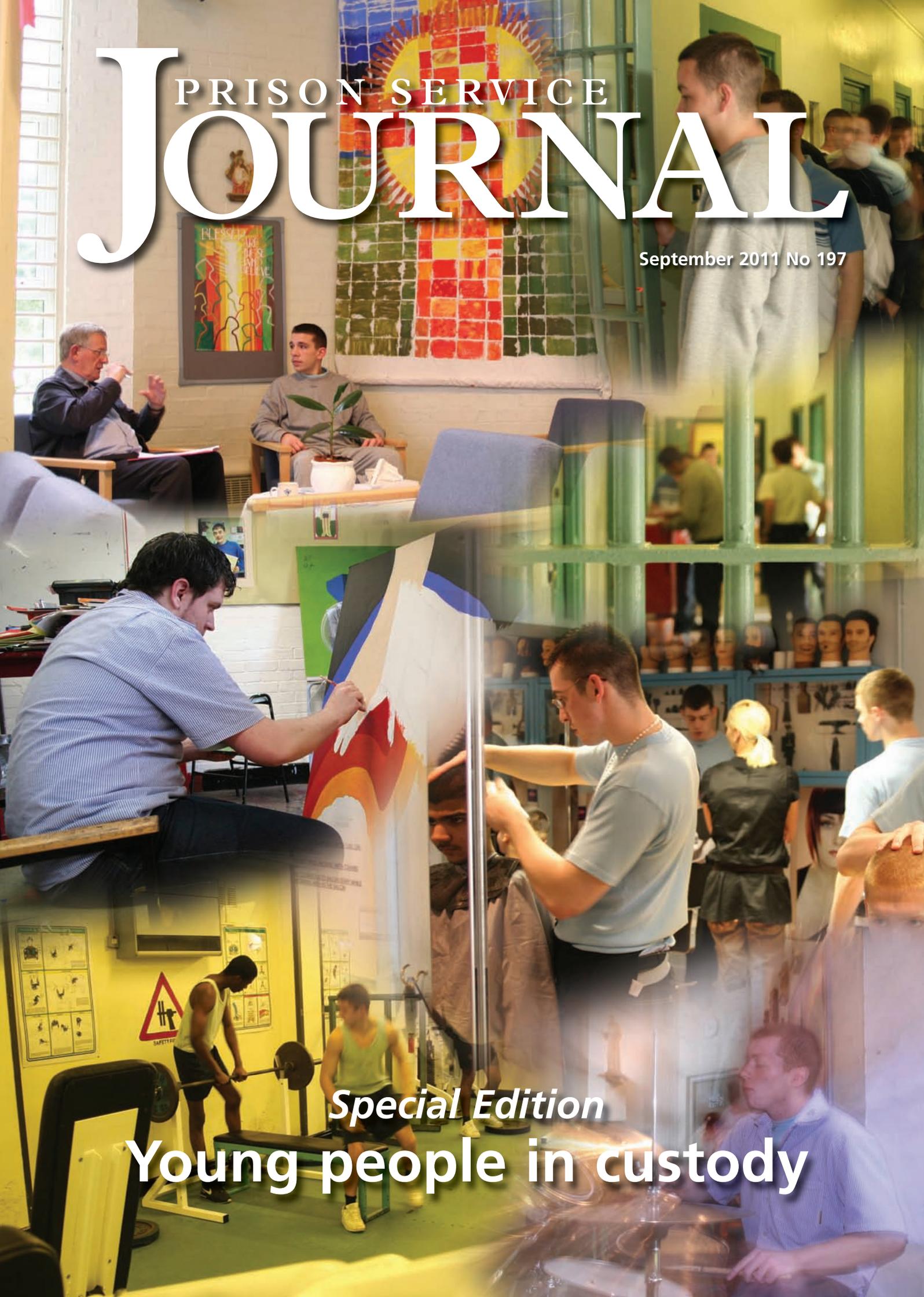


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Young people in custody

Needs or Deeds?

Youth Justice in Finland and England and Wales

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Today a host of special commissions, governmental working groups, policy ‘think tanks’ and penal pressure groups are re-thinking youth justice. This is partly because the reformed system introduced by New Labour in 1998 appears to have had little impact upon re-offending rates, but largely because it has proved to be extremely expensive. The emerging consensus appears to be that we are locking up too many children and young people; that we are locking them up in the wrong places and that, when we lock them up, we are far too concerned with their deeds and uninterested in their needs.

However this is just the latest oscillation in the erratic history of English youth justice. In the 1960s a reforming Labour government, under the influence of the social work lobby and social scientists, developed a needs-led, interventionist, youth justice strategy which culminated in the Children and Young Person’s Act 1969². Then, the 1970s witnessed a political backlash against the 1969 Act, resulting in a custodial bonanza. But, soaring custody rates and the looming fiscal crisis of the early 1980s spawned a cross-party ‘minimalist’ alliance which achieved unprecedented reductions in the numbers of young people formally processed and imprisoned. No sooner were these developments enshrined in the Criminal Justice Act 1991, than they were subverted by the punitive renaissance of the early 1990s, following the death of James Bulger, which culminated in New Labour’s Crime and Disorder Act 1998.

New Labour’s youth justice strategy involved the induction of a new, younger, population into the youth justice system, via pre-emptive civil measures targeting ‘incivilities’ perpetrated by younger children and the inadequacies of their parents. Informalism was abandoned in favour of earlier, formal, intervention by the

police via reprimands and final warnings. Diversion from custody into ‘alternatives’ gave way to community penalties, which could be imposed on only two occasions. Beyond this, longer, semi-indeterminate, custodial penalties could be imposed, and the age at which they could be imposed was lowered from 15 to 12.

Unsurprisingly, perhaps, in England and Wales, between 1992 and 2001, the number of 10-17 year olds sentenced to security or custody rose by 90 per cent. The number of incarcerated 10 to 14 year olds quadrupled³ while the number of girls increased by 600 per cent, albeit from a relatively low base⁴. The over-representation of black young people also grew, with children and young people classified as Black or Black British, who constitute approximately 2.5 per cent of the age group, accounting for 15 per cent of remands into custody or security, 11.3 per cent of custodial disposals and more than 20 per cent of those in long term detention⁵. However, not only did recorded reoffending rates remain more or less unchanged, but crimes recorded as having been committed by children and young people fell by 20 per cent⁶. The numbers of children and young people consigned to immediate custody or security by the Courts peaked at 5,440 in 2001, falling back to 3,421 by 2008; in no small part because of the radical policy shifts that followed the financial crisis of 2007. Nonetheless this figure is almost three times the number of children and young people held in custody in 1993⁷.

The apparent swing of the penal pendulum, back towards non-intervention and decarceration, is occurring in both the UK and North America. In the case of the USA, this gradual volte follows a three decade long carceral bonanza⁸. Although this shift is supported by evidence that incarceration tends to compound nascent criminal careers, it is almost certainly prompted by dwindling policing and youth

1. The research was undertaken by the University of Bedfordshire’s Vauxhall Centre for the Study of Crime in collaboration with HUMAK, Finland’s largest youth work training agency, the University of Kuopio’s Department of Sociology and Social Psychology and the NACRO Youth Crime Section. Funding was provided by the Esme Fairburn Trust.
2. Pitts J. (1988) *The Politics of Juvenile Crime*, London, Sage Publications.
3. Bateman T. (2005) *Custody and Policy, The Russell House Companion to Youth Justice*, Lyme Regis, Russell House Publishing.
4. Ibid.
5. Youth Justice Board (2003) *Youth justice annual statistics: 2002 /03*. London: Youth Justice Board; Audit Commission (2004) *Youth Justice 2004: A review of the youth justice reforms*. London: Audit Commission.
6. Nacro (2003) *Counting the cost: reducing child imprisonment*. London: Nacro.
7. Pitts J. (2003) *The New Politics of Youth Crime: Discipline or Solidarity* (2nd edition), Lyme Regis, Russell House Publishing.
8. Blumstein A. & Brown A. (1999) Population Growth in US Prisons 1980–1996, *Crime & Justice*, 26, 17; Pitts J. (2010) Bringing the Boys Back Home, *Safer Communities*, 9(1): 27-29.

justice budgets. The volatility of responses to youth crime in Anglo-America stands in marked contrast with the stability of policy and practice in Scandinavia. Moreover, those who wish to usher in a system more concerned with needs than deeds might do well to consider the Scandinavian experience.

Penal Policy in Finland

At the beginning of the 1950s, the rate of imprisonment in Finland was four times higher than in the other Scandinavian countries with 200 prisoners per 100,000 inhabitants. This compares with around 50 in Sweden, Denmark, and Norway. From the 1950s, however, Finland began to distance itself from the Soviet bloc, with which it had previously been politically allied, by constructing a national identity more akin to that of other Scandinavian states. In the 1970s and 1980s Finnish politicians, embarrassed by Finland's internationally high custody rates, 'bought into' the consensus amongst Scandinavian scholars, jurists and civil servants that reducing the number and duration of prison sentences would have no significant impact upon crime rates. One of the consequences of this volte face was that between the late 1980s and the present day, the number of prison sentences imposed on juveniles has decreased by 90 per cent. This decrease is largely due to far fewer juveniles being sentenced to imprisonment for property offences⁹.

By the beginning of the 1990s, Finland had reached the Scandinavian norm of around 60 prisoners per 100,000 of the population. Meanwhile, following the precept that *good social development policy is the best criminal justice policy*¹⁰ Finland had pursued radically redistributive fiscal policies, developed world-leading public health, welfare and educational services, comprehensive child care policies and a famously liberal penal policy. In the 21st century, not only does Finland lock up only a handful of children and young people in trouble in Prison Department establishments, in a period

when the child and adult incarceration rates in the UK and the USA and many European states were accelerating, it effected remarkable reductions in its overall penal population and its juvenile penal population in particular¹¹.

In Finland, penal reform has traditionally been the province of a relatively small group of professional and academic criminal policy experts. This group has maintained close links with successive Ministers of Justice some of whom have themselves been researchers and criminologists. This has meant that criminal justice policy has remained relatively depoliticised and attempts to insinuate 'heavyweight', US-style, 'law and order' measures like 'three strikes' and 'truth in sentencing' have been thwarted at an early stage.

The Finnish system has a strong 'expert orientation'. Finnish judges have worked closely with criminologists and civil servants to develop more liberal criminal justice policies and, as a result, appear to have accepted and 'internalised' the values inherent in such policies. It is also the case that criminology and criminal justice policy are taught in juridical faculties and to lawyers. The majority of local court judges and prosecutors are relatively young, having studied in the 1970s and 1980s when liberal criminological policies were in the ascendant. Beyond this, ongoing training and updating is organised by the judicial authorities in collaboration

with university criminology faculties.

Despite increases in crime since the 1960s, Finland remains a relatively safe and law-abiding society. This tends to be seen as a sign that liberal criminal justice policies are, at the very least, not making the situation worse and this makes it easier for governments to defend such policies to the public.

What Happens to 'Young Offenders' in Finland?

In 2002 in Finland only two juveniles (aged 15-21) were serving custodial sentences and a further eight were being held on remand¹². In Finland the age of

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9. Lappi-Seppala, T. (1998) *Regulating the Prison Population*, Research Communications No. 38 Helsinki, Finnish National Research Institute of Legal Policy; Kuula T. Pitts J. & Marttunen M (2006) Nuoret Laitoksissa suomessa Ja Englannissa, Honkatukia P & Kivivuori J (toim) *Nuorisoriikollisuus: Maara syyt ja kontrolli*, Helsinki, Finnish National Research Institute of Legal Policy.
10. Christie, N. (2000) *Crime Control as Industry*, London, Routledge.
11. Lappi-Seppala, T. (2001) 'Sentencing and Punishment in Finland' in Tonry, M. and Fraser, R. (eds) *Sentencing and Sanctions in Western Countries*, Oxford, Oxford University Press.
12. Kuure T. (2002) Reducing Custodial Sentencing for Young Offenders: Low Custody in Finland, Reducing Custodial Sentencing for Young Offenders, *The European Experience — Conference Summary* (Oct.), London, Nacro.

criminal responsibility is 15 but the far larger numbers of juveniles held in security or custody in the England and Wales cannot be explained by the lower age of criminal responsibility (10 years), since most incarcerated young people in England and Wales are 15 and over. Nor can it be explained by population size. The population of Finland is approximately 5.5 million, around one tenth the size of the population of England and Wales (53.5 million). If, therefore, we multiply the Finnish figures by ten, we see that, pro rata, the rate for England and Wales is about 76 times greater. This, of course raises the question of what happens to those young people aged 15-17 who offend, and to those children aged 10 to 15 who are below the age of criminal responsibility in Finland but behave in ways which, in England and Wales would be against the law and would render them liable to prosecution and incarceration.

Methodology

To try to answer this question we analysed the national data for 2002 held by STAKES, the Finnish National Research and Development Centre for Welfare and Health of Children aged 10-17 placed outside their own homes. The 2002 data is comparable with the data held by the Finnish Prison Department. In order to make the closest possible comparison with children and young people dealt within the youth justice system of England and Wales, we collected data held by STAKES on 10-17 year olds removed from their own homes to social welfare institutions. However, this was problematic because, as we have noted, in Finland the age of criminal responsibility is 15 and children aged 10-15 are therefore technically incapable of committing a criminal offence. Without a detailed file search it would not have been possible to establish precisely how many of these young people were involved in behaviour for which, in England and Wales, they could have been charged with a criminal offence. We were however, able to access a small-scale file study of Finnish children and young people placed on Care Orders in which

In cases, where the child or young person's situation or behaviour is deemed to be serious, responsibility for their upbringing is transferred to the Board which will make a Care Order which can often involve removal from home.

'offending' had been a major factor in the Care proceedings¹³. This was augmented by data on judicial involvement in contested placement decisions in the Finnish system, interviews with and a questionnaire administered to, 30 English and 30 Finnish social welfare professionals, and the findings of published and unpublished research studies, currently only available in Finnish.

Out-of-Home Placements

In 2002 in Finland, 7,242 children and young people aged between 10 and 17 were placed outside their own homes by social workers. 47 per cent were girls and 53 per cent boys. 879 of these children and young people (12 per cent) were placed involuntarily.

The decision to place children under the age of 18 outside of their own homes is taken by Municipal Social Welfare Boards in each local authority or, in emergencies, by an appropriately qualified social worker employed by the Board. In cases, where the child or young person's situation or behaviour is deemed to be serious, responsibility for their upbringing is transferred to the Board which will make a Care Order which can often involve removal from home. Involuntary removal to Care means that a child who has attained the age of

12 either opposes such removal him/herself or their parent or guardian opposes the Care Order (*Social Welfare Act (683/1983)*)¹⁴. Removal decisions can be appealed and are subject to regular reviews which may be overseen by a judge. However, because childcare, child protection and youth justice provision is not clearly differentiated in the Finnish social welfare system, it is difficult to tease out what constitutes a response to 'youth offending' as we understand it in the UK. Nonetheless, the results of the file study mentioned above¹⁵ suggests that offending was a major consideration in removal decisions in around 40 per cent of cases dealt with by the Municipal Social Welfare Boards included in this study.

13. Kuula T. Pitts J. & Marttunen M (2006) Nuoret Laitoksissa suomessa Ja Englannissa, Honkatukia P & Kivivuori J (toim) *Nuorisori-kollisuus: Maara syyt ja kontrolli*, Helsinki, Finnish National Research Institute of Legal Policy.
 14. STAKES (2003), *Child Welfare Register*, Helsinki: StakesInfo, tutkimuksia 133.
 15. Kuula T. Pitts J. & Marttunen M (2006) Nuoret Laitoksissa suomessa Ja Englannissa, Honkatukia P & Kivivuori J (toim) *Nuorisori-kollisuus: Maara syyt ja kontrolli*, Helsinki, Finnish National Research Institute of Legal Policy.

Fig.1: Children and Young People (10-17) in Need and in Trouble Placed by Local Authorities and Youth Courts in England and Wales and Finland (2002)

	<i>Finland</i>		<i>England & Wales</i>	
Reformatory/Secure Estate	248	2%	12,592	15%
Shelters for battered family members	75	1%	—	
Mother and baby home	15	1%	—	—
Special psych. units	3,985	38%	1,000 (est.)	1%
Youth clinic (detox)	20	1%	—	—
Foster care	2,968	27%	45,674	55%
Children's homes	2,800	26%	8,896	11%
Independent living	78	1%	—	—
Youth homes	460	4%	—	—
Private care	96	1%	—	—
Placed with parents	305	3%	7,536	9%
Other	—	—	6,851	8%
TOTAL	11,053		82,549	

Deeds versus Needs

Surprisingly perhaps, pro rata, Finland removes more children and young people from their homes than is the case in England and Wales. And, as fig. 1. (above) indicates, it places them in a broader range of institutions than in England and Wales. These placements are of variable duration. For example, the time young people spent in a reformatory ranged from one week to four years, while a placement in a 'detox' centre could vary between a few days and a few months. The length of stay was determined by the supervising social workers and, in the case of a contested placement, a children's judge,

The other major difference between the two countries concerns placement in what in the UK we describe as the secure estate vis-a-vis specialist child and adolescent psychiatric facilities. Whereas Finnish reformatories accommodate around 2 per cent of children and young people removed from home, in England and Wales the secure estate houses 15 per cent. The strong mental health/psychiatric orientation of the system is evidenced by the fact that in 2002, almost 4,000 children and young people (38 per cent) were consigned to hospitals and specialist psychiatric units. This would be equivalent to around 40,000 children and young people in England and Wales, whereas the actual figure is estimated to be under 1,000. This latter figure is the more remarkable when we consider that an estimated 60 per cent of young people in the secure estate in England and Wales are said to be suffering from some type of 'mental health' problem¹⁶.

It appears that, in recent years, the concern with child and adolescent mental health in Finland has eclipsed concerns about youth crime and this tendency is evident in recent changes in Finnish reformatories which have come to view the problems presented by youngsters placed there as being indicative of behavioural or psychiatric disorders¹⁷.

This changed orientation appears to have been a response to the economic recession of the early 1990s which triggered growing public concern about the mental health of children and young people whose parents were thrown out of work and, in particular, the association between youth unemployment, excessive drinking and drug use and psychiatric disorders. The demand for psychiatric institutional care for 10 to 14 year olds, increased by 46 per cent between 1998-2002 and as it did so the proportion of involuntary admissions to Care rose by 7 per cent¹⁸. This demand, as well as public and media concern about the mental health of Finland's young people, has triggered heavy government investment in both institutional and community-based child and adolescent mental health services in recent years.

In a study conducted in 1989, the six main reasons given for placing children in reformatories were:

1. School problems
2. Problems at home
3. Family problems,
4. Crime problems
5. Substance misuse,
6. Problems of life-style and bad company (especially in the case of girls consorting with older men).

16. Bateman T. (2005) *Custody and Policy, The Russell House Companion to Youth Justice*, Lyme Regis, Russell House Publishing.

17. Pösö T. (2004) *Serious Eyes and Other Experiences of Reform Schools*, Stakes, Tutkimuksia 133: Helsinki.

18. STAKES (2003), *Child Welfare Register*, Helsinki: StakesInfo, tutkimuksia 133.

Twelve years later, however, the language appears to have changed significantly, with a far greater emphasis upon school problems and psychiatric disorders and, not infrequently, the link between them¹⁹.

The range and orientation of placements in the Finnish system is interesting from a UK perspective because of the low priority afforded to offending per se, which emerges as a 'symptom' of deeper disorders like addiction, depression, family violence, learning difficulties etc., the treatment of which is, apparently, given a far higher priority than programmes which address offending behaviour.

However, while those who argue for a greater emphasis upon needs rather than deeds in the English system may find such diversity attractive, those who believe that children should only ever be incarcerated in the most extreme circumstances, and then only via 'due process of law', will undoubtedly be alarmed²⁰. Indeed from an Anglo-American perspective, the apparent ease with which children and young people subject to Care Orders can be consigned to residential institutions, and transferred between them, and the discretion granted to social workers to decide when inmates will be released, can appear both regressive and anachronistic.

Professional Perceptions of Removal From Home

However, interviews with English and Finnish welfare professionals²¹ about the institutional confinement and treatment of children and young people revealed that Finnish professionals were far less worried about it than the English. By and large, English professionals viewed removal from home as a last resort, and community-based responses, which allowed the child to remain in their family, as the ideal. Finnish professionals tended to see things differently, arguing that residential childcare is more congruent with Finnish than English culture, suggesting that the relationship between the young person and their family is different in Finland where, from an early age, children are encouraged to be independent of their

families and to place greater reliance upon the peer group. In short, they argued, life is more 'social' and less familial in Finland. This being the case, they argued, to be consigned to a residential institution in Finland is not an analogous experience. They expressed far greater confidence in the professional expertise of those running residential and secure institutions than their English counterparts, echoing the strong 'expert orientation' of the Finnish system. While the English professionals emphasised the dangers inherent in institutionalisation the Finnish professionals argued that, because their system had an essentially developmental and educational orientation, it was able to compensate for the disadvantages experienced by the children and young people passing through it. The quality of residential provision was obviously an issue here and respondents pointed to the fact that a higher proportion of young people in the Finnish Care system entered higher education than was the case in the general youth population of Finland, although this is itself very high by European standards²². Meanwhile, of course, the majority of young people in the UK Care system fail to achieve five A to C grade GCSEs, let alone move on to higher education.

Conclusion

The Finnish childcare and penal systems appear to present us with a contradiction because, while the penal system maintains a remarkably low imprisonment rate, the child and youth welfare system institutionalises a larger number of children and young people, *pro rata*, than England and Wales. Seen from an Anglo-American perspective, this represents confused and contradictory thinking, yet it appears to be relatively unproblematic for most Finns. Research suggests that the Finns are happy to support a low imprisonment rate and a high degree of state involvement in the lives of troubled and troublesome children and young people, because they see both aims as complementary; contributing to greater social equality, social cohesion and a low crime rate.²³

19. Pösö, T (1993) Kolme koulukotia. Tutkimus tyttöjen ja poikien poikkeavuuden määrittelykäytännöistä koulukotihoidossa. Acta Universitatis Tamperensis ser A vol 388. Tampereen yliopisto: Tampere; Pösö T. (2004) *Serious Eyes and Other Experiences of Reform Schools, Stakes*, Tutkimuksia 133: Helsinki.

20. Pitts J. (2003) *The New Politics of Youth Crime: Discipline or Solidarity* (2nd edition), Lyme Regis, Russell House Publishing.

21. Bateman T. & Randall V. (2007) *The Attitudes of English and Finnish Child Care Professionals to Residential and Custodial Disposals for Children and Young People*, Unpublished, Luton, University of Bedfordshire.

22. Ibid.

23. Lappi-Seppala, T. (2001) 'Sentencing and Punishment in Finland' in Tonry, M. and Fraser, R. (eds) *Sentencing and Sanctions in Western Countries*, Oxford, Oxford University Press.