chief administrator of the Borstal system in the inter-war years, referred to 'boyish crime' and to the 'stream of high-spirited fellows...summoned for playing football, swearing or gambling in the street', who were to be distinguished from the 'proper youthful offender' who was arrested on a more serious charge. C.E.B.Russell, Chief Inspector of Reformatory and Industrial Schools, argued, at the height of national concern over youthful crime during the Great War, that the boy who was really 'a criminal at heart' was a 'rarity'. Youthful crimes were 'expressions of animal vigour, of exuberance of spirits, of misdirected energy for want of a legitimate outlet'.[33]

The term 'delinquency' tended to be used in a loose generic sense referring to a wide spectrum of behaviour patterns which were of a nature that was likely to transgress adult, and predominantly middle-class, standards. The essential question was the extent to which adolescents were predisposed to delinquency.[34]

The inter-war years heralded a change in the perceptions of the correlation between adolescence, delinquency and social class. It was then openly acknowledged that the 'concept of adolescence' as a 'stage of life' could apply with equal force to youngsters of all social classes. Certain characteristics, including a propensity towards delinquency, could cross social class boundaries. Consequently, the juvenile crime which preoccupied the inter-war academic generation was all the more threatening because it was interpreted by some influential sources as an attribute of social and

psychological growth during adolescence and, therefore, only indirectly subject to the manipulation of environmental conditions.[35]

In the early 1920s greater attention was given to psychological factors common to all delinquents, irrespective of social or economic status. This trend was fully expanded by Cyril Burt in *The Young Delinquent* (1925). Although Burt's later work on intelligence and heredity has been discredited, this book has remained as one of the standard texts because of its comprehensive coverage of the psychological causes of delinquency.[36] Burt placed influences 'operating outside the home' low on his list of primary causes. In the debate between 'heredity' and 'environment' - or 'nature' and 'nurture' - Burt firmly perceived 'heredity/nature' to be the root cause of delinquent behaviour. He deduced that 'conduct and misconduct are always, in the last analysis, the outcome of mental life'. This conclusion may have been predictable since, as Springhall has pointed out, Burt's two hundred case studies were mainly an unrepresentative sample of adolescents referred to him for psychological examination by sentencing magistrates. However, there is no evidence that Burt's book, influential though it was, stimulated anything like a widespread conversion to an acceptance of psychological factors as being the mainspring of delinquent patterns of behaviour in the 1920s.[37] The psychology of adolescence never superseded all other influences. Social class conditioning continued to frame the perceptions of middle-class commentators. Therefore, as Hendrick has argued, the interpretation put forward by John Gillis that 'a stage of life, adolescence, had replaced station in life', or class, as the perceived cause of misbehaviour is an exaggeration.[38]

The view of delinquency which prevailed over psychological explanations, by the time the Departmental Committee on the Treatment of Young Offenders reported on the situation in England in 1927, was that which emphasized unsatisfactory home

conditions and family life.[39] In Scotland, the investigations of the Scottish National Council of Juvenile Organizations concluded that the influence of the mother was of paramount importance in the home. Of the 799 cases coming before the Edinburgh juvenile courts in 1921 -

Table 34

Mother dead	Mother working	Mother at home
54	112	633

From these statistics it is apparent that maternal influence in the home was reduced to 20.77% of the cases as a result of death or absence during hours of work. In the Edinburgh Sheriff Court, where the more serious cases of juvenile delinquency were heard, the proportion of maternal absence from the home due to death or work was 32.46%. From their observations the Scottish National Council for Juvenile Organizations was convinced that in cases where the mother either, through her absence from the home while at work coupled with indifference, or her own habits of intemperance, was unable to compensate for the irresponsibility of the father, then the family seldom escaped moral corruption and the home irretrievable damage.[40]

The Scottish Departmental Committee of 1928 recognized the psychological stress of family life in city slums in houses which lacked every attribute of a home, causing the father to spend as little time there as possible and the mother, old before her time, to succumb to futility of effort.[41] In compiling their report on delinquency in 1937 the Bailies of Edinburgh concluded from a questionnaire circulated to local persons and organizations interested in the welfare of children and young persons, that drunkenness was much less prevalent as a factor in family disruption than it was before the First World War. What was causing more concern in 1937 were the effects of unemployment. Of itself, unemployment among the fathers was not considered to be an adequate explanation for acts of delinquency committed by younger members of the

family. Indeed, it could be presumed that the father's opportunity for supervising the family would be increased. In actual fact, unemployment had certain negative effects upon the father, such as loss of interest in his home and loss of self-respect. In consequence, the father's interest in the family was diminished, leading to a general deterioration in family discipline and standards.[42]

There was a general consensus of opinion in several British studies in the inter-war years that the existence of criminality in a family increased the probability of the younger members of the household committing offences.[43] Indeed, the members of the Scottish National Council of Juvenile Organizations were struck by the number of cases involving the theft of coal, coke and firewood from railway sidings and industrial premises in Edinburgh. From the particulars of the cases investigated, the Council was forced to conclude that the coal (etc.) was stolen at the request of parents. In many of the cases which came before the Edinburgh juvenile courts in 1921 it was found that parents, perhaps because of their own criminal tendencies or social inadequacy, had not made any effort to instruct their children in the facts of honesty and dishonesty.[44]

However, in the inter-war years, there was an awareness that there was no simple pattern of cause and effect relating to the manifestation of delinquency. For instance, the incidence of criminality in the family could only be regarded as an indication of the probability of criminal inheritance. Not all youthful offenders came from criminal backgrounds; it was surprising how many came from law-abiding families.[45] Nor was there any absolute rule that all latchkey children; youngsters from single parent families, or broken homes, or suffering maternal deprivation; adolescents whose fathers were unemployed, or whose families were under psychological or social stress, would express their emotions in deviant forms of behaviour. Under such conditions of family adversity delinquency was manifest in individuals who were

particularly susceptible emotionally, perhaps as the result of their adolescent stage of development in combination with varying degrees of parental neglect, rejection, inconsistency in discipline or separation at crucial stages of development.[46]

This argument was perceived to have particular relevance to the small minority of girls who became persistently wayward. It was alleged that such girls, in nearly all cases, came from a family background of discord and hostility, and as a protest against family attitudes and disciplinary imbalance, or as a way of finding affection which was lacking in their childhood, their capricious adolescent behaviour nearly always turned to promiscuity. These girls were frequently found to have had difficult relationships with parents whose marriage lacked stability. Girls who added thieving to their deviant behaviour had,in most cases, suffered separation from, or rejection by, parents.[47]

By the late 1920s delinquent behaviour was perceived to originate in an inimical situation within the family circle; a situation which had perhaps, but not necessarily, resulted from external social or economic pressures. Such situations exerted the greatest psychological and social strain on young people, even those from apparently comfortable and secure homes.[48] The perception of delinquency as a sequel to neglect became, in the inter-war years, less centred on material impoverishment and more cognizant of the effects of a combination of social and psychological deprivation. Out of this emerged the psycho-social approach to the problem of delinquency which viewed youthful offenders as individual human beings, each with their unique psychological composition, social or family problems and deviant patterns of behaviour. The legal protocol of the juvenile courts increasingly demanded background information,not only on the home and social environment of each case, but also on the psychological condition of the offender. This appreciation of the individual psycho-social nature of each case led to an increased concern that great care be taken to

select the most suitable method of treatment for each child or adolescent appearing before the courts as either an offender or in need of care and protection.49

3. 'Youth Labour' Problem

Increasing popular anxiety about 'national efficiency' in the early years of the twentieth century occurred almost simultaneously with the public debate on 'boy labour' and with the popularization of the concept of adolescence. It is highly probable that the ideas coming out of the 'national efficiency' movement influenced middle-class perceptions of working-class youth. For instance, activists in the 'boy labour' debate used terminology such as 'human material' and the 'waste of resources'. The 'national efficiency' controversy provided youth reformers with a framework within which they could set their economic and social criticism, and this gave the 'youth problem' a new degree of urgency and political relevance.

The connection between the 'youth problem' and the search for greater efficiency in all aspects of the nation's affairs lay in 'the condition of the people'. This, in turn, found a wider context within social-Darwinism with its aims of promoting a fit people in order to achieve racial effectiveness and the ability to compete for survival and supremacy internationally. The science of eugenics was the most popular expression of these notions and its advocates represented Britain as wasting its human resources. The symptoms of this, it was claimed, were the declining birth-rate and the apparent physical deterioration of the population, in particular 'incapacitated manhood'. The miserable performance of the British Army during the Boer War and the high proportion of recruits turned down on medical grounds provided a wealth of evidence for such arguments. Anxiety with regards to the 'womanhood' of the nation centred on the living and occupational conditions of working-class girls and women, their child-bearing, child-rearing and domestic abilities. However, the dominant concern remained

the prospects of British manhood in the military, economic, imperial and parental spheres. Within this context 'boy labour' and its ancillary aspects came to be seen as part of the 'social problem' and the difficulties associated with youth were felt to require urgent solution.[50]

By the 1890s young workers were not only recognized as an important component in the labour market, but they had also come to be recognized as an identifiable economic and social problem. The opinions of the Webbs and Booth, as well as the influence of the Labour Commission and the growth and radicalization of the trade unionism, turned the employment of adolescent labourers and apprentices into an issue that could not be ignored.[51]

After 1880 the problem areas of industrial relations were centred not only on 'manning levels' and 'demarcation', but also on apprenticeship ratios. Business confidence had been shaken and profit margins reduced by the combined effects of the 'great depression' and foreign and domestic competition. Consequently, employers looked for ways to cut costs. The evidence given before the *Royal Commission on Technical Instruction 1884* and the *Royal Commission on Depression of Trade and Industry 1886*, reflected the growing concern among trade unionists, social scientists and administrators regarding the role of the young worker. In the minds of tradesmen all categories of juvenile labour (and female labour) were seen as a threat to the status of skilled workers and the wage rates of adult males. Trade union witnesses made three claims before the *Royal Commission on Labour 1891-94* - firstly, apprenticeship was either in decline or being disregarded by employers; secondly, the introduction of new machinery created a tendency among employers to substitute juveniles for adults; and thirdly, half trained apprentices were being exploited as semi-skilled workers.

The Webbs treated the problem of youth labour very seriously in both the 1897 and the 1902 editions of their *Industrial Democracy*. They regarded 'boy labour' as a 'serious evil', and they deplored the fact that industrial organization absorbed youths between the ages of 14 and 21 to do unskilled and undisciplined routine work for long hours at comparatively high wages for boys. They learned no trade and were simply thrown aside into the ranks of unskilled labour as soon as they required a man's wages. Alfred Marshall, the economist, condemned the 'growing demand for boys to run errands and do other work that had no educational value' - in other words, 'blind-alley' work. The writings of Charles Booth were particularly apposite in their description of the extent of juvenile labour and the multifarious ways in which it was used. Booth drew particular attention to the fact that the 'whole system of apprenticeship was dead or dying'; and that parents were all too willing to place a boy in work for the sake of augmenting the family income with no forethought to his future maintenance. There tended to be a haphazard transition from school to full-time employment. Booth warned that the only future for such young people was a gradual drift downwards through the ranks of casual labour and into the mass of the 'unemployed'.[52]

The emphasis in perception of the 'youth labour' problem was generally applied to boys - hence, it was most frequently referred to as the 'boy labour' problem. Sidney Webb, in giving evidence to the Poor Law Commission, admitted to having made no reference to 'girl labour', but he acknowledged that this was a parallel problem. In the case of adolescent labour, the 'decline' of apprenticeship and the creation of a casual labour class were always viewed as a male rather than a female problem, as was 'blind alley' employment. Although the conditions of unskilled and 'dead end' labour were often the same for boys and girls, the long-term social and economic effects, relating to skill, wages, and the support of the family were usually viewed from the patriarchal perspective. Regardless of the widespread use of their labour throughout the economy

in domestic service, dressmaking, factory, clerical and shop work,girls had only two socially significant identities; namely, those of wife and mother.[53]

Investigations into the training of youth in Scotland in the first decade of the twentieth century revealed a similar situation. Dr. Alexander Scott declared that the years between the ages of 14 and 16 had become known as 'the great years of forgetting and undoing', instead of being treated as perhaps the most important for the formation of character and the assimilation of knowledge. At the approximate age of 14 young people were sent out into the adult working world with nothing to safeguard them either morally or intellectually.[54] Many adolescents failed during this stage of their lives to adjust adequately to the social demands placed upon them as specified by home, work and recreation. They lacked supervision and guidance.[55] On leaving school young people were being drawn into unskilled work with short term prospects. In most cases boys and girls left school without any guidance regarding employment. The first job offered was usually taken. The employment was frequently of short duration because employers tended to deal with young people as though they were convenient machines, easily replaced. The necessitous condition of parents, in too many cases, meant that they regarded their children as financial assets to be exploited, and were indifferent, or even hostile to their future welfare.[56] The saddest fact of all was that the poor prospects in such work were not recognized until a year or two later when the lad asked for a man's wage and was fit only for a boy's work. By the age of 16 he had, in all probability, forgotten much that he knew when he was 14, and, what was more serious, he was less capable of learning. A sense of being trapped into work which was devoid of interest and future prospects had a demoralizing effect, drawing young people towards the ranks of the unemployable.[57]

It was almost impossible for boys to be apprenticed to a trade until they were 16 years of age. From his experience as a factory surgeon in Glasgow, Dr. Alexander Scott claimed that it was absurd to suppose, that after either running wild for two years or taking various jobs on a short term basis, a lad would settle down to study as an apprentice.[58] In Glasgow not more than 50% to 55% of the apprentices completed their time as engineers and obtained first or second class lines. Of those who dropped out 15% deserted the trade voluntarily before the completion of their time; 2.5% left to join other trades; 7% were accounted for by ill health; no fewer than 15% were discharged for insubordination, including bad time-keeping. In some engineering works the percentage of those discharged amounted to nearly 25%. In almost every engineering establishment the 50% (approximately) who completed their time correlated with the proportion of apprentices who attended evening classes. In the boiler-making trade, 40% completed their time; 35% left; 3% were accounted for by ill health and 22% were discharged. In the iron and steel industry there were two well defined categories of work. Where the operatives were paid by time the workforce was generally steady and regular and 90% of the apprentices completed their time. Only 3% of the apprentices attended evening classes, but it is to be noted that 3% of the apprentices eventually became foremen or managers. In piece-work shops the operatives were generally unsettled, irregular, intemperate and migratory in habits, making discipline and organization difficult to maintain. Dr. Scott was of the opinion that this example had an immoral effect on the character of the apprentices. There was no evidence of any apprentices in the piece-work shops attending evening schools. In one piece-work shop the master employed fourteen apprentices, and to show interest in their welfare he paid all their expenses for a full term of continuation classes. The results were disappointing; only twelve attended for one week, and two for a full month, illustrating the contention that these boys, having had uncontrolled freedom from their fourteenth to their sixteenth year found it very difficult to settle down again

to study, even if they were moved by a temporary desire to learn. What they needed was the firm direction of the state as well as the friendly influence of employers and social agencies to steady their characters and save them from undisciplined habits and lawbreaking conduct.[59]

There was a consensus of opinion among observers in Scotland and England that 'boy labour' involved a 'moral evil'; a lack of 'salutory discipline' and a precocious sense of independence which was encouraged by the earning of wages which more than sufficed for a boy's needs. It was alleged that young labourers, at the critical age of adolescence, became victims of whim and impulse, finding an outlet for their energies in some form of 'hooliganism' and in the excitement of the streets.[60]

Street trading was generally regarded as one of the worst aspects of the 'youth labour' problem. The demoralizing nature of street trading and its direct connection with delinquency and crime was recognized unanimously by Chief Constables, clergymen, probation officers and social workers. There was little doubt that the street was a training ground for crime and moral degradation. The *Report of the Edinburgh Police Establishment 1902* stated that in Edinburgh street trading was conducive to boys becoming thieves, 'loafers' and gamblers, while the girls learned degrading and vicious habits leading them eventually into prostitution.[61] R.H.Tawney, writing in the *Economic Journal* (1909) cited figures provided by the Chief Constable of Glasgow to show that messengers, van-boys, street-traders and young labourers were susceptible groups who were very liable to be led into crime.[62]

Any good home influence there may have been on these young people rapidly declined, their lives hardened as their business made them abnormally cute at deceiving or cheating with change; frequent possession of money hastened their moral corruption

and bad companions completed their downfall from respectability.[63] It was generally assumed that once involved in undisciplined means of earning a living as van-boys; trace-boys; touting for carrying parcels; acting as 'scouts' and 'runners' for bookmakers; hawking newspapers, matches, flowers and other articles; shoeblacking; playing, singing or performing for profit in streets or public places, there was little hope of young people taking part in regular, honest, work in later life.[64]

There was no doubt in the minds of social commentators on the 'youth problem' that there was a relationship between 'blind alley' occupations, the worst aspect of which was casual employment and street trading, and unemployment. Unemployment was generally acknowledged to be the root of crime, vagrancy and prostitution.[65] The *laissez-faire* state of the juvenile labour market contributed to the excess of unskilled workers and to the perpetuation of a class of casual workers. In addition to the negative consequences which directly affected the adolescents themselves, there were long-term repercussions in adult unemployment, poverty and the demoralization of workmen and their families.

The correlation between unskilled and casual labour and unemployment was examined in detail by the *Majority and Minority Reports of the Poor Law Commission 1905-1909*. In giving evidence to the Commission, Sydney Webb claimed that the growth in the number of van-boys, messengers and errand boys in large urban areas was leading to the recruitment of 'an excessive army of unskilled, casually employed, merely brute labour' while the 'growing up of hundreds of thousands of boys without obtaining any sort of industrial training, specialized or unspecialized amounted to 'a perpetual creating of future pauperism, and a grave social menace'. Other influential witnesses, such as Bray, Tawney, Urwick and Michael Sadler, the educationalist, expressed similar opinions and the Commission was sufficiently impressed with the

serious nature of the issue to appoint Cyril Jackson to make further enquiries. Jackson's *Special Report* verified the connection between 'boy labour', unskilled work and unemployment. He concluded that those who failed to find permanent jobs during their adolescence grew up to swell "the army of general labourers who form the class from which the casual, the under-employed and the unemployed are drawn'.[66]

Social commentators were not only concerned with the economic realities of the problem, but also with the observation that unskilled and casual labour could lead to a 'pauperized character'. The Webbs analysed that a perpetual discontinuity of employment weakened the desire and the ability 'to work regularly'; it encouraged 'loafing habits' which led to gambling and drinking; in addition, 'zeal, fidelity and even honest effort' were lost sight of and an 'inferior character' was produced. A home run on financial insecurity was prone to an accumulating depression and the demoralization of both husband and wife, leading to excessive drinking and child neglect. The Webbs were of the opinion that the children from such homes were more likely to become the inmates of reformatories and industrial schools and, when they grew up, more likely to be without a trade, doing casual work, and thus continuing the 'cycle of deprivation into another generation'. Hence, the question of 'boy labour' was a problem not only because, in economic terms, it left the majority of youths without clearly defined 'skills' and aptitudes, but also because, in the social dimension, it could lead to the creation of an unemployable casual class exhibiting precocious independence, immorality, potential delinquency, lack of self-control, thriftlessness and 'immoral habits of life'.[67]

With regards to the whole question of adolescent labour, work training and education, the *Majority and Minority Reports of the Poor Law Commission* were in agreement that the state of affairs was very unsatisfactory and upon it was dependent

much of the crime and social deterioration in the population.[68] Out of the new understanding of poverty and unemployment came pressure for the creation of a 'scientific social policy' for dealing with these problems.[69]

Control had to be exerted over the abuse of juvenile labour in street trading. The Departmental Committee appointed by the Secretary of State for the Home Department in 1909 had as its terms of reference -

> To inquire into the operation of the *Employment of Children Act 1903* and to consider whether any, and what, further legislative action, or restriction, was required in respect of street trading and other employments dealt with in that Act.

Important evidence from Scottish witnesses was included in the *Report of the Departmental Committee on the Employment of Children Act (Cmd. 5229), 1910.* The report recommended that street trading by boys be wholly prohibited by statute up to the age of 17, and that street trading by girls be similarly prohibited up to an age of not less than 18. Positive action was not taken until 1918 when section 16(2) of the *Education (Scotland) Act* stipulated that 'No child or young person under the age of 17 shall be employed in street trading'. However, it was held in the courts that while this Act prohibited an employer from employing a person under the age of 17 in street trading, it did not absolutely prohibit the young person from so employing himself. The *Employment of Children Act 1903 Amendment (Scotland) Bill* was introduced in the House of Commons as a government measure in 1922 to amend the enactments relating to street trading and to prohibit all street trading by persons under 17 years of age. The Bill awaited a third reading when parliament was dissolved in 1922.[70]

The re-establishment of control over adolescents was seen by many reformers to lie within the context of schooling. Reformers who followed this line regarded the elementary school as the most important agency of socialization and they regretted the abrupt ending of its authority when the pupil reached school-leaving age. The

transition from school to work was made too quickly and usually without careful thought. Consequently, working-class adolescents began their working lives in a 'haphazard' way. Suddenly free from adult supervision and encouraged by their new wage-earning status they 'naturally' followed their own self-destructive impulses. The basic premiss was that they could not be expected to do otherwise because the psychology of adolescence proved that during these critical years all adolescents were liable to display the same characteristics. However, among middle-class youth, such tendencies were supervised and controlled by parents, and by the public schools which made every effort to prolong boyhood for their pupils who remained at school well into their teens.[71]

Consequently, there was pressure for a comprehensive extension of day-time continued education from many quarters, including government committees, teachers' organizations, the Workers' Educational Association, the Labour Party, and the Liberal-inspired Educational Reform Council, as well as from influential individuals in the field of education, such as Michael Sadler. A number of Bills were presented in the House of Commons between 1908 and 1914, but without success, as far as the situation in England was concerned.[72] In Scotland legislative action was taken in the *Education (Scotland) Act 1908*. The provision of further instruction in the form of continuation classes for all young people above the age of 14 who wished to attend was made the duty of School Boards. They were given permissive powers to enforce attendance at such classes up to 17 years of age, but only in cases where young people were not otherwise receiving a suitable education. The course of instruction was to relate to the crafts and industries of the locality and to include English language and literature, the laws of health and make provision for suitable physical training.[73]

The First World War radicalized informed opinion on educational matters. The pre-war concern with the 'boy labour' problem in its social and economic context was amplified by new anxieties relating to working-class youth which came with the start of war. There was particular concern over the rising rate of juvenile crime as well as fears, which were perhaps exaggerated, regarding the consequences of high wages and precocious independence. With most of the fathers in the forces and the mothers in full-time war-work there was little supervision of young people who were earning high war-time wages. In the latter part of the war, what was considered to be of even greater consequence was the participation of adolescents in society when 'reconstruction' promised both efficiency and a liberal, social democracy in which all citizens had a role to play.[74]

In 1916 H.A.L.Fisher was appointed President of the Board of Education. Part of his brief was to introduce some order into the whole field of adolescent education, which, because of the increase in juvenile delinquency and mounting industrial unrest, was believed to be a social issue of some importance. In his Education Bill, Fisher introduced clauses making provision for day continuation classes for all those aged between 14 and 18. The intention was to change the public perception of the juvenile 'as primarily that of a little wage-earner' to that of the young person who was 'primarily the workman and citizen in training'. During its passage through the House of Commons, however, an amendment was introduced by representatives of various groups of employers, which postponed, for seven years, the extension of continuation classes to those aged between 16 and 18. The *Education Act 1918* only, therefore, made provision for continuation classes for those in the age group of 14 to 16.[75]

In Scotland the *Education (Scotland) Act 1918* required every education authority to submit, for the approval of the Scottish Education Department, a scheme of

continuation classes for young persons under 16 years of age to be followed by similar proposals for those between the ages of 16 and 18. The minimum attendance requirement proposed was 320 hours per annum with instruction being provided between the hours of 8 a.m.and 7 p.m. It was intended that attendance at these classes be made compulsory for all who left school at the minimum age of 14, but this provision was never put into effect.[76]

The few continuation schools which were established following the Education Acts of 1918 were closed within a few years. The major obstacles to the experiment were, in the first place, the Geddes axe which placed education on a low priority in an economic climate of financial restraint; secondly, local education authorities lacked enthusiasm in submitting their schemes; thirdly, the beginning of opposition from teachers' unions and the Labour movement in favour of 'secondary education for all' and a school-leaving age of 15; and finally, the opposition of large sections of industry, including the Federation of British Industries.[77] A.J.P.Taylor has commented that had these schools survived they would have provided a strictly proletarian education and so have further emphasized the class division in education.[78]

Further developments on the line of creating a 'scientific' social policy to control the working youth of the nation came from Beveridge and Churchill, who were very influential in promoting a policy to make special provisions for young people in terms of vocational guidance and juvenile labour exchanges.[79] Beveridge shared the general concern about the untrained, unregulated, and unsupervised adolescent workforce, and he was of the opinion that it was not possible to segregate the behaviour of the young workers from the larger problem of unemployment. He argued that the use of labour exchanges to encourage vocational guidance and industrial training would have three consequences: in the first place, it would reduce risks of

individual 'maladjustment' which often resulted in waste of abilities and even unemployment; secondly, it would adjust the flow of labour between trades; and thirdly, it would discourage 'blind alley' occupations. In 1908 Beveridge joined the Board of Trade as an unestablished civil servant when Winston Churchill was president.[80]

Churchill gave his approval to the idea of labour exchanges. In a cabinet paper drafted by Beveridge in January 1909, under the section entitled 'Juvenile Employment', he expressed the view that the labour exchange should be more than a place of registration and placement. For young people it should be 'both a market place and a centre of guidance and supervision in the choice of careers'. He proposed that there be separate facilities at each exchange for dealing with juveniles; notices with information about the exchanges were to be displayed in schools; lists of prospective school-leavers to be forwarded to the local exchange with details of their 'ability, tastes and desires', and each school-leaver was to be instructed to call at the exchange for an interview. In this way, he believed, boys and girls would get the opportunity of career guidance, and those who were going to be apprenticed or learn skilled trades might have all their arrangements made before leaving school. Beveridge also recommended the establishment of special Juvenile Advisory Committees' at the exchanges with representatives from education authorities. These special committees were to work in co-operation with the schools and their duties were to include supervising conditions of labour; making recommendations as to continuation and technical education classes; directing 'a public opinion' against 'blind alley' occupations; organizing apprenticeships; and, caring for juveniles with special disabilities.[81]

It is plain that Beveridge recognized young workers as a separate source of labour supply requiring specialized provision. He was in agreement with the

apprenticeship and Skilled Employment Association and the 'boy labour' reformers in wishing to see the transition from school to work treated as an educational matter,but not necessarily controlled by the Board of Education. Beveridge's thoughts were directed principally towards making the labour market more efficient. Along with others he saw adolescent labour as an obstacle to efficiency, not only because it lacked awareness of employment opportunities and the ability to evaluate different occupations,but also because its inherent 'adaptability' was 'wasted' by the 'haphazard' nature of the school-to-work transition which left too many youths in 'blind alley' work and failed to enrol them in any form of further education.[82]

The whole scheme was drafted on the basis of a co-operative effort between the Board of Trade and the Board of Education operating through their respective agencies of the labour exchanges (Juvenile Advisory Committees) and local education authorities. Beveridge regarded the local education authorities as unsuited to cope with the administration of the service by themselves. In opposition to this, Sir Robert Morant, the powerful Permanent Secretary at the Board of Education, was determined to secure for education committees the sole right of both advising and placing juveniles in employment. Morant and others were aware that for the previous ten years several local education authorities including Sheffield, Nottingham, Wigan, Liverpool, Carlisle, Finchley, Bolton, Cambridge and, in Scotland, Edinburgh, had been experimenting with their own employment schemes.

Further advocacy for the educational side of the dispute was conducted by Mrs. Ogilvie Gordon, chairwoman of the Education Committee of the National Union of Women Workers and an experienced campaigner on behalf of vocational guidance for young people. At a meeting in Glasgow in 1904, she had proposed the establishment of a national system of 'Educational Information and Employment Bureaux' to be run

by the local education authorities. Her scheme made little impact in England, but in Scotland it gained influential support and it was adopted by the Scottish Education Department, which agreed to give school boards 'choice of employment' powers under the *Education (Scotland) Act 1908*. Mrs. Gordon's particular interest in the educational aspects of vocational guidance was to help to 'humanize the roughest elements among our young population'. She expressed these views to Morant, who was known to be anxious to find a way of humanizing, not simply young people but the entire labour force. She also aired her views to Churchill, emphasizing that without the Board of Education (or the Scottish Education Department) the Board of Trade was 'powerless' to make 'a better worker, a better man, or a better citizen of the young worker'. It is, therefore, apparent that vocational guidance, registration and placement of school-leavers were seen to relate to more than simply the organization of the labour market; these provisions were seen as essential to the incorporation of working-class adolescents into, what social theorists referred to as, 'the community'.[83]

The *Labour Exchanges Bill* was passed on 16 June 1909, and the new exchanges opened in February 1910. The Act made no specific reference to special provision for young workers. However, it was well known that Beveridge, Churchill, Llewellyn Smith and Asquith, were intent on setting up a scheme for juveniles. The question was raised in the Commons during the debates on the Bill, when Churchill indicated that the Board of Trade hoped for co-operation between labour exchanges and local education authorities in the sharing of information, and that in certain instances Juvenile Advisory Committees could be established. Where this did not happen it would be possible for part of the membership of the Exchange Advisory Committees (provided for in the Act) to be co-opted to assist with the Local Education Employment Bureaux which were being started in Scotland and in some areas of England. Churchill emphasized that 'boy labour' would be dealt with in conjunction with education

authorities because there was no intention of allowing the commercial side to over-ride the educational side in regard to young people.[84]

The draft regulations, which Beveridge had written in December 1909 were published in February 1910 to coincide with the opening of the labour exchanges. These rules clarified the situation to the effect that the Board of Trade was more or less in control of the employment service for young persons, co-operating with other agencies when and where necessary, although local education authorities which already had, or might have in the future, statutory powers for dealing with juveniles, were permitted to submit schemes for the exercise of these powers, provided they obtained the permission of both the Board of Trade and the Board of Education.

The Board of Education was discontented with the rules. In August 1910 the Board introduced its own legislation as the *Education (Choice of Employment) Bill*, which empowered local education authorities to create and finance their own Juvenile Employment Services. Immediately before the passing of the Act, Beveridge and Llewellyn Smith attended several conferences with representatives from the Education Board. A joint memorandum was published which was intended to clarify the position in a 'spirit of co-operation'. The memorandum emphasized that in the employment of young people priority should be given to their 'educational interests and permanent careers rather than that of their immediate earning capacities'. Consequently, local education authorities were urged to undertake their new responsibilities and to exercise them 'in the fullest co-operation with the national system of labour exchanges'. Areas where the Board of Trade already operated Juvenile Advisory Committees, or were about to do so, were to be excluded from local education authority schemes. If, however, there remained,by the end of 1911, certain areas in which local authorities

had not exercised their powers, then further Juvenile Advisory Committees could be established by the Board of Trade.

The areas of responsibility of the two departments were defined in the following terms: the education authorities who operated a service under the Act of 1910 had to confine themselves to 'interviewing, advising, registering and selecting juvenile applicants', while the labour exchanges would 'register vacancies, place juveniles with employers and oversee their progress during the early years of employment'. In practical operation this distinction was almost impossible to maintain, especially as the exchanges and the education employment committees often failed to provide each other with the necessary information. This situation prevailed,with some modifications, throughout the 1920s and 1930s.[85]

4. Leisure

In the opinion of social commentators the dangers of adolescent freedom and independence were most obviously demonstrated in their leisure pursuits. Concern centred on, not simply the nature of the recreations, but on the fact that involvement in them exposed young people to thriftless and dangerous habits while giving them the opportunity to mix with an unwise selection of acquaintances, perhaps including undesirable adults. Disapproval was most frequently directed against 'aimless' street life; music halls and the cinema; smoking and gambling; the reading of a 'low' type of literature; playing games in the wrong spirit which involved lying and cheating; and, informal social conduct in which 'coarse' behaviour between the sexes was too much in evidence.

All of these activities occurred within the urban environment, which was always a major theme in all aspects of social criticism. Many social scientists described the city

as having an 'organic' and often 'diseased' life of its own and it was universally recognized as 'the centre of modern social problems'. Since the 1880s the 'theory of urban degeneration' had promoted the idea that cities were responsible for the physical and mental deterioration of their populations. The impact of the Boer War and the *Report of the Physical Deterioration Committee*, as well as the scare over the falling birth-rate, kept the racial deterioration factor and the question of urban health problems to the fore in discussions about imperial security, economic competitiveness and social stability throughout the Edwardian period.[86] C.F.G.Masterman, a leading New Liberal, detected in the city crowd 'a note of menace' in its 'waywardness, its caprice, its incalculable mettle temper' denoting a potential for 'violence'. The terminology Masterman used did not differ in quality from that used by commentators regarding adolescents. The young worker was a member of the city crowd, which, in the opinion of many observers, made him both threatening and vulnerable. It was common knowledge that young people had always been involved in crowd activity and had participated in strikes, including school strikes - facts which carried a considerable degree of impact in a time of industrial unrest. Canon Scott Holland commented that the city offered 'one vast field of temptation' bribing the boy 'to live for the day and forget the morrow'.[87]

(i) *Street culture*: The street was frequently proscribed as a place of suspicious activities where 'hanging around' or 'wandering about' habituated young people to loud and vulgar behaviour,foul language, smoking and gambling.[88] John Springhall has pointed out that one of the more dangerous facets of the 'unstructured' street leisure activities was that in certain urban areas, at certain times, games such as pitch and toss, could overlap with a genuine criminal 'milieu' or delinquent subculture.[89]

In areas of inadequate housing and overcrowding very little social control could be exercised over children outwith school hours, or, more particularly, over young people beyond school age, who were forced to spend a great deal of their time on the streets with nothing positive to do or anywhere to go. In discussing the provision of working-class housing in Scotland, J. Butt has provided evidence that, while an active policy of slum clearance was pursued by many local authorities, very little effort was directed towards new building for the purpose of re-housing displaced families. Indeed, between 1890 and 1913 only 3,484 families were re-housed by local authorities; on average, approximately 151 each year. The Royal Commission on Housing in Scotland, appointed in 1912, but not reporting until 1918, recognized that the provision of new houses was essential because, as dispossessed families were forced out they aggravated the problems of overcrowding in other districts.

Table 35

Housing distribution among families % in 1901

Accommodation	Aberdeen families	Dundee families	Edinburgh families	Glasgow families
1 Room	13.1	19.7	17.0	26.1
2 Rooms	37.3	52.1	31.4	43.6
3 Rooms	26.2	16.5	19.2	16.5
Totals	76.6	88.3	67.6	86.2

In analysing the Census of 1901, Butt has demonstrated that 11.02% of the total population of Scotland were living in one apartment housing. In 1911 it was apparent that 56% of all single roomed residences were occupied by more than two persons, and over 20% had an occupancy rate of five or more persons, frequently including at least one lodger. The occupancy rate of more than two persons per room also applied to 47% of two apartment dwellings and 24% of three roomed houses.[90]

The Departmental Committee of 1928 included in its report statistics from the Census of 1921, which revealed the extent of overcrowding in the four major cities of Scotland.[91]

Table 36

Name of town	Living more than 2 but not more than 3 per room	Living more than 3 but not more than 4 per room	Living more than 4 per room
Edinburgh	78,385	33,773	14,859
Glasgow	263,365	162,429	114,837
Dundee	41,485	18,453	8,116
Aberdeen	36,822	13,014	3,479

the number of one-roomed houses in 1921 was as follows

Edinburgh	Glasgow	Dundee	Aberdeen
7,879	40,689	6,650	3,172

There were many instances where very large families were living in very cramped conditions. In looking specifically at the situation in Edinburgh the Scottish National Council of Juvenile Organizations compiled statistics which indicated that 69.28% of the offenders coming before the Edinburgh juvenile courts in 1921 came from homes where the rent did not exceed 30s. per month. The accommodation in such properties was inadequate. Young people did not have the space for indoor games,nor did they have those facilities for outdoor organized recreational games and activities in private house gardens, open spaces and playgrounds which their more fortunate middle-class contemporaries enjoyed both at school and at home.[92] Working-class youth in the overcrowded urban areas had little option but to spill out into the streets attracted to the cheerful gossip of the sweet shops, the 'glitter' of the ice-cream parlours and the chip-supper bars.

In writing *The Growing Generation* (1911), Barclay Baron cited an enquiry conducted in Scotland which concluded that ice-cream shops encouraged the free mixing of the sexes, drinking, smoking and 'rough horseplay' and were often frequented by prostitutes.[93] The Scottish National Council of Juvenile Organizations observed that in the vast majority of cases which came before the Edinburgh juvenile courts in 1921, leisure time was used for playing football in the streets, and, in the case of older lads, for frequenting billiard saloons. A great deal of time was spent in street or 'stair head' gambling, or simply in 'loafing' on street corners.[94]

It was, as Springhall has argued, difficult for middle-class observers to recognize 'loafing' about on street corners as a form of leisure activity. This pattern of behaviour was generally regarded as threatening, offering opportunities for various types of rule-breaking or 'getting into trouble'.[95] However, Hendrick has claimed that not all contemporary middle-class observers were hypercritical in their observations. Rev. S.J.Gibb and Alexander Paterson, for instance, appreciated the social pleasure of mere gossip at the street corner, or a discussion of cricket or football over the counter of an ice-cream shop. E.J.Urwick recognized, on the one hand, the disorder of street culture, while, on the other hand, he appreciated its complex influence on the growth of the boy and girl. He perceived the main problem of street corner leisure to be the fact that there was too much of it filling too many hours of a young person's life, '...so that its freedom, sociability and opportunities for play lead only to habits of aimlessly killing time by knocking about waiting for some diversion to turn up'.[96] Implicit in these remarks is the search for a more ordered pattern of leisure and 'rational' recreations for working-class youth.[97]

(ii) *Betting and gambling*: There was a recognized requirement for stricter control over the behaviour of children and young people with regards to betting and gambling. Gambling in general was believed to be on the increase and, with reference to young people, it was regarded as an 'elusive evil' giving boys an 'unhealthy craving for excitement', turning them into bad workers, introducing them to a style of life which weakened 'the hold of moral principle and the spirit of religion.'. Evidence given before the *House of Lords Select Committee on Betting 1902* indicated that among the young gambling had almost become 'a form of insanity' which taught them 'low cunning' instead of 'character' and hastened their deterioration into 'moral and intellectual wrecks'. Leading youth workers were in agreement that sports and games, especially football, were being 'perverted' by petty gambling which was one of the 'earliest vices' that boys acquired.[98] Popular street games, such as 'pitch and toss', which attracted betting circles, were regularly broken up by the police in an effort to keep the pavements clear. Police arrests for such non-indictable 'crimes' as gambling in the streets by adolescents and children were bringing the police into a certain amount of disrepute before 1914. However, the police had public approval for their efforts where adolescent street gambling merged into actively 'criminal' large-scale adult gambling.[99]

In view of the direct relationship between betting, gambling and crime, the Scottish Departmental Committee of 1928 considered that some instruction in the moral harm and economic folly of street gambling and betting should be given to boys and girls during their last two terms at school. The Committee also recommended that it should be an offence to cause a person under 17 years of age to deliver betting slips, money or other betting information to a bookmaker or his representative. Furthermore, the liability of bookmakers, under the *Street Betting Act 1906* and the *Summary*

Jurisdiction Acts, to pay fines for conducting betting transactions with persons under the age of 16, should be raised by one year to the age limit of 17.[100]

(iii) *Smoking*: There was much concern among social commentators on the growing prevalence of juvenile smoking. The *Report of the Physical Deterioration Committee* commented on what it regarded as the extremely harmful effects of this 'noxious habit' on the youth of the nation. Smoking was regarded as leading in general to national physical deterioration and, in particular, to the rejection of army recruits on the grounds of 'smoker's heart'. The *Report of the House of Lords Select Committee on the Juvenile Smoking Bill (1906)* stated that, in addition to making individuals prone to disease, it led to the 'habit of drink; and encouraged a lack of self-control and even delinquency. The reason why smoking was regarded with such concern was that, in common with tea and alcohol, it was believed to be a brain stimulant and the psychologists had convinced observers that uncontrolled stimulation, particularly of the adolescent, could be extremely dangerous.[101]

(iv) *The Penny Theatres and the Music-Hall*: The penny theatres, or 'gaffs', were places of cheap, staged entertainment, usually offering a repertoire of 'sensational' mimed dramas, for children and young people of both sexes in the age-group eight to twenty. They were a cultural and recreational form that was unique to the Victorian urban working-class young. These cheap theatres flourished in urban centres throughout Britain from the 1830s until the early 1880s, although they continued for much longer in areas such as the East End of London.[102] In some of the Scottish urban areas, notably in Glasgow, several 'penny geggies' continued to operate until 1914, but the one at Old Vinegar Hill survived until about 1921. In Dundee, John Young's 'penny gaff' in the Alhambra continued performances until 1904.

The major charges made against the penny theatres were that obscene songs and dances formed a large part of their repertoire and that they were regular meeting places for juvenile criminals. Springhall has claimed that the 'penny gaffs' reveal, not only a great deal about childhood, adolescence and recreation in the Victorian period, but the vigorously expressed middle-class opposition to them sheds light on the various strategies of social control available to the authorities. Such entertainments ran contrary to 'rational' temperance pursuits and to the public school code of Christian manliness which set the general tone of youth work during the later decades of the nineteenth century. The 'penny gaffs' did not provide the proper moral and religious framework that the 'respectable' classes believed was necessary for the socialization of the ordinary adolescent into the prevailing urban-industrial order. It was not the tightening up of the almost unenforceable theatrical licensing laws in the 1870s that heralded the demise of the penny theatres, but rather the rise of the music-halls which appealed across both age and class barriers.[103]

The consensus of opinion among youth reformers regarding the music-halls was that, at best,they provided a poor entertainment, and, at worst, they opened 'the gate to every temptation'. It was alleged that this form of entertainment undermined the development of 'character'; it was coarse and 'unelevating'; it could lead the individual into bad company. The atmosphere of the halls was 'low' and young people were exposed to a combination of 'beer, tobacco and spirits'. These criticism, Hendrick claims, were typical of the hostile middle-class attitude towards working-class recreation as thoughtless, trite, and offering only momentary satisfaction. It was claimed that music-hall entertainment demanded 'no concentrated effort of mind, no fixed attention for any length of time', which contributed to a lack of self-control, lack of perseverance and inability to concentrate - all symptoms of, what was referred to as, the 'malaise of urban working-class youth'.[104]

(v) *The Cinema*: It was widely believed that the cinema was responsible for much juvenile delinquency. Some of the major criticisms were that films displayed nothing of an 'elevating' nature and that they could encourage criminal actions such as stealing the money in order to gain the price of admission.[105] More seriously, according to C.E.B.Russell, Chief Inspector of Reformatory and Industrial Schools from 1913 to 1917, 'thoughts of burglary are, without doubt, put into boys' minds and in some places juvenile thieves try to emulate the exploits of their cinema heroes'. A simple cause and effect relationship between what appeared on the screen and juvenile crime was established by many important figures in authority over young people.

The *Cinematograph Films Act 1910* opened the way for future political intervention in the film business. The issue of censorship came to the fore with the increasing flood of American films being distributed in Britain, and by 1912 the film industry had set up its own self-regulating body, the British Board of Film Censors. The marked increase in juvenile crime during World War I brought the issue of censorship once again under government consideration. Consequently, the National Council of Public Morals set up an independent commission of inquiry in 1917 to investigate the extent to which the generalized accusations that the cinema incited juvenile delinquency in war-time could be substantiated in fact. Its members included distinguished personalties such as Baden-Powell, the Bishop of Birmingham and the secretary of the Sunday School Union. After listening to a great deal of conflicting evidence the inquiry found the charge that children and adolescents were induced to steal in order to pay for admission to cinemas was unverifiable, and there was, therefore, no reason to censure the cinema on these grounds. In point of fact that same objection could have been raised against almost any other commodity that was desirable to young people. Evidence presented by a Probation Officer indicated that the picture

house was frequently blamed by juvenile offenders as a reason for stealing, in the same way that they would use a desire for 'sweets, cigarettes, tram rides and music-halls' as scapegoats to secure more lenient treatment from a credulous magistrate. With regards to the criticism that the cinema inspired imitative juvenile crime, the inquiry concluded that a causal connection might exist to a limited extent, but that such a connection was only a sufficient rather than a necessary cause and,therefore, other contributory factors should not be excluded.[106]

In Scotland, there were similar attitudes towards the influence of the cinema on young people. From their observations in the Edinburgh juvenile courts in 1921, the Scottish National Council of Juvenile Organizations claimed that the vast majority of the young persons who appeared in court regularly attended picture houses. With reference to lads who appeared before the Sheriff Court, for the more serious cases of youthful crime, attendance at the picture palace was, on average, twice a week. At that court there were also cases of young wage earners, of between 14 and 16 years of age, who spent all their available money in attending cinemas. There were several cases of theft in which money was stolen to pay the admission charges to a cinema.[107] There was also evidence in Scotland of the cinema being the inspiration for imitative juvenile crime. Springhall has cited the case of two boys who were charged at Paisley Police Court in 1920 with malicious damage. The boys frequented picture houses and the Procurator Fiscal was of the opinion that this was a case of impulsive criminality inspired by the desire of the boys to imitate the actions of Charlie Chaplin.[108]

The Scottish National Council of Juvenile Organizations also expressed a general suspicion that the type of films shown all too often portrayed the wrong ideas of life and conduct, causing insidious mental and moral damage to impressionable young minds. However, in assessing the degree to which the cinema could be blamed

for stimulating delinquent tendencies, the Scottish National Council of Juvenile Organizations also considered the positive aspects of this form of entertainment. It was cheap and easily accessible to the vast majority of children, helping them to forget the rough lessons of the street corner for one evening. To be able to send the children of an overcrowded home to a place of entertainment which was never far away, and to know precisely where they were, could provide relief for an over-worked mother. Furthermore, cinema attendance was often mentioned by parents as a 'red herring' to divert attention from the real factors behind the wayward behaviour of the youthful members of the family. There was a conflict among social workers on the question of the direct connection between the cinema and delinquency. Such a connection was difficult to prove in any individual case. Possibly, in cases where the home influence was not definitely good, where the elementary facts of right and wrong, of honesty and dishonesty were not taught, the viewing of certain films could have a detrimental influence. Properly controlled,there was every reason to believe the cinema could become a means of communicating the best educational, social and moral influences.[109]

(vi) *Popular Boys' Literature*: A great deal of concern was expressed over the dubious moral quality of the cheap literature that was so popular among older school children and young workers.[110] Cheap, sensational literature was directed towards youth from about the 1860s. Edwin J. Brett was responsible for the publication of the majority of the 'penny dreadfuls' which outraged 'respectable public opinion'. The heroes of Brett's cheap fiction were amoral, blood-thirsty and openly defiant towards authority. School teachers and local magistrates constantly accused the 'penny dreadfuls' of inciting boys to commit crimes.

To counter the sensationalism and the absence of moral restraint in the popular literature for young people, the Religious Tract society launched the *Boys' Own Paper*

in 1879. Each issue had a variety of articles on hobbies, sport, nature and a section on 'Health Hints for Growing Boys'. The *BOP* was sold for a penny per copy which meant that many ordinary working class boys could not afford to be regular readers. In the 1890s a series of halfpenny publications were published by Alfred Harmsworth, the newspaper magnate. The Harmsworth boys' papers included *The Marvel* (1893), *The Boys' Friend* (1895), *The Union Jack* (1894) and *Pluck* (1894). They were, in effect, organs of propaganda for the imperialism of the age. C.E.B.Russell, when he was working as a boys' club leader in Birmingham, was of the opinion that the 'ha'penny bloods' inspired boys to runaway from home or to attempt 'foolish and often evil deeds'.[111]

The National Purity League Crusaders condemned the stories in popular boys' literature for conniving at 'trickery, cheating, lying and laziness' and for cultivating 'low instincts' and awakening 'low passions' by showing women in 'lewdly suggestive' poses.[112] The problem for writers of juvenile literature was to find a formula that would hold the interest of 'street boys and girls' and provide them with 'uplifting' stories as good as those already provided for the boys and girls of more socially fortunate backgrounds. This problem was not resolved until the twentieth century. In 1902 the Harmsworth company became the Amalgamated Press and began to publish popular boys' weeklies, such as *The Gem* (1907) and *The Magnet* (1908). By the late 1920s the latter title had reached a circulation of 200,000 copies a week. Working-class adolescents developed, what Springhall has referred to as, a 'rather surprising addiction' to the Greyfriars school stories in *The Magnet* and the St. Jim stories in *The Gem*. These tales influenced a whole generation of boys by distorting the public school ethic into myth and thus communicating its ideals and standards in a way that youth reformers, both secular and religious, had failed to do.[113]

The 'penny gaffs', the music-hall, the cinema and cheap literature; in other words, the commercial forms of entertainment which were within the purchasing power of working-class youth, were all regarded by middle-class commentators and reformers with an expectation of trouble because they were the main sources of ideas for the working boy. There was great concern about the long-term effects of 'unedifying influences' experienced during the years of adolescence when the mind was 'sponge-like in its nature'.[114]

(vii) *Sports and Games*: By 1900 games, sports and physical recreation had become more organized and team orientated than ever before. This trend towards organization was formulated by the middle classes on the basis of public school practices, which gave sport important social and moral attributes. Working-class games, such as football, were welcomed as team sports because they were healthy outdoor activities requiring strenuous physical exercise; but, unfortunately, working-class sporting attitudes did not come up to the public school ideal. Observers, such as C.E.B.Russell and Barclay Baron, perceived that this difficulty originated in the lack of effective supervision of the kind given in the public schools which compelled boys to play in the 'spirit' of the game. The public schools promoted the ideal that the ultimate aim of the game was not merely sportsmanship, it was the development of 'character'.

Among the middle class there was an 'intensive culture' of games and there was social class unity based on a conscious ideal of 'good form'. There was a widely shared opinion among youth reformers that the 'sporting' view of the game and the 'sporting' view of the whole of life were closely interlocked. Hendrick has placed this profoundly middle-class perspective,which was fashioned by public school education, at the centre of all the criticisms of working-class attitudes towards games and sport.

The youth of the working-classes lacked the essential quality of *esprit de corps*; they lacked a coherent concept of 'sportsmanship'. This was thought to be partly explained by the difficulty that working-class people of all ages were said to have with concepts - their lives were seen to be too orderless and too thoughtless for them to conceptualize their own behaviour. From this it followed that without the right kind of supervision and tuition working-class adolescents would never understand the principles behind the maxim - 'Play up! Play up! And play the game!'

Consequently, reformers promoted the principle of 'rational recreation' as a means of controlling the uninhibited and 'instinctive' reactions of working-class youth and superimposing middle-class judgements regarding standards of 'play' and choice of recreation.[115] The aim was to re-mould working-class adolescent leisure by providing an alternative range of 'reformed' recreations which would attract youth away from cheap commercial entertainment and 'unstructured' street games and culture.[116] After all, by directing how the urban working-class adolescent was to spend his free time, his future social role was also being selected for him and his attitude towards those in authority and his own self-identity were being defined.[117]

(viii) *Organized Youth*: The organized youth movement emerged out of the economic and social crises of the late Victorian period. These groups were the first to focus their attention directly on urban working-class, and in some instances, lower middle-class, youth.[118] Altogether this was an attempt to enrol older children and adolescents in a socially conservative youth movement whose main features were discipline, religion and organized leisure.[119] Essentially, what they offered was a programme for citizenship.

Within this large and very diversified movement there were two main groupings - the uniformed brigades and the clubs. The organized youth movement of the last two

decades of the nineteenth century was based on a tradition of youth work which began mainly in charitable work among young people in Sunday schools, temperance societies and the Band of Hope. The Young Men's Christian Association, founded in 1844, formulated a combination of religion, recreation and welfare which was to have particular influence on the 'social education' to be provided in the organized youth movement of the 1880s and 1890s.[120]

(a) Uniformed youth movement: Within the uniformed youth movement there were two main streams - firstly, the religious brigades with definite church connections, including the Boys' Brigade (BB), the Church Lads' Brigade (CLB) and the Boys' Life Brigade (BLB); and secondly, the non-sectarian militaristic brigades, including the Cadet Corps and the Scouts.

The Boys' Brigade was the earliest of the religious brigades and it was founded by William Smith in Glasgow in 1883. Smith had a background of missionary work in the city and was a member of the YMCA and the Volunteer Force. It was, however, his experience as a Sunday school teacher which alerted him to the numbers of young boys who lost touch with the church once they became wage-earners and left the Sunday schools. They could not join the YMCA until they were 17 years of age, during which time many working-class boys ran wild, became 'hooligans' or street corner 'loafers'. Groups, such as the Working Boys' Brigades formed in the 1860s and the Glasgow Foundry Boys' Religious Society had attempted to bridge the 13 to 17 age-group. Smith felt there was a need to influence this older group of boys, not only on Sunday, but throughout the whole week. Out of Smith's experience in the Volunteer Force came the programme of discipline, uniforms, bands, drill, camps, recreation rooms, coupled with religious instruction, which was intended to attract adolescents so that their leisure time could be 'organized'.[121]

Smith summed up the philosophy of the BB as one of 'discipline and religion' and the aim was 'the advancement of Christ's Kingdom among boys and the promotion of habits of obedience, reverence, discipline, self-respect and all that tends towards a true Christian manliness' - sometimes referred to as 'muscular Christianity'. The concept of 'manliness' and the *esprit de corps* introduced by Smith were derived from public school culture and functioned to unite the boys and make them 'proud of their company, jealous of its honour, ashamed to do anything to disgrace it, and prepared to make any sacrifice rather than be dismissed from it'. The intention was to surround the youth with 'continued influence for good' at a critical time of his life. The exertion of 'friendly' discipline furthered the public school sentiment of prolonging boyhood. Smith believed that 'boys ought to be boys and nothing else'. He did not intend to 'put old heads on young shoulders'. The BB was probably the first youth group to specifically emphasize the nature of 'boyhood' and to develop a programme and a philosophy, based on 'discipline, religion and friendship', designed for this stage of life.[122]

The Church Lads' Brigade was founded in 1891 by W.M.Gee, previously an officer in the Volunteer Force and secretary of the junior branch of the Church of England Temperance Society. The CLB was formed as an Anglican institution for the 'care and training of lads in religion, morals and physique' during the important years of adolescence. It proclaimed itself as the 'public school' of the sons of the poor, where, for a short time, they received training in the public school virtues of '*esprit de corps*', obedience, humility, a sense of responsibility, honour and truthfulness'. Although the CLB was similar, in many ways to the BB, they differed in that where the BB concentrated upon creating Christian men and promoting Christian manliness, the CLB had political ambitions. The leaders of the CLB interpreted the Edwardian age as

a 'critical period' which was characterized by an unfortunate tendency towards 'slackness', 'ease', and 'carelessness of religion, morals and work', as well as 'a great craving for pleasure'. The social problem of the unfit and the unemployed had reached such a scale that it had become a 'national scandal' and a 'public danger' making it necessary to provide 'men of the future' with that 'spirit of self-denial, self-control and definiteness of righteous purpose' which had made Britain a leader of nations. In its literature the CLB claimed that it could train youth in the 'spirit' and the 'purpose' through 'discipline' and 'control', the taming of 'flippancy and impertinence', the promotion of 'chivalry' and the teaching of 'reverence and obedience to all properly constituted authority' and the cultivation of 'temperance' in all things'.[123]

The Boys' Life Brigade was founded in 1899 in Nottingham by the Rev. John Paton. It adopted a BB-style uniform and a military command structure. Paton was also in accord with Smith's adherence to the idea that young people should be kept under the influence of the church and that they required discipline and order. He was, however, more outspoken than Smith on the nature of 'adolescence', referring to it as the age of 'terrible peril' and 'wayward forces' which had to be 'rightly directed'. Adolescence was to receive a 'suitable and spiritual education' from the application of Christianity to common life'. This meant compulsory attendance at either company Bible class or Sunday school. The unique feature of the BLB was its commitment to the principles of life-saving. It trained the boys in life-saving drills (fire, water and stretcher), gymnastics, swimming, first-aid and hygiene, in order to prepare them for 'helpful service to others' while, at the same time, training the body in 'healthful vigour' and 'moral discipline'.[124]

The most militaristic of all the uniformed youth groups was the Cadet Corps. It did not originate in voluntary social youth work, but in the Volunteer Movement

formed in 1859 as a result of the panic over the threat of a French invasion. By the 1870s several public schools had their own cadet or rifle corps, although it was not until the Boer War that they became a popular feature. In the 1880s the recruitment of working-class boys began mainly through clubs associated with University Settlement Houses and Public School Missions. The Cadet Corps, in similar vein to the CLB, claimed to offer a substitute public school environment in which the boy would 'learn the duty and dignity of obedience...get a sense of corporate life and civic duty and learn to honour the power of endurance and effort'.[125] Cadet companies were very quickly seen to be a means of controlling unruly working-class adolescents through military drill and discipline, which was a reversal of much of the public school promotion of Christian brotherhood and social reconciliation featured in the early stages of the settlement movement. There was a new concentration on instilling 'civic virtue' and *esprit de corps* into the lower ranks of working-class adolescents. Military training was, as Springhall has argued, promoted as a means of attracting youth away from working-class street culture and the potential corruption in commercial forms of entertainment.[126]

The Scouts had formed a fairly substantial uniformed movement by 1908-09, which was designed to appeal to boys between 11 and 18 years of age by providing a programme of outdoor activities and promoting a strong sense of patriotism and moral purpose. The Scout movement sought to encourage certain positive values necessary for national and imperial security. However, in addition to its military and imperialist overtones, the Scout movement was also concerned with the promotion of good 'citizenship' among the young. By including training in 'citizenship', Baden-Powell was acknowledging the increasing importance of civics as a classroom subject, the influence of philosophical idealism in educational circles, the propaganda of the Moral Instruction League and the influence of R.B.Haldane, the War Minister, who was also

a professional philosopher and a prominent educational theorist. The Scout movement was a conservative organization, conformist and profoundly reverent towards properly designated authority. It rallied youth by calling for shared community values which were very much in line with Idealist principles of citizenship, the main features of which were political stability, social harmony and the survival and growth of the 'common good'.[127]

By the early 1900s many reformers were under the impression that certain 'interests' were threatening the survival and growth of the 'common good'. The critical factor was seen to be the question of 'rights and duties within the state' and their relation to the wider issues arising out of an increasingly democratic society in which the franchise was placing more power in the hands of the working class. Liberal and Conservative interests feared the increasing power in the 'sectional interest' of the labour movement which, along with the polarization of class politics, stimulated class conflict and highlighted the irreconcilable aspects of differences between certain social and ethical standards. The New Liberals, in particular, regarded this as undermining the atmosphere of political stability and social harmony they sought to create wherein citizenship, rather than class consciousness, would determine priorities.

Training was needed to re-invigorate 'citizenship' in order that the youth of the nation would act morally with a sense of national duty and obligation towards the state. Loyalty, service and duty were the precise values that 'boy labour' reformers attempted to impress upon young workers. Many of these reformers had been actively involved in youth groups and were sympathetic to the objectives of the Scout movement. The Scout movement was not seen as the ultimate solution to the 'boy labour' problem, or the 'youth problem' in general, but its ideas and its trained personnel were perceived as

being a useful medium for sustaining scientific collectivism and for motivating youth with a sense of national identity regardless of social class divisions.[128]

(b) The Club Movement: The origins of the boys' club movement can be traced back to the pastoral work of the mid-nineteenth century churches in London and to the extension of the Working Men's Clubs of the 1850s and 1860s. According to a paper on youth clubs and institutes, read before the 1863 Social Science Association meeting in Edinburgh, Working Men's Clubs were frequently invaded by teenage boys who, when allowed entry, caused varying degrees of disruption. The solution was the creation of the youth clubs of the 1860s, which were designed for adolescents who had left elementary school and were employed as junior clerks, office and errand boys, apprentices and shop assistants.

Almost simultaneously, youth institutes were started,with a mainly educational purpose in view, for adolescents too young for Mechanics Institutes.[129] Initially, the youth institutes appear to have recruited from among the lower middle class, but as anxiety about the working classes intensified, some of the institutes opened their doors to youth of the lower social orders. As they reached down into working-class youth, they moderated their formal educational programmes by adding in recreational activities. Hendrick has argued that this was partly due to the unpopularity of education classes, and partly to the universal influence of the public school obsession with games.[130] In addition, as Springhall has pointed out, their original educational purpose was absorbed into the developing state school system of the 1870s.[131] Gradually, many institutes dropped the word from their title and turned themselves into clubs with only recreational facilities. The educational youth institutes, where they continued, were located in middle class areas.[132]

Between 1880 and the early 1900s the development of the club movement was rapidly promoted by University Settlement Houses, Public School Missions, the Girls' Friendly Society, the YMCA and the Wesley Guild of Youth. The religious influence which had followed through from the mid-Victorian religious philanthropy work, continued to be important, but the new movement was also interested in 'wholesome recreation' and in keeping boys and girls off the streets. This new concern was expressed in the fact that the clubs took on a more overtly social, rather than a religious, character.[133]

While 'rescue' work may have been the main aim initially, it was never the only aim. The founders of the clubs, the University Settlement Houses and the Public School Missions, were ultimately concerned to 'reclaim' and 're-educate'. Club life was intended to provide a practical course in 'citizenship'. According to C.E.B.Russell, the clubs sought to achieve their objectives through a combination of recreation, education and religion. The recreation had to provide the needed excitement but also had to be 'healthy', which meant games, swimming, gymnastics, boxing, indoor games and, in certain clubs, cycling and country walks. Education had to be interpreted in the widest sense to include physical, moral and mental training. Religion also had to be given a broad interpretation. Some of the older clubs were narrowly evangelical, but what Russell envisaged was that religion should be used as an imperceptible means of influencing the boys in the furtherance of their spiritual development, the practical doing of good, the helping of the weaker and the unselfish performance of work for others.

Another aim, which Hendrick claims was rarely stated explicitly, was to counter the threat of early sexual and marital relationships. It was generally agreed that the lads' clubs performed a valuable function by filling the lives of their young members

with interests and activities which prevented them from being distracted by the 'flirtation' of girls, who were usually seen as a threat to the healthy development of the boys. Maude Stanley, a founder of girls' clubs, expressed the wider social anxiety about the role of girls in the alleged deterioration of the race and the threat of over-population among the working class. Social surveys had demonstrated that early marriage by unskilled workers could lead to poverty and destitution. Reformers were of the opinion that a preventive measure against these marriages was to provide clubs with attractive and organized recreational facilities in the hope that, as Maude Stanley put it, 'the girl who has her clubs will not need the idle companionship of lads'. This explains why club founders and managers were opposed to mixed membership.

The club movement made strenuous efforts to develop discipline, obedience, self-control and self-respect, which were the essentials of 'character'. Discipline was regarded as the first step towards all forms of mental, moral and physical improvement. The maintenance of the imposed discipline of rules within the clubs was essential in order to teach obedience and to create a more ordered world in contrast to the undisciplined nature of the streets and the chaotic, irrational and spontaneous nature of working-class life in general. The clubs also sought to generate within individual members 'constructive self-discipline' which was integral to the control of the mental environment of individuals and essential to self-respect, self-control and perseverance as well as to the ability of the individual to formulate the nature of his or her own existence.

While exposure to the properly approved values was integral to the complex process of developing the dutiful, rational and moral citizen, of at least equal importance, was the personal contact bonded by friendship, which all youth groups encouraged between members and personnel. This was one reason why it was so

important to have 'suitable' club leaders and workers - in particular those with a public school background. The original perceptions of William Smith continued to echo throughout youth work; namely, that 'contact, friendship, influence' were the means by which youth could not only be rescued and disciplined, but also civilized. Success in creating the 'citizen' depended on establishing a relationship that, through influence and example, could bring about a change in the character of the boy or girl.[134]

(c) Working-class attitudes to 'organized youth': Public opinion in Scotland gradually recognized the national importance of social work among children, and particularly among adolescents. However, some parents did not appreciate the ultimate objectives of organizations, such as the Boys' Brigade and the Scouts, or even the youth clubs. They were unwilling for their sons to become members. There was an imputation of social class and income attached to membership of youth organizations. Even in the districts where the membership was composed of boys and girls from average working-class homes, the parents of youngsters from the poorer working-class homes were unwilling for their offspring to join.[135]

It is possible to draw parallels with working-class attitudes in England. While the youth movements, north and south of the border, conducted a crusade to enlist working-class youth, there were certain economic and social obstacles in their path. Children at school and young people who were apprenticed to a trade or secure in work with regular hours had sufficient time to attend organized activities; but, for the vast numbers of lads who were in various grades of casual labour, or for girls employed as domestic servants,the hours of work could be very long if enough money was to be earned to make a reasonable contribution to the family income. Among certain segments of the working class there remained a resentment of any form of middle class intervention in their family lives.[136]

Even though the zeal of the Public School Missions and the University Settlements gradually quietened down in the last decade of the nineteenth century, the clubs, brigades and troops continued to be organized by men and women with a public school background, and the whole exercise continued to be part of a complex colonizing process conducted by the middle-classes.[137] Working class resistance to the persuasion and encouragement of youth workers in England,had, according to John Gillis, perceptibly, although not entirely,changed by 1914. An increasing anxiety among poor parents to ensure that the sacrifices they made for their children to attend school, would not be abnegated by youthful misdemeanour, stimulated a wider appreciation of the facilities for supervision provided by various organizations. Skilled workers gradually became more ambitious for their children and saw organizations, such as the Scouts, as a step towards social upgrading. There was also a wider acceptance of middle-class standards of child care. Nevertheless, there remained, even in England, significant differences in the extent to which various categories of the working classes responded to the youth movements.[138]

In Scotland, working class acceptance of the youth organizations had, in all probability, increased along similar lines, but there still remained a significant degree of social class alienation. The Scottish National Council for Juvenile Organizations expressed understanding of the social class problem in their report of 1921, and they resolved to consider how far the needs of the poorest boy and girl were being met and what action should be taken.[139] The Scottish Departmental Committee of 1928 recommended that there was a need for clubs for boys and clubs for girls from the poorest homes. It was advised that such clubs should be very free places with as few rules as possible, since they would have among their members some young people who had not settled as members of more highly organized movements.[140] What had to be

remembered was that it was traditional for the majority of working class adolescents to be free of all institutional restraint, with the exception of their daily work, and for this reason they resented supervision.[141]

(d) Youth movements - significance: Hendrick has summarized the goal of the organized youth movement in general to have been 'the building of Christian character, driven by civic responsibility in search of class harmony'. By the early 1900s, however, a re-definition of the youth question was emerging. Many of the activists involved in the youth movement were coming to the conclusion that the philanthropic provision of youth services was inadequate for the task of coping with the economic, social and, what were increasingly regarded as, the educational problems relating to working class adolescents.

The Edwardian perception gave working class youth an economic identity which had important ramifications in the formative development of the 'citizen'. The range of problems relating to the youth question was such that it was impossible for a solution to be provided by brigades or clubs. Social scientists and youth workers gradually recognized that the uniformed youth organizations and clubs could only really provide amusement; that their positive educational value was small, and that they were unable to reach the mass of adolescents. There was an increasing awareness that the complexity of the problem required state intervention.[142]

However, even within the changing perceptions of the early twentieth century, there was, as Hendrick has argued, no intention of abandoning the youth organizations or of abrogating all the work of the clubs, brigades and Scouts, because that would have meant abandoning the voluntary principle. In the area of youth policy, as in many

other areas of welfare, the philanthropic tradition was incorporated into the social service state which was evolving within the Liberal reform programme.[143]

(e) State intervention in 'organized youth': Charles Russell was appointed in 1913 as Chief Inspector of Reformatory and Industrial Schools. It was as a result of his advice, based on his background in voluntary youth work, that the Home Office reacted to the sudden increase in juvenile delinquency during the First World War by encouraging magistrates to revive, in their local areas, the work of youth clubs, many of which had ceased to function due to the war-time absence of their organizers. The Home Office also promoted the appointment of committees to co-ordinate the work of the existing agencies for juvenile welfare, in an attempt to reinforce and extend the activities of voluntary organizations in the provision of healthy recreation and physical training for young people, by the formation of local juvenile organizations in the larger towns in England, which were to be affiliated to a central Juvenile Organizations Committee appointed by the Home Secretary, Herbert Samuel, in December 1916.[144] Baden-Powell was asked to become the first chairman of the Juvenile Organizations Committee in England.[145]

It was not until 1919 that the Scottish Central Council of Juvenile Organizations (later known as the Scottish National Council for Juvenile Organizations) was formed as a subsidiary of the Home Office Juvenile Organizations Committee. It was furnished at government expense with staff and premises. The full Council consisted of 37 members. One of its main objectives was to establish subordinate Juvenile Organizations Committees. Local voluntary committees were eventually established in Edinburgh, Glasgow, Dundee, Aberdeen, Dumfries, Maxwelltown, Falkirk, Galashiels, Greenock, Kilmarnock, Paisley and Stirling. The extension of the

movement was slow: in 1919 there were seven local committees and by the late 1930s there were twelve.[146]

Of the children and young persons appearing before the Edinburgh juvenile courts in 1921 -

Connected with a voluntary organization	Not connected with any voluntary organization
205	521

Put otherwise, this meant that 71.76% of children and young persons under 16 years of age appearing in court had no connection with a voluntary organization. The statistics for the Sheriff Court revealed that out of a total of 89 young persons under 16 years of age, only 13 were connected with a voluntary organization while the remaining 76 had no such connection. It became apparent, however, that of these 76 lads about one third of them had been connected with voluntary organizations in the past, the periods of membership varying from three nights to four months. There was every reason to presume that this leakage from the membership of voluntary organizations was represented in the statistics from the other juvenile courts in Edinburgh. In general, outwith those who appeared before the juvenile courts in 1921, a large proportion of the youth of Edinburgh was not connected to any organization for young people. It was estimated that there were approximately 42,000 boys in Edinburgh in 1921, of whom only 12,000 belonged to voluntary organizations, leaving 30,000 connected with none. There was no reason to doubt that these statistics applied, in general, to other large towns.[147]

The following table shows, as far as could be ascertained from the cases appearing before the Edinburgh juvenile courts in 1921, the extent to which children and young people were members of Sunday schools or Bible classes -

Members of Sunday schools or Bible classes	Not members of Sunday schools or Bible classes
403	314

In other words 43.79% of the children and young persons whose cases were under review were not members of Sunday schools or Bible classes. It was perceived that the sudden independence gained by a young wage earner at the age of 14 made it apparently very difficult to retain them in the membership of a Bible class or any voluntary organization.[148]

At about the age of 14 many lads preferred the liberty of the street to the more disciplined life of a class, company, troop or club.[149] The number of girls appearing before the several juvenile courts of Edinburgh was very small compared with the number of lads. However, the need in the inter-war years for proper recreational facilities applied with equal force to girls. The investigations of the Scottish National Council of Juvenile Organizations seemed to indicate that many girls of school age spent their evenings as household drudges. On starting work and contributing to family income there was sudden independence and release from the imposition of a drab routine,which allegedly made girls more susceptible to a need to seek any pleasure or excitement.[150]

As a result of the investigation carried out in 1921 by the Scottish National Council for Juvenile Organizations, 283 boys and girls appearing before the Edinburgh and Leith Police Courts were definitely put in touch with voluntary organizations. The facilities granted to the Scottish National Council for Juvenile Organizations were handed on to the Council's local committee, the Edinburgh Juvenile Organizations Committee, with the result that representatives of the committee were present at the various juvenile courts held in Edinburgh. When a boy or girl was charged with a first offence in court and admonished, dismissed or fined, the offender was,thereafter,

visited at home by a social worker representing the Juvenile Organizations Committee. In general, the social worker endeavoured to secure the friendship and the confidence of the young person and the parents. As a result of these approaches a number of families, who had lapsed from church membership, were again connected with the activities of religious organizations. With parental consent, attempts were also made to place the youthful offender within the membership of one of the local organizations for young people.

A circular, issued by the Secretary for Scotland in 1923, gave official sanction for representatives of the local committees of the Scottish National Council for Juvenile Organizations to be present in the juvenile courts throughout Scotland. This circular also conveyed the opinion of the Secretary of Scotland that it would be to the advantage of a juvenile appearing in court, particularly one who was admonished for a first offence, to join a club, brigade or other voluntary organization.[151] The representatives of the local committees of the Scottish National Council for Juvenile Organizations were thus established in the juvenile courts to guide, advise and help at a time when a considerable number of children and young people needed it. They made arrangements for youthful offenders to have the opportunity of joining an organization for young people and they took action if such membership lapsed. In Glasgow, between 4 March, 1927 and 31 August, 1935, action was taken by the Glasgow Juvenile Organizations Committee on behalf of 16,129 juvenile offenders.[152]

There was a gradual consensus of opinion in official circles in Scotland that the work of the voluntary organizations was of positive value in the fight against delinquency in the inter-war years. The Scottish Departmental Committee of 1928 was convinced, from evidence submitted, that only a negligible number of young people who had regular connections with any of these organizations, found their way into

industrial schools, reformatories or Borstal institutions. Furthermore, it was realized that an important aspect of the work of these organizations was hampered by the inadequate provision of playing fields and open spaces. The Departmental Committee expressed the hope that the planning of open spaces would be carefully considered in all slum clearance, town planning and housing schemes. Until such facilities were available it was proposed that school playgrounds and certain areas of public parks should be made available for the playing of organized games under competent leadership.[153]

In the report on delinquency prepared by by Bailies of Edinburgh in 1937, the essential vulnerability of adolescent youth was recognized. It was perceived that as a means of controlling the potentially delinquent tendencies of the youthful members of society, repression and punishment could not be compared, either as a deterrent, or in redemptive value, with the effort of the voluntary organizations, which aimed to stimulate young life with healthy attractions and recreations and so prevent the misdirection of youthful energies into pursuits which could eventually lead to criminal involvement.[154] In the inter-war years the stereotype, referred to as 'organized youth' was promoted as the ideal adolescent, representing the expanding intervention of the state into the lives of all young persons, and constituting a subtle means by which control could be exerted to formulate behaviour and mould the character of the potentially wayward adolescent into what was considered to be responsible 'citizenship'.

5. <u>Conclusion</u>

At all levels of debate on the 'youth problem' there can be found a bias towards the male side of the question, even though, as Hendrick has argued, the essential problem was that of working class youth, irrespective of gender. While middle class

observers were aware that the discovery of adolescence, the economic and social problems to which young people were subjected and their proposed remedies, involved both sexes, the way this involvement was understood differed considerably depending on whether it was being applied to males or females. Anxieties relating to boys had a wider scope covering indiscipline, precocity, and undesirable occupational status. Particular importance was accorded to the concept of 'fatherhood' and to the development of physical and moral 'character' in preparation for the role of defenders of the empire, 'adaptable' wage earners and democratic citizens. Concern regarding the behaviour of girls was less wide-ranging. While they were accused of indiscipline and precocious behaviour and much apprehension was focused on the 'unelevating' nature of their recreations, the dominant concept around which anxiety revolved was that of domesticity as expressed in 'marriage' and 'motherhood'. Consequently, the 'girl problem' appears to have preoccupied the attention of only two main groups of reformers: club managers who sought to 'refine' and prepare young females to be 'guides' for husbands and children, and psycho-medics, including eugenists, whose anxieties concentrated on maternal and racial deterioration.

Male adolescents were the centre of attention because they were potentially dangerous by reason of what they might do as adolescents and because of what was believed to be their far greater potential as agents for good or evil in the social fabric. Therefore, they needed to be under supervision, to be disciplined, controlled, educated and managed. While it was also accepted that girls could be dangerous in all sorts of ways, essentially middle class, and possibly respectable working class opinion, maintained that, in addition to being made refined, they required protection for their own sake, and for that of the nation. Their only two publicly significant identities; namely, those of wife and mother, were recognized as being nationally important, but since they served to confine girls, they reinforced the sexism of the male-female

relationship, and so narrowed the potential of female adolescents as future citizens. Once they married girls might acquire a degree of power and influence over husbands and children, but the importance of this was perceived to be limited to the home. Whereas, the power and influence which boys would eventually exercise, however restricted by reason of their social class, was perceived to be potentially more influential over a wider extent of social dimensions.[155]

For 'collectivism' to bring about the restructuring of society on behalf of the 'social good', it was essential that the 'youth problem' be efficiently managed and controlled because it had ultimate ramifications in the economic structure, in labour relations, in political stability, in questions of 'national efficiency' and in the concept of 'citizenship'. A reappraisal of 'youth' in society evolved out of the new social philosophy which perceived the social organism to be vastly more complex in terms of causes and consequences than had ever previously been understood. Youth was no longer regarded simply as a troublesome or delinquent burden on society, but as an investment in the future of the nation. One aspect of this new awareness was stimulated by new developments in the science of psychology, which aroused a more intense interest in, and a new understanding of, 'childhood' and 'adolescence' as distinct 'stages' in individual life-cycles.[156] Psychology gave the 'youth problem' scientific respectability as an aspect of the social sciences.

Consequently, an increasingly holistic approach to the welfare of children and adolescents was initiated under the New Liberal welfare policy. The *Children Act 1908* was an expression of the Liberal conviction in the correlation between a welfare policy and a penal policy as a means of controlling the 'youth problem'.[157] This Act effectively took the treatment of wayward youth out of the context of crime and into the broad field of welfare. The influence of child psychology and the 'discovery' of

adolescence contributed to the treatment of children and young persons, appearing before the courts, by stressing the importance of an appreciation of the individual nature of the psycho-social background of each case. The new understanding of the psychology of youth had a major influence on the amelioration of the 'guilt' of young offenders in the eyes of the law, and it promoted the importance of the correct decisions being taken as to the most appropriate form of treatment for each child or young person. The gradual shift away from a preoccupation with punishment 'being seen to be done', to a greater concern for individual children in need of care and protection and youthful offenders as future 'citizens', resulted in priority being given to the maintenance of family relationships and 'normalizing' treatment within the community in all possible cases. Concern for the individual problems of each offender also permeated the walls of industrial schools, reformatories and Borstal institutions, where a priority on institutional pragmatism gave way to the new systems of training and treatment under the 'correctional' sector of the reformed penal system. All of these developments were further affirmed and developed in Scotland by the *Children and Young Persons Acts 1932* and *1937*.

Awareness of the psychological vulnerability of adolescents, particularly working class adolescents, prompted the state to extend its protective and preventive measures beyond the confines of institutions. The 'inherent momentum' of the state moved into the community by developing more subtle forms of social control, keeping pace with the changing dimensions in the 'youth problem'. Recognition of the potential power of the youth of the working class in a new democratic, imperial and technological age,[158] stimulated moves to institute a 'scientific' policy to control the working class 'boy labour' problem. In its involvement with the youth movements of the inter-war years,the state was not simply forming a partnership with voluntary organizations to provide healthy attractions and recreations, it was attempting to

promote the image of 'organized youth' as a subtle means by which control could be exerted to mould the 'character' of the potentially wayward adolescent into what was considered to be responsible 'citizenship' according to middle class standards.

Essentially, the changing perceptions of delinquency between the middle years of the nineteenth century and 1937 involved the replacement of 'individual culpability' by a new awareness of 'individual susceptibility'. The criminal culpability of the delinquent of Victorian times was superseded by the psychological and social susceptibility of the wayward adolescent of the twentieth century. Although social class overtones continued to colour the perception of 'youth' as a social problem, the developing awareness of the vulnerability of youth *per se* contributed to a gradual change from the interpretation of delinquency as an idiosyncrasy specific to the youth of the working classes, to its exposition as a matter of individual predisposition irrespective of social class.

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