CJM
CRIMINAL JUSTICE MATTERS

# MUDDIED WATERS

## Young Offenders and the politics of the CJA 1991

### Dilemma

The Government faced a huge dilemma in its approach to young offenders when planning the Criminal Justice Act 1991. Part of it wanted to claim credit for the successful revolution in juvenile justice practice in the 1980's - cautioning up, custody down, young offender crime rates falling, greater use of community based sentencing options, greater magisterial confidence in supervision orders and social work practice, the virtual abolition of children under 14 from court statistics, the abolition through good practice of care orders for offending - and extend this success to older offenders. At the same time it did not want to appear "soft" on crime, particularly towards those same young people who have been consistent "folk devils" and target for public spending cuts - witness the decline of the youth service, the creation of youth homelessness by cuts in income support and housing benefits, the abolition of real employment for young people and its replacement by training schemes, reductions in mobility by cuts in public transport which most affect those not allowed to drive by reason of age.

Not surprisingly, the Act reflects this ambivalence. While almost all sections affect young people, in the space available this article will concentrate upon those sections that affect only them, in Part III of the Act, and which are not covered in other contributions in this journal issue. An examination of selected sections of the Act will show that the change in policies concerning young offenders had far more to do with political ideology than with juvenile crime.

### Parental responsibility

Sections 56, 57 and 58 of the Act concern "parental responsibility". Parents can be required to attend court whenever their child appears (s.56), can be fined for the offences which their children commit (s.57), and can be bound over to take proper care of their child for up to 3 years and up to £1000.

The concept of "parental responsibility" introduced in the Act, and floated in the preceding White Paper: Crime, Justice and Protecting the Public, links responsibility to the cash nexus. No evidence has been offered that there was a problem regarding parental attendance at court. The White Paper actually recognised that "parents can already be required to attend when their children appear in court charged with criminal offences" (Paragraph 8.7). The Act operates in a mythical world which fails to acknowledge that parental failure, or conflicts in relationships between parents and their children, do not imply irresponsibility or lack of care, but may be due to difficult social circumstances, low income, debt, overcrowding, poverty and family stress. To introduce fines on parents in such situations, or to bind them over and make them subject to criminal sanctions for their children's misbehaviour, is likely to further exacerbate family tension and weaken both parental authority and respect between parents and children.

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Section 57 of the Act also allows courts to fine local authorities for offences committed by children in care, and award compensation against them. The logic for this, as set out in the White Paper, was to ensure that victim compensation was not denied simply because the offender was in care. As a result the Act introduces a disincentive to local authorities to receive young offenders into care, and penalises them for the behaviour of those children and young people with whom they may be struggling. A much simpler solution to the stated problem would have been the establishment of a central compensation scheme for such victims. The funding could still have come out of local and national taxation.

### Blurring age boundaries

In the long term one of the most serious consequences of the Act may be its undermining of traditional concepts of childhood and adolescence, by the juggling of legal age boundaries and a blurring of the boundaries at 16 and 17. Though the Act did not include original ideas to give magistrates the power to define "maturity" before deciding which jurisdiction a young person should experience, it does make 16 and 17 year old offenders in the Youth Court subject to all disposals previously available for 16 year olds in the Juvenile Court and 17 year olds in the Magistrates' Court. Home Office Circulars have stirred the pot by questioning which agency - social services or probation - should have lead role in servicing the Youth Court, creating tension and conflict which could undermine the successful inter-agency co-operation of the 1980's.

As a result, an Act whose stated intentions were to transfer good practice with juvenile offenders upwards, to older age groups, and to raise the level of jurisdiction of the Juvenile Court, could well end up effectively reducing the age limit of the Magistrates' Court to 16 and undermining successful social services practice.

The 1982 and 1988 Criminal Justice Acts generally hindered the development of good practice with juvenile offenders. Practitioners had to change their styles of work, come to terms with magistrates use of new powers, convince magistrates of the ineffectiveness of such sentences, and encourage a return to what was previously being achieved. The 1991 Act may finally have turned the tide. I fear that we will see more young people imprisoned, more family break-up through court imposed stress, and the collapse of community based support which assisted young offenders to reform.

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'The major penal question governments must address themselves to is not how to contain troublesome youth, but how to set them free...' (Denis Briggs, 1975)

'The cry of injustice is among the most fateful utterances of which man is capable - and no less consequential when expressed by school boys...' (David Matza, 1964)