

# What 'justice' for children in conflict with the law? Some reflections and thoughts

Barry Goldson argues that the treatment of children in conflict with the law is an important signifier of a society's civility.

## 'Justice' as a moving image

It is 40 years since the Children and Young Persons Act 1969 received Royal Assent. The legislative product of prolonged debate – following publication of the 'Ingleby Report' in 1960, the Children and Young Persons Act 1963, the 'Longford Report' in 1964, 'The Child, the Family and the Young Offender' White Paper in 1965 and the 'Children in Trouble' White Paper in 1968 – the 1969 Act expressed the progressive spirit of the decade and its core provisions promised sweeping reforms. Indeed, throughout the 1960s radical proposals – including abolishing juvenile courts and raising the age of criminal responsibility to 16 – were seriously considered at the highest level. The received wisdom of the time was that children in conflict with the law were normally drawn from the most distressed and disadvantaged families, communities and neighbourhoods and the conventional juvenile justice apparatus, with its emphasis on punishment and correction, rarely provided appropriate responses. Anthony Bottoms (1974) observed that the Children and Young Persons Act 1969 was an attempt to 'decriminalise' the juvenile court, subsequently describing it as 'the most welfare-oriented legislation ever enacted with regard to the treatment of juvenile offenders in England and Wales' (Bottoms, 2008). By the 1980s the policy emphasis

with regard to children in trouble shifted from free-ranging *welfarist* objectives to more sharply focused *justice* priorities. Detailed research undertaken by a team of social scientists working out of Lancaster University problematised the net-widening tendencies of welfarist approaches (Thorpe et al., 1980) and policy makers, together with practitioners, began to recognise the counter-productive, even if well-intentioned, consequences of unbridled intervention. Throughout the 1980s and into the 1990s, therefore, legislation served incrementally to limit the reach of the juvenile justice system in general, and to radically reduce the use of penal detention for children and young people in particular. Diversion, decriminalisation and decarceration became the new policy and practice watchwords.

Whilst obviously schematic, it is instructive to reflect upon policy and practice developments in this way. Further, it does no harm to recall that constructions of 'justice', the purposes of 'justice' systems, the rationales that underpin juvenile 'justice' law and policy and children's experiences of 'justice' comprise *moving images*. In other words 'justice' is relative and contingent, it is conditioned by time (as seen above) and it is differentiated across place – varying between jurisdictions and, in some cases, *within* jurisdictions (Goldson and Muncie, 2006).

## 'Justice' as a political choice

The great Norwegian criminologist, Nils Christie (1998), observes: 'acts are not, they become. So also with crime. Crime does not exist. Crime is created. First there are acts. Then follows a long process of giving meaning to those acts'. Perhaps the clearest expression of this principle, with specific regard to children in conflict with the law at least, applies to the age of criminal minority or criminal responsibility; the age at which a child is deemed to be fully accountable in criminal law and the point at which an 'act' of transgression may formally be processed as a 'crime'. There is extraordinary variation in the age of criminal minority/responsibility in youth justice systems across the world. There is equal dissonance in the range of responses directed towards children in conflict with the law, depending upon the extent to which youth justice systems emphasise welfare, justice, diversion, informalism, prevention, intervention, rights, responsibilities, restoration, remoralisation, retribution or even starkly punitive imperatives. In short, 'justice' is uncertain and decisions to define – or not – children's 'acts' as 'crimes', together with the nature of preferred 'remedies' are, in essence, *political choices*.

It follows that governments, formal administrations, judicial bodies and correctional agencies choose to govern 'deviant' children in accordance with widely divergent ideological perspectives, political calculations, judicial conceptualisations and operational strategies. In this way policies and practices are constantly in motion and similar 'acts' can elicit quite different responses. Ultimately, 'justice' is the gift of power and its particular shape and form – at any given time and/or place – is determined by the vagaries of political choice.

## 'Justice' as a fading image

Policy responses to children in conflict with the law (particularly in England) have taken a significant turn over the last 15 years or so, essentially signalling a new punitive

era. In many important respects the trajectory of youth justice law, policy and practice during this period has followed the contours of what Feeley and Simon (1992) first termed the 'new penology'. Conventional constructions of 'welfare' and 'justice' have each been eclipsed by an obsessive focus on risk management, actuarial logics and a proliferation of assessment technologies. Simultaneously, youth crime has become highly politicised, giving rise to widespread anxiety, 'no excuses' sentiments and increasingly 'tough' policy responses. Thus, a particular inflection of new penology, framed within a context of consolidating punitivity, has been applied to the youth justice realm in England, serving to fundamentally compromise 'justice' for children in conflict with the law.

At the 'shallow end' of the youth justice system distorted constructs of crime prevention have ushered in a multitude of early (and earlier) intervention strategies, targeted not only towards convicted 'offenders' but also children who are deemed to be 'latent offenders', 'near criminal', 'possibly criminal', 'sub-criminal', 'anti-social', 'disorderly' or 'potentially problematic' in some way or another.

At the system's midriff a panoply of rigorous restrictions, increasingly onerous reporting conditions and a range of electronic monitoring and surveillance devices have underpinned more intensive regulation. At the 'deep end' of the system, penal capacity has diversified in form and expanded in size, and the numbers of child prisoners has more-or-less doubled. In sum, the youth justice apparatus has extended its reach and deepened its penetration, drawing approximately 90,000 'first time entrants' into the system each year and, on any given day, confining 3,000 children in penal institutions, many of which are recognisably unfit for purpose. As research evidence and practitioner knowledge has repeatedly affirmed, such approaches are extraordinarily expensive, extremely harmful and spectacularly

counter-productive when measured in terms of crime prevention and community safety.

### 'Justice' as a human right

If 2009 marks the 40th anniversary of the Children and Young Persons Act 1969, it also signals the 20th anniversary of the United Nations Convention on the Rights of the Child (UNCRC). Along with a number of other international human rights standards, treaties, rules and conventions, the UNCRC provides for both the protection and the promotion of the human rights of children in conflict with the law. Such international instruments are especially important not least because – as is widely observed – such children are particularly susceptible to having both their human rights and their claims to 'justice' violated and/or denied (Goldson and Muncie, 2009).

The UK government formally ratified the UNCRC in 1991 and, as such, it committed to submit periodic reports to the United Nations Committee on the Rights of the Child, allowing it to assess the degree to which law, policy and practice is Convention-compliant. In 1995, 2002 and 2008, the Committee provided detailed 'concluding observations' with regard to the government's record of protecting and promoting children's human rights. On each occasion, focused critique centred upon fundamental human rights violations in respect of children in conflict with the law. Similarly, in 2005 and again in 2008, the Commissioner for Human Rights for the Council of Europe raised serious concerns about the treatment of children in the youth justice system in England.

### 'Justice' as a symbolic marker

Anniversaries serve to focus the mind. The 40th and 20th anniversaries of the Children and Young Persons Act 1969 and the UNCRC respectively reveal the extent to which constructions of 'justice' are fluid and they raise discomfiting questions with regard to the treatment of

children in conflict with the law. During the period considered here, England (in particular) has become a more polarised, divided and unequal society. Child poverty is more entrenched and the apparent distance between social 'justice' and criminal 'justice' has widened. In political discourse, profound contradictions in social and economic ordering are overshadowed conceptually by crude, abstracted and decontextualised emphases on individual responsibility. In this way socio-economic polarisation is trumped by essentialised constructions of moral polarisation whereby society is conceived as a fractious amalgam of a 'responsible ... decent law abiding majority' and a so-called 'out of control minority' (Home Office, 2003). Such juxtapositions – the classic ingredients of 'othering' – are allowed to dominate political discourse.

The treatment of children – perhaps particularly those in conflict with the law – is an important signifier of a society's civility, maturity, compassion and humanity. It represents a profound symbolic marker of its core values, principles and moral integrity. The driving welfare imperatives of the 1960s, the 'justice' priorities of the 1980s and the human rights provisions of the UNCRC appear increasingly remote in the current period. Inequality, poverty, social distress, populist punitiveness, crude responsabilisation and caricatured demonisation all manifest base *injustices*. They signify a society that is deeply unbalanced and ill-at-ease. Those least able to resist the contemporary economic recession will inevitably be harmed most. Few are more vulnerable than children swept into youth justice systems. Surely, the time is ripe for a serious re-engagement with the principles of inclusivity, universal welfare, human rights and social justice? ■

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## References

- Bottoms, A. (1974), 'On the decriminalisation of English juvenile courts', in R. Hood (ed) *Crime, Criminology and Public Policy*, pp.319–46. London, Heinemann.
- Bottoms, A. (2008), 'Children and Young Persons Act 1969', in B. Goldson (ed) *Dictionary of Youth Justice*, pp.59–61. Cullompton, Willan.
- Christie, N. (1998), 'Between civility and the state', in V. Ruggiero, N. South and I. Taylor (eds) *The New European Criminology*, pp.119–24. London, Routledge.
- Feeley, M. and Simon, J. (1992), 'The New Penology', *Criminology*, 39(4), pp.449–74.
- Goldson, B. and Muncie, J. (2006), 'Rethinking Youth Justice: Comparative Analysis, International Human Rights and Research Evidence', *Youth Justice*, 6(2), pp.91–106.
- Goldson, B. and Muncie, J. (eds) (2009), *Youth Crime and Juvenile Justice Volume 3: Children's Rights and State Responsibilities*. London, Sage.
- Home Office (2003), *Respect and Responsibility – Taking a Stand Against Anti-Social Behaviour*. London, The Stationery Office.
- Thorpe, D., Smith, D., Green, C. and Paley, J. (1980), *Out of Care*. London, George Allen and Unwin.

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