Introduction

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In the contemporary world, society's ability to function harmoniously without recourse to physical violence is, for many observers, a key marker of its civilised status. How crime and punishment are defined and managed is central to our shared sense of humanity and tremendous efforts have been made to ensure that these standards are adhered to internationally, with accountability and fairness. Cross-border cooperation in policing has matched the rise of international criminal activities and the belief in an ultimate human authority with the right to impose justice on crimes against humanity has even been established in the Hague.

Yet this historical tendency towards the harmonisation of definitions and legal codification of crime, integrated methods for its prevention and detection and a scientific and humane approach to punishment also underlines the fact that each nation has its own distinctive relationship to these questions, a relationship which has evolved in harmony with its changing sense of national identity. The French legal system, for instance, is called le droit pénal and, as its name suggests, its emphasis is on punishment. The English approach, on the other hand, focuses on the

transgression, the crime, thus its designation as "criminal law". Despite, or perhaps because of the fact that since 1707 Scotland has been a "stateless nation", the Scottish approach to these questions has always attributed a central place to the notion of the community and the social context, the sense of guilt and the naming and shaming of the "guilty". It has therefore relied much more heavily on the "common law", the law of the people.

The distinctiveness of the Scots' relationship to crime and its punishment is well documented but, arguably, has never been analysed in its totality as a statement of Scottishness. The formal nature of Scottish legal proceedings illustrates this point very clearly. The law governing criminal trials in Scotland, for instance, does not allow the accused to elect a judge or jury trial, but has juries composed of 15 members, and judgements that require corroborative evidence from at least two different and independent sources, provide the almost unique possibility of three different verdicts: "guilty", "not guilty" and "not proven" and allow for a guilty verdict on a simple majority of eight out of the 15 jurors. Punishment of criminals also has a distinctly Scottish bent to it. At the present time, Scotland has developed one of the widest ranges of community sanctions available in the world, even if custodial sentencing is still heavily used. Community involvement in the criminal justice system is also one of the intriguing aspects of the nation's history. History tells us that not all crimes punished by the courts have been condemned by the Scottish people and not all crimes condemned by the Scottish people have been punished by the courts. In 1736, for instance, Captain John Porteous was lynched by rioters in Edinburgh amid widespread fears that his death sentence would be reprieved by the government in London. Despite a reward of £200 offered by the government for information, a considerable sum for the period, those responsible for his murder were never brought to justice. The Scottish socialist John MacLean (1920-1999) was sentenced to five years penal servitude for sedition in May 1918 but was released from prison after only five months through relentless public pressure. What this says about Scottish society, about the way the Scots see themselves before the law is less evident and needs exploring and hopefully these essays will contribute to this end and stimulate further research into the question.

On the other side of the tandem, the Scottish dimension to crime and policing is equally intriguing and deserving of research. The informal ties between crime and society are certainly complex. We know, for instance that only in 2013 was it deemed necessary to create a *Police Service of*

Scotland and that, until then, the local dimension to crime and policing was the preferred choice of the people. Most older Scottish readers will probably remember the role played by the neighbourhood bobby in maintaining public order – a clip on the ear was usually enough to remind children of where the straight and narrow was to be found – but much of what was taken for granted in the maintenance of the nation's peace and tranquillity in the past is remarkably scant. We have no clear map of its relationship to the deeply-rooted civic traditions of the country yet the whole of popular culture is awash with images of the criminal and his nemesis. In fact and fiction, crime and its detection seem to have a special hold on the Scottish people. From Percy Sillitoe and Joe Jackson to Jack Laidlaw, Jim Taggart (the world's longest-running TV police drama) and John Rebus, the seamless bond between fact and fiction highlights some remarkable characters who, it would appear are individuals in their own right but also in some respects re-incarnations of national images. Scotland's fascination with crime is not a black and white one of "goodies" and "baddies" facing each other but rather, as Ian Rankin suggests about his detective John Rebus, they are an insight into "Scotland's soul, its phobias, psychosis and mistakes, and [about] the people there".

Detective novels, thrillers and spy fiction convey, each in their own way, pictures of Scotland through time. Crimes and murders, discovering the guilty, and exposing the necessary fight of good and evil are mere excuses to exhibit Scotland and Scottishness. Exploring the rich varieties of punishment, in connection with crime, likewise highlights the tenets of Scottish society which always seems more than keen to promote its idiosyncrasies

As one explores Scotland's history, the power of the Judeo-Christian culture laden with the notion of guilt and an overwhelming sense of personal culpability is a sentiment we are forced to acknowledge. Crime seems to permeate all aspects of Scottish society – religious, moral, social, and political. The highly contrasted figure of Mary, Queen of Scots, for instance, a martyr for some, the archetype of ultimate evil for others shows us how the historian, in this case Alison Weir, needs sometimes to become the detective in order to cut through the entangled web of truths and counter-truths surrounding the Darnley assassination. We are perhaps not in a position to return a not-proven verdict, but we can still evaluate the manifold responsibilities in this crime against the state and report a complex picture of 1567 Scotland.

To acknowledge, as many critics do, that Wilkie Collins created crime fiction with *The Moonstone* (1868) should not blind us to the fact that Walter Scott's novels are richly endowed with criminals and detectives. In *Rob Roy* (1818), for instance, the eponymous hero goes undercover to confound the thief who stole the money used to pay the soldiers during their operations in Scotland; Morris, who stole the money he had been trusted with is arrested by Helen MacGreggor and duly drowned in the heart of the Highlands – a generous backdrop which itself provided Scott with so many picturesque scenes and popular images. James Hogg organised his gothic and satirical novel, *The Confessions and Private Memoirs of a Justified Sinner* (1824) to ironically show criminal behaviour while, at the same time, revealing the mechanics of such behaviour. In so doing Hogg introduces the figure of Miss Logan as a prototype of the detective who gradually comes to understand the role of the devilish Gil-Martin, a seemingly unstoppable serial killer. Such works of gothic fiction by Scott and Hogg paved the way for James McLevy's accounts of his own activities as the first actual detective in the 1860s. And later writers, among whom R. L. Stevenson, would develop the literary detection genre using the national languages, thus allowing it to grow and multiply.

Each crime novel provides the readers with the expected dose of adrenaline, social criticism, historical references, analysis of the killer's psyche, and the detective's very own neurosis. However, the latest generations of Scottish authors of dark novels, thrillers and spy novels, following in the footsteps of Alistair MacLean's *When Eight Bells Toll* (1966), seem to be creating a definite specificity which deserves exploring (see Lenn Wanner's *Tartan Noir*, 2015). This reminds us of the pledge of the founders of the National Theatre of Scotland, back in the 1920s.

Scotland's towns and cities seem to be caught up in this phenomenon. Laidlaw is nationally acknowledged as the archetype of Scottish detective inspectors. He was created by William McIlvanney, who fathered "tartan noir" – *Laidlaw* (1977); *The Papers of Tony Veitch* (1983); *Strange Loyalties* (1991). Ian Rankin's Rebus (*Knots & Crosses*, 1987) belongs to Edinburgh as Glenn Chandler's Taggart (first aired in 1983) belongs to Glasgow. But Scotland's two great cities do not hold the monopoly in this. All sorts of detectives can also be found in most towns and regions throughout the country: Rhona MacLeod in Glasgow and Argyll, Bob Skinner in Edinburgh, Logan MacRae in Aberdeen, Fin Macleod on Lewis, Jimmy Perez and Willow Reeves in Shetland, Alice Rice in the Lothian

region. Their adventures are but excuses for celebrating a city, a district or an island. Whether it be John Macnab, a John Buchan-style character, in Andrew Greig's *Romanno Bridge* (2008) or Inspector McNab, in Lin Anderson's *Paths of the Dead* (2014), the chase-thriller takes hold of its reader as it unfolds its mysteries across the nation's glens and bens and beyond thus making Scotland's scenery part and parcel of the story itself.

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This review's modest contribution to research into these questions covers a wide-ranging array of themes and questions. Wide-ranging in terms of the period covered from pre-union Scotland to the present times. Wide-ranging also in terms of the scientific approaches adopted, from literary analysis and theatrical output to artistic, historical, legal and political studies. Variety rather than a focussed line of study has been our goal. We have placed the article by Lin Anderson at the head of the volume in recognition of her contribution as our guest speaker at our conference in Toulouse necessarily followed by the critical study on her "thrawn characters". Then, the reader is free to choose his/her reading material from what catches his/her eye in the Contents page or according to the general themes which underlie this research.

The articles which focus primarily on literary themes show less of a concentration on the horrors of crimes such as murder, cruelty, and madness and more on the background to such deeds. Here we find the large variety of landscapes and the details pertaining to realism that make up the Scottishness of Scottish crime fiction, thus justifying the expression *Tartan Noir*.

Lin Anderson's article "The Heart of Tartan Noir", briefly reviews the history of Scottish crime fiction, dwelling on the part MacIlvanney's Laidlaw played in delineating the Scottish Tartan noir hero. While questioning the Scottishness of Scottish crime fiction, she stresses the importance of both the history and landscape – emulating Walter Scott – of the nation and how "thrawn" the villains can be, meaning that such characters are made to react unexpectedly, usually "going for the opposite". Jean Berton's essay (the first dealing with Anderson's fiction), "Thrawn characters on converging routes leading to thanatography", explores this notion of "thrawnness" and studies the symbolical character of McNab, the

leading detective loaded with a set of qualities usually belonging to a Byronic hero. Anderson's *Paths of the Dead* combines the canonical features of a serial killer in a detective novel and those of a thriller. As the title suggests, Anderson makes use of the world of mediums and druids to offer an opening to the so rarely used subgenre of thanatography.

Philippe Laplace's essay, "Récits, symboles et répression dans *Witch Light* de Susan Fletcher", studies the connection between the genres of historical narratives and crime fiction. Fletcher's heroine, Corrag, a so-called witch involved in the Glencoe massacre, highlights the case of high treason – rebellion against the crown versus breaking the law of hospitality. The witch is found to be set at the crossing point of good and evil, since Corrag has soothing powers, whereas the Crown (William III of Orange) seems to master only the powers of destruction – broken bodies, whether assaulted or punished are central to Fletcher's narrative in which Corrag's own body stands as a crucible to produce chastisement and liberation. In "Punishment and crime in Jenni Fagan's *The Panopticon*", Marie-Odile Pittin Hedon observes how Jenni Fagan's debut novel *The Panopticon* is a tale of punishment that has very little to do with its expected premise, crime, kept in the background. Still, this type of prison is at the root of panopticism and self-erasure. The heroine, Anais, is allowed to wander in the totalitarian world of total control where she both is an experiment and is watched by the experiment. In Fagan's novel, the idea of the Panopticon – seeing at all times without being seen – is brought into frightful existence thus questioning the force of punishment. Isn't the Panopticon, devised some two centuries ago, more than an ideal prison, some sort of prototype of Big Brother? Ahmady Camara has focussed his attention on Denise Mina's *The Field of Blood* a stimulating topic for the core of his research: his essay, "La culpabilité des enfants criminels dans *The Field of Blood* de Denise Mina", while exploring the culture of violence in Glasgow highlights the role of religion in fostering violence. Mina's novel puts forward an original way of somatising violence in the character of the heroine, thus enabling Camara to explore the notion of passing down to generations some irrepressible indulgence to crime.

Karyn Wilson-Costa's study, "Robert Burns's Poetic Justice: Let the Punishment Fit the Crime", deals with Robert Burns's notion of guilt and accountability especially when facing Auld Lichts judges. She analyses how Burns satirises the attitude of the so-called elects, particularly how the poet turned the crime of fornication and its punishment "on its head". Robert A.

Wirth's essay, "*His Bloody* Deceptive *Project*: the Unjustified Confessions of Roderick Macrae", is about how Burnet's second crime novel mocks legal documents concerning a triple murder allegedly having taken place in 1869. Although young Roderick's guilt is not questioned, the accountability of a murderer who is not totally sane of mind, undoubtedly is: "This paper [is exploring] the specifically Scottish laconic and sardonic voices in the novel, the role played by reliability of the various forms of narration, and the deliberate juxtaposition of empirical and theoretical approaches to the questions of crime and punishment as evidenced in the testimony of the various witnesses". To some extent, the case highlights the importance of the not-proven verdict in Scottish criminal law.

Andrew Monnickendam's essay, "Crime, Punishment, and Civilisation in Walter Scott's *The Talisman*" is a subtle analysis of the notions of justice and retribution when applied to the violence engendered in a war context. And Andrew is holding the scales when writing: "On the one hand, Scott seems to be involved in a contrastive study of what is legally and/or ethically correct, while on the other, the particularly bloody finale would suggest that there are no winners in the pointless contest of war".

Mario Ebest's article, "Displacement as an Exit Strategy: Crime and Punishment in Mackay Brown's *Greenvoe*", focusses on the antagonism between Calvinism and Roman Catholicism how these impact on the attribution of sound justice. Especially as the debated crime is that of apostasy: is the law of men really included in the law of God or is it a construct whose approval by God is only a matter of faith? The heroine's only way of escape from hallucinations is exile and recovery in hospital from mental and physical exhaustion. The cruelty of the accusers and the helplessness of old Mrs McKee induce a question about the Clearances – were all the exiles from northern Scotland victims of the landlords' greed only? Or, who is guilty of causing so much suffering?

Two articles by Danièle Berton-Charrière, Hamish MacDonald's *Singing Far into the Night* or the 1931 Invergordon events on stage", and Tri Tran, "The Invergordon 'Mutiny' 1931 and the Admiralty", stand apart at the crossroads between literature and historical research and, in this sense, complement each other. Both concern the last and largest mutiny in modern British naval history which took place off the coast of Invergordon, a small village on the north-east coast of Scotland, in September 1931. Tran's paper looks in detail at the mutiny, its causes and consequences against the history of a service notoriously violent in its treatment of its personnel and the

social context of the period in Scotland where left-wing sentiment and sympathies with the Bolshevik experiment were widespread. Berton-Charrière's article covers the same story but from the angle of the people of Invergordon and through the medium of a play by Hamish MacDonald, *Singing All Through The Night.* The human dimension which the play is thus able to focus on and the literary freedom which accompanies it is refreshing in its ability to do justice to the forgotten aspects of history. The historical facts of Tran's study can thus be reinserted into the uncertain and highly charged social reality of the period and the all too easily forgotten personal sacrifices and human suffering which lie behind these momentous events.

The collection of articles which focus on the historical aspects of crime and punishment also seem to converge on the specifically Scottish cultural dimension to this relationship with the people. In his "Knox et Burne sur la question religieuse du crime et du châtiment", Christian Jérémie explores the somewhat neglected backdrop to the shaping of the popular attitudes towards crime and punishment, the religious one. Jérémie's article looks at the ideas of John Knox and Nicol Burne on punishment and identity of criminals in the eyes of the Church. Jérémie argues that although these issues have an eternal quality to them, we should not underestimate the impact such theorising had on shaping social attitudes, linguistics and public rhetoric particularly in the context of 16th century Scotland. The Church was not alone in thinking through the questions of crime and punishment and secular society. Scotland's Enlightenment thinkers also became caught up in the debate. Kim Nguyen looks, in "Natural Feelings, Crime and Punishment in Adam Smith's Moral Philosophy", at how Adam Smith's Moral Philosophy addressed these problems. Smith challenges the idea that punishment should have a purely utilitarian end. He argues instead that it stems from natural feelings and therefore that the consequences of a person's acts should determine the nature of retribution. The judgement of the impartial spectator should, accordingly, be the final arbiter hence anchoring it in the ever-changing nature of Scottish society. These new ideas and how they were to be applied to Edinburgh's prisons is the subject of Émilie Berthillot's article, "Les prisons édimbourgeoises: témoins de la spécificité et de l'évolution du châtiment écossais à l'époque victorienne (1837-1901)". After the demolition of the Old Tolbooth in Edinburgh, a different approach to punishment centred on education and religious redemption, was adopted with the building of the new jail on Calton Hill in 1817. While initially the new institution was considered as "a palace", and

indeed the prison was often mistaken for Edinburgh Castle by 19th century visitors, the reality of conditions inside the prison were nevertheless primitive as the authorities struggled to find a balance between fair sentencing and custodial punishment that Scottish society could understand and accept as fair and just.

The popular perception of the crime and the criminal is also the subject of Marion Amblard's article "Marie Stuart : coupable ou innocente ? La réhabilitation d'un personnage historique dans l'art pictural". Amblard explores the incredible fascination which Mary Queen of Scots has held over the Scottish people from her condemnation and vilification during her short lifetime to an almost total transformation in her image after death. Using the numerous portraits of the Queen which were produced through the nineteenth century, Amblard retraces this gradual metamorphosis from the vile criminal to the innocent victim, a process which she places inside the rise of a new found Scottish sense of identity and against the backdrop of Mary's own prophetic prediction, "en ma fin est mon commencement". This link between popular perceptions of what is criminal activity and the strength of a sense of Scottish identity is also the subject of a paper by Arnaud Fiasson "Jacobite Legacies to Scottish Popular Culture: Murder under Trust, Treason and their Punishment". The Massacre of Glencoe and the Jacobite Risings brought popular attention to focus on the gravity of the crimes involved, those of "Murder under Trust" and "Treason". Yet, over time, they have acted as focal points in the development of Scottish national sentiment in quite different ways, the one fading to a distant spectral presence, the other participating in a cultural rethink of the fundamental characteristics of Scottishness. Popular reactions to crime and punishment are also explored by Michael Murphy in "The Porteous Riots and the Gordon Riots: the reactions to Crime and Punishment of Allan Ramsay father and son". Murphy looks at the Porteous and Gordon Riots of the eighteenth century through the eyes and writings of the Ramsays, father and son. He points to the fact that even extreme outrages like mob rule can be seen from various angles with greater or less empathy. Political considerations in the post-Union context would appear to play a key role in these interpretations and the solutions proposed to eradicate them.

These questions of law and order, crime and punishment are certainly embedded in the nation's past but they also have a pressing edge to them inside modern Scottish society. Indeed, it would appear that they are often indissociable from the debate on the nation's identity. Wafa El Fekih Said,

in “Perception of criminality among migrants and the myth of equality in Scotland”, looks at the perception of criminality involving migrants in today’s Scotland. Using data from recent social surveys she explores the tensions between the deeply-held belief in Scottish egalitarianism and the powerful perception, especially in the media, of the immigrant as criminal. Are the xenophobic rantings often associated with the country’s southern neighbour irrelevant in the new all-inclusive Scotland and how does the Scottish parliament deal with issues of race and racism and encourage the concept of civic nationalism, she asks. In her essay “The Scottish State and the Tartanisation of Penal Politics”, Emma Bell takes this question on directly from a political point of view with her article on the “tartanisation” of penal politics today. Bell analyses the popular image of the “stateless nation’s” criminal justice system and questions whether it lives up to its reputation of being ‘fairer’ and able to reflect the ‘values of a modern and progressive nation’. Does it, for instance, have recourse to more imaginative alternatives to custodial sentencing and focus more determinedly on the underlying social causes of crime. Has the trend towards the centralisation of state control in Scotland, since the return of the Parliament, reinforced the Scottishness of criminal justice or perhaps undermined the very foundations of notion of Scotland’s local state? Edwige Camp-Pietrain also looks at Scotland’s attitudes towards human rights and the criminal justice system, in “Les droits des justiciables : une conception écossaise des droits de l’homme ?”. For Camp-Pietrain Scotland’s commitment to the human rights of prisoners and those accused of crimes is one of the hallmarks of the parliamentary debates in Holyrood, particularly since the arrival of an SNP government. Indeed, as she points out, this attachment to human rights is one of the clearest points of division between Scotland and England. Yet, the lack of political enthusiasm for the practical application of some of these rights to Scottish prisons and the way they are repositioned during electoral periods is also part of the political equation that needs to be taken into consideration when assessing Scotland’s commitment to human rights. But, arguably, the greatest problem in assessing this commitment, Camp-Pietrain points out, is the “European” dimension to the question which, since the Brexit vote has become a major part of the SNP strategy for independence.

Ultimately, the “tartanisation” of crime and punishment is as central to the understanding of Scotland today as it was in earlier times. It is hoped that this volume will therefore stimulate more research in this field in the years ahead.