

Child criminalisation and the mistake of early intervention

Barry Goldson asserts that history has taught us that diversion is more effective than intervention.

On January 26, 2007, Professor Rod Morgan resigned as Chairperson of the Youth Justice Board (YJB). In an open letter distributed widely, Morgan explained that the youth justice system in England and Wales was being 'swamped'. He drew particular attention to, and expressed his frustration with 'the numbers of children and young people being criminalised and ... the growth in the number of relatively minor offenders being prosecuted'. In August 2007, the YJB's annual report was published. The report refers to 'missing data for 2005/06' in respect of 'first-time entrants'; that is children and young people subject to formal reprimands, final warnings or court disposals (in the vast majority of cases Referral Orders). Despite the missing data, however, the available statistics reveal that in a single year no fewer than 97,329 children entered the youth

this approach was self-evident from the outset. The dissenting voices were marginalised, however, and early intervention was, and continues to be, rolled out in two key forms.

First, with regard to *actual* offenders, ss. 65-66 of the Crime and Disorder Act 1998 essentially put an end to diversion (cautioning) and established instead the statutory, interventionist system of 'Reprimands' and 'Final Warnings'. The Reprimand applies to children who 'have not previously been convicted of an offence', whilst the Final Warning is primarily reserved for second-time offenders. Reprimands and Warnings effectively comprise a 'two-strikes-and-you're-in-court' rule, that has led to a significant increase in the number of children and young people appearing in court, often for minor infringements of the criminal law; the 'swamping' to which Morgan refers. Such

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justice system in England and Wales for the first time (Youth Justice Board 2007: 23). The modern youth justice system in England and Wales has become bloated and obese, as an inevitable consequence of a policy obsession with early intervention that has endured for a decade.

Early intervention is a hallmark of the 'new youth justice' (Goldson 2000). Immediately prior to the election of the first New Labour government in 1997, Jack Straw and Alun Michael – two of the principal architects of youth justice reform – argued that:

'Insufficient attention is given to changing behaviour, to teaching the difference between right and wrong ... Too little is done to change youngsters' behaviour early in their offending career ... We believe that the time has come for fundamental changes to be made ... We have to start again ... by prioritising early intervention to nip offending in the bud' (Straw and Michael, 1996: *passim*).

Such sentiments defined the contours of policies that have been implemented by the YJB since its inception. Despite Morgan's latter day protestations, interventionist imperatives were adopted and applied without question; 'Catching Them Early' was the title of the YJB's inaugural conference in March 1999. For critical youth justice researchers and progressive practitioners, the problematic nature of

interventionist impulses were further compounded by the Youth Justice and Criminal Evidence Act 1999 and the introduction of the Referral Order; essentially a mandatory sentence for children appearing in court for the first time and triggering additional modes of criminalising intervention.

Second, 'risk-based pre-emptive intervention' is arguably more problematic still. A broad range of measures have been introduced to 'target' children and young people who are perceived to be at risk of engaging in anti-social behaviour, disorder and/or offending behaviour. A familiar form of New Labour double-speak is evident here, whereby discourses of intervention switch interchangeably between benign child-centredness and tough punitiveness in order to suit the political moment. On the one hand, early identification of those at greatest risk is said to allow preventative intervention to divert vulnerable children from problematic behaviours. On the other hand, however, intervention is the vehicle which governs the future through actuarial modes of social control that undermine justice and expose children and young people to ever greater levels of criminalisation, surveillance and regulation.

Guilt is no longer the founding principle; intervention can be triggered without an offence being committed, premised instead upon a condition,

a character or a way of life that is judged to be failing or posing 'risk'. In this way, new modes of risk classification and early intervention are unencumbered by core jurisprudential principles such as the burden of proof, beyond reasonable doubt and due legal process. Children and young people face judgement, and are exposed to intervention, not only on the basis of what they *have done*, but what they *might do*, who *they are* or who they *are thought to be*. In the final analysis perceived risk is not crime, yet terms such as 'potential offender', 'pre-delinquent' and 'crime-prone' are increasingly mobilised to legitimise formal intervention, intelligence gathering and the free-flow of information exchange within and between state agencies. A vulgar positivism, ultimately serves to criminalise children and young people, their families and even their communities.

The first type of early intervention produces a substantial 'up-tariffing' effect that is pivotal to understanding how premature intervention leads to custodial expansion. The second form of intervention comes from a crude 'bastardisation' of developmental criminology and its predictive capacities. Paradoxically, therefore, even the keenest and most prominent advocates of 'risk factor' paradigms offer critical insight. Thus Sutton, Utting and Farrington (2004: 5) note:

'Even if there were no ethical objections to putting 'potential delinquent' labels round the necks of young children, there would continue to be statistical barriers. Research into the continuity of anti-social behaviour shows substantial flows out of - as well as into - the pool of children who develop chronic conduct problems. This demonstrates the dangers of assuming that anti-social five-year-olds are the criminals or drug abusers of tomorrow.'

Early intervention negates the lessons that youth justice research and practice have taught. In this sense the current policy emphasis is counter-historical. A long-established criminological 'truth' reveals that it is not uncommon for children and young people to transgress the law and the primary difference between those who are regarded as 'offenders', and those who are not, is 'understood not as a difference in psychological character but as a consequence of whether or not the young person has become entangled in the criminal justice system' (Pearson, 1994: 1186).

More than 50 years have passed since interactionist, labelling and social reaction theorists (including Howard Becker; Edwin Lemert and David Matza) helped students of youth justice to understand the means by which formal interventions - particularly the processes of prosecution and court appearances - serve to set in stone delinquent 'identities'. Labelling, followed by negative social reaction, is an inevitable consequence of intervention activating a correctional spiral: the labels produce 'outsiders' and elicit further and more concentrated forms of intervention. This led Edwin Lemert (1967) to conclude that 'social control leads to deviance', and David Matza (1969: 80) to reflect on the 'irony' and self-defeating nature of certain interventions: 'the very effort to prevent, intervene, arrest and 'cure' persons ... precipitate or seriously aggravate the tendency society wishes to guard against'. Over 25 years have lapsed since a group of social scientists from Lancaster University (Thorpe et al, 1980) carefully traced the processes that linked early intervention (even when it is ostensibly underpinned by benign intentions) to more intensive measures that also become more punitive in nature. Programmes of 'treatment', they concluded, often do more harm than good. More recently, Lesley McAra and Susan McVie (2007: 336-338) have reported on research derived from the longitudinal 'Edinburgh Study of Youth Transitions and Crime':

'Taken together, our findings indicate that the key to reducing offending may lie in minimal intervention and maximum diversion: doing less rather than more in individual cases may mitigate the potential for damage that system contact brings ... More significantly, our findings provide some support for the international longitudinal research... In particular, they confirm that repeated and more intensive forms of contact with agencies of youth justice may be damaging to young people in the longer term... Such findings are supportive of a maximum diversion approach'.

In the final analysis, early intervention encourages child criminalisation as distinct from crime prevention. The national and international evidence illustrates a pressing need to rethink youth justice policy and practice and to re-establish diversion without delay (Goldson and Muncie, 2006).

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