

The End of an Era? – Youth Justice in Scotland

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INTRODUCTION

Scotland is a small jurisdiction, yet it has a distinctive criminal justice system with unique institutional arrangements and certain political and legislative structures, which render it academically and politically interesting. Unlike other jurisdictions which have adopted neo-liberal policies, Scotland remains committed to a welfare state ethos that is expressed in the continuing commitment to social work with offenders and the welfarism of its youth justice system. The Scottish youth justice system is based on a core set of welfarist principles which stem from the work of the Kilbrandon Committee which reported in 1964. A key strength of the Scottish system is that it has thus far managed to avoid the more punitive and incarcerative aspects of other jurisdictions (most notably England and Wales), yet some recent policy and legislative developments that have impacted on the management of young offenders and the delivery of justice can be seen to pose serious challenges to the core Kilbrandon ethos.

Following decades of debate, a devolved form of government was introduced in Scotland in the late 1990s.¹ Devolution has been accompanied by a raft of legislative and policy changes, alongside a new emphasis on bottom-up policy development, partnerships and networks within Scotland. There has been the establishment of a Justice Department, and two Justice Committees. Following the new Parliament, there has been the assimilation of human rights into Scots law, the introduction of efficiency measures in the delivery of criminal justice and other changes, which include the restructuring of youth justice interventions, the introduction of antisocial behaviour orders, restriction of liberty orders (RLO), and electronic monitoring of young offenders, and the introduction of specialist youth courts. Increasing emphasis is placed upon inter-agency working practices to try to ensure effective delivery of criminal justice.

There are just over 5 million people living in Scotland with almost one in five (19%) being a child under the age of 15 years. The 2001 Census showed that 15- to 19-year-olds make up 6% of the population, as do 20- to 24-year-olds. Scotland

¹Devolution was legislated for in 1998, elections for MPs were held in May 1999, and the Scottish Parliament assumed its full powers in July 1999.

currently has one of the youngest ages of criminal responsibility in Europe (8 years) although the Scottish Law Commission has recommended that this be raised to 12 years.

In this chapter, we present a contextual overview of the Scottish youth justice and welfare system, tracing its genesis in the work of the Kilbrandon Committee, and discuss the implications of recent policy initiatives on the management and delivery of youth justice.

1. THE LEGACY OF KILBRANDON

The late 1960s and early 1970s in Scotland saw the inception of major changes transforming the ways in which the courts and services deliver youth justice. The most notable of these, the Children's Hearing System, was set up on the basis of recommendations made in 1964 by the Kilbrandon Committee.² Charged with finding solutions to the rise in the rate of juvenile delinquency in post-war Scotland, the Committee found that most cases coming before the juvenile courts were on offence rather than care grounds, and the majority of offences were trivial in nature. Over 90% of juveniles charged with offending did not dispute the charges made against them; and over a third of cases resulted in an absolute discharge or admonition (Kilbrandon Report, 1964). The Committee deemed the arrangements for dealing with children unsatisfactory, and recommended the removal of those under 16 years from adult criminal procedures (except for the most severe offences). Given the trivial nature of the majority of the cases, formal judicial proceedings were considered unnecessary and time-consuming. Furthermore, in Kilbrandon's view, the referral of children to the criminal courts for "juvenile delinquency" was best understood as a failure in the social education of children who were not amenable to voluntary measures of support and correction (Kilbrandon Report, 1964). The Kilbrandon Report put forward a set of rather radical and far reaching recommendations for a new national coordinated system to deal with children in need of compulsory measures of care. It proposed the separation of adjudication from disposition, and community participation in the system in the form of lay involvement in decision-making. It also promoted the importance of early intervention in a child's life. This new system was intended as the means by which the deficiencies of the pre-1971 systems were to be remedied, but it can also be seen as an important departure from the models of youth justice operating in other jurisdictions at the time.

Kilbrandon's recommendations are premised on certain key principles. Somewhat radically, the Committee maintained that the legal distinction and institutional separation between juvenile offending and children who were in need of care and protection was not meaningful, in that the underlying needs and circumstances

²Lord Kilbrandon was a senior Scottish judge.