MEDICAL AND LEGAL PROBLEMS IN THE TREATMENT OF DELINQUENT GIRLS IN SCOTLAND*

I. GIRLS IN CUSTODIAL INSTITUTIONS

BY

D. H. H. ROBERTSON

Edinburgh Royal Infirmary

Whereas young persons of either sex may be brought to the juvenile courts for suspected promiscuity, in practice it is mainly girls over whom legal control may be sought on this account (West, 1967). Promiscuity, sexually-transmitted disease, and pregnancy, are of common occurrence among girl delinquents (Epps, 1951; Keighley, 1957; 1963) but endeavours to ensure effective medical care have been mainly restricted to the small proportion of delinquents committed to custodial institutions. Girls from these institutions are frequently referred to venereologists for investigation and it is necessary to examine the system which has been developed for their supervision.

As a prelude to analysis and discussion of some of the medical and legal problems in the management of girls dealt with by Scottish Courts of Criminal Law and by other legal procedures it is helpful to understand the history and development of the legal processes involved. There may be doubt regarding the value of legal classifications in determining suitable "social treatment" for young offenders, and court figures are not representative of the whole problem of crime and promiscuity, but such classification can assist in assessing the size of the problem presented to the venereologist in Scotland and in making an estimate of some of the medical needs of young persons dealt with by the courts, in particular those of the girls. Most medico-legal discussions in Britain habitually make no reference to Scottish law, and it is important to realize that the processes of law in Scotland are not necessarily similar to those in England.

This paper sets out briefly the history of the development of the legal procedure of Scotland relating to juvenile delinquents. Statistics are

presented on the "disposal" of girls against whom a charge has been proved in a court and the various legal classifications of young female offenders are defined. Data on the numbers of girls from Scotland reaching custodial institutions have been collected. To clarify recent proposals for dealing with young offenders and to contrast them with existing procedures, the major features of these processes are presented in diagrammatic form (Figure). Details of the statutes concerned and some definitions of legal terms are given in an Appendix headed "Relevant Statutes". In the discussion the question of medical confidentiality is raised in relation to matters discovered during the course of medical examination of girls, in particular the examination for the exclusion of venereal disease, and to the communication of such information to lay officials.

In a later paper (in preparation) the results of the investigations to detect venereal disease in girls in three Scottish custodial institutions will be presented and relevant statutory regulations pertaining to these institutions in Scotland will be contrasted with those pertaining to similar institutions in England.

History

A curious statute of 1503 defined the corporal punishment that might be given to children, not yet of a responsible age, and detailed the fine which the parents might pay for the actions of their children (See Appendix, Relevant Statutes).

In the past children have usually been dealt with severely by Criminal Courts, but there is an important early reference in Scottish legal literature to the matter of diminished responsibility. It is against deviations from accepted standards of sexual morality that strong feelings have always been directed in the past, but even in this a Scottish jurist, Sir George MacKenzie, not noted for his

*Received for publication November 1, 1968.

leniency, held that in respect of crimes children should be treated differently from adults. In his treatise concerning "The Laws and Customs of Scotland in Matters Criminal" (1678), he wrote:

"There are some Crymes also, wherein minors may be punisht, and are repute majors, *per fictionem juris* (according to the opinion of some Lawyers) such as fornication, adultery, sodomy, etc. *omnia delicta carnis*; because the guilt there consists in the commission of the fact, and not in a contrivance, and so minors may be equally guilty of these crimes with majors. Yet I differ from these Doctors in this; for since the committing of these crimes, may be occasioned by levity and vacillancy of judgment in minors; and seeing furious persons would not at all be punished for such Crimes, I do think the age is somewhat to be considered, even in these cases; and that minors are not to be as severely punisht, as majors; seeing they are not of so solid a judgment as these are".

Unfortunately this principle of diminished responsibility did not become a rule, and severe sentences were possible, such as transportation for life as in the case of a 12-year-old girl Elizabeth Miller in 1827 (Hume, 1829).

In more modern times the principle that children should be treated differently from adults was effectively re-established by the Children's Act, 1908, and this continued to govern the operation of juvenile courts. The aim was to educate and reform rather than to punish. The Children and Young Persons (Scotland) Act, 1932, consolidated by the similarly named Act of 1937, set up juvenile courts, and four distinct types of court are at present dealing with juvenile cases: the Sheriff Court, the Burgh (or Police) Courts, the Justice of the Peace Courts, and in some cases the specially constituted J.P. Juvenile Courts (Scottish Home and Health Department, Cmnd. 2306, 1964).

Existing Arrangements for Dealing with Juvenile Offenders by Scottish Courts (Cmnd. 2306, 1964)

Young offenders, when detected, may not all reach the courts as there is some preliminary sifting of cases by the police and the decision to prosecute rests with the procurator fiscal (Appendix, Prosecution of Crimes and Offences). Those offenders who have committed a crime and other juveniles whose behaviour may be deemed sufficient to render them liable to compulsory measures of "care or protection" may be classified into the following legal categories (Figure):

- (1) *Juvenile offenders* (aged 8 or over, and under 17)
The criminal law proceeds on the basis that crimes and offences carry a liability to prosecution and, if proved before a court of law, a liability to certain penalties.

- (2) *Juveniles in need of care or protection* (any age under 17)

Children can be committed as a result of a civil action arising from the Children and Young Persons (Scotland) Act 1937, Section 65 (1)(a). This class comprises those who are falling into bad company or exposed to moral danger or beyond the control of their parents, who may themselves be unfit for guardianship of children (See Appendix, Relevant Statutes).

- (3) *Refractory children beyond parental control*
Section 68 of the 1937 Act empowers a parent to bring his child before a Juvenile Court on the ground that the child is beyond his control.

- (4) *Truancy and unreasonable failure to attend school*
Under the Education (Scotland) Act, 1962, every parent has a duty to secure his child's attendance at school while the child is within the age for compulsory education.

At the present time the decision whether or not to institute criminal proceedings rests not with the police but with the appropriate public prosecutor (Figure), except in the case of certain public bodies such as the British Transport Commission which are authorized to bring before Juvenile Courts offenders involved in offences against railway property. The Royal Scottish Society for the Prevention of Cruelty to Children, the police, and the local authority, can bring juveniles alleged to be in need of "care or protection" before the juvenile court. Juveniles in need of "care or protection" are not strictly offenders in that they are dealt with by a civil action but their ultimate disposal may be the same. All such cases are dealt with in the Sheriff Courts, Burgh Police Courts, specially constituted Justice of the Peace Juvenile Courts, and other J.P. courts.

Though the Juvenile Courts' first function is the determination of the guilt or innocence of the accused, there is a statutory duty to consider the welfare of the person before it. A compromise has to be found between the concepts of crime, responsibility, and retribution, considerations of deterrence to the offender and to others, and the duty to educate and reform the offenders as well as to protect the public.

At the present time young offenders are brought before Juvenile Courts (Table I, opposite) which have various methods of dealing with cases; the more important of these comprise absolute discharge, probation, admonition, caution, fine or residential training in an approved school, remand home, or Borstal training (Table II, overleaf).

TABLE I

SEX AND AGE OF JUVENILES AGAINST WHOM
A CHARGE WAS PROVED IN A COURT DURING 1966
(CMND. 3336)

Age (yrs)	All Crimes and Offences (Rates per 1,000 population in each age)	
	Males	Females
8	247 (5·3)	7 (0·1)
9	538 (12·1)	21 (0·5)
10	816 (18·7)	34 (0·8)
11	1,133 (27·2)	65 (1·6)
12	1,550 (37·4)	113 (2·8)
13	2,362 (58·2)	229 (5·9)
14	3,569 (89·9)	378 (9·9)
15	4,569 (111·2)	499 (12·7)
16	6,790 (165·2)	531 (13·3)
Total Juveniles	21,574	1,877

Alternatives Proposed by the Kilbrandon Committee (Scottish Home and Health Department Cmnd. 2306, 1964)

Delinquency may be a symptom of environmental or personal difficulties and the Committee considered that the present legal classification was not useful for the purpose of determining suitable treatment of the offender. As a high proportion of juvenile offenders are dealt with by admonition or discharge, an opportunity of sustained supervision and appropriate training at the earliest possible stage is lost.

The committee proposed (Figure) that all juvenile courts should be abolished and that juveniles under the age of 16 should, in principle, be removed from the jurisdiction of the criminal courts. Juvenile panels, appointed by the Sheriff, would be set up to deal with those in this age group and offenders would be referred to an officer known as the

FIGURE.—Diagram representing the main Scottish procedures for dealing with young offenders. The present procedure (EXISTING PROCEDURE) is contrasted with the proposals of the Kilbrandon Committee, 1964 (KILBRANDON ALTERNATIVE), and the later measures developed in the SOCIAL WORK (SCOTLAND ACT, 1968).

"Reporter" to the panel. Experience has shown that in most cases the facts are not in dispute, so in these instances offenders would be presented directly to the panel; only when a child denied the act in question would the case be referred to the Sheriff. A report on the social background of the offender would be prepared by the staff of a new department within the Department of Education under a Director of Social Education. This Director would also be responsible for making recommendations to the panel for treatment, and would function as the panel's executive agency. The Department would be able to carry out education and training with the help of locally-based supporting staff. It was proposed that the staff would not be part of the probation service as the latter is concerned with the criminal courts.

"Care or Protection" cases in the 16 and under 17-year age group The committee saw little justification for retaining compulsory protective powers. Persons of this age, generally girls, have been dealt with under "care or protection" proceedings as being "exposed to moral danger". The committee were not satisfied that matters of this kind involving persons of this age should, in the absence of actual criminal behaviour, be the subject of sanctions by a court of criminal law.

Young offenders between the ages of 16 and 21 The committee proposed that offenders of this group would be dealt with in the ordinary courts of summary jurisdiction.

Government Proposals Developed from the Kilbrandon Report (Scottish Education Department, Cmnd. 3065, 1966)

The Government outlined their proposals for establishing children's panels (Cmnd. 3065, 1966) on the lines advocated by the committee under the chairmanship of Lord Kilbrandon (Cmnd. 2306, 1964). Their modifications included the formation of a new local authority social work department for supporting the ill and handicapped as well as young offenders. This would be separate from the Department of Education and would not include the school health service. All the functions of the probation service, however, would be provided by the department, and would not remain as a separate entity serving the courts as suggested by the Kilbrandon Committee.

Statutory distinctions between the various residential establishments for children would be abolished. Suitable remand homes would become assessment centres, and approved schools would no

longer be known by their generic name but would form part of the range of residential training centres. The services would in general be based on cities or counties or amalgamations of these when the units were unduly small.

A child who had not yet reached the age of 16, subject to the Crown's right to prosecute, would be brought before the panel if there was a *prima facie* case that there was need of some form of care or control, because he had committed an offence or was unduly exposed to danger to his development either moral or physical. An official known as the Reporter would receive notices from the agencies of first contact and would request the Director of Social Work for information on the social and family background. In many cases the Reporter would agree with the Director's recommendations if voluntary supervision was decided upon, and the matter would not be referred to the panel. If a decision had been made to refer the child to the panel, and if the child and parents accepted the Reporter's statement, then the decision affecting the child would become binding. A child would not remain under the panel's jurisdiction after his 18th birthday.

Children's panels would include local teachers, ministers, leaders of youth organizations, housewives, and members put forward by professional associations, trades unions, and voluntary organizations; deliberations within the panel would be confidential.

The Social Work (Scotland) Act, 1968

The proposals outlined in the White Paper (Cmnd. 3065, 1966) developed in the Social Work (Scotland) Bill published in March, 1968, have reached a final form in the Social Work (Scotland) Act, 1968. In this Act the functions of the local health authorities relating to "Section 27 of the National Health Service (Scotland) Act, 1947, (care and after-care of persons who are or who have been suffering from illness) other than functions relating to medical, dental or nursing care, or to health visiting are transferred to the local authorities (Section 1.6)". The reference to health visitors was added to the original Bill.

The ultimate disposal of juveniles is similar to that of the previous system except that there is greater opportunity for social workers to maintain continuous and compulsory supervision. Girls under 16 years of age, or under 18 years and already under a supervision requirement, may be placed under compulsory supervision at a children's hearing (Social Work (Scotland) Act, 1968, Part III, Section 30).

Juvenile Delinquency in Scotland Girls Committed to Approved Schools

Compulsory supervision may be ordered under the criminal law in the cases of young offenders; girls suspected of promiscuity may be committed under the civil processes of "care or protection" proceedings. From the point of view of determining effective social treatment, the legal classification may have little value but it assists here in demonstrating the small proportion of those against whom a charge has been proved who are examined for the detection of venereal disease; it is generally only those reaching custodial institutions who are so examined. The data also indicate the amount of clinical work involved.

(1) *Juvenile offenders (female)* In a calendar year, 1966 for example, the number of girls aged 8 to under 17 years, against whom a crime or offence was proved, was 1,877 (Scottish Home and Health Department, Cmnd. 3336, 1967). The difference in the various age groups and the striking difference from the number of boys is shown in Table I (above).

Girls in the senior group (aged 14 to under 17) comprised 1,408, of whom only 41 (2.9 per cent.) were committed to an approved school. Only eight 16-year-olds were sent for Borstal training and only eleven to a remand home. Only sixty senior girls were committed to a custodial institution (Table II).

(2) *Girls in need of "care or protection"* In the 12 months ending March 31, 1967, 64 girls in the senior age group (14 to under 17) were committed to approved schools in Scotland on the basis of "care or protection" proceedings defined in Sections 65 and 66 of the Children and Young Persons (Scotland) Act, 1937 (Table III).

TABLE III
GIRLS COMMITTED TO APPROVED SCHOOLS IN
SCOTLAND DURING THE 12 MONTHS ENDING
MARCH 31, 1967

Age (yrs)	Legal Offence	Truancy	Needing Care or Protection	Beyond Parental Control	Total
11	1	0	0	0	1
12	3	0	2	0	5
13	8	1	9	2	20
Total	12	1	11	2	26
14	10	3	18	2	33
15	12	0	27	5	44
16	22	0	19	6	47
Total	44	3	64	13	124

(3) *Refractory girls beyond parental control* In the same year, under section 68 of the Children and Young Persons (Scotland) Act, 1937, thirteen senior girls (aged 14 to under 17) were committed to approved schools (Table III).

(4) *Persistent truants* This group is always small, and during this same year only three girls (aged 14 to under 17) were committed to approved schools (Table III) under the Education (Scotland) Act, 1962.

TABLE II
AGE AND DISPOSAL OF GIRLS AGAINST WHOM A CHARGE WAS PROVED IN A COURT DURING 1966

Age (yrs)	No. of Girls	Disposal in Each Age Group								
		Absolute Discharge	Probation	Admonition	Fine	Approved School	Remand Home	Borstal Training	Caution	Other
8	7		2	4	1					
9	21	6	4	6	4				1	
10	34	8	11	9	2	1				3
11	65	14	13	21	11		2			4
12	113	15	26	41	25	5				1
13	229	24	62	66	59	13	4			1
Total	469	67	118	147	102	19	6		1	9
14	378	25	78	103	154	6	4		1	7
15	499	32	82	133	230	15	4		1	2
16	531	39	67	128	258	20	3	8	3	5
Total	1,408	96	227	364	642	41	11	8	5	14

The numbers in the approved schools in Scotland on March 31, 1967, are listed below.

Senior Girls	A	Midlothian	33	} 117
	B	Renfrewshire	26	
	C	East Lothian	19	
	D	Renfrewshire	39	
Intermediate Girls	E	Angus	36	
Junior Girls	F	Perthshire	13	} 40
	G	Stirlingshire	11	
	H	Aberdeenshire	16	
Total			193	

Girls in Schools A and C are classified according to the legal reason for committal in Table IV, which shows that "care or protection" cases form by far the largest group.

TABLE IV
GIRLS COMMITTED TO TWO SCOTTISH APPROVED SCHOOLS DURING THE 12 MONTHS ENDING MARCH 31, 1967

School	Age (yrs)	Legal Offence	Truancy	Needing Care or Protection	Total
A	14	1	0	9	10
	15	16	1	55	72
	16	15	0	34	49
	Total No.	32	1	98	131
	Per cent.	24.4	0.8	74.8	100
C	14	1	0	7	8
	15	3	0	22	25
	16	12	0	15	27
	Total No.	16	0	44	60
	Per cent.	26.7	—	73.6	100

Girls Admitted to a Remand Home

In the year 1965, 95 girls in the age group 14 to under 17 years were admitted to the Remand Home in Midlothian (in other years the totals for this age were as follows: 1963, 70; 1964, 81; 1965, 95; 1966, 96; 1967, 98). The reasons for committal are

summarized in Table V. Often the duration of stay was very short.

Discussion

In Scotland measures for dealing with young offenders have progressed from those described by the curious Statute of 1503 (C 69) and those exemplified by the harsh sentences of the 19th century. In the 20th century legislation has introduced the concept of concern for the welfare of the child and has developed attempts to educate and reform. More recently the Kilbrandon Committee made recommendations to develop the provisions of the law relating to treatment of juvenile delinquents and juveniles in need of care or beyond parental control (Cmnd. 2306, 1964) which have been, in part, followed by the Social Work (Scotland) Act, 1968. This Act has departed from some of the Kilbrandon suggestions in that social workers of all kinds, including in particular probation officers concerned with delinquents and those concerned with the after-care of prisoners, will be organized in a single department based on local authorities and under the general guidance of the Secretary of State. In brief, the means for social care of the sick and the care of delinquents, adult or juvenile, will not be separated. The proposals have been criticised because they place a great deal of power in the hands of social workers, and protests have been made at the proposed demolition of the present probation service (Keir, 1968; Lockhart, 1968).

It is fortunate that the problem of juvenile delinquency is relieved by the fact that the vast majority of young offenders outgrow their antisocial tendencies (*Lancet*, 1967). The need for a rational enquiry into the causes of youthful crime and for an objective assessment of the various treatments aimed at reform has been emphasized by West (1967) who drew attention to the group of persistent offenders who fail to respond to any method. Though

TABLE V
REASONS FOR ADMISSION OF GIRLS TO A REMAND HOME DURING 1965, BY AGE

Age (yrs)	Total No.	Missing from Home	Needing Care or Protection	Beyond Parental Control	Persistent Truancy	Breach of Supervision	Breach of Probation	Absconding from Approved School	Vagrancy	Other Reasons
12	4	1	0	0	2	0	0	1	0	0
13	10	2	8	0	0	0	0	0	0	0
Total	14	3	8	0	2	0	0	1	0	0
14	27	1	6	2	3	1	0	8	0	6
15	42	4	17	1	1	8	2	3	1	5
16	26	1	14	1	0	0	1	1	2	6
Total	95	6	37	4	4	9	3	12	3	17

the Mental Health (Scotland) Act, 1960, makes provision for hospital treatment of psychopaths, doctors have tended to reject such patients because treatment appears to be ineffective. Such persons may be taken into custody under the penal system, where individual needs are not readily catered for. In the cases of young offenders the new Social Work (Scotland) Act endeavours to provide a system by which a regime of treatment may be suited to the individual needs of the offender.

Promiscuity brings special problems of concern to the venereologist. There can be no doubt that extramarital intercourse may be so common among certain groups in all strata of society that it may constitute the normal pattern (Carstairs, 1963). Promiscuity, varying widely in degree, may also constitute normal behaviour and may not necessarily be associated with other forms of delinquent behaviour. With the young, the use of coercive measures to control promiscuity may lead to anomalous situations; such measures are applied in practice more often to girls than to boys, and it is girls who are more likely to be apprehended by the police for frequenting night clubs or keeping bad company. Intercourse outside marriage is not punishable unless the girl is under 16 years of age. Girls deemed to be promiscuous or "falling into bad associations or exposed to moral danger" (Children and Young Persons (Scotland) Act, 1937, section 65) tend to be committed to approved schools and these "care or protection cases" constituted more than 70 per cent. of those so committed, as reported in this paper. Though committal to such schools would, if the freedom of the young girls was rigidly and continuously restricted, give protection against pregnancy and venereal disease, the regime might well tend to prevent them coming to terms with their environment (West, 1967). There is no proof that the regime at an approved school modifies in any permanent way the behaviour of the very promiscuous girls, many of whom exhibit disorders of personality which make them unsuitable companions for those less disturbed. Our lack of knowledge of the causes and treatment of such disordered behaviour makes it difficult to suggest alternatives. An ambivalent attitude is acknowledged and it seems that some empirical method has to be offered to deal with young girls who continually run away from home and whose behaviour gives rise to parental anxiety. There is no doubt that only a minute proportion of the whole problem comes to the notice of the Courts and that the proportion of such girls who reach approved schools is very small; legislation can deal only with those whose promiscuity is prominent

enough to attract the attention of parents or the police.

Venereologists in general are uneasy about laws which apply coercive measures to the control of promiscuity. During the war, in 1942, Defence Regulation 33B allowed action to be taken when a person was alleged to have infected two or more persons with venereal disease: in 1962 an attempt to introduce a Bill with similar provisions failed (Bernfeld, 1967) and a later suggestion that such legislation should be revived (Macfarlane and Pearson, 1967; Morton, 1967) found no general favour with the venereologists (Fluker, 1967; Wright, 1967; Rees, 1967; Jefferiss, 1967; Catterall and Seale, 1967; Gallagher, 1967), who considered that legal compulsion would defeat its own ends, discourage attendance at clinics, and interfere with attempts to make attitudes more humane.

The ethical problem persists. With adults one can assert ideas about personal liberty, confidentiality and reluctance to interfere, but if prepubertal children are victims of venereal disease through unlawful sexual acts, few venereologists in Britain will have any compunction about giving information to the proper authorities. With patients in the age range of puberty difficulties begin to appear and the various legal limitations on sexual intercourse based dogmatically on age may not be justified on the basis of maturity. It has been shown that the menarche has tended to occur at a progressively earlier age over the last century or more and this trend shows no sign of abating (Tanner, 1962). Sexual intercourse with a girl aged less than 16 years is still a crime and, particularly if the girl is under the age of 13, the offending male may be sentenced to a long term of imprisonment (see Appendix, Sexual Intercourse with a Girl under the Age of Sixteen). At present, a girl under 17 years of age may be deemed to be exposed to moral danger and through action under Section 65 of the Children and Young Persons (Scotland) Act, 1937, she may lose her liberty by being sent to an approved school. Once there she can be retained or recalled for further detention until the age of 19 years. The new Social Work (Scotland) Act may raise further problems for the venereologist. For example, if a patient under 16, working and living away from home, asked for help requiring the assistance of the local authority social work department, she might become the subject of a supervision requirement or she might be sent to "a residential establishment where education is provided" (a custodial institution), if her behaviour and attitudes were contrary to those approved by her helpers.

This is the main issue; physicians do not like to pass patients to a system with coercive powers and do not like to link persuasion with compulsion. There is this underlying fear that the decisions of others may be prejudiced by irrational feelings, when concerned with sexual matters, particularly those associated with venereal disease or deviation from conventional standards of morality. Venereologists know well the effects of this intolerance and fear that any association with coercion, however well intentioned, may prevent patients from attending and damage an essential relationship based on confidentiality which aims to treat and help a patient on an entirely voluntary basis.

It is necessary to emphasize this conflict of attitudes: on the one hand it must be admitted that certain young persons developing dangerous ways of living may need coercion and custody for their own protection, but on the other hand, one would wish to deny that doctors, particularly venereologists, should be part of the coercive system. The price of introducing the fear of coercive measures is too high and it seems wiser to allow a girl to understand that her doctor's confidentiality is valuable and something she can count on, even though legally we do not now, in the National Health Service, act in the fiduciary capacity deemed important by jurists (*A.B. v. C.D.*, 1851; Lord Riddell, 1929). The vaguely worded English Statutory Regulation relating to the special degree of confidentiality in venereal disease departments (Appendix, Relevant Statutes) does not apply in Scotland. Finally, it should be appreciated that in practice "the care or protection" system tends to involve those who are psychiatrically ill rather than those who are promiscuous only.

Summary

- (1) Methods of dealing with juvenile delinquents have changed in modern times from the imposition of retributive penalties to the development of methods of education and reform rather than punishment.
- (2) The existing system for dealing with juvenile offenders by Scottish Courts of Criminal Law is described and contrasted with recent proposals for abolishing juvenile courts and substituting a system for carrying out sustained measures of education and training, deemed suitable to the needs of the individual, irrespective of the nature of the delinquency.
- (3) The tendency to apply legislation to young girls considered to be "exposed to moral danger" rather than to boys is discussed; the greater physical dangers of promiscuity to girls, namely pregnancy and sexually-transmitted disease, is acknowledged as a reason for this ambivalence.
- (4) The intrinsic value of medical confidentiality in relation to the control of venereal disease and its importance in the relationship between physician and patients, particularly young girls, is discussed.
- (5) In 1966 a charge was proved in a juvenile court against 21,574 boys and 1,877 girls. Of the 1,877 girls, only 41 seniors and nineteen juniors were committed to an approved school and only sixteen seniors and eleven juniors to a remand home.
- (6) In a recent calendar year (ending March 31, 1967), 64 girls in the senior age group (14 to under 17 years) were committed to approved schools in Scotland on the basis of "care or protection" proceedings, a civil procedure. Thirteen senior girls were committed on the basis of being "beyond parental control" and only three as persistent truants. On March 31, 1967, there were only 117 senior girls in approved schools in Scotland. Only the small proportion reaching custodial institutions are examined for the exclusion of venereal disease apart from some of those who may pass through a remand home.

The author wishes to thank the Scottish Home and Health Department for the data in Tables III and IV and Mr J. G. Burns for his help in the preparation of Table V.

REFERENCES

- BERNFELD, W. K. (1967). *Lancet*, **1**, 280.
- CARSTAIRS, G. M. (1963). "This Island Now: The B.B.C. Reith Lectures, 1962". Hogarth Press, London.
- CATTERALL, R. D., and SEALE, J. R. (1967). *Lancet*, **1**, 384.
- EPFS, P. (1951). *Brit. J. Delinquency*, **1**, 187.
- FLUKER, J. L. (1967). *Lancet*, **1**, 510.
- GORDON, G. H. (1967). "The Criminal Law of Scotland". Scottish Universities' Law Institute Series. Green, Edinburgh.
- GALLAGHER, E. (1967). *Lancet*, **1**, 441.
- HUME, D. (1829). "Commentaries on the Law of Scotland respecting Crimes", 3rd edition, p. 33. Bell and Brafute, Edinburgh.
- JAMIESON, J. (1879-87). "An Etymological Dictionary of the Scottish Language", rev. ed., 5 vols. Gardner, Paisley.
- JEFFERISS, F. J. G. (1967). *Lancet*, **1**, 328.
- KEIR, D. (1968). In "Reform plan splits probation service", *Scotsman*, 12th February. Edinburgh.
- KEIGHLEY, E. (1957). *Brit. J. vener. Dis.*, **33**, 105.
- (1963). *Ibid.*, **39**, 278.
- Lancet* (1967). "The Challenge of Delinquency", Leading article, **2**, 349.

- LOCKHART, S. A. (1968). In "Reform plan splits probation service", *Scotsman*, 12th February. Edinburgh.
- MACFARLANE, W. V., and PEARSON, R. C. M. (1967). *Lancet*, 1, 158.
- MACKENZIE, SIR G. (1678). "The Laws and Customs of Scotland in Matters Criminal", p. 14. Brown, Edinburgh.
- MORTON, R. S. (1967). *Lancet*, 1, 221.
- REES, E. (1967). *Lancet*, 1, 328.
- RIDDELL, LORD G. A. (1929). "Medico-legal Problems". Lewis, London.
- SCOTTISH EDUCATION DEPARTMENT; SCOTTISH HOME AND HEALTH DEPARTMENT (1966). "Social Work and the Community: Proposals for reorganising Local Authority Services in Scotland". Cmnd. 3065. H.M.S.O., Edinburgh.
- SCOTTISH HOME AND HEALTH DEPARTMENT; SCOTTISH EDUCATION DEPARTMENT (1964). "Children and Young Persons, Scotland. Report by the Committee appointed by the Secretary of State for Scotland". Cmnd. 2306. H.M.S.O., Edinburgh.
- (1967). "Criminal Statistics (Scotland), 1966: Statistics relating to Police Apprehensions and Criminal Proceedings for the Year 1966". Cmnd. 3336. H.M.S.O., Edinburgh.
- TANNER, J. M. (1962). "Growth at Adolescence", 2nd ed. Blackwell, Oxford.
- WALKER, D. M. (1963). "The Scottish Legal System", 2nd ed. revised. Green, Edinburgh.
- WEST, D. J. (1967). "The Young Offender". Pelican book, A872.
- WRIGHT, D. J. M. (1967). *Lancet*, 1, 221.

Citation of Legal Case

- A B v. C D (1851). 14, Dunlop—Court of Session Cases, Scotland, 1838–62. 177.

Les problèmes médicaux et légaux de la délinquance en Écosse

I. Les jeunes filles dans les institutions de détention

RÉSUMÉ

(1) Les méthodes appliquées à la délinquance juvénile ont changé dans les temps modernes. Des

méthodes d'éducation et de réforme tendent à se substituer à l'imposition de peines judiciaires.

(2) Le système appliqué actuellement aux jeunes délinquantes par les Cours criminelles de justice en Écosse sont décrits et comparés aux propositions récentes d'abolir ces Cours et de leur substituer un système de mesures soutenues d'éducation et de formation jugées comme étant appropriées aux besoins de la personne, sans tenir compte de la nature du délit.

(3) La tendance d'appliquer la loi quand il s'agit des filles qui sont considérées comme étant "exposées à un péril moral" plutôt qu'aux garçons est discutée. Le fait que les filles sont plus exposées aux grands dangers de la promiscuité, la grossesse et les maladies transmises par l'acte sexuel, est reconnu comme étant une raison de cette différence.

(4) Le valeur intrinsèque du secret professionnel en relation avec la lutte contre les maladies vénériennes et son importance dans les rapports entre le médecin et ses malades, surtout quand il s'agit de jeunes filles, est discutée.

(5) En 1966, 21.574 garçons et 1.877 filles ont été trouvés coupables par les Cours. Des 1.877 filles, seulement 41 parmi les plus âgées et 19 parmi les plus jeunes ont été envoyées à une institution d'éducation surveillée et seulement 16 parmi les plus âgées et 11 parmi les plus jeunes à une maison de détention provisoire.

(6) Pendant une récente année "fiscale" finissant le 31 mars 1967, 64 filles du groupe des plus âgées (14 ans jusqu'à moins de 17 ans) ont été envoyées à une institution d'éducation surveillée en Écosse pour des raisons de "sollicitude ou protection" à la suite d'une procédure civile. 13 de ces plus âgées ont été envoyées parce qu'elles s'étaient "affranchies de l'autorité des parents" et seulement 3 avaient été absentes de l'école d'une façon régulière. Au 31 mars 1967 il y avait seulement 117 de ces filles plus âgées dans les institutions d'éducation surveillée en Écosse. Seulement une petite proportion arrivant aux institutions de détention est examinée pour la recherche des maladies vénériennes, à part quelques-unes de celles qui auraient pu passer par une institution de détention provisoire.

APPENDIX

RELEVANT STATUTES

SCOTLAND

K. James IV (1503) c. 69 (Sir Thomas Murray's of Glendook Collection of Statutes, published in Edinburgh in 1682).

Item. Anent steallars of Pykes out of stancks (ponds), breakers of Dowcattes, Orchardes or zairds (fish-traps), or stealers of hives, and destroyers thereof: And als anent them, that slayis Parked Deare, Raes (roes), or Rae-bucks (roe-bucks), of Lordes proper woodies, that that be a poynt of dittay (indictment) in time to cum. And that the unlaw (fine) thereof, be ten pound, togidder with ane amendis to the partie, according to the skaith (damage). And gif any Children within age,

committit any of thir things foresaid, because they may not be punished for none-age (by reason of the fact that they are not of lawful age), their Fathers or Maisters sall pay for ilk ane of them (each one of them), ilk time committing any of the said trespasses foresaid, threttane shillings four pennies, or else deliver the said child to the judge to be leished (lashed), scourged and dung (past partiple of to ding—to beat), according to the fault. (Translations from Jamieson, 1879–87.)

Children and Young Persons (Scotland) Act, 1937
(1 Edw. 8. Geo. 6 Ch. 37)

65 (1) For the purposes of this Act, a child or young

person in need of care or protection means a person who comes within any of the descriptions hereinafter mentioned, that is to say:

- (a) a child or young person who, having no parent or guardian or a parent or guardian unfit to exercise care and guardianship or not exercising proper care and guardianship, is falling into bad associations, or exposed to moral danger, or beyond control;
- or
- (b) a child or young person:
 - (i) in respect of whom any of the offences* mentioned in the First Schedule to this Act has been committed;
 - or
 - (ii) who is a member of the same household as a child or young person in respect of whom such an offence has been committed;
 - or
 - (iii) who is a member of the same household as a person who has been convicted of such an offence in respect of a child or young person;
 - or
 - (iv) who, being a female, is a member of the same household as a female in respect of whom an offence which constitutes the crime of incest has been committed by a member of the household, and who, in any such case as aforesaid, requires care or protection;
 - or
- (c) a child in respect of whom an offence has been committed under section 21 of this Act (which relates to the punishment of vagrants preventing children from receiving education).

(2) For the purposes of this section, the fact that a child or young person is found destitute, or is found wandering without any settled place of abode and without visible means of subsistence, or is found begging or receiving alms (whether or not there is any pretence of singing, playing, performing or offering anything for sale), or is found loitering for the purpose of so begging or receiving alms, shall (without prejudice to the generality of the words of paragraph (a) of the last foregoing sub-section) be evidence that he is exposed to moral danger.

Social Work (Scotland) Act, 1968. Part III **Children in need of compulsory measures of care**

30-(1) Except where otherwise expressly provided, a child for the purposes of this Part of this Act means:

- (a) a child who has not attained the age of 16 years;
- (b) a child over the age of 16 years who has not attained the age of 18 years and in respect of whom a supervision requirement of a children's hearing is in force under this part of this Act;
- (c) a child whose case has been referred to a children's hearing in pursuance of Part V of this Act.

(2) For the said purposes the expression "parent" includes a guardian.

*Sexual and other crimes or offences

32-(1) A child may be in need of compulsory measures of care within the meaning of this part of this Act if any of the conditions mentioned in the next following sub-section is satisfied with respect to him.

(2) The conditions referred to in sub-section (1) of this section are that:

- (a) he is beyond the control of his parent;
- or
- (b) through lack of parental care he is falling into bad associations or is exposed to moral danger;
- or
- (c) the lack of care as aforesaid is likely to cause him unnecessary suffering or seriously to impair his health or development;
- or
- (d) any of the offences mentioned in Schedule I to the Children and Young Persons (Scotland) Act, 1937, has been committed in respect of him or in respect of a child who is a member of the same household;
- or
- (e) the child, being a female, is a member of the same household as a female in respect of whom an offence which constitutes the crime of incest has been committed by a member of that household;
- or
- (f) he has failed to attend school regularly without reasonable excuse;
- or
- (g) he has committed an offence;
- or
- (h) he is a child whose case has been referred to a children's hearing in pursuance of Part V of this Act.

(3) For the purposes of this Part of this Act "care" includes protection, control, guidance and treatment.

Prosecution of Crimes and Offences

The prosecution of crimes and offences is almost exclusively in the hands of the Lord Advocate in the High Court and of procurators-fiscal acting on instructions from the Lord Advocate in the Sheriff Court. The police do not prosecute in any circumstances in Scotland. Crimes are reported to the procurator-fiscal in the first place and he decides whether to prosecute (Walker, 1963).

Sexual Intercourse with a Girl under the Age of 16 years

In Scottish law it is rape for a man to have intercourse with a girl of 12 years of age. A jury may convict a man of contravention of Section 4 of the Criminal Law Amendment Act, 1885, which makes it an offence, punishable with life imprisonment, to have intercourse with any girl under the age of 13 years, and an offence

punishable with 2 years imprisonment to attempt to do so. Section 5 (1) of the same Act, as amended by the Criminal Law Amendment Act, 1922, makes it an offence punishable with 2 years' imprisonment to have or attempt to have sexual intercourse with a girl of or above the age of 13 and under the age of 16 (Gordon, 1967).

ENGLAND AND WALES (1968, No. 1624)
National Health Service (Venereal Diseases)
Regulations 1968 (*Coming into Operation*
December 2, 1968)

The Minister of Health, in exercise of his powers under Section 12 of the National Health Service Act

1946* and of all other powers enabling him in that behalf, hereby makes the following regulations:

(3) Every Regional Hospital Board and every Board of Governors of a teaching hospital shall take all necessary steps to secure that any information obtained by officers of the Board with respect to persons examined or treated for venereal disease in a hospital for the administration of which the Board is responsible shall be treated as confidential *except for the purpose of communicating to a medical practitioner, or to a person employed under the direction of a medical practitioner in connection with the treatment of persons suffering from such disease or the prevention of the spread thereof, and for the purpose of such treatment or prevention.*

*1946 c. 81.