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REVIEW

THE CRIME AND DISORDER ACT 1998: IMPLICATIONS FOR YOUTH JUSTICE IN ENGLAND AND WALES[1]

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ABSTRACT

The implementation of the Crime and Disorder Act 1998 (CDA 1998) has been described as representing the most far reaching changes to the Youth Justice System in England and Wales in the last 50 Years (Pitts 2001). In this paper ***Joe Yates*** *presents a critical analysis of the changes to the youth justice system brought about as a result of the implementation of the Crime and Disorder Act 1998. The paper contextualises the changes in relation to the principles and philosophies of the youth justice system prior to the CDA 1998 and explores these changes not only in relation to penal policy, but also in a broader political context. The paper also offers a critical analysis of the government's critique of the youth justice system prior to the CDA 1998 and a critical analysis of governmental responses to what they perceived were the failings of the youth justice system. A critical analysis of the main body of the changes embodied in the CDA 1998 is presented. This is followed by a focus on the replacement of the caution with the Final Warning and the implementation of the Detention and Training Order, which presents a critical exploration of the net widening capacity of early intervention and the rise in custodial sentences for children. The paper concludes by exploring the background to the changes to the youth justice system, which occurred at a time when recorded youth crime had fallen. The paper critically engages with this issue by presenting an analysis of the links between moral panics around youth and crime and increasingly interventionist and coercive youth justice policies.*

Key words: *Crime and Disorder Act, youth justice*

INTRODUCTION

The implementation of the Crime and Disorder Act in 1998 (CDA 1998) has led to the most far reaching changes to the Youth Justice system in England and Wales for the last 50 years (Pitts 2001). The implications have been wide reaching and while the full effects of the Act have yet to be fully realised, it is already apparent that the changes have had a revolutionary impact on the way young people and children, in trouble, in England and Wales are dealt with. The Act brought in wide range and sweeping changes, which reformed what the government perceived to be a failing Youth Justice System. It has radically altered the philosophy and principles which the Youth Justice System was based on. In doing this the Act ditched decriminalisation, diversion and decarceration in favour of early intervention and making young offenders responsible for their actions, reinforcing the responsibility of parents and making young people face up to the consequences of their offending. Initially there was little critical analysis of these changes. However, more recently a number of commentators have raised concerns regarding the ethical and practical implications of the 'New Youth Justice'

1 This article is based on a paper delivered at the Juvenile Justice Course, in June 2002, at the Inter Univeristy Centre in Dubrovnik, Croatia.

(Goldson, 2000, 2001, 2002, Pitts, 2000, 2001, Muncie 2001 and Butler and Drakeford 2001).

In this paper I will critically explore the changes brought about by the Crime and Disorder Act 1998, particularly in relation to the promotion of early interventionism and the introduction of the Detention and Training Order. In order to do this I will begin by outlining the governmental critique of the 'old' youth justice system. This will then be followed by an outline of the main changes, to the youth justice system, embodied in the Crime and Disorder Act. I will then move on to critically analyse, the promotion of early intervention, via the criminal justice system, as an effective way of working with young offenders and the introduction of the Detention and Training Order. I will conclude by attempting to contextualise the changes by offering a critical analysis of the 'ahistorical amnesia' (Pearson 1994), which characterises discourses around youth crime and the moral panics[2] which although not according with the 'realities' of youth crime have served to validate politically expedient responses to it.

'NO MORE EXCUSES': A CRITIQUE OF YOUTH JUSTICE PRIOR TO THE CRIME AND DISORDER ACT

> "An excuse culture has developed within the youth justice system. It excuses itself for its inefficiency, and too often excuses the young offenders before it, implying that they cannot help their behaviour because of their social circumstances" (Home Office 1997:2)
>
> "The current system for dealing with youth crime is inefficient and expensive, while little is done to effectively deal with Juvenile nuisance. The present arrangements are failing the young people who are not being guided away from offending to constructive activities. They are also failing victims . . ." (Misspent Youth 1996: 96)

The period prior to the Criminal Justice and Public Order Act in 1994 has been described as one of the most progressive periods in juvenile justice (Rutherford 1995). Practice in the Youth Justice System during this period was underpinned by the principles and philosophies of diversion, decriminalisation and decarceration. This 'successful revolution' in youth justice (Anderson 1997), [3]was the result of the convergence of a number of influences, which led to a consensus on diverting young people from the Criminal Justice System and reducing the use of custody for children in trouble. The disparate influences, which underpinned this consensus have been identified by Goldson (2002). Firstly, he notes the role of academic research in confirming that both institutional and custodial responses to children in trouble were harmful, expensive and counter productive. Secondly, he identifies professional developments in the field of youth justice which emphasised diversionary, decriminalising and decarcerative priorities and put these into practice locally. Finally, he notes the role of the Thatcherite neo monetarist economic governmental priorities which focused on reducing public spending and despite having a manifesto heavily focused on the issues of 'Law and Order', openly encouraged the use of diversionary strategies due to the expensive nature of criminalising and custodial responses to young offenders[4].

In the early 1990's a punitive populism came to characterise the question of youth crime and this moved child crime into the centre stage of electoral politics (Pitts 2000). New Labour[5] placed this centrally in their attempts to locate themselves politically as the party of 'Law and Order' and as such they rejected what they referred to as the excuse culture of the 'old' youth justice and the theoretical and philosophical traditions, which underpinned it. New Labour argued that the youth justice had failed and identified these failings in a series of papers and reports such as 'Misspent Youth' (1996) and 'Tackling Youth Crime: A Consultation Paper' (1997). They argued that the Youth Justice System lacked 'credibility' and clear aims, the system of repeat cautioning was not working, re offending continued whist young people where on bail, the youth court system was too cumbersome, there was a distinct lack of supervised community intervention programmes aimed at changing the behaviour of offenders, the system of custodial facilities was disjointed and that there was an absence of national strategic direction.

The changes implemented by New Labour to the Youth Justice System through the Crime and Disorder Act were aimed at tackling these 'failings' and 'getting tough' with child offenders in order to

2 The term 'Moral panics' relate to exaggerated and media-amplified social reactions to relatively minor acts of social deviance (Cohen 1972). Hall et al (1978) also suggest that 'moral panics' are encouraged and utilised by governments in order to mobalise political support by creating a common 'threat', which they can then publicly respond to.

3 which coincided with a 17% decrease in youth crime between 1988 and 1998 (NACRO 2000),

4 (in 1993 NACRO estimated that incarcerating children cost £190 million per year and in 1996 the Audit Commission estimated that it cost on average £2500 from arrest to sentence).

5 New Labour refers to the Labour Government of Tony Blair.

tackle the problem of youth and crime. Indeed it was as if we were entering 'year zero', a new dawn in dealing with children in trouble as the philosophies of diversion, decriminalization and decarceration were rejected in favour of early intervention aimed at tackling the risk factors, reinforcing the responsibility of parents and making young offenders 'face up' to the consequences of their behaviour. The message was that as far as youth crime was concerned there would be 'no more excuses'.

THE 'NEW DAWN': REFORMING YOUTH JUSTICE

In order to tackle what they perceived as the failings of the Youth Justice System the government introduced a raft of new measures. They asserted that they knew a good deal about the factors, which are associated with youth crime and that research had confirmed these as: being male, being brought up by a criminal parent or parents, living in a family with multiple problems, experiencing poor parenting and lack of supervision, poor discipline in the family and at school, playing truant or being excluded from school, associating with delinquent friends, and having siblings who offend (Misspent Youth 1996). In their analysis of these factors they went on to assert that the two important influences are persistent school truancy and associating with offenders (Jones 2001). In addition they stated that the single most important factor in explaining criminality is the quality of a young person's home life, including parental supervision.

The identification of the risk factors identified above as causal factors has received criticism from theorists such as Pitts (2000, 2001), Goldson (2000, 2002) and Jones (2001). Jones in particular argued that these factors were based on a selective reading of the research and essentially reframed what had been identified in the research as factors associated with delinquency as causal factors. Jones (2001) also critisised the identification of these 'causal' factors due to their focus on individual factors such as parental supervision, which served to play down the important link between structural factors such as poverty and youth offending. This, it is argued served to individually pathologise young offenders and their parents, whilst ignoring the important role that wider structural, societal and economic issues, such as inequality and deprivation, played in underpinning youth crime.

At the core of the New Labour's approach to tackling youth crime was the introduction of multi agency youth offending teams to tackle the multi faceted problems, which underpin youth crime (YOT) (section 39 CDA)[6]. The newly formed YOT's had a statutory obligation to pursue the aim to prevent offending (Section 37 CDA 1998) and were made up of representatives from the Police, Health, Education, Probation and Social Services. These teams were to be arranged locally and overseen by the Youth Justice Board (YJB)[7], which would give national strategic direction to the new youth justice system. Each YOT was required to submit a yearly youth justice plan to the YJB (section 40 CDA 1998) in order to outline how they were performing against an array of targets set by the YJB and would be financially penalised should they fail. In addition a range of new orders, were introduced which facilitated intervention in young peoples lives, which was earlier and more rigorous.

In the fight against youth crime the government identified a number of national priorities which were broadly based on the findings of the Audit Commission Report (Misspent Youth 1996). A report, which has recently come under criticism as being methodologically flawed and politically motivated (Jones 2001). These national priorities were to be pursued by the YOT's under the national strategic direction of the Youth Justice Board. I have identified these priorities below and related them to some of the specific measures which have been employed to implement them.

The swift administration of justice so that every young person accused of breaking the law has the matter resolved without delay.

In order to tackle thisthe government made a pledge to reduce delays in processing juvenile offenders through the courts. This was to be achieved through YOT officers being present in all youth courts to assist the courts (a practice not uncommon in the 'old youth justice'), closer liaison with the courts through the youth court users' groups and tighter timescales for the completion of court reports by the youth offending teams. These have also been supplemented in some areas by piloting late night youth courts and a standard practice of identifying and fast tracking 'persistent' young offenders through the courts.

6 This was part of a wider governmental drive towards 'joined up' government and 'joined up' thinking and practice in public services.

7 Bailey and Williams (2000) have identified a number of difficulties that the formation of multi agency YOTs brought about. One of the issues they identify relates to the differences in organisational and professional cultures of workers from different agencies (who have different philosophies) and the tensions that this has brought about.

Whilst there are obvious benefits of 'speeding up' the youth court process, there was some concern expressed by commentators that it may have a detrimental effect on the quality of the assessments completed by YOT workers as they had to be completed within increasingly tight schedules. Another concern was expressed by Jones (2001) who argued that the Audit Commission's 'Misspent Youth' report (1996) had misunderstood the complex dynamic, which led to delays in the Youth Justice System and had wrongly identified delays in compiling court reports by youth justice teams as one of the main reasons for delay (for further discussion see Jones 2001).

Confronting young offenders with the consequences of their offending, for themselves, their family, their victims and their community.

This was reflected in the implementation of a range of new disposals such as the Action Plan Order, The Reparation Order, The Detention and Training Order as well as the aim to incorporate Restorative processes in the vast majority of disposals by 2005. Essentially these were aimed at ensuring offenders were confronted with the consequences of their actions swiftly and rigorously.

Punishment proportionate to the seriousness and persistence of offending.

This aimed to ensure that the punishment reflected the crime. There has been criticism levelled at this in relation to the increased use of custody for less serious offences and the restriction on only one Final Warning being allowed in any two-year period. This has effectively increased the number of children through the courts for minor offences, leading to punishments which are arguably not proportionate to the seriousness of offence.

There was also concern that some of the preemptive preventative measures, such as the Local Child Curfew and the Child Safety Order, would widen the coercive net of social control, punishing young people (although using the language of protection) for 'incivilities' and perceived 'nuisance' in a manner which was not proportionate to the seriousness of their actions.

Encouraging reparation to victims by young offenders.

This was to be achieved via the introduction of the Reparation Order (Section 67 CDA1998) which took the form of the young offender making reparation for their offending. This could be direct to the victim in undertaking a task to make amends or attending a restorative conference, where the young offender would come face to face with the victim in order to make apology. Alternatively Reparation could be indirect in the form of 'community payback' where the young offender would undertake unpaid work for the benefit of the local community.

This rests on the philosophy of restorative justice (Braithwaite 1989), which is based on the principles of shame, blame, and reintegration. Whilst many YOT's have developed innovative reparation schemes, which have been successful in assisting young offenders in making amends for their offending, there is some concern that whilst young offenders are undoubtedly 'shamed' and 'blamed' there is still a long way to go in successfully securing their re integration. This is due to both the continued dominance of punitive blaming discourses, in the retributive Criminal Justice System in England and Wales and the socially excluded and structurally disadvantaged structural position, where many young offenders are located. Indeed Williams (2000) argues that although 'fashionable' the rhetoric around restorative justice in the new youth justice offers 'no real prospect of genuinely restorative justice being introduced in England and Wales'.

Reinforcing the responsibilities of parents.

This was central to the New Labour agenda and reflected the view that "the single most important factor in explaining criminality is the quality of a young person's home life, including parental supervision" (Home Office 1997:5). A central tenent in reinforcing the responsibility of parents was the introduction of the Parenting Order which all courts are obliged to consider when dealing with young offenders. Parenting orders were available to be made on the parents of young offenders, which would require them to attend parenting classes to improve their parenting skills which in turn would improve their control of their children. This has been criticised as it combined the language of coercion and empowerment, presenting itself as a coercive court order to punish and with consequences for non-compliance but also as an empowering method of encouraging and assisting parents in fulfilling their parental responsibility.

Several concerns have been expressed in relation to Parenting Orders. Firstly parents are a useful resource in working with the child, indeed youth justice teams have historically worked very closely with parents on a voluntary basis to change the behaviour of their children. The concern is that this more coercive approach may well serve to sour this relationship. It is also of concern that ultimately the 'criminalisation' of the parents of young offenders could lead to more children being ac-

commodated under section 20 of the Children Act (1980) in residential units due to concerns by parents that they will be punished for their children's behaviour. Also ironically one of the highest groups of young offenders in the population are children cared for by the State, who in many cases share or have sole parental responsibility.

Helping young offenders to tackle problems associated with their offending and to develop a sense of personal responsibility.

This was to be achieved through a number of measures, however I will focus here on the abolition of Doli Incapax which held that children under the age of 14 were less morally culpable for their actions than an adult. The abolition of this through the Crime and Disorder Act centred on the removal of the presumption that children under 14 were not criminally responsible. This effectively led to a lowering of the age of criminal responsibility from the age of 14 to the age of 10 (lower than most other European countries) and made younger children more responsible for their actions within the Criminal Justice System. The government based this change on the presentation of Doli Incapax as 'archaic', 'flying in the face of common sense' and in desperate need of reform (Home Office, 1997).

This focus on 'helping' children to take responsibility for their offending has been criticised by a number of commentators. Bandalli (2000) criticises it for 'eroding the special status of childhood' and identifies it as 'demonstrable of a significant shift in attitudes to children who offend', mix matching the language of protection and coercion in a 'responsibilisation' of children (Bandalli 2000: 81-82). She goes on to argue that:

> "The abolition of the presumption of *doli incapax,* combined with the opposition to raising the age of criminal responsibility, the removal of special safeguards for children, and the prioritising of the responsibility of the child are all symbolic of the state's limited vision in understanding children, the nature of childhood, or the true meaning of an appropriate criminal law response" Bandalli 2000:94)

EARLY INTERVENTION

> "The broad contours of New Labour's youth justice strategy are easily described. It involves the induction of a new, younger population into the youth justice system, via pre-emptive civil measures, which target 'incivilities' perpetrated by younger children, and the inadequacies of their parents. Informalism is abandoned in favour of earlier, formal interventions by the police" (Pitts 2000:1)

As a direct result of the focus on diversion and decriminalisation in the 1980's by 1993 90% of boys and 97% of girls who offended received cautions ensuring they were diverted from formal prosecution (Gelsthorpe and Morris 1999:210). Cautioning was widely held to be a success by professional, academic and government sources. Many local schemes were identified as evidence of 'good practice' resulting in the Home Office actively promoted the use of cautions to divert young people from formal prosecution (Home Office 1985, 1991). The use of cautions effectively diverted young people from the criminal Justice System quickly and economically. In short there was authoritative support for the argument that cautioning as a diversionary strategy was an 'effective means of preventing re offending by young people' (Reid 1997:4) and that it provided value for money (Goldson 2000, Jones 2001).

New Labour with their focus on early intervention and the philosophy of 'nipping offending in the bud' made early intervention, through the Criminal Justice System central to the 'New Youth Justice'. They discounted the previous concerns that widening the net of social control, through early intervention, would increase the number of young offenders being sucked into the Criminal Justice System at the lower end of the tariff and increasing the flux of young people into custody at the higher end (Cohen 1985). In order to facilitate the new 'mantra' of early interventionism New Labour, through the Crime and Disorder Act, introduced a raft of new measures.

I will firstly consider the 'pre emptive' measures which Pitts (2000) referred to in the opening quote of this section. The starting point for this analysis is the abolition of Doli Incapax, considered earlier, which effectively reduced the age of criminal responsibility to the age of 10, therefore facilitating children's earlier entry into the formal setting of the Criminal Justice System. For children under 10 the Crime and Disorder Act introduced the Child Safety Order (section 11-13 CDA 1998), which could be applied for in relation to children where there is concern that the child is getting involved in offending or what is euphemistically referred to as 'anti social behaviour'. This was promoted as enabling the court to "protect children under 10 who are at risk of becoming involved in crime, or having started to behave in an anti-social or criminal manner by imposing an order" (Home Office 1997:5). The government based this on the

assertion that 'Children under 10 need help to change their bad behaviour just as much as older children' (Home Office: 1997: 18).

Rather than accomplishing this through welfare agencies New Labour brought children under 10 into the arena of the courts and into the formal processes of the Criminal Justice System. The Anti Social Behaviour Order (section 1 CDA 1998) was introduced and made available for children over 10 who were engaged in 'anti social behaviour' and although only reliant on a civil standard of proof (Drakeford and McCarthy 2000:101) breach of the ASBO would be a criminal offence and punishable ultimately by 2 years of imprisonment. Local Child Curfews were also introduced (section 14 and 15 CDA 1998) and provided for a ban to be imposed on unsupervised children, of a certain age, being present in certain public areas between 8pm and 6am. This would be a temporary ban and imposed on whole populations of children in particular areas.

In the paper 'No More Excuses: Tackling Youth Crime' (1997) the government argued that the system of repeat cautioning was not working. However, it wasapparent that cautioning was working for the 87% (Home Office 1992) of young people who did not re offend. The issue may well have been that cautioning was not working for New Labour's portrayal of themselves as 'tough on crime' in their attempt to court the favour of an increasingly punitive middle class electorate (Pitts 2000). Thus, despite its proven effectiveness New Labour abolished the caution promoting in its place early intervention as a cornerstone of their approach in the form of Reprimands and Final Warnings. They argued that merely cautioning young offenders meant that the opportunity was lost for early intervention to turn young people away from crime. Thus, they actively promoted the inclusion of interventions, such as Final Warnings in order to 'nip offending in the bud' and tackle the causes of young people's offending.

The introduction of Final Warning and Reprimands has been critisised as the decision as whether to prosecute or deliver a final warning or Reprimand has been placed solely in the hands of the Police. Many of the regional cautioning schemes developed during the 1980's incorporated multi agency working, which included representatives from Health, Education, Social Services along with the Police in making the decision whether to caution or prosecute[8]. This pluralized the process of deciding whether to caution or prosecute and served to gate keep the critical point when young people enter into the Criminal Justice System (Goldson, 2000). Ironically, the changes implemented by the Crime and Disorder Act, with its focus on multi agency working have located the decision to give a Final Warning solely with the Police therefore ensuring that the decision making process is less rather than more multi agency. In many areas this has led to the costly practice of the Police sending cases to be prosecuted in the youth court only to be gate kept by Youth Offending Team workers in conjunction with the Crown Prosecution Service and returned to the Police for further consideration for a Final warning.

The restriction that a young person can only receive one final warning in any 2 year period has also led to a high number of young people appearing before the youth court for relatively minor offences. A risk which is endemic in the net widening capacity of locating early intervention strategies within the Criminal Justice System. Under the 'old' system these young people would have previously been diverted via a caution. This also raises the issue of parity in that young people are appearing in court for minor offences which adults may well receive a caution for and as such are being treated more harshly. This has led to increased expense and pressure on the youth court system, as courts are forced to deal with an array of minor offences, which arguably could have been dealt with more effectively and more economically via a diversionary strategy.

A further criticism of this approach is the government directive that if a young person appears in court within 2 years of receiving a Final Warning then they must receive a 'substantial punishment' and that a Conditional Discharge should only be imposed on a young person in exceptional circumstances. It was argued that this would lead to young people being unnecessarily sucked further into the Criminal Justice System and ultimately up tarriffed unnecessarily. This is more concerning due to the fact that if young people have already received an intervention, (compliance with a Final Warning Intervention can be identified in court), this may well lead to them receiving a more punitive disposal. Ultimately this will increase the flux of young people up the Criminal Justice tariff ultimately into custodial or residential treatment environments (Goldson 2000).

It is also of concern that these early intervention measures, and in particular the pre emptive measures outlined at the beginning of this section, will be disproportionately used against working class and ethnic minority children in communities which are structurally disadvantaged (for further

8 Indeed the concept of multi agency Youth Offending Teams was based on this model.

discussion see Jones 2001 and Goldson 2000). These are children who suffer disadvantage due to their structural location in the socio and economic hierarchy of society and as such are 'deprived' and 'at risk'. However, as Cohen (1985) argues the line between 'deprived' (at risk) and 'depraved' (posing a risk) are often blurred in the language of criminal justice responses and rehabilitative discourses around children in trouble. Arguably a more effective method of reducing both the risk that these children pose of offending and the innumerable risks posed to them, due to their disadvantaged social position, would be to better resource welfare agencies to fulfill their statutory requirement under the Children Act 1989 to promote the welfare of children. This would also avoid further stigmatising and avoid prematurely pushing them into the Criminal Justice System. As Clarkson (1995) argues:

> "Criminal processes such as arrest, police custody and interrogation are highly intrusive and in themselves involve stigma and humiliation. Accordingly, one should not use criminal law to control conduct that can be effectively regulated by other areas of the law... In any society that values liberty, the criminal law ought only to involved as a last resort method of social control when absolutely necessary" (Clarkeson, 1995, Quoted in Bandalli 2000).

Indeed it is apparent that as Bandalli argues (2000:92) "policy changes in the 1990s have increasingly selected children as an appropriate target for the stigmatizing intervention of the criminal law at ever younger ages". The concern is that with the net widening effects of early intervention, via the formal arena of the Criminal Justice System, more young people will be stigmatized adversely effecting their future life chances. Indeed as the Crown Prosecution Service argued, "The stigma of conviction can cause irreparable harm to the future prospects of a young adult" (CPS 1988, Para 8, iii). There is also concern that as more young people enter the system earlier this will have the knock on effect of moving young people up the sentencing tariff quicker, ultimately increasing the flux of young people into custody an issue I will now consider.

DETENTION AND TRAINING ORDERS: THE RISE IN INCARCERATION

> "In as much as social scientific research can ever 'prove' anything it has proved that locking up children and young people in an attempt to change their delinquent behaviour has been an expensive failure ... more and more studies have demonstrated the tendency of these institutions to increase the re conviction rates of their ex-inmates, to evoke violence from previously non violent people, to render ex-inmates virtually un employable, to destroy family relationships and to put potentially victimised citizenry at greater risk". (Pitts 1990: 8).

The Crime and Disorder Act introduced the Detention and Training Order which replaced the Secure Training Order available for 12 –14 year old children, and also Detention in a Young Offenders Institution for 15-17 year old children. The Crime and Disorder Act replaced these custodial sentences with a single Sentence the Detention and Training Order (DTO) whose minimum length was four months and whose maximum length was two years. The DTO was made available to magistrates in the Youth Court and extended their sentencing powers, enabling them to sentence children to up to 2 years in custody. The introduction of the DTO also relaxed the criteria for sentencing 12-14 year olds to custody and made provision for the Home secretary to extend the use of custody for children as young as 10. In the first 6 months after the introduction of the Detention Order there was an increase in the use of custodial facilities for children by 14% (NACRO: July 2000).

When the Detention and Training Order was introduced, much was made by the Youth Justice Board of the 'Training' element of the order. The young people would spend half their sentence in custody, where they would receive 'training' and then be 'transferred' to the community where they would be supervised by the Youth Offending Team for the remainder of their sentence. The Board described the DTO as a 'Better sentence for young people' (YJB 2001:1). In portraying the incarceration of children in this way it was almost as if the government was reasserting these children's rights to go into custody, which would empower them through 'training' to fulfill their potentials as citizens and 'assist' them in avoiding following a criminal career path. However, there is little evidence that the harsh realities of custody or its brutalising and stigmatising effects have changed considerably since the introduction of the Detention and Training Order.

A central tenent of the Detention and Training Order has been the promotion of 'constructive regimes' for young people in custody. However, whilst it would be illogical to object to the prospect of improving custodial regimes for young offenders, children are still being incarcerated in the same institutions. The evidence is, that in most of these, little has changed other than that the number of children sentenced to custody has greatly increased.

Indeed a recent report compiled after an inspection of Brinsford Young Offenders Institution (YOI) identified "a level of neglect and lack of understanding of the young people that was breathtaking" (HMIP 2001:1). The Chief inspector of prisons was so 'appalled' regarding the conditions that children experienced on entry to Brinsford, that he raised serious child protection concerns regarding the safety of children, and questioned whether child protection procedures should not apply in a situation where "institutional arrangements are themselves intrinsically abusive" (HMIP 2001).

The Howard League for penal reform recently issued a press release (Howard League 2002) which highlighted the findings of a damming report compiled by the Chief Inspector of Prisons on Onley Young Offenders institution. This identified Onley as a 'dangerous, poorly resourced institution where children routinely are placed at risk'. They highlighted staff that did not understand the essential elements of child protection, a regime that lacked a 'robust, coherent and integrated strategy on vulnerability', and an institution with high levels of bullying and excessive use of control and restraint. The Howard league go on to identify 309 instances of force used by staff at Onley against children and 661 occasions where children were placed in solitary confinement in unsafe conditions. A significant number of allegations against staff which had been insufficiently followed up. They argue that 'These practices would be unacceptable, if not unlawful, in any other setting' (Howard League 2002).

This issue of child protection and the risks posed to young people in custody is a pertinent one and one which effectively illustrates the point that whilst children pose a risk (as in reoffending) they are also at risk. This is a tension which has always been at the heart of the Youth Justice System and a tension, which arguably has been complicated further by the Crime and Disorder Act and New Labour's confusing rhetoric, which has served to further blur the issues regarding the rights and responsibilities of children. The issue of child protection and young people in trouble, centres around the 1989 Children's Act which seeks to ensure that the welfare of the child is paramount, is not being applied in the custodial institutions which hold children. Thus, child prisoners are not afforded the same protection and rights as children outside in the community, arguably their status as children has been denied.

This situation leaves an extremely vulnerable group of children outside of the normal machinations of child protection procedures and at risk. Children in jails are primarily a working class, poor, highly racialised and highly gendered population. Many of them have experienced a range of difficulties with approximately 50% of them having at some point been in the care of the local authority. A considerable section of the child prison population suffer from mental health problems and incarceration often compounds these difficulties, as children are placed a long distance from home isolated from their local community and placed in hostile and brutalising environments where bullying and institutional abuses are rife. The Youth Justice Board had stated that they aimed for all young people in custody to be placed within 50 miles of their home. However, due to the pressure on the system as a direct result of a rising population of children in prison, this has been unachievable with young people being placed long distances from home. This issue has recently been taken up by the Howard League, who have launched a legal challenge to the governments position that the Children's Act 1989 does not apply to young people who are in young offender institutions and is currently in the process of going to Judicial Review.[9]

Drakeford and Butler (2001) identify two elements of popular opinion relating to the use of custodial sentences for children, firstly that imprisonment is reserved only for those whose actions could be dealt with in no other way and secondly that Individuals are reaping the consequences of their lifestyle choices. However both of these statements are misconceptions. In relation to the misconception that imprisonment is reserved for children who can be dealt with in no other way. In a press release the Youth Justice Board admitted that

> "Although many custodial sentences are imposed for relatively serious offences, a significant number of them were not necessarily inevitable because of the nature of the offence" (Youth Justice Board: 2000 press release).

This evidences the fact that custody for children is increasingly being used for the less serious offences and offences which arguably could be dealt via community disposals, which have been identified as more effective in reducing the risk of recidivism (McGuire and Priestley 1995). Thus, it appears that the YJB national priority of punish-

9 In December 2002 a land mark ruling in the High Court by Mr Justice Mumby clarified the state of play for the protection of children in prison. He stated that the Home Office was wrong to say that the Children's Act did not apply to young prisoners and that the Act did apply. This essentially overruled the Prison Service Order, (PSO 4950), which stated that the Children's Act did not apply to prisoners under the age of 18. However, although this is a major step, as the Howard league noted after the ruling the whole issue is still not fully resolved. The position is now that whilst respective social services have responsibilities to children in prison under the Children's Act the prison service who 'care' for them still do not.

ment being proportionate to the offence is not being met in respect of Detention and Training Orders. In relation to custody being the result of the life choices of children, there is concern that the vast majority of children incarcerated are from groups within society, which are structurally disadvantaged and their offending is linked to the extent to which their life chances and life choices have already been severely restricted by there structurally disadvantaged and socially excluded position in society.

In 2000 Williams argued that the Labour government showed no sign of reversing the 'vicious incarceration spiral' (Williams 2000:176) which had begun under the Conservative governments implementation of the Criminal Justice and Public Order Act 1994. Indeed, under New Labour it is apparent that the incarceration of children has spiralled out of control and there is no indication of a slow down in the increase (NACRO identified the rise in custody for young people as 64% between 1993 and 1999, from 5,081 to 8,343). Indeed, NACRO (2000) saw the introduction of the Detention and Training Order as central in the continued increase in the use of custody for children. They argued the introduction of the Detention and Training Order:

> "appears to have exacerbated an already disturbing situation. In part, this is likely to be a result of the fact that the criteria for imposing custody on children aged 12-14 have been loosened as a consequence of the new order. In addition, while any improvement in regimes is obviously to be welcomed, the increase can also be seen to reflect the fact that sentencers appear to be less reticent to use the new order because of its presentation as a more constructive intervention with an emphasis on education, training and confronting offending behaviour" (NACRO: July 2000)

YOUTH CRIME IN THE 1990'S: MORAL PANICS, POPULAR PUNITIVENESS AND POLITICAL EXPEDIENCY

> "The highly emotive public debate about 'child offenders' which has taken place during the 1990's has radically altered the terms in which crime by young people is both understood and managed" (Anderson 1997:75)

Much of the research, which informed the Crime and Disorder Act, was conducted during the period of the 'highly emotive debate' around youth crime in the 1990s which Anderson refers to above. The Crime and Disorder Act did not develop in a political and cultural vacuum and therefore its substantive content must be understood from the context it grew out of. In this section I will attempt to do this by exploring the ahistorical amnesia and moral panic which characterised discourses around youth crime, in the 1990's, and New Labour's politically expedient responses to this panic.

In 1994 Geoffrey Pearson argued that there is an unhelpful, historical amnesia which tends to characterize the question of young peoples involvement in crime and that both 'Youth cultures and Youth crime assume the appearance of ever-increasing outrage and perpetual novelty' (Pearson, 1994:1168). However, a measure of continuity can also be identified in the 'perpetual novelty' which Pearson refers to, indeed concerns regarding youth crime and delinquency are not new and have historically been and remain to be a source of public concern and outrage. Indeed although the language may have changed there is continuity in the substantive content of popular discourse around youth and crime, with young people and their involvement in criminal activity being simultaneously feared, loathed and pitied throughout the last three centuries (Pearson 1983). Children in trouble occupy a peculiarly contradictory position in society where they are demonized being a threat (Eekalaar et al, 1982, Morris and Giller, 1987) and as 'posing a risk' and at the same time perceived as being in need of protection as they are vulnerable and 'at risk'.

Thus despite historical, cultural and societal shifts over time, young people and their involvement in criminal or what is historically constructed as 'nuisance' or 'anti social' activity have been of central social and political significance (Clarke 1975). In the 1990's the discourse relating to youth and crime was characterised by a particularly politisised and punitive moral panic, which misleadingly harked back to a golden age when children were children and when strong moral discipline, family values and social stability served to protect against juvenile delinquency and disorder. Pearson argues that this his concept of a golden age, is unhelpful and is fraught with difficulties as it harks back to a time that never was – a mythical period.

As noted earlier the Youth Justice System, prior to the changes implemented by the Crime and Disorder Act 1998, was underpinned by the philosophies of diversion, decriminalisation and decarceration which appeared to be professionally applied with some success (Goldson 2000, Pitts 2000). However, these philosophies and the ensuing professional practice occupied a tenuous position, due to the salience of youth crime as an electoral vote winner and as an issue which was perceived as having central social significance.

Arguably the tide began to turn against these principles in England and Wales with the 1994

Criminal Justice and Public Order Act. During this period, culturally and politically much was made of a number of high profile cases which led to increasing media moral panics and public outrage regarding youth and crime. At the core of this was a portrayal of youth and crime as a major threat to social order and the very fabric of society. The moral panic focused on highly visible cases, such as the murder of James Bulger in 1991 by two children, and other cases, which the media sensationalised. They successfully avoided the reporting restrictions on naming young offenders by referring to them in animalistic terms such as 'rat boy' and 'spider boy'. This served to dehumanise children who were involved in offending portraying them as 'feral' outside the laws of society and a threat to social cohesion. This discourse is reflected in the language of New Labour, which located child offenders as 'other', 'vermin' and 'nasty little juveniles' which something needed to be done about (Senior politician quoted in Goldson 1997:130-1). This in turn served to fuel a moral panic and secure a subsequent hardening of public opinion relating to youth crime. This effectively re politisised the youth crime debate and set the scene for a radical overhaul of the system which dealt with them.

The New Labour government utlised this 'moral panic' by incorporating reform of the Youth Justice System as a central plank of their 'Covenant' with the electorate. Some commentators such as Pitts (2000) have argued that New Labour politically expedient approach to the youth crime rode 'roughshod' over the complexities and realities of youth crime and youth justice responses to it. Thus, they offered sound bites which pandered to commonsensical punitive populism rather than informed debate (Goldson: 2000). Indeed in establishing itself as 'tough on crime' New Labour played the 'crime card' in 'ways which were unprecedented in its history' (Brownlee1998: 313). Their political interventions in the field of youth justice where unashamedly aimed at exploiting the fear of youth crime for electoral advantage (Bailey and Williams 2001).

Mc Robbie and Thornton (1995) argue that moral panics around youth crime serve a distinct purpose as they act as a form of "ideological cohesion" which draws on a "complex language of nostalgia" intervening in the space occupied by public opinion, employing highly emotive rhetorical language which serves to develop a moral panic. This in turn leads the populace to call for something to be done and the government to intervene via legislation in order to respond to the commonsensical fears, in this case in relation to youth crime. However, it isimportant to note that the realities of youth crime do not concur with the moral panic evident regarding the perceived rise in youth crime in the 1990's. Indeed NACRO identify a 17% drop in 'known offending' by young people between 1988 and 1998 with less than 25% of all offenders being juveniles (NACRO 2000). NACRO also note that violent youth crime fell by 2%, as noted earlier during this period there was an increase by 64% in the use of custody for young people.

CONCLUSION

In this paper I have attempted to outline the changes to the youth justice system by the implementation of the Crime and Disorder Act in England and Wales. As I have stated the Crime and Disorder Act did not emerge from a political, cultural or social vacuum. It did however emerge during a period when recorded incidence of youth crime was dropping and public concern and the fear of crime was rising. The New Youth Justice of Tony Blair's New Labour government appears to have reflected the latter rather than the former. Indeed as I have argued certain elements of the changes implemented indicate that New Labour were guilty of pandering to the punitive populism which dominated the discourse around youth, crime and punishment during the 1990's.The two elements of the changes I have focused on in this paper were early intervention and the implementation of the Detention and Training Order. The major concern regarding these two elements relate to the complete abandonment of the principles, which the 'old' youth justice were based on namely diversion, decriminalisation and decarceration. As I have tried to identify in this paper there was authoritative support for the effectiveness of these principles and in this respect the current focus on early intervention and the increasing use of Detention and Training Orders appears to indicate "a conspicuous discordance between research findings, policy formation and practice development" (Goldson 2001:77).

For a large sections of young people transgressing rules and sometimes laws is a part of growing up, indeed in a self report study conducted by MORI (NACRO 2000) identified that 50% of boys and 35% of girls admitted being involved in offending in the last 12-months. The concern is with the rise of early intervention more and more of these young people will be sucked into the Criminal Justice System and suffer its stigmatising effects. There is also concern that this will ultimately serve to further swell the numbers of children in prisons as they become involved in the criminal justice system at ever earlier ages.

However, not all the changes were negative and in some respects certain changes to the 'old' youth justice system were long overdue (Williams, 2000). The setting up of the Youth Justice Board to oversee the Youth Justice System and give national direction has been positive in many respects, they have attempted to co ordinate more evidence based approaches to youth crime and have increased the accountability of youth justice services. This national co ordination and increased accountability on a local as well as a national level may well serve to promote the effectiveness of community responses to young people in trouble and serve as a rational influence on the some time hysterical responses to young people in trouble. There are also indicators that the Youth Justice Board is attempting to tackle the rise of incarceration of child offenders, for example in 2001 they issued a performance target for all YOT's to reduce the use of custodial sentences and custodial remands. However, it remains that the introduction of the Crime and Disorder Act appears to have contributed to the disturbingly high use of custody for juvenile offenders, and as such is part of the problem. There also appears to be continued issues with the extent to which the governments own thinking is 'joined up' in relation to youth crime, as shortly after the performance targets to reduce the use of custody (sentencing and remands) were issued, the Home Secretary loosened the criteria for remanding 12-14 year olds into custody. Thus opening the gates to an increase in a younger, increasingly vulnerable, remand population.

Further changes, such as the implementation of bail support schemes, have also proved positive in that they have served to provide a coordinated approach to providing bail support and supervision for young people in order to reduce the number of unnecessary remands to custody. However, again this is a task, which proves more difficult due to the increasingly politically expediency of central government (see changes to criteria for remands outlined above). Also, although the implementation of the Multi Agency YOT's has encountered some problems (Bailey and Williams, 2000) they have arguably increased the effectiveness of the Youth Justice System in dealing with the multi faceted individual problems, which young people in trouble face. Although, this falls short of addressing the social justice issues relating to the disadvantages faced by many young people due to their socially and economically disadvantaged positions in society they are a positive contribution to assisting young people and children in trouble.

However, although it appears that change was due in the Youth Justice System in England and Wales, some of the changes implemented in by the Crime and Disorder Act 1998 have led to more young people being sucked into an ever expanding Youth Justice System at earlier ages. Indeed it is concerning that we are increasingly criminalizing some of the most vulnerable children in England and Wales and that the child custody population continues to grow.

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