



The Investigation of Suicide in Victorian and Edwardian Scotland

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Introduction

Notwithstanding the highly sensitive nature of death by suicide is such that there seems to have been little discussion, in Scotland at least, of the history and related legal aspects of the occurrence of these events. There is no doubt that the subject matter ought to be considered because of the sad circumstances that often surround such deaths, not least because of the effect of the event on the nearest relatives of the deceased. Occasionally, these deaths are induced in large numbers by appalling circumstances that certain groups in the same society find themselves in.¹ Most commonly, in Scotland, death by suicide occurs by individuals acting alone. That aspect of solitude, however, should not prevent attempts at discovering underlying issues for further development in order to try to discover more of the phenomenon. In doing so some indication can be given of the particular Scottish approach to the issues.

Existing literature

The office of coroner in Scotland had fallen into decline and disappeared before modern times.² This contrasted notably with the work of forensic examination of deaths that continued, and still continues, to be carried out by the coroner in England and Wales, and also in Northern Ireland. The Coroner's Court is a well-established part of the respective jurisdictions. In Scotland, individual deaths by suicide, and much else besides, were left to be investigated by the Procurator Fiscal, the local public prosecutor appointed by the Sheriff, with such medical advice and assistance as required, and if available. In short, the circumstances of a death by suicide were not examined in a public forum. The legal processes in practice (investigation by an official with a report to a senior colleague elsewhere with the findings) appear distinctly continental in origin but the existence of such a procedure of investigation in private was at variance with the English practice, and yet remained unchanged by national government in London where there was preference for the application of a model that matched that of English law.

Professor Olive Anderson through her classic text, *Suicide in Victorian and Edwardian England*, was notable for her examination of suicide from many different but complementary

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¹ Florian Huber, *Promise Me You'll Shoot Yourself: The Downfall of Ordinary Germans in 1945* (Allen Lane, 2019) has provided the most recent history of exactly that with the collapse of German society in the immediate post-war era.

² J.G.S., "Coroners' Inquests" (1881) 25 *Journal of Jurisprudence* 251-3.

angles.³ Anderson made use of a wide range of sources, including coroners' inquests, official statistics, and newspaper reports. The value of her research lay in her challenge of the reasons usually given to explain suicide: far from the newly created and heavily-industrialised urban centres giving rise to appalling conditions that drove people to take their lives, deaths by suicide more often occurred in rural areas or small backwater towns. The explanations included the point that industrial centres were, in fact, communities in which plentiful work nearby with high wages gave reasons for living. The book was extensively reviewed and highly regarded.⁴

One of Anderson's convincing arguments was that suicide statistics were plainly shaped at every stage by the processes which produced them.⁵ Her view was that in the Victorian period professional expertise, greater bureaucratic rigour and consistency made some very substantial advances in a system for investigating sudden death, but always within an archaic feudal framework which was neither uniform nor centrally controlled.⁶ The coroners of Wales and Ireland had their duties to perform but that was in the context of the inquest model from English law:

“It has too often been forgotten that the English legal system of investigating sudden death was a peculiarly open one, and involved washing everyone's dirty linen not only in a public inquest room, but probably in the local newspaper as well. An inquiry was thus not usually welcome”.⁷

Professor Anderson identified four stages as being crucial to the process by which a death came to be registered as one caused by suicide. The first, or pre-coronatorial, at which it was settled whether a death should be drawn to the attention of the coroner; the second, or coronatorial, at which the coroner determined whether an inquest should be held on that death; the third, or inquest stage, at which a jury decided whether a verdict of suicide should be returned; and, finally, the recording stage, at which the coroner and the local Registrar of Deaths carried out this verdict into the judicial statistics compiled by the Home Office and the death returns lodged at the General Register House.⁸

Yet, one reviewer noted that the evidence on which the professor relied was overwhelmingly drawn from London and the south-east; there was little detailed material from the great industrial cities and the north of England- “Wales gets only the briefest discussion, Scotland an occasional mention, and Ireland not even that”.⁹ The Scottish investigation of suicide by confidential inquiry is an example of how the inherent contradictions of law and civic administration (in short, the wholly different ways of doing the same thing) amongst the home nations were, somehow, absorbed and tolerated within the Victorian and Edwardian eras.

³ Olive Anderson, *Suicide in Victorian and Edwardian England* (Oxford University Press, 1987).

⁴ e.g. Roy Porter, “Book Review” (1988) 32(1) *Medical History* 110, 110-1.

⁵ Anderson (n.3), 32.

⁶ *ibid*, 15.

⁷ *ibid*, 255.

⁸ *ibid*, 18.

⁹ David Cannadine, *History in Our Time* (Penguin, 1998), 127.

One study of suicide has considered the secularisation of suicide and the opportunities for it to become medicalised.¹⁰ Scots law of the time is to be seen as more centralised and supervised and took cognisance of the actions of the deceased person. The differences in the manner that suicides were investigated in Scotland and England meant that data obtained from official sources was derived by different means: confidential inquiries were bound to produce a different view from oral evidence given in a public forum, at the very least because of the private nature of the former. Little research seems to have been undertaken as to how Scottish statistics were obtained in the Victorian and Edwardian era and that is a significant omission.¹¹ Doubt has been expressed, at least once, as to the accuracy or reliability of the resulting statistics for Scotland but that superficial view made no reference to the procedural differences when challenging accuracy and reliability.¹²

Scots law and suicide

Dying is an event that every aspect is affected by its specific historical and legal context. The statistics around suicide have been treated with scepticism as to unreliability.¹³ The most remarkable point about the investigation of death in nineteenth-century Scotland was that the almost subliminal legal context has received little academic study until recently.¹⁴ The authoritative view of an early legal authority, Lord Stair, set down the principles of Scots law that presented cohesion, order and rationality, as well as providing the foundation for later authoritative writers.¹⁵

Scots law as a general system received its “first synthetic statement” from Stair.¹⁶ The three principles of equity expounded by Lord Stair were those of obedience, freedom and engagement:

“[t]he first principles of equity are these: That God is to be obeyed by man. 2 That man is a free creature, *having power to dispose of himself* [emphasis added] and of all things, in so far as by his obedience to God he is not restrained. 3 That this freedom of man is in his own power, and may be restrained by his voluntary engagements, which he is bound to fulfil. Or, to take them up more summarily, the first principles of right are obedience, freedom, and engagement”.¹⁷

Stair then discusses obedience to God:

¹⁰ Rab Houston, “The Medicalisation of Suicide: Medicine and the Law in Scotland and England, circa. 1750-1850” in John Weaver and David Wright (eds.) *Histories of Suicide: International Perspectives on Self-Destruction in the Modern World* (University of Toronto Press, 2009), 93-5.

¹¹ J. Maxwell Atkinson, *Discovering Suicide: Studies in the Social Organisation of Sudden Death*, (Macmillan, 1978), 67.

¹² *ibid*, 54 and fn. 4 for discussion of the Scottish statistics.

¹³ Emile Durkheim (George Simpson (ed.)), *Suicide: A Study in Sociology* (Routledge & Kegan Paul, 1952), 18.

¹⁴ Robert Shiels, “The Investigation of Sudden and Accidental Deaths in Mid-Victorian Scotland” in Susan Buckham, Peter C Jupp and Julie Rugg (eds.) *Death in Modern Scotland, 1855-1955: Beliefs, Attitudes and Practices* (Peter Lang, 2016), 177-91.

¹⁵ Lord Stair (David Walker (ed.)), “Book 1; Title 1: Common Principles of Law” in *The Institutions of the Law of Scotland* (1681: rep. 1981, Edinburgh and Glasgow University Presses).

¹⁶ Peter Stein, “Legal Thought in Eighteenth-Century Scotland” 1957 69 *Juridical Review* 1, 3.

¹⁷ Stair (n.15), 90.

“Where obedience ends, there freedom begins, and man by nature is free in all things, where this obedience has not tied him, until he oblige himself. It is a great mercy to man, that God hath obliged him only in a few necessary moral duties, and has left him free in much more, [...] all things must be done to the glory of God [...]”.¹⁸

God is to be obeyed by man: does God say that a human ought not to take their own life? The obedience owed to God is asserted in explanations of Lord Stair’s work but does not move to specific duties owed.¹⁹ In any event, to announce that human beings have a social or philosophical right to commit suicide, as David Hume the philosopher did, does not tell us why they do it.²⁰

Durkheim asserted that “everywhere” suicide was reckoned a sin.²¹ In regard to Scotland at least, as noted earlier, Stair wrote that man was “a free creature, having power to dispose of himself and of all things, in so far as by his obedience to God he is not restrained”.²² Whether the phrase used by Stair, ‘dispose of himself’, read short, meant an adult was merely free to behave as he or she wished, or whether, taking a broad interpretation, it meant ending one’s own life, may be considered to be uncertain.²³

Another commentator of the seventeenth century, Sir George Mackenzie, dealt specifically with criminal law.²⁴ In contrast to Stair, Mackenzie commenced a brief study under the heading of ‘Self-Murder’ with the assertion that:

“God Almighty has placed every man in his post here, and he who violently tears himself from it deserves much worse and is more guilty than a soldier who deserts his station; and since princes punish as criminals such as kill their subjects, much more may the Almighty punish him who kills himself; for he who kills himself, kills God’s subject, and therefore *nemo est dominus suorum membrorum*” [nobody is the owner of his own limbs].²⁵

Mackenzie’s point was that as God had forbidden man to kill man without making a distinction in doing so, all Christian nations punish severely self-murder as murder.²⁶ His brief discussion of the basis of the law encompasses ancient philosophers and principles of Roman law.²⁷ He comments that self-murder may be committed by omission as well as by commission and describes the legal consequence of forfeiture of the property of the deceased.²⁸

¹⁸ *ibid*, 91.

¹⁹ Neil MacCormick, “The Rational Discipline of Law” 1981 *Juridical Review* 146, 151-2.

²⁰ Durkheim (n.13), 23.

²¹ Durkheim (n.13), 241.

²² Stair (n.15), 91.

²³ The great deference still paid to the views of Lord Stair may be judged from Adelyn M. Wilson, “The Textual Tradition of Stair’s *Institutions*, With Reference to The Title “Of Liberty And Servitude” in Hector L. MacQueen (ed.) *Miscellany Seven*, (The Stair Society, 2015) 1-124.

²⁴ Olivia F. Robinson (Ed.), *The Laws and Customs of Scotland in Matters Criminal by George Mackenzie*, (1678: reprinted by The Stair Society, 2012).

²⁵ *ibid*, 112.

²⁶ *ibid*, 112.

²⁷ *ibid*, 112-114.

²⁸ *ibid*, 114-115.

The general view of suicide in Scottish society doubtless varied over time and a full assessment is beyond this note, although, there is a well-documented link between law and religion.²⁹ Suicide was not in Victorian and Edwardian times, and is not now, a crime in Scots law and neither was an attempt at suicide.³⁰ That absence of criminalisation and the theological context may provide some basis for explaining the processes in place by the mid-Victorian era- the civic authorities, such as they were, had no duty to be interested in suicide and the religious authorities could only refer to answerability after life.

Duties to investigate deaths were beginning to be placed, by statute, on civic authorities. That was mainly due to concerns about deaths from industrial accidents. In the only relevant textbook or manual published about half way through the period under consideration, there was some further explanation that reveals the thinking around deaths at the time- an accident, for the purposes of an accident inquiry, was said to be defined as: “a sudden and unforeseen event, resulting from human intervention, but arising from an act or omission which was not done or omitted with the intention of causing that event”.³¹ That definition excluded events resulting from human intervention, but arising from acts or omissions designed to produce the incident that had happened, so that with human intervention suicide, along with murder and assault, came to be considered as an event produced: “by the working of a diseased mind”.³²

In short, a person was free to take their own life subject to their being answerable to God: their actions may well have been seen as having been done in the glory of God. Further, it was not God who had brought about the death. As far as there was a possible explanation for the death, in suicide, it may well have been the acting of a diseased mind. The theological context and the predisposition to considered human intervention taken together in the context of an absence of a coronial forum meant that the investigations were limited: the explanations of the after-life accountability were assumed, investigations were directed at proving or excluding third party human intervention, and reports were administrative in form rather than in open court.

Public Administration

It has been written of the Victorian era that it “is not easy to grasp today [...] that there was simply no notion of many of the economic concepts and perspectives which we now take for granted as the basis of debated about economic matters”.³³ Further, there was then no assumption “of any kind” that the government could control these factors.³⁴ These comments by analogy might be said to apply in the same era to the investigation of deaths: in other words, it was accepted that some things just happen. Moreover, the organisation of the medical profession, as it is known today, was almost certainly not the same in the distant past. Finally,

²⁹ Chloë Kennedy, “Criminal law and religion in post-reformation Scotland” (2012) 16(2) *Edinburgh Law Review* 178.

³⁰ Pamela Ferguson, “Killing ‘without getting into trouble? Assisted suicide and Scots criminal law” (1998) 2(3) *Edinburgh Law Review* 288, 290.

³¹ Henry Brown, *The Procedure in Accident Inquiries and Investigations According to the Law of Scotland*, (T & T Clark, 1897), 2.

³² *ibid*, 2-3.

³³ William Rubenstein, *The World Hegemon: the British Isles 1832-1914*, (Vintage, pb. 2015), 27.

³⁴ *ibid*, 27.

and no less important, the Whig history of Britain emphasised progress and the idea of perpetual improvement, which was evidence of divine providence.³⁵

The introduction of legislation providing compulsory registration for Scotland was not simple, and the final legislation followed on from eight failed attempts.³⁶ The Registration of Births, Deaths, and Marriages (Scotland) Act 1854 (c.80) was the beginning of the modern era. The maintaining of high standards for national records was then taken seriously and ‘vital registration’ was a phrase ‘devised’ to cover everything connected with the recording of births, deaths, and marriages.³⁷

The involvement of the Procurators Fiscal in the investigation of deaths was then a comparatively new process:

“From an infrequent boasting of the great superiority of the English coroner’s inquest over the system of Fiscal examination, and especially after a well-known trial for murder by poison from the West of Scotland [probably a reference to that of Madeleine Smith], where it was said that the want of such public investigation was felt, instructions were issued by the Lord Advocate which impose on the Fiscals the same extensive duties, if not even greater, than are devolved on the coroner’s inquest in England”.³⁸

Reference was then made to General Orders of 25 August 1858 and 12 December 1857.³⁹ The conclusion was that the only difference between the two countries was “publicity”.⁴⁰

The instructions of 1857 and 1858 were remarked on a decade or so later when Dr J.J. Gordon of Banff read, at a conference, a paper entitled ‘The General Criminal Law of Scotland as a basis of improvement and new legislation’, in which he suggested: “[t]he Procurator Fiscal ought possibly to be made coroner. Within the last few years he had been empowered by the Lord Advocate to investigate cases of sudden death.”⁴¹

There was clear and continuous political pressure for change: in 1856, Alexander McDonald, MP for Lanarkshire and a former miner, had: “by assiduous lobbying in the House of Commons, gathered the support of some few score members of Parliament” with the intention of removing the grievances of the miners and that included the concerns over safety.⁴² Perhaps then, the influential or compelling background to the instruction of 1857 is to be found in the Coal Mines Inspection Act 1855 (c.108) and the Coal Mines Regulation Act 1860 (c.150). In

³⁵ *ibid*, 68.

³⁶ Anne Cameron, (2007) “The Establishment of Civil Registration in Scotland” (2007) 50 *The Historical Journal* 377.

³⁷ G.T. Bissett Smith, “Vital Registration: a manual of the law and practice concerning the registration of births, deaths and marriages” (Wm Green & Son, 2nd ed., 1907), p. v.

³⁸ Hugh Barclay, *On the administration of criminal law in Scotland*, [Transcript of a lecture] (Glasgow, 1862) 10-11.

³⁹ *ibid*.

⁴⁰ *ibid*.

⁴¹ J.J. Gordon, “The General Criminal Law of Scotland as a basis of improvement and new legislation” in E. Pears (Ed), *Transactions of the National Association for the Promotion of Social Science: Newcastle-Upon-Tyne Meeting 1870* (Longmans, Green, Reader and Dyer, 1871), 295-6. It is an interesting aside that the authority of the Lord Advocate to ‘empower’ others is not challenged.

⁴² Robert Page Arnott, *A History of the Scottish Miners from the Earliest Times*, (George Allen and Unwin, 1955), 45.

the debate that preceded the latter Act, it was said that deaths due to accidents in Great Britain amounted to 1 in 64,000 employees. However, in the Durham area it was 1 in 114,000, in Scotland it was 1 in 95,000 and in South Wales it was 1 in 47,000.⁴³ The investigation of these accidental deaths was made the responsibility of the coroner for the relevant area who was required to deal with these as all other sudden deaths.⁴⁴

The Imperial managers were tolerant enough of a distinctive Scottish government, such as it had developed to that point, but there could be no toleration of blatant increases in the rights of some subjects when others were, in similar circumstances, to be denied the same. The provision for England and Wales had merely extended the responsibility of the coroner. An Act of Parliament would have been required to establish jurisdiction, possibly that of the Sheriff, which permitted competence to investigate such accidental deaths. In an era of minimal government, the financial line of least resistance was simply to follow the example of others and extend the responsibility of existing office holders.

Consideration has been given to the guidebook issued to coroners in England and the use to which they were put in practice in a paper by Trabsky.⁴⁵ The argument in his paper is that:

“the technology of the [coroner’s] handbook professionalised the role of the coroner in the nineteenth and twentieth centuries. The manual became an overwhelmingly technocratic document, occupying an important role in the formation of the modern office of the coroner”.⁴⁶

The Lord Advocate in 1868 instructed, probably to codify the major part of the business of the Procurator Fiscal in an era of great change, that the Procurators Fiscal in the Sheriff Court, as local public prosecutor, was to investigate sudden deaths.⁴⁷ The comprehensive statement of normative rules followed on from the introduction into Scotland for the first time of public hearings. These limited inquiries were a trade-off for the removal of judicial executions as capital punishment from the public places where they were held in the presence of citizens to the privacy within jails.⁴⁸

Individual instructions had, for a long time, emanated from Crown Office. These seem to have been sent out on an individual basis. Crown Office issued a book entitled “Regulations to be Observed in Criminal and Other Investigations” (July 1868).⁴⁹ These included rules which determined the investigation of deaths believed to be suicides. The role of the Procurator Fiscal was specified:

“3. In all *cases of sudden death* [emphasis in original] which come to the knowledge of the Procurator Fiscal, through reports from the police, or otherwise, it shall be his duty

⁴³ Hansard, HC Deb. June 25, 1860, vol. 159, col. 970-1.

⁴⁴ See s.10 of the 1855 Act and s.20 of the 1860 Act.

⁴⁵ Marc Trabsky, “The coronial manual and the bureaucratic logic of the coroner’s office” (2016) 12(2) International Journal of Law in Context 195.

⁴⁶ *ibid*, 195-6.

⁴⁷ National Records of Scotland (hereafter ‘NRS’): AD5/11: Book of Regulations 1868, Part One, Title Two, and Appendix 1.

⁴⁸ Robert S. Shiels, “The Origins of the Fatal Accident Inquiry” 2017 Scots Law Times (News) 47.

⁴⁹ NRS (n.47), AD5/11.

to make inquiry, or, if deemed advisable by him, to take a precognition, relative to the causes of death.

4. Wherever in the opinion of the Procurator Fiscal, a written medical report is necessary for the due consideration of any of the cases aforesaid, he shall obtain such a report from a qualified medical practitioner”.⁵⁰

Certain administrative results followed that emphasised the administrative nature of investigation:

“8. The proceedings taken in carrying out the foregoing instruction shall, in every case, be reported in ordinary course to the Crown Agent by the Procurator Fiscal charged with their execution.*”

The associated footnote is in the following terms and is followed by the Rules it relates to:

“* Rule 8 is thought be sufficiently guarded and restricted by Rules 9 and 10.”

“9. There may be cases of sudden death, or of violent death, by suicide or shipwreck, or the like, in regard to which no formal precognition is necessary; and there may be cases in which, although at first doubtful, it may be discovered, before incurring expense, that it is unnecessary to pursue the investigation farther.

“10. A form of inquiry and report by a Procurator Fiscal is contained in Appendix II, p. 14 [of the Regulations], and is recommended for adoption in cases where a formal precognition is not essential; and in cases of a still more simple or ordinary kind, it may be sufficient for the Procurator Fiscal to report that on inquiry he has found the death to have arisen from some natural cause, or under circumstances not inferring blame, stating at the same time, as accurately as possible, the cause and circumstances of the death”.

The Book of Regulations presupposed, for the purpose of all post-mortem examination, the availability of a medically qualified person, invariably then, a man, who was to be guided, “unless where satisfactory reasons can be given to the contrary”, by the “medico-legal suggestions” contained in the appropriate appendix.⁵¹ The appendix is dated 31 March 1869 and has the names below it of “R. Christison, James Syme and Douglas Maclagan”.⁵² The esteemed authors advert in the introductory remarks to their thought that: “it of more importance to confine [their] attention to points which are of essential consequence in judicial investigation, or which are apt to be neglected in common dissection”.⁵³

Moreover, it was added:

“It will be remarked, that we propose to turn the attention of the medical inspector to some points which are often inquired into, not by him but by magistrates, or other official persons, not of the medical profession, - such as, the place where the body is found; its position when first seen; surrounding objects; the clothes; the history of cases

⁵⁰ *ibid*, AD5/11: Part 1, Title 2.

⁵¹ *ibid*, AD5/11: Part 1, Title 1 and Appendix 5.

⁵² All three at different times held chairs of medicine at the University of Edinburgh.

⁵³ NRS (n.47), AD5/11: Part 1, Title 1 and Appendix 5, p.2.

of suspected poisoning, and the existence of poison in a house &etc. This we have been led to do, because we have occasion to observe that on such points important articles of evidence have been overlooked, owing to the absence of a medical man, to whom alone their importance would have been apparent. *On the whole, however, such matters would probably be best investigated by a law officer, with the aid of a medical man [emphasis added]*".⁵⁴

The remainder of the appendix is taken up by general duties, the necessary implements for dissection and the external as well as the internal examination of the body. This whole aspect of the Book of Regulations is an embryonic moment in the development of the consciousness of investigators in Scotland of the existence of a 'crime scene'. The careers of the three authors, it may be argued reasonably, suggest a result that was probably an aggregate work of an accumulative contributions and was then entirely in keeping with developing mainstream European thought, although their work pre-dates publicly available handbooks.⁵⁵

In a consideration now of the instructions to Procurators Fiscal and 'the medical men' it is difficult *not* to regard the presence of the Procurator Fiscal as *Untersuchungsrichter* or examining magistrate. This is a pivotal point. The modern history of English developments sets out the equivalent of examining magistrate as, "following the English translations, investigating officer, hereafter, IO".⁵⁶ In any event, the Book of Regulations constitutes a start to a site of disciplined investigation, with both deference to the search for medical truth and the need to do so in the context of the legal regime in place then for dealing with proof of facts leading to forensic conclusions as to what happened and why it had.

It is to be recalled that the Procurator Fiscal appeared for "the public interest". Indeed, the style documents presented in the first legal publication specifically on deaths and for the assistance of Procurators Fiscal has many examples of the use of the term.⁵⁷ The precise meaning of "public interest", and the history of the concept in Scots law, are probably too extensive topics to be examined here. It may assist now, however, to note merely that there are references to the law of ancient Rome having a vocabulary which suggest that the reference was to matters of concern to the whole community rather than to matters that affected particular persons only.⁵⁸

The Authorities

The duty of the Procurator Fiscal to investigate sudden deaths seems to have been extended on the basis of the position in common law of the Lord Advocate and thereafter by practice to reporting such deaths, or some of them, to Crown Office.⁵⁹ While the administrative onus was on the Procurator Fiscal to investigate and report, there were increasingly available the police

⁵⁴ *ibid*, AD5/11: Part 1, Title 1 and Appendix 5, p.2.

⁵⁵ Iain Burney and Neil Pemberton, *Murder and the Making of English CSI* (Johns Hopkins, 2016), 10-31.

⁵⁶ *ibid*- the 'translations' are unspecified but by the approach adopted the 'IO' became a police officer rather than an official comparable to the Procurator Fiscal.

⁵⁷ Brown (n.31) 14, 16, 18, and 29.

⁵⁸ J.A.W. Gunn, "Public Interest" in T. Ball (eds.) *Political Innovation and Conceptual Change* (Cambridge University Press, 1989) 194-210, at 195.

⁵⁹ See generally the Book of Regulations (n.37).

who could, and were required to, assist. Indeed, by 1897, it was said that every occurrence in Scotland which has caused loss of life or serious injury is made the subject of:

“a careful inquiry by the local police constable so soon as it comes to his knowledge. This is usually the first step in the investigation. The constable reports the facts to his superior officer, who examines the report, and, if satisfied that it is so complete as circumstances permit, transmits it to the Procurator Fiscal of the county or district in which the casualty has taken place”.⁶⁰

The embryonic police forces developed substantially in the Victorian and Edwardian eras and so too did their statutory duty. In particular, it was provided from the mid-century that constables acting under the Police (Scotland) Act 1857 were required, in addition to their ordinary duties, to perform all such duties connected with the police in their respective counties as the Sheriff or the Justices of the Peace of the County may from time to time “direct and require”.⁶¹

Statistics

The first quarterly report from the Registrar General for Scotland followed from the 1854 Act coming into force on 1 January 1855.⁶² The caveat from the publication was that: “as the Scottish people had not been previously accustomed to Registration, it was feared that the Returns for the first Quarter would present serious deficiencies in the numbers” for births, deaths, and marriages.⁶³ Yet, it was suggested that for deaths and regular marriages that “counterchecks in the [1854] Act” meant that the numbers recorded “must be within a small fraction of reality, if not absolutely correct”.⁶⁴

Part of the problem in assessing the suicide figures lies in the development of the process of accountability: the figures given are for births, deaths, and marriages as such. The Registrars were taking time, it would seem, to settle on what they thought that they were to provide. It was only by August 1855 that there was a degree of specification: seven ‘sudden’ deaths were identified in three towns and while ‘hanging’ was listed as an option none were recorded as such.⁶⁵

The overwhelming statistics contained within the annual reports appear to be directed at mapping the medical condition of Scotland and the local variations. Suicide, by definition, suggests that matters are beyond the professional intervention of physicians and surgeons. Consequently, little attention was shown to the statistics of the phenomenon of self-destruction. To take a year at random, in 1885 there were, in Scotland, 158 male deaths attributable to

⁶⁰ Brown (n.31), 7.

⁶¹ Police (Scotland) Act 1857 (20 & 21 Vict. c. 72) s. 15.

⁶² Registrar General for Scotland, *Quarterly Return of the Births, Deaths, and Marriages Registered in the Divisions, Counties and Districts of Scotland No.1 (for the quarter ending 31 March 1855)* (Murray and Gibb, 1855)

⁶³ *ibid*, 2.

⁶⁴ *ibid*, 2.

⁶⁵ Registrar General for Scotland, *Monthly Returns of Births, Deaths, and Marriages Registered in the Eight Principal Towns of Scotland: with causes of death at the four periods of life*: (Murray and Gibb, 1855), XVI, 2 and XVII, 4.

suicide with 73 female deaths similarly recorded.⁶⁶ Twenty years later, in 1905, the annual report had by then become more nuanced with a separate table provided for suicides and recorded the total deaths as 217 males and 88 females.⁶⁷

The new table specified, albeit in general terms, the general categories of death according to the methods used by which death was “accomplished”, and these were railways, gunshot wounds, “cut; stab”, precipitation (probably described now as ‘fall from height’), drowning, hanging, and a very small number under “otherwise not stated”.⁶⁸ In the reports from 1908, there was a separated table of three parts listing deaths by poisons which consisted of accidental deaths, suicidal deaths and anaesthetic deaths.⁶⁹

The Registrar-General sought to test the accuracy of the recorded deaths. Dr James C. Dunlop provided for the Registrar-General a report on the medical background to these statistics and that formed part of the general publication. Dr Dunlop advised in 1906 that 75,635 deaths had been registered the previous year having been certified by a registered medical practitioner or confirmed by the Procurator Fiscal. Further, in

“an endeavour to make the information as to the cause of death as satisfactory as possible, letters of enquiry during the year were freely used in cases where there were doubts as to the significance of the terms used in the certificate. In all 1300 such letters were used [...]. In all these enquiries resulted in over 1000 deaths being properly classified in the tables of this report.”⁷⁰

The figures for each category inquired into included 16 deaths from suicides.

Discussion

Professor Anderson accepted that her study was a matter of micro-history, but it was “micro-history which is throughout pressed into the service of macro-history”.⁷¹ How might that be applied in Scotland? The simple answer is that the Registrar General’s statistics available from 1854 onwards, moving from the particular to the general, give an indication of the development of the nature and extent of public administration in Scotland at the time. However, first, it cannot be said that the system was an immediate success. There is an impression, and admittedly a subjective one, that there was an indifference to the statistics on suicide. Medically, of course, there was hope that tuberculosis, or any other illness, might be eradicated but such optimism was not, apparently, extended to suicide.

⁶⁶ Registrar General for Scotland, *Thirty-First Detailed Annual Report: (Abstract of 1885)* (Neill & Co., 1888), 52 and 53.

⁶⁷ Registrar-General for Scotland, *Fifty-First Detailed Annual Report; (Abstract of 1905)* (James Hedderwick & Son, 1907) xcii-xciii.

⁶⁸ Registrar-General for Scotland, *Fifty-Third Detailed Annual Report; (Abstract of 1907)* (HMSO, 1909), xciii-xcv.

⁶⁹ Registrar-General for Scotland, *Fifty-Fourth Detailed Annual Report; (Abstract of 1908)* (HMSO, 1910), cvi.

⁷⁰ Registrar-General for Scotland, *Fifty-Second Detailed Annual Report; (Abstract of 1906)* (James Hedderwick & Son, 1907), xxvi.

⁷¹ Anderson (n.2), 3.

Secondly, twenty-two years after the introduction of compulsory registration, there was clear dissatisfaction with the system as it then operated, as seen in an article by ‘H.B’.⁷² The article in the law journal discussed, somewhat angrily it might be thought, a pamphlet dated April 19 1875 that had been prepared by Dr JB Russell, the Medical Officer of Health for Glasgow.⁷³ The crucial figure then cited by Dr Russell and taken from the Report was that in Glasgow in three years (1872-1874) the number of deaths was 45,556 of which 10,187, or 22.3%, were not certified. The further “melancholy fact” was that: “the proportion of uncertified deaths was much greater below *five* years [of age] than above it. The average of the three years shows 31 per cent uncertified *below* five years, and 15 per cent uncertified at five years and *upwards* [all emphasis in original].”

Further, it was a “still more painful fact” that there was a contrast between uncertified deaths of legitimate and illegitimate children. According to the Report being commented upon, this cast: “a very lurid light upon the whole circumstances surrounding this matter of uncertified deaths, and must give rise to most painful surmises in the absence of still more definite information”.⁷⁴ The relevant details at this point were that the percentage of deaths uncertified under five years of age was to the whole uncertified deaths 23.51% of legitimate children, whilst of illegitimate children the percentage rises to 41.03%.

Dr Russell in his report declined to consider the general question of: “Coroners’ Inquests v. Procurator Fiscal’s precognition”.⁷⁵ He did, however, argue that on the specific question of uncertified deaths the English Coroners’ Court:

“...both adds considerably to the certification of deaths which otherwise would be uncertified, and acts as a recognised deterrent from neglect to procure attendance during life; while the system of Fiscal’s precognition at either end”.⁷⁶

That view might well be contrasted immediately with separate contemporary reference to: “that absurdity, the coroner’s inquest”.⁷⁷

The importance of the Report of 1876, it may be suggested, lies in the comment of Dr Russell that: “it may be held in general, where the Registration Act is in efficient operation, that persons, the cause of whose death is ‘not certified’, have either received no medical attendance during their last illness, or attendance of such a casual sort as not to enable the attendant to certify”.⁷⁸ The statistics cited in the Report reveal a marked disparity in uncertified deaths amongst the areas of Glasgow, and between the city and others elsewhere.

The problem seemed not to be replicated elsewhere because of other local arrangements: in Edinburgh, the Medical Officer for the city *voluntarily* examined the body of a deceased and granted a certificate in every case where no medical practitioner had been in attendance on the deceased, and where an informant refused to obtain and furnish the Registrar with a

⁷² H.B. [Hugh Barclay], “Review: Report upon Uncertified Deaths in Glasgow”, (1876) 22 Journal of Jurisprudence 302.

⁷³ A copy of the report by the Dr JB Russell is in Glasgow City Archives at D-TC14/2/4, no.37.

⁷⁴ H.B. (n.72), 302.

⁷⁵ Russell (n.73), 58.

⁷⁶ Russell (n.73), 59.

⁷⁷ Anonymous, ‘Criminal Codes’ (1878) 22 Journal of Jurisprudence 352, 354.

⁷⁸ Russell (n.73), 6.

certificate.⁷⁹ The results of the pragmatism of the arrangements for government as suggested by this episode is demonstrated by the comment that: “it hardly needs to be expressly stated how destitute we are in Scotland of any sufficient means of improving our death registers as trustworthy records of the probable cause of mortality”.⁸⁰

The administrative instruction of the Law Officer of 1857 is remarkable in several respects: first, no legislation seems to have been necessary, or thought necessary, the instruction went out and it was followed. By the implementation of such confidential decision, a remarkable change was affected. Secondly, no public intimation of this policy development seems to have been thought necessary. Thirdly, the instruction was specifically not directed at Chief Constables, or police officers generally, but at the local public prosecutor. Finally, no objection to this change was raised in the Imperial Parliament, assuming for a moment that anyone knew or cared much about the development.

In short, a major reform of civic administration was achieved within the existing system and in keeping with the general policy of financial rectitude and minimal government. The system of public prosecution in Scotland was undoubtedly hierarchical: reports of suicides went to Crown Office, the administrative head office for the Law Officers. As was said succinctly:

“To this office are sent from the Procurators Fiscal of every county and burgh in Scotland all reports of serious crime, sudden deaths, or abnormal occurrence of any kind.”⁸¹

The reports were then considered by what might be regarded as an executive team for the national interests of Scotland. The Lord Advocate was assisted by the Solicitor General and Advocates Depute. There were by the turn of the century, four of the last named: the four Advocates Depute consisted of the Home Depute and three others. The Home Depute covered the business in Edinburgh and the others were assigned circuits in Scotland. There was an extra Advocate Depute for six months at a time and an assistant depute to deal with Sheriff Court and other matters.

“The Advocates Depute dispose of all reports of sudden deaths occurring within the bounds of the respective circuits for which they are for the time attached, and mark their views on the papers, the usual ordering being “no proceedings, schedule revised”; but, in the event of their being any abnormal cause of death further inquiries are directed to be made before the schedule is revised for registration”.⁸²

The Procurator Fiscal did indeed have the duty of investigating sudden deaths but that was not a forensic one: the investigations were by a public official relying on medical advice where available and in the context of what has been described in general conceptual terms for legal process as a “classical bureaucracy [...] characterised by a professional corps of officials, organised into a hierarchy which makes decisions according to technical standards”.⁸³

⁷⁹ Russell (n.73), 19 and 60.

⁸⁰ Russell (n.73), 60.

⁸¹ Anonymous, “Our Scottish Official Departments” (1904) 20 *Scottish Legal Review* 31-33, 31.

⁸² *ibid*, 32.

⁸³ Mirjan Damaška, *The Faces of Justice and State Authority*, (Yale University Press, pb. 1986), 17

By the Edwardian era, the system of investigating deaths had evolved and become an established routine, the essence of civil service business. The Procurator Fiscal of Counties had a limited role of investigating deaths to exclude criminality and report findings to Crown Counsel. There were no public inquests or inquiries conducted for each death but then perhaps these were *not* the best place to bring to bear on the circumstances of a death “the judgement of society”, whatever Dr Russell may have meant by that ominous phrase.⁸⁴

Perhaps, some explanation might be attempted of the possible meaning of the judgement of Scottish society in this era. First, Providence as the intervention of God for His purpose might be an explanation. If that was accepted, then suicide as an event was beyond the explanation of even the most assiduous of investigations by the most persistent of Procurators Fiscal, with or without police assistance. If that explanation was a possibility, and it might be, then lawyers could ask reasonably why the law should even attempt to find evidence of the root cause of self-destruction. It is not irrelevant that Scots law with a civilian tradition followed the Roman law policy of having no general prohibition of suicide.⁸⁵

Secondly, in the established hierarchical structure, Crown Counsel would merely have to have regard to the report from the Procurator Fiscal and revise the findings as being in accordance with the medical evidence. Given the security of tenure of Procurators Fiscal and the independence that they had, unlike private prosecutor, in their investigations their findings might almost be said to be quasi-judicial. The strong view always to have permeated the Scottish legal approach to these matters seems to have been to defer to the medical view of the facts and circumstances, and yet other considerations applied.

“No one who has had experience of the practical workings of the Scots system would for a moment desire to put in its place the coroner’s inquest, which, to the mind of a Scots lawyer, appears alike cumbrous and expensive.”⁸⁶

That view by Robert Renton, a very experienced practitioner, could not be described as complacent as it was expressed in an article that considered the possibility of “modification” while preserving the essential features. This was a point made at a time when legislation was in contemplation by the Imperial Parliament. The Faculty of Advocates established a committee to discuss the subject-matter and comment on the resulting report which included the comment that: “It would be a calamity to have a public enquiry [sic] into every sudden death, whether occurring in a trade occupation or not.”⁸⁷

Finally, it has been argued that:

“However different the approach of research workers investigating the suicide problem, their work leads ineluctably to one conclusion, the irrelevance of the criminal law to its solution. Whether it is hoped to reduce the suicide rate by changing the social structure

⁸⁴ Russell (n.73), 59.

⁸⁵ Norman St. John-Stevas, *Life, Death, and the Law*, (Eyre and Spottiswoode; 1961), 247.

⁸⁶ Robert Renton, “The Investigation of Cases of Sudden Death in Scotland” (1893) 5 *Juridical Review* 167, 167: and see 172-173 for medical discussion.

⁸⁷ Anonymous, “Current Topics: Fatal Accident Enquiry” (1893) 5 *Juridical Review* 266, 267.

or providing psychiatric help to potential suicides, the criminal law can do nothing to help.”⁸⁸

There may be grounds for suggesting in all the circumstances that many generations before that point was made, Scots lawyers had also earlier arrived at that ‘ineluctable conclusion’ and consequently not sought the lawful authority to hold inquiries: cost and personal embarrassment or shame of relatives were not irrelevant.

Concluding Remarks

The Scottish system of investigating sudden, suspicious and unexplained deaths from the mid-Victorian era was entirely consistent, by necessity and choice, with a model of minimalist central government: the absence of litigation in a specialist court to investigate deaths, at least until 1895, meant no demand from Scotland in that regard on the British Treasury. Administrative disposal, in private, of investigations provided economy, regularity and predictability in place of a myriad of individual court disposals. There was more than a hint of a continental influence in that the Scottish system proceeded on restricted decisions based on (to adopt a description from elsewhere):

“[...] orderly documents that screened out ‘messy’ situational and personal nuances likely to exert pressure toward leeway in decision-making. As a bureaucratic maxim of the period asserted, *quod non est in actis non est in mundo* (‘what is not in the file does not exist’).”⁸⁹

There seems to have been no public pressure for an open inquiry of individual circumstances of deaths and little else was sought beyond the figures that were available. The deaths for Perth were published for a six-year period: viz; 1858 (13); 1859 (57); 1860 (49); 1861 (20); 1862 (21); 1863 (21). In regard to 1862 and 1863 a note was appended after the latter: “These remarkable coincidences in numbers have been found to be really facts”.⁹⁰ Nothing else was asked by the anonymous commentator of what these figures may have meant or why it was that they varied over so short a time.

After 1895, the system of forensic examination by Fatal Accident Inquiry was restricted to those who died in the course of their ‘trade occupation’ but that produced a system that was consistent with enhanced State intervention for the purpose of regulation in the context of wider governmental activity.⁹¹ Suicide at that time never appears to have been considered for inclusion in the new scheme of inquiry, and the matter appears to have been left entirely as having been “produced by the workings of a diseased mind”.⁹² That general idea of indifference was probably the determining factor for the absence of a need for inquiry into suicides. The

⁸⁸ St. John-Stevas (n.85), 256.

⁸⁹ Damaska (n.83), 33: the ‘period’ referred to is France in the 16th and 17th centuries.

⁹⁰ Anonymous, “Vidimus of Business in Sheriff Court for Thirty Years From 1834 to 1863”, (1864) Scottish Law Magazine, Vol. 3, New Series, 7-8. Given that the deaths were from Perth it seems highly likely that the ever-active Sheriff Hugh Barclay was behind this note.

⁹¹ Fatal Accident Inquiry (Scotland) Act 1895 (c.36).

⁹² Brown (n.31), 2-3.

discretionary Fatal Accident Inquiry introduced by the reforming Liberal Government did not mark any change in that approach.⁹³

The English model of a coronial inquest has its modern advocate as a means of resolving issues between parties around a death.⁹⁴ Yet, the inquisitorial system of inquiry before a jury may produce a verdict, but that in itself does not necessarily achieve much.⁹⁵ The modern Scottish legislation has continued the earlier innovation of having an inquisitorial hearing without a jury and yet held in public, with a written determination as an outcome.⁹⁶ The determinations resulting from Fatal Accident Inquiries are available to the interested public as there is a statutory responsibility on the national court authority to disseminate the determinations.⁹⁷ There is no requirement in Scots law for such an inquiry for all suicides, except for deaths involving individuals who at the time of their death were in legal custody.⁹⁸

The absence in modern Scots law of the crime of suicide or attempted suicide does not mean that there was no Crown interest in the latter. At the time of the passing of the Suicide Act 1961 (c.60) to abrogate the rule that suicide was a crime by English law, the Scots were asked for their view of abolition which hardly mattered given the absence of the rule in the first place. In the correspondence passing within government, the Crown Agent, Lionel Gordon, by letter dated 31 May 1958 wrote to the official in the Scottish Home Department who had inquired about the matter:

“Where an attempted suicide has occurred in a public place, or in circumstances which have caused alarm and annoyance, a charge of breach of the peace has been taken, usually in one of the lower courts – the Police Court or the J.P. Court.”⁹⁹

That may be said to encapsulate the consistent Scottish approach; suicide or attempted suicide are deeply personal matters, unless and until they become public because of their attendant circumstances of the crucial act.¹⁰⁰

All of this brings to the fore the modern policy development by the Scottish Government. In November 2017 in a debate in the Scottish Parliament at Holyrood, Edinburgh on developing a suitable policy for suicide prevention it was said that: “The Scottish Government attaches the utmost priority to this high-profile area”.¹⁰¹ That parliamentary remark is significant at least in so far as it signalled the point at which deaths by suicide, for centuries a private matter in

⁹³ Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1906 (c.35).

⁹⁴ Paul MacMahon, “The Inquest and the Virtues of Soft Adjudication” (2015) 33 Yale Law and Policy Rev. 275.

⁹⁵ At an inquest on 28 October 1881, two days after the shootout at the OK Corral in Tombstone, Arizona, it was said by the Coroner that it was “obvious that at the legal issues would not be resolved through the inquest”: John Guinn, *The Last Gunfight: The real story of the shootout at the O.K. Corral And how it changed the American West* (Robson: 2011), 239.

⁹⁶ Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2) s.26(1).

⁹⁷ Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016, s.27(1); and see

<http://www.scotcourts.gov.uk/search-judgments/fatal-accident-inquiries> [accessed August 2019]

⁹⁸ Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2) s.2(1) and (4).

⁹⁹ NRS: file HH60/687

¹⁰⁰ For contemporary discussion see: N.G. “Legal Aspects of Suicide” 1958 S.L.T. (News) 141, 144; and G.H Gordon “Suicide Pacts” (1958) S.L.T. (News) 209-22

¹⁰¹ Maureen Watt MSP (Minister for Mental Health) in support of motion S5M-09000, Scottish Parliament, Tuesday 21 November 2017, Chamber Report: available at <http://www.parliament.scot/> [accessed August 2019]

Scotland, had only now become a public issue. Subsequently, in late 2018, a Suicide Prevention Action Plan was published.¹⁰²

These modern policies are intended to correct the views of those who think, for whatever reason, that death is preferable to life and are prepared to do something to end their lives. That attempt by government action to affect the suicide rates is commendable and these efforts now would doubtless be supported by earlier generations had they known of them. Yet, there seems to be little discussion of the strategy in a larger context, that is to say, the two great contemporary debates about dying – assisted suicide and advance directives, or living wills – which are both informed “by a passion for personal autonomy: for control”.¹⁰³ The modern policy may mark a move in society from free will to some sort of preventative determinism.

The Victorian and Edwardian view, in Scotland at least, was that suicide was a not matter for suitable for discussion at a public inquiry. The main alleged defect in the investigation of deaths in Scotland was acknowledged in Parliament: “it was absolutely secret”.¹⁰⁴ Not everyone wanted the circumstances of a death made public and there seems to have been little political demand for an office of coroner, or at least an enhanced jurisdiction of Fatal Accident Inquiries to cover suicides.¹⁰⁵ The whole event of self-destruction was imbued with theological implications, and the cluster of social traits and influences that surrounded suicide was most probably thought of as being beyond the range of issues for public analysis. Certainly, such action by individuals seemed contrary to the overarching contemporary societal desire for progress, individually and in everything else. The whole area of civic administration and the bureaucratic manner and enthusiasm for the investigation of deaths in Scotland is redolent of an area ripe for research from a legal point of view, and also as one reflective of the beliefs of the people concerned.

¹⁰² *Every Life Matters*, ISBN 978-1-78851-988-4 <https://www.gov.scot/publications/scotlands-suicide-prevention-action-plan-life-matters/> [accessed August 2019].

¹⁰³ Seamus O’Mahony, *The Way We Die Now* (Head of Zeus, 2016) 180.

¹⁰⁴ Thomas Shaw QC, Lord Advocate: Hansard HC Debates, 15 June 1906, vol.158, c.1299.

¹⁰⁵ C.f. Ian Freckelton, “Health Law: The Past and the Future” (2018) 25 *Journal of Law and Medicine* 869, 888,