

Abstract

Purpose

First, it is the intention of this paper to explore the impact of risk-focussed intervention on the lives of young offenders and young people defined to be 'at risk' of crime. Second, the paper considers 'alternative perspectives' and the prospect of a youth justice predicated upon the principles of informal justice, child-friendly values and the notion of inclusion.

Design/methodology/approach

The first part of the paper reviews the theory and literature on early-preventative intervention in the youth justice system. The second part of the paper explores 'alternative perspectives', drawing on restorative justice, restorative approaches and diversionary measures.

Findings

The paper presents three general findings. First, young people can be subject to youth justice intervention without a 'presenting problem' or offence committed. More pertinently this form of pre-emptive criminalisation violates the child's human rights, due-process and legal safeguards. Second, young people who are drawn into the net of formal youth justice intervention can suffer from the stigmatising and labelling effects of being criminalised. Third, there is a pressing need for youth

justice policy and practice to be transformed in order to allow for the implementation of more informal, diversionary and restorative measures.

Originality/value

The paper has great value for students of youth justice, and policy-makers, especially the conservative-liberal democrat government who wish to cut costs, introduce Restorative Justice on a large scale and appear to be in favour of diverting young people away from formal youth justice intervention.

Key words youth justice, labelling, stigma, criminalisation, diversion, restorative justice, alternative perspectives.

Paper type Conceptual paper

Introduction

[T]he emergence of 'youth as risk' rather than 'youth as problem' extends the scope from concern about presenting problem behaviours to the potential for future problems (or negative 'outcomes'). In this context, 'risk' provides the justification for pre-emptive intervention, surveillance and control in the lives of children and young people, even in the absence of a presenting problem

(Turnbull and Spence, 2011:940)

As the opening quotation testifies, contemporary youth justice policy and practice responses to young people who have offended or who are deemed to be "on the cusp" of engaging in criminal activity '*[are] now defined by risk...underpinned by the assessment of risk and the planning of interventions to prevent and reduce this risk...*' (Case and Haines, 2009:304). This approach is rather attractive to policy makers in that it is '*an ostensibly neat and coherent approach to the messy and ill-defined complexities of practice*' (Stephenson, et al., 2007:3). Predicated upon this negative perception of youth as dangerous, and threatening (Armstrong, 2004; Brown, 1998; Jamieson and Yates, 2009), this risk-led focus embraces actuarial principles and processes (Feeley and Simon, 1994) ignoring historically dominant '*conflicting discourses of punishment and welfare*' (Cross, et al., 2003:151) and alternatively opting for '*a move*

towards risk management of offenders rather than their rehabilitation' (Kemshall, 2004:106). In essence, actuarialism *'dispenses with concerns about the meaning or motives behind offending'* concentrating instead on *'technologies of risk minimisation and the elimination of potential threats to social order'* (Smith, 2006:93).

Arguably, this emphasis on risk assessment and risk management, accompanied by decision making principles of defensibility and accountability, has seemingly resulted in professionals acting as *'technicians, encouraged to do as they are told, rather than [act as] professionals who might think independently, question orthodoxy and produce creative and inspired work'* (Bhui, 2001:638). In addition to this *'technicization'* and *'de-professionalization'* (Pitts, 2001) of practice, professionals in youth justice seem to have embraced that of a tick-box culture rather than conduct assessments and devise interventions that are inclusive and meaningful. In this context, practice-based responses seem to comprise a *'prescription without a consultation'* (Case, 2006:174) whereby there appears to be minimal incorporation of the views of young people into the assessment process (Case, 2010). Furthermore, the prevailing focus on risk/deficit led interventions seem to be in stark contrast to a model of practice emphasising the enhancement of protective factors, concerned with the welfare of young people and the building of strengths and aspirations.

This paper critically investigates the impact of contemporary youth justice policy and practice responses to children in conflict with the law and young people defined to be at risk of crime. The paper offers insight into their treatment and contends that young people are labelled, and stigmatised by engaging in youth justice processes. Further, the paper explores current and future developments in the field of youth justice, notably *prevention* and *early intervention* and considers 'alternative perspectives'. I present an 'alternative vision' of youth justice, based on the principles of informal justice, child-friendly values and the notion of inclusion. More specifically, restorative justice, restorative approaches and diversionary measures are advocated, as a direct alternative to that of 'formalism' which is currently embedded in youth justice policy and practice responses (Goldson, 2005a).

The paper is timely given the conservative-liberal democrat government's commitment to further deploy diversionary approaches and restorative interventions in youth justice (MOJ, 2010). However, although the Coalition government appear to be in favour of informal/child-centred measures, in contemporary youth justice there are still residues of previous punitive and pre-emptive policies.

Concept of risk and pre-emptive criminalisation

Moreover, the concept of 'risk' has increasingly become individualised resulting in young people deemed to be 'active citizens' (Rose, 1989) capable of making informed choices regardless of any structural factors impeding their decisions such as poverty and inequality (Smith, 2011). Similarly, Case (2007:93) notes that risk-based practice is fixed on '*individual, family, school and peer group influences...neglecting the role of wider structural and socio-political factors*'. Understanding this, reductions in public spending and withdrawal of mainstream social-welfare services responsible for addressing poverty, health and social inequalities, has contributed to the increase in youth warranting a criminal/youth justice measure (Muncie, 2009; Sharpe, 2011). In other words:

The human logic of progressive welfare orientated anti-poverty responses [has been] eclipsed by disciplinary measures encoded within an increasingly repressive and responsabilizing correctionalism

(Goldson, 2002:685)

Notably the Centre for Social Justice (2012:12) contend that '*the youth justice system continues to function as a backstop: sweeping up the problem cases that other services have failed, or been unable, to address*'. This may appear astounding when we consider that '*those factors which appear to be most closely associated with serious and*

persistent youth crime, like disadvantaged neighbourhood of residence, poverty, early childhood abuse and rejection, illiteracy and so on, are also those which are least amenable’ to intervention by youth offending teams or other personnel operating in the youth justice arena (Bateman and Pitts, 2005:257). More pertinently, perhaps, it is concerning that, rather than allowing for the protection of children’s human rights, due-process and legal safeguards, young people can be subject to criminal justice intervention without a ‘presenting problem’ or criminal offence actually being committed (**Case, 2010**; Turnbull and Spence, 2011). In turn *‘children face judgement and are exposed to intervention, not only on the basis for what they have done, but what they might do, who they are or who they are thought to be* (Goldson, 2005b:264). It is of concern that this pre-emptive criminalisation has been accompanied by the emergence of terms to describe these types of young people, such as “potential offender” “pre-delinquent” and “crime prone” (Goldson, 2005b; Turnbull and Spence, 2011). In other words there has been *‘a shift from a post – to a pre-crime society... in which the possibility of forestalling risks competes with and even takes precedence over responding to wrongs done’* (Zedner, 2007:262). This resonates with that approach adopted in the film *Minority Report* (2002) where *‘individuals are locked up for crimes that they have not committed, purely on the basis of prediction’* (Burnett, 2007:97). Similarly, in this context, the Centre for Social Justice

(2012:33) noted their concerns with the adoption of this type of youth justice model:

...by targeting children as 'would be' offenders they are labelled as such. This is often both stigmatising (leading to difficulties with engagement) and criminogenic: that is, it may increase the likelihood of offending. The children are marked out at a critical stage in the formation of their identities, which can create a self-fulfilling prophecy: the criminal label not only shapes the child's identity and behaviour, but also how others perceive and then tend to treat them

Targeting, labelling and stigma

...it could be argued that young people – by nature of their relative immaturity (cognitive, emotional) lack of life experience and powerlessness in decision-making processes that directly relate to them – are the most at risk section of society; at risk of labelling, stigmatization, marginalization and invasive intervention by adult agencies.

(Case, 2006:173)

In order to 'nip crime in the bud' and 'stop children from engaging in crime', or to put it another way, prohibit children from 'wrecking their own lives as well as disrupting their families and communities' (Home Office, 1997) it may be argued that targeted early preventative intervention is

necessary and deemed most appropriate. Predicated upon its success in achieving 'positive outcomes' for children and young people (Sutton, et al., 2004) - particularly as it can provide a 'platform' for young people to 'think' and 'act' more positively - this approach, essentially guides young people towards a non-offending life-style by tackling the 'causes' of crime at the outset (France, 2007; France, 2008; Whyte, 2004). Furthermore Case (2010:95) notes that *'there are many advantages to interventions promoting health, wellbeing, quality of life and access to opportunities for young people and strong evidence that these can help to encourage positive, prosocial behaviour'*. Policy makers, however, seem to view the practice of early intervention as commonsensical, simplistic and unproblematic (Case and Haines, 2009; Garside, 2009), *whereby persistent, substantial and complex social problems can apparently be diagnosed and solved in a matter of seconds* (Smith, 2007:42). In addition to this 'oversimplified technical fix' (Stephenson, et al., 2007) to a rather 'complex social reality' (Case, 2010), and deployment of assessment and interventions that 'see the worst in people' (Smith, 2007:209), the potential for 'false positive' (Commit a criminal offence when predicted not to) and 'false negative' (Do not commit a criminal offence when predicted to) outcomes to result from practice-intervention has been overlooked (Case, 2010; Centre for Social Justice, 2012). In the event false-positive or false-negative outcomes occur, Case (2010:94)

details the implications for young people and offers insight into the damage that can be caused:

Both practically and ethically, there is a clear potential for false-positive young people to be caught in a (widening) net of unmerited and possibly criminalizing interventions, while false negatives could fall through the cracks of risk assessment and be deprived of vital intervention and support because they are not deemed sufficiently 'risky' or indeed go onto commit serious offences.

Indeed *'boys with very similar risk profiles turn out to have very divergent lives... in practice it is almost impossible to predict which children with similar characteristics will become offenders and which will not'* (Whyte, 2009:29). Importantly, the discovery that unintended consequences may occur provides further evidence that interventions should be aligned to *'children's existing needs and problems, rather than future risk of criminality'* (Sutton, et al., 2004:99) and be universal, delivered by mainstream services to address education, social care and health issues, focussing on strengths and aspirations, rather than target driven and risk-focussed (Whyte, 2004, 2009). Added to this, young people who are drawn into the net of formal youth justice intervention can suffer from the stigmatising and labelling effects of being criminalised. The acceptance of self-blame can damage self-esteem and impact negatively upon the process of desistance and unintentionally encourage young people to commit further crime *'by reinforcing the label and reducing non-deviant*

options' (Whyte, 2009:25). In accordance with this belief Whyte (2009:25) discusses how this viewpoint is realised in practice:

Individuals in the process of being caught, shamed and punished change or confirm their view of themselves that in turn reinforces the adoption of a criminal lifestyle and associations and confirms their criminality... offending is...ultimately...reinforced and confirmed by system responses, particularly formal and criminal processes

In tandem with this understanding, drawing upon the labelling theory Pearson (1994:1190) notes that: '*many young people might commit "criminal" and "deviant" acts, but they [do] not become criminals and deviants unless they [are] caught and branded and drawn into the criminal justice system...*'. Indeed, as Muncie (2008:13-14) notes it is '*the stigma attached to the label that [is] considered pivotal in informing future behaviour patterns*'. More specifically, the depiction of a youth as an 'outsider' inevitably results in a 'self-fulfilling prophecy' where individuals accept the labels attached to them and '*through name-calling, stereotyping and labelling, a deviant identity is established and confirmed*' (Muncie, 2008:13). Unintended consequences result from this practice intervention where young people continue to commit criminal behaviour and/or experience crime-related issues (Creaney, 2012a).

Although labelling theorists have uncovered the harmful nature of intervention (Becker, 1963; Erikson, 1966; Lemert, 1951; **McAra and**

McVie, 2010), rather than rejecting risk focussed-intervention in the lives of offending youth, this approach has been strengthened by the introduction of the **Criminal** Justice and Immigration Act (2008). As part of this legislation the Scaled Approach was introduced, primarily to streamline the process, and enable practitioners to tailor the level of intervention to the assessed risk in respect of the risk presented to the general public (i.e. risk of serious harm) and risk of re-offending (i.e. likelihood of engaging in criminal activity). In addition to its potentially stigmatising and labelling effects, the Scaled Approach has been described as 'inflexible' and 'prescriptive' and has been criticised for its reliance on:

encouraging needy young people to demonstrate sufficient levels of risk and deficit in order to qualify for much needed intervention while young people measured to be 'low risk' (but potentially high need) could be deprived of the support to which they should be entitled

(Case, 2010:97)

The Scaled Approach is underpinned by the belief '*that dynamic risk factors are amenable to change through intervention programmes*' (Case, 2010:97); despite research evidence suggesting otherwise (McAra and **McVie**, 2007). In fact, this approach is largely counterproductive. **More specifically, empirical evidence (McAra and McVie, 2010)**

demonstrates that rather than tackling offending behaviour by way of intervention to reduce risk, being drawn into formal processes can have a devastating impact on the young person and increase criminality:

Targeted early intervention strategies, far from diminishing the number of offence referrals, are likely to widen the net of potential recipients even further. Greater numbers of children will be identified as at risk and any early hearing involvement will result in constant recycling into the system...

(McAra and McVie, 2007:337)

Viewed from these perspectives then, contemporary youth justice processes are 'inefficient' and 'ineffective' to deal constructively (and arguably in a proper ethical manner) with the problematic behaviour of children and young people. Perhaps most worryingly, as discussed previously within this paper, there is an array of evidence highlighting how damaging interventions in the system can be for young people (Carlile, 2006; Lyon, *et al.*, 2000). More specifically, Smith (2011:151) accurately describes how youth justice policy and practice is harmful and counterproductive:

Offending is identified as a consequence of particular social circumstances; criminal processes act to criminalise and punish rather than addressing the specific offence; the justice system

exacerbates the situation, confirming and reinforcing criminality; and, the experience of social exclusion is intensified by the process, offering little choice but to continue to offend in order to survive.

In response to the criticisms levelled at contemporary youth justice policy and practice, **notably in relation to prevention and early intervention**, 'alterative perspectives' will now be explored. It is important to note, I do not intend to provide a blueprint on how to respond to the problematic behaviour of children and young people. Rather, I will proceed to identify and briefly discuss 'alternative perspectives'.

Alternative perspectives

First, one could argue that there is an embedded belief amongst members of the public that '*our society does not like young people*' (Haines and Drakeford, 1999:1). These *negative* perceptions of youth within society have contributed towards '*a climate in favour of 'tough' and dramatic measures to 'tackle' wrongdoing*' (Smith, 2011:152). In contrast to a deficit-led model of practice however, an alternative perspective would be to '*perceive, treat and view children with respect, dignity, and understanding to maximize both potential and capacity for positive change*' (Almond, 2012:147). Rather than embracing scientific, actuarial measurements of risk and individualising offending (Armstrong, 2004; Smith, 2006), it seems a '*radical re-orientation of the traditional risk*

factor paradigm' (Case, 2006:7) is required; tailored to young people's needs, and the enhancement of positive, pro-social behaviour **(Creaney,2012b)**. In practice this could be achieved by involving children in '*consultation and participation processes shaping their futures*' (Case, 2006:3). Indeed, Armstrong (2006:276) notes '*to engage with young people we have to listen to them without trying to cure them of their problems*'.

Approaches should allow for young people to be viewed in a more positive light and be primarily informed by the principles of inclusion and equality, '*address[ing] aspects of young people's lives that promote positive engagement and motivation... focussing away from dynamic risk factors to pose the question as to how a young person's life can become more purposeful*' (Almond, 2012:146).

Second, as distinct from instigating criminalising procedures to tackle offending behaviour it is deemed more child-centred to actively divert children from the harmful 'machine of control' that is the formal justice system. Indeed McAra and McVie (2007:337-340) in their ongoing empirical study assert that '*...forms of diversion... without resource to formal intervention...are associated with desistance from serious offending*'. Diversionary principles, predicated upon an avoidance of labelling and stigma, provide that young people should be diverted from damaging formal interventions. Diversionary measures are positive and constructive, offering a more progressive alternative to the formal process

(Creaney, 2012b). Indeed, the practice of youth diversion in the 1980s was a '*successful revolution in juvenile justice* (Rutherford, 1986:5) despite being deployed alongside principles of law and order and 'tough on crime' rhetoric. During the 1980s diversionary measures produced quite impressive results, in particular, reductions in recorded youth crime and improved outcomes for children and young people (Smith, 2011). McAra and McVie (2007:315) conclude that '*the key to reducing offending lies in minimal intervention and maximum diversion*'. Importantly, in response to the classification to an 'outsider' '*doing less rather than more in individual cases may mitigate the potential for damage that system contact brings...*' (McAra and McVie, 2007:337).

Third, although Restorative Justice has been, and continues to be, difficult to define, simply put it is concerned with conflict resolution and the '*repairing of harm caused by anti-social and criminal behaviour*' (Arthur, 2010:89). **Although not specifically a child-centred process,** Restorative Justice is an approach that purports to benefit victims of crime alongside offenders by facilitating reconciliation.

Although in 1997 New Labour supported this type of approach in the youth/criminal justice arena, and demonstrated their commitment to RJ by adopting the principles of 'restoration' 'reintegration' and 'responsibility', as Arthur (2010:94) notes restorative approaches '*are additions rather than defining components of a justice system*'. This can result in '*a bifurcated approach whereby 'restorative' interventions are*

reserved for low-level child 'offenders' and/or the readily compliant, whilst the more conventional apparatus remains open for the 'heavy-enders' and/or the recalcitrant' (Goldson, 2011:20).

What is more, restorative approaches allow for victims of crime and members of the local community to become involved in the process. However, community members, inevitably, have different values and beliefs and in turn present with different opinions on how the problematic behaviour of children should be dealt with. This has been termed a 'postcode lottery' where *'two people from a similar background committing a similar offence ... may receive different responses'* (Arthur, 2010:94). Notwithstanding these criticisms however, proponents of Restorative Justice contend that by engaging the victim of crime, and encouraging the perpetrator to take responsibility and apologise for their actions, harm can successfully be repaired. **It is important to acknowledge that Restorative Justice interventions are not diversionary measures. Rather than diverting young people away from forms of intervention, proponents of Restorative Justice argue that any 'wrong' should result in some form of restorative approach.**

Fourth, it is worth re-iterating that a significant proportion of young people who are processed through the youth justice system suffer from poverty and experience different forms of social inequalities. Understanding this provides justification that interventions should have

regard for the young person's social-economic circumstances (Goldson and Muncie, 2006). 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 (Goldson and Muncie, 2007). 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 suggests that services located *outside* the formal apparatus are much more 'effective' in tackling the root causes of youth crime (Howell, *et al.*, 1995). In contrast to youth justice practice that is often deficit-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 (Howell, *et al.*, 1995).

Conclusion: towards a child friendly youth justice

Interactionist, social reaction and labelling perspectives highlight the counter-productive nature of early-intervention in the youth justice arena where it '*often serves to intensify the very problems that it apparently seeks to resolve*' (Goldson, 2008:93). However, in contemporary youth justice, although labelling perspectives demonstrate that system contact can be damaging and harmful, these perspectives have largely been ignored (Myers, 2001): policy-makers remain committed towards the

protection of the public by *'early identification... of those most likely to compromise public safety'* (Kemshall, 2004:106). This stated intention has, worryingly, resulted in a *'decreased emphasis upon welfare needs'* of young people (Kemshall, 2004:106).

What is more, in practice, the *'predictive accuracy'* of assessment in youth justice is questionable, perhaps not surprising when we consider that the behaviour of young people is somewhat unpredictable (Case, 2006). Furthermore, with regard to assessment, well-intentioned practice intervention may result in unintended outcomes where young people go on to commit a criminal offence when predicted not to (false positive) or turn out not to engage in crime when predicted to (false negative). In turn, *false positive* young people may have received quite intrusive forms of intervention while *false negative* young people may have been denied sufficient help and support (Case, 2010).

It is disturbing that *'prior notions of universality and welfare for all children 'in need' have retreated into a context of classification, control and correction'* (Muncie, 2006:781). In addition to this, it is of concern that unethical terms are being used to describe young people who are displaying problematic behaviour: *'interventions are targeted at ... the 'near criminal', the 'possibly criminal', the 'sub-criminal' the 'anti-social', the 'disorderly' or the 'potentially problematic' in some way or another'* (Goldson, 2005b, cited in Muncie, 2006:781). In response to these concerns, the paper briefly reviewed *'alternative perspectives'*.

In respect of the various 'alternative perspectives' explored, it must be understood that some of these approaches are in existence in contemporary youth justice law, policy and practice. However, they are often 'ad hoc' in form and attached to the existing system rather than seen as direct alternatives. Goldson (2011:20) notes how this is often counterproductive, as it increases criminality by drawing vast amounts of young people into the system:

There can be no guarantee that incorporating 'restoration' into an otherwise 'retributive' youth 'justice' system will serve to 'reduce' recourse to 'conventional prosecutions, court proceedings and sentencing'. In fact, quite the opposite is, at least, just as likely...This is not a recipe for 'reduction' but rather an invitation for net-widening, system expansion, disproportionality and diversified (but interdependent) technologies of criminalization.

As alluded to previously within the paper, a social justice/child friendly approach, where young people are not judged or treated unfairly, is most desirable. Rather than criminalising young people for committing minor crimes or displaying criminal tendencies and introducing them into harmful *formal* justice processes, *informal* community-based services seem much more promising, as Goldson (2005a:238) notes:

Generic social policy, as distinct from specific youth justice policy, provides the most appropriate medium for addressing the complex

range of inter-related issues within which youth crime is usually located.

These measures are tailored to the child's specific needs and abilities rather than their deficits or risky behaviours. Indeed, there is a pressing need for youth justice policy and practice to be transformed in order to allow for the implementation of more informal, diversionary and restorative measures (Creaney, 2012b; Goldson, 2005a). This would create space for innovative forms of practice to flourish including *'a more genuine engagement with young people, their families and their victims to reach mutually agreed solutions, without unnecessary pressure to contrive a 'happy ending''* (Smith, 2007:225). However, although the coalition government seem to be in favour of such an approach, for this to be implemented in practice, it would *'require... both courage and vision on the part of policy makers...'* (McAra and McVie, 2007:337-340).

In addition to generic social policy being the most appropriate response to youth crime, restorative approaches and diversionary measures seem more tolerant towards youth offending. Importantly, they are based on an understanding that youth crime is rather *common* and often *opportunistic* and *minor* in nature (Rutherford, 1992).

Whatever the merits and disadvantages of alternative perspectives, when we consider that youth justice intervention is harmful and counterproductive, it is important to work towards developing a system

that is child-friendly. **Additionally, in relation to risk-led approaches it must be acknowledged that the Youth Justice Board has accepted some of the criticisms, and intends, subject to funding being available, to introduce a new assessment framework (See Bateman and Fox, 2012).**

It is hoped that the brief exploration of 'alternative perspectives' will provide the basis for further discussion.

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