

Youth justice back at the crossroads

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Abstract

Purpose: – The purpose of this paper is to provide a reflection on the current trajectory of youth justice policy. The paper offers fresh insight into the changing face of youth justice.

Design/ methodology/ approach: The paper draws on a range of sources, including published journal articles and statistical evidence. In so doing it critically reviews relevant academic literature.

Findings: Three critical insights arise from the review. First, there are promising approaches emerging in youth justice organised around the principle of avoiding formal processing of young people where possible; such as, for example, Triage, the Youth Restorative Disposal, Youth Justice Liaison and Diversion schemes, the Swansea Bureau and the Durham Pre-Reprimand Disposal. Thus there is evidence of an emerging consensus, across the domains of policy, practice and legislation which seem to endorse the idea of community-based minimum intervention, supported by principles of offender rehabilitation and restoration. Second, whilst they have not intruded to any great extent in the sphere of youth justice so far, there is no doubt that the government is keen to extend the remit of payment by results schemes. Perhaps most concerning is the issue with private sector organisations engaging in 'gaming activities' where maximizing profit becomes the intention over enhancing the well-being of the young person. Third, it is argued that in order to reconcile the lack of user-led engagement of offenders, and experiences of disempowerment, the priority should be, throughout the Youth Justice System, to involve young people in assessment and decision making processes.

Research implications/limitations: As an exploratory paper, it does not set out to provide a blueprint on 'how' the issues outlined should be resolved. Rather, it provides a basis for further discussion, and highlights some examples of promising practice, particularly around the issues of offender engagement, participation and rights compliance. This is particularly important considering that the UK government will report to the United Nations this year (2014) on its progress in implementing and complying with the children's right agenda.

Practice implications: The paper highlights the issues and ambiguities facing practitioners working within a payment by results framework which is contextualised by what appears to be a more liberal tone in public policy. It also explores the challenges delivering participatory approaches.

Social implications: The paper argues that in relation to young people who are 'at risk' of engaging in further crime and experiencing social, family, educative or health related issues, services located outside the formal apparatus are much more 'effective' in tackling the root causes of youth crime. But what happens when these

services, too, are increasingly unavailable to young people in general, their families and their communities, and it is the market which dictates who will be the subject of interventions, and on what criteria these will be determined successful – surely nothing as sensitive, hard to define or valuable (in human rather than market terms) as ‘community cohesion’, ‘wellbeing’, or ‘social justice’?

Originality/value: The paper investigates a neglected area in youth justice, namely that of participatory approaches. It argues that, although there are resource pressures and time constraints, service user participatory techniques should be encouraged, particularly as they promote positive engagement and motivation, principally by offering a sense of control over choice.

As is now clear, there has been another rapid reversal in the pattern of interventions and disposals in youth justice over the past 5 years or so. This change of direction seems to have opened up the possibility that we are experiencing a ‘new age of diversion’; it was unexpected and certainly not predicted beforehand, and it has no obvious or direct relationship with a change in political mood or ideological shift (Smith, 2014). If anything, the change was initiated by pragmatic concerns over wasted police time spent processing ‘low hanging fruit’ in order to meet arbitrary detection targets.

Resulting from New Labour’s flagship Crime and Disorder Act (1998) was a very inflexible ‘tariff’ applied to low level crime and anti-social behaviour where the ‘offender’ was seen as a law-breaker rather than, first and foremost, a child in need. This more or less rigid tariff involved progression via reprimands and final warnings, both administrable only once, to formal prosecution, often after one or two minor criminal activities (NAYJ, 2012).

Practice was very much concerned with the risk management of offenders, creating a defensive culture (i.e. an over reliance on record keeping) (Smith, 2006). Bureaucratic aspects of work became dominant. Professionals were constrained to work creatively and denied the opportunity to use their professional discretion. Children and young people were, at times, labelled and stigmatised, as a result of ‘excessive’ targeting: increasing numbers of children were criminalised for engaging in low level crime, due to changes in police practice, most notably the introduction of the Offences Brought to Justice (OBTJ) sanction detection target. This target resulted in behaviours being criminalised which might previously have normally been dealt with informally. It could be argued that, at times, the likelihood of further criminal activity increased rather than diminished (McAra and McVie, 2007; Creaney, 2012a, 2012b).

The Flanagan Review of Policing in 2007 drew conclusions along these lines, and it wasn’t long before targets were amended, and excessive involvement in dealing with minor misdemeanours became more actively discouraged. The introduction of targets to reduce the number of ‘First Time Entrants’ into the justice process appeared to have the desired effect, and there was an almost instantaneous and sharp decline in the number of young people becoming caught up in the system. As in the 1980s, when diversionary strategies also became widely practiced, the consequences were progressively felt, not just at the ‘shallow end’ of the youth justice system, but at every point in the process, so that proportionally fewer young

people were processed, prosecuted, subjected to court imposed sanctions, and, eventually, incarcerated, as the inflow was reduced over time. Annual youth justice statistics published by the Ministry of Justice show a substantial and sustained fall in the number of first time entrants to the youth justice system (MOJ, 2013).

Alongside these emerging trends, there have also been a number of policy and practice innovations which implicitly endorse and underpin the changing pattern of disposals in youth justice (similar trends are not observable in the adult penal sector). Thus, there have been a series of pilot diversionary initiatives at local level and more widely, which offer various rationales and intervention methodologies, organised around the principle of avoiding formal processing of young people where possible; such as, for example, Triage, the Youth Restorative Disposal, Youth Justice Liaison and Diversion schemes, the Swansea Bureau and the Durham Pre-Reprimand Disposal. Each of the initiatives listed involves a distinctive model of practice, but in common they enable the police and other agencies to deal with minor offending without resort to formal sanction.

Whilst these initiatives all aspire to 'divert' young offenders, there is some variation between them in the nature and intent of the interventions they represent. Some, at least, appear to be geared towards simply reducing the level of activity involved in processing the reported young offender, and aim principally to minimise intervention, as in the lower levels of Triage, perhaps. Others appear, at least from their presentation, as oriented more directly to promoting community resolution and restorative practice; whilst some, such as liaison and diversion schemes and to some extent the Swansea scheme appeared to focus rather on addressing welfare and support needs of young people, linked to the circumstances of their offending.

In similar vein, recent policy developments also seem to have incorporated these varying justifications for the increased use of 'out of court' disposals, and the erosion of rigid tariff principles (Smith, 2014). The coalition government has recently introduced the Legal Aid Sentencing and Punishment of Offenders Act (LASPO) (2012) where the space is provided 'for dialogue around costly, net widening, criminalising, counterproductive, and damaging institutional practices' (Yates, 2012:5). The LASPO Act 2012 restructured informal measures to deal with youth crime, through the (re)introduction of the youth caution and extension of the youth conditional caution. These measures replaced the scheme of reprimands and final warnings introduced by the Crime and Disorder Act 1998, which itself took the place of previous, more flexible, cautioning arrangements.

This legislation could, in principle, pave the way for innovative, youth-friendly practices, similar to the well documented progressive youth justice policies administered in the 1980s (NAYJ, 2012). Thus we find evidence of an emerging consensus, across the domains of policy, practice and legislation which seems to endorse the idea of community-based minimum intervention, supported by principles of offender rehabilitation and restoration. Whilst these may appear to represent competing orientations towards youth offending, its causes and appropriate responses to it, they all seem to share an emphasis on dealing with the associated problems outside the formal justice system and in ways which de-emphasise punishment and control.

A more sceptical view, however, might be that this 'favourable tide' is also consistent with a spirit of pragmatic retrenchment associated with pressures for cost saving on the one hand and 'marketisation' on the other. Whilst they have not intruded to any great extent in the sphere of youth justice so far, there is no doubt that the government is keen to extend the remit of payment by results schemes. Such schemes allow charity, voluntary and private sector organisations to supervise young offenders; and these organisations will receive financial rewards on completion of intervention programmes, subject to meeting required outcomes. These schemes purport to innovate and 'promote' effective practice and make 'a real difference with those offenders who are hardest to change' (MOJ, 2010:138). However, there are clear issues with regard to measuring outcomes, namely 'the complexity of ... factors and their overlapping, and interacting, nature' (Yates, 2012:11). In addition to the difficulties measuring the dynamic nature of risk, this approach ignores important matters of frequency and severity of offending and instead adopts a rather straightforward yes/no indicator of criminal activity.

Perhaps most concerning, however, is the issue with private sector organisations engaging in 'gaming activities' where maximizing profit becomes the intention over enhancing the well-being of the young person. In particular there are issues of 'creaming' and 'parking' (Yates, 2012). With regard to the former, organisations will opt to work with the most receptive young people where there is greater certainty of financial rewards. Organisations may then 'park' the most difficult to engage, most needy, marginalised, and disadvantaged young people, where the opportunity to secure a successful outcome and generate profit is difficult to achieve. Inevitably, those young people who are the most difficult to engage and essentially the most marginalised young people within society will not benefit from this system (Yates, 2012).

We are faced then with the challenge of making sense of very different alternative interpretations of current trends in youth justice. Whilst we must accept and take encouragement from the positive indications of a less punitive, less tariff-based, less 'othering' approach to dealing with the problems represented by the reported crimes of the young, we must also acknowledge the consequences of the consequent 'withdrawal' of the state from this area of public life. Not only is less being invested in 'preventive' services for those purportedly 'at risk' of offending, but, at precisely the same time, universal services, particularly those available to young people are also being decimated. Most young people who are processed through the youth justice system suffer from poverty and experience social inequalities. This provides justification for inclusive interventions that have regard for the young person's social-economic circumstances. In order to address such issues adequately, it seems logical to invest in mainstream social-welfare services, rather than resort to the formal youth justice apparatus to find solutions to youth crime (Creaney, 2013).

In contrast to youth justice practice that is often deficit-led, and may increasingly become distorted by being profit-led, the types of services located in the social-welfare arena are underpinned by concern for developing strengths, aspirations and positive outcomes. Furthermore, unlike the current emphasis on individualisation these approaches acknowledge and address social-structural factors by way of universal holistic provision (Creaney, 2013). Indeed, at the heart should be a principled approach, where children's needs and rights take precedence, and social,

developmental and economic factors are acknowledged and understood (Smith, 2013). Most notably, in relation to young people who are 'at risk' of engaging in further crime and experiencing social, family, educative or health related issues, the research evidence (Howell, et al., 1995) suggests that services located outside the formal apparatus are much more 'effective' in tackling the root causes of youth crime.

But what happens when these services, too, are increasingly unavailable to young people in general, their families and their communities, and it is the market which dictates who will be the subject of interventions, and on what criteria these will be determined successful – surely nothing as sensitive, hard to define or valuable (in human rather than market terms) as 'community cohesion', 'wellbeing', or 'social justice'?

On a slightly divergent note, self-assessment and participatory methods of practice in youth justice are virtually non-existent. There is an exception to the rule however with the introduction of the 'What Do You Think?' component into the Asset assessment framework. Asset is used with all children who offend and are in contact with the Youth Justice System. It is used by Youth Offending Team professionals to help identify risk factors that are related to a child's offending behaviour. The self-assessment tool is meant to be used to inform planning and intervention.

However, it was clearly introduced as an afterthought, often used inappropriately and appears to be more of a tokenistic gesture (Hart and Thompson, 2009). It must be acknowledged, though, that the Youth Justice Board recognise the importance of service-user involvement in assessment and is in the process of implementing (2014/15) a new and improved assessment framework that claims to give much greater emphasis to young people's wishes and feelings (Cabey, 2013).

Although there are resource pressures and time constraints, service user participatory techniques should be encouraged, particularly as they promote positive engagement and motivation, principally by offering a sense of control over choice (Nacro, 2008). In order to reconcile the lack of user-led engagement of offenders, and experiences of disempowerment, the priority should be, throughout the Youth Justice System, to involve young people in decision making processes. At the practice level, though, this way of working may be more difficult to implement in youth justice. More specifically, whereas within children's social care at the heart is a focus on promoting the rights of the client within youth justice or criminal justice more broadly there is political and public ambivalence towards whether children who offend deserve or should be provided with the opportunity to 'have a say' on the purpose of their intervention (See Hart and Thompson, 2009).

Notwithstanding these challenges, an approach that emphasises the 'welfare' needs and promotes the human rights of children who offend should be promoted, where young people are encouraged to become involved in decision making processes (Goldson and Muncie, 2006; Scraton and Hayden, 2002). This would reduce the chances of young people being further marginalised, and allow stereotypes to be challenged - particularly where young people are 'blamed' for their situation (Smith, 2008).

One would argue that the 'social world' is complex: there are no 'quick fix' solutions when it concerns young people and offending. In turn, it is not possible to generate a true understanding of the lives young people live without acknowledging the social, economic and political context. In order to grasp the true nature of the 'problematic behaviour'; it is necessary to apply a 'rights' lens in and beyond the assessment process and show a deeper and more empathic understanding of the child's personal, social and emotional development in order to gain a fully rounded picture of how the child/young person has become marginalised and excluded by society (Hine, 2010; Smith, 2011).

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