The influence of neo-liberalism on the development of the English youth justice system under New Labour

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**Introduction**

This chapter will examine the way in which neo-liberalism has impacted upon and consequently re-shaped the youth justice system in England and Wales in the period 1997-2010. Neo-liberal conceptions of the role of the state have encouraged the formulation of policies based on principles of social inequality, penal expansionism and on the diminution of welfare concerns. In the neo-liberal context less attention is paid to the social contexts of crime and more on prescriptions of individual/family/community responsibility and accountability. Neo-liberal discourse emphasises eliminating the concept of the community and replacing it with individual responsibility. (Gray, 2001) Social problems consequently become defined in terms of the individual rather than state responsibility. The best outcomes for society will be realised when governments retreat from involvement in social programs that breed welfare dependency (Gray, 2001). This chapter will show some of the relationships between the violations of law in youth and the neoliberal model as a factor of increasing marginalization of concern for the welfare needs of young people. It will critically examine whether the influence of neo-liberalism has led to a renewed criminalisation of young people and their families and argue that society must acknowledge that it, as well as the offender has some responsibility for youth offending.

**Neo-Liberalism and the Youth Justice System**

Neo-liberalism represents an ideological commitment to rolling back the state and reducing welfare intervention. Neo-liberal conceptions of the market and international capital promote the view that unfettered markets lead to maximal efficiency and prosperity and encourage the formulation of policies based less on principles of social inclusion and more on social inequality, deregulation, privatisation, penal expansionism and welfare residualism (Muncie, 2005). As Brown (2005) argues:

‘Neoliberal rationality, while foregrounding the market, is not only or even primarily focused on the economy; it involves extending and disseminating market values to all institutions and social action, even as the market itself remains a distinctive player.’ (Brown, 2005: 39–40)

Nikolas Rose (1999: 74) suggests that neo-liberalism involves a ‘technology of the self’ which in turn entails an on-going processes of ‘responsibilization’. This means that, in a neo-liberal era, the ‘good citizens’ are increasingly those who are capable of appropriate degrees of self-regulation such that they ultimately reduce their demands on the state and take responsibility for themselves. Neo-liberal penal policies encourage the dissemination of punitive and exclusionary practices (Newburn, 2002). For neo-liberals there has to be a turn away from the welfare approach towards punishment and just deserts. Neo-liberalism relies upon the construction of self-governing individuals who accept that the responsibility for improving the conditions of their existence lies in their own hands. This individualisation involves more than just the devolution of responsibility, neoliberalism discourses locate the sources of these problems in the attributes and supposed deficiencies of people themselves (see Rose, 1999, Higgins, 2002 and Cheshire and Lawrence, 2005).

The advent of the ‘New’ Labour government in 1997 signalled the development of a youth justice system subject to a neo-liberal responsibilizing mentality in which the position historically afforded to children is dissolving (Muncie, 2008). Since 1997 the welfare needs of young people who engage in anti-social and offending behaviour have become marginalized within the youth justice system. The marginalisation of the young persons’ welfare needs was reflected in the White Paper *No More Excuses* which stated that ‘punishment is necessary to signal society’s disapproval when any person including a young person breaks the law … Young people … should be in no doubt about the tough penalties they will face …’ (Home Office, 1997a: 5.1). Subsequently section 37 of the Crime and Disorder Act 1998 places all those carrying out functions in relation to the youth justice system under a statutory duty to have regard to the principal aim of preventing offending by children and young people. The Crime and Disorder Act 1998 gives no direction to the courts or anyone else working in the youth justice system that the child’s welfare should also be of primary consideration. Consequently the primary duty of those involved in the youth justice system, including the police, is to prevent offending and not necessarily to promote the child’s best interests (Hollingsworth, 2007). Section 9 of the Criminal Justice and Immigration Act 2008 has elevated the aim of preventing offending and reoffending to the principal consideration when sentencing young offenders. While the courts are required to have regard to the welfare of the young person who has engaged in offending behaviour when sentencing, in accordance with section 44 of the Children and Young Persons Act 1933, the 2008 Act makes clear that welfare needs will not have equal status, nor will they override the primary aim of preventing offending (Arthur, 2010). Section 44 of the Children and Young Persons Act 1933 imposes an important welfare principle which requires every court to have regard to the welfare of a child or young person who is brought before it, either as an offender or otherwise. The welfare principle’s main virtue is that it requires a decision made with respect to a child to be justified from the point of view of a judgment about the child’s interests. It would be inconsistent with the welfare principle to make a decision that is overtly justified by reference to the way the outcome benefited some other interests (Eekelaar, 2002). Welfarism reflects a prevailing assumption that the role of the state is to try to realise a more just, equitable and inclusive society (Stenson, 2001: 20). It is characterised by the pursuit of social justice and the promotion of solidarity through the provision of universal services. Welfarism is accompanied by a belief that social workers and other professional agencies can rehabilitate those involved in deviant lifestyles and who are suffering from personal and social pathologies (Stenson, 2001). The recommendations of the 1927 Moloney Committee formed the basis of the Children and Young Persons Act 1933. The Moloney Committee recognized the importance of the welfare of young offenders, most of whom were victims of social and psychological conditions and in need of individualised treatment and recommended that welfare principles should dominate the youth justice system (Home Office, 1927). The Moloney Committee recommended the development of a juvenile court whose duty was not to punish the young person but to readjust and rehabilitate the young person.

The Children and Young Persons Act 1969 was similarly underpinned by a philosophy of treatment which promoted welfarism. The 1969 Act advocated a rise in the age of criminal responsibility and sought alternatives to detention by way of treatment, non-criminal care proceedings and care orders. The 1969 Act advocated a range of interventions intended to deal with young offenders through systems of supervision, treatment and social welfare in the community rather than punishment in custodial institutions. It was quite explicitly based on a social welfare approach to young offenders. Authority and discretion were shifted out of the hands of the police, magistrates and prisons and into the hands of the local authorities, social workers and Department of Health. The 1969 Act gave primacy to the family and the social circumstances of the deprived and underprivileged, it aimed to reduce the criminalisation of young people and to increase the support and care available to them. The 1969 Act effectively legislated to abolish prosecuting any child under 14 years of age for any criminal offence except homicide. Although the Children and Young Persons Act 1969 aimed to reduce the criminalisation of young people and to increase the support and care available to them, it did not have an easy passage through Parliament. Conservative politicians argued that it was unjust, that it gave insufficient recognition to the constructive role of the juvenile court, and that it interfered with police work with young people, especially in regard to more serious offences (Bottoms, 1974). The Magistrates Association was also opposed to the Children and Young Persons Act 1969 blaming it for the vast increases in youth crime (Berlino and Wansell, 1974), thus precipitating a moral panic about the powerlessness of the juvenile court. Following the defeat of the Wilson government in the 1970 general election, large sections of the 1969 Act were never implemented and the social welfare ideology underlying the Act never came to fruition. The new Conservative party government elected in 1970 declared that it would not implement those sections of the Act that were intended to raise the age of criminal responsibility from 10 to 14 and to replace criminal proceedings with care proceedings. Essentially the Conservative party government objected to state intervention in criminal matters through welfare rather than judicial bodies. Similarly magistrates and the police responded to the undermining of their key positions in the justice system by becoming more punitively minded and declining the opportunity to use community sentences on a large scale. Consequently since the 1970s the youth justice system in England and Wales has seen the decline of penal welfarism in place of the development of forms of neo-liberal governance. When Margaret Thatcher came to power, her government was able to take advantage of growing public dissatisfaction with the costs of maintaining the welfare state to challenge ideas of social citizenship, “notions of community and collective welfare were cast aside before the altar of individualism, enterprise and consumerism (Lister, 1998: 312).

For the conservatives the role of the government was to protect the interests of the individual. This protection of the individual also extended to young people accused of committing crimes. In the 1980s the view emerged that if children’s liberty was going to be interfered with it, it should be done in a legal arena and children’s rights should be protected in the same way as adults rights are. This was fuelled by the report of the US President’s Commission on Law Enforcement and Administration of Justice and the landmark US Supreme Court decision *re Gault* (387 US 1 (1967)). The report of the President’s Commission on Law Enforcement and Administration of Justice stated that ‘the juvenile court is a court of law, charged like other agencies of criminal justice with protecting the community against threatening conduct’ (United States Government, 1967). In *re Gault* the US Supreme Court ruled that where a young person faced incarceration the young person should be entitled to the protection of due process of law, in the same way as adults. Any period spent in an institution should be proportionate to the offence. This position is contrary to the welfare model where you look to the child’s needs and keep the child in care for as long as needs be despite the potential for disproportionate incarceration. The United States Supreme Court condemned a system whereby young people could be subjected to long periods of detention in various forms of institutions without rights to due process, such as the right to counsel, rights against self-incrimination and other procedural protections automatically accorded to adult defendants in criminal trials. The Supreme Court held that due process of law is the primary and indispensable foundation of individual freedom. *Gault* also highlighted a second failing of the welfare approach, namely the lack of proportionality and the potential for indeterminacy in disposals. The United States Supreme Court believed that an individualised welfare approach could lead to indeterminate sentences in the name of treatment, in circumstances where if an adult had committed the offences they would have been treated more leniently. Developments in the US influenced the English youth justice system also. In England the Criminal Justice Act 1982 required that legal representation be offered to the young person and that social inquiry reports be presented to assist the court and required that sanctions be determinate and proportionate. The 1982 Act created youth custody sentences which were fixed by the courts and not by social workers. The 1982 Act expanded the use of detention centres and empowered the courts to incarcerate young offenders for periods exceeding three years.

The judgement in *Gault* was part of a broader contemporary liberal commitment to the protection of human rights (Cavadino and Dignan, 2006: 216). However if children are to be protected from the disastrous consequences of their offending behaviour, then youth crime prevention strategies have to be part of a much wider consideration of how justly life chances are distributed to our children. Youth justice cannot simply be about their just treatment within legal or formal systems of control, important though that may be, it has to be about the way life chances and opportunities are provided for children. It is therefore imperative that general social policy provides a coherent and comprehensive welfare safety net so that vulnerable children are protected from the adverse environmental, familial and socio-economic circumstances that can encourage criminal behaviour (Arthur 2002).

Since the 1990’s policy responses to juvenile offending in England and Wales have been founded on the image of young offenders as threatening and lawless as distinct from vulnerable, threatened and disadvantaged children (Goldson 1999). Young offenders have been conceptualised as violent predators warranting retribution, rather than as wayward children in need of a guiding hand. This trend reached fever pitch after the tragic killing of James Bulger in February 1993 when the then Prime Minister, John Major, declared that ‘society needs to condemn a little more and understand a little less’(Major, 1993). This harsh stance set the tone for refocusing policy and practice in relation to children in trouble upon punishment, retribution and the wholesale incarceration of children. New Labour, with its focus on individual and parental responsibility and its desire to cement its position on the law and order high ground continued this trend (Muncie 1999). Legislation introduced since 1997 reflected an ideological conviction in favour of punishment in which more and more people, including children, are brought within the criminal justice system for an ever-growing range of criminal behaviour. This stance is indicative of the Labour government’s avowed attempt to ‘talk tough on crime’ (Goldson 1999). Thus there emerged a new punitive bipartisanship around questions of crime and punishment (Loader, 2006). For example the Children Act 1989 brought about a radical separation between criminal justice and childcare concerns. The Children Act 1989 removed from the youth court the power to order a young person into the care of a local authority. Care and supervision orders can now only be made in the Family Proceedings Court, leaving the youth court to deal exclusively with criminal matters. The Criminal Justice and Public Order Act 1994 lowered the age at which children could be detained in custody for grave crimes such as manslaughter or other crimes of violence from fourteen to ten years of age. The 1994 Act also introduced a range of measures which extended the courts remand and sentencing powers to younger offenders by introducing secure training orders for twelve-fourteen year old persistent offenders, increasing the maximum length of detention in a Young Offenders Institution from twelve to twenty-four months for fifteen-seventeen year olds and allowing the court to remand twelve-fourteen year olds.

In 1996 the Audit Commission report *Misspent Youth* was highly critical of the youth justice system in England and Wales. It concluded that:

‘The current system for dealing with youth crime is inefficient and expensive while little is being done to deal effectively with juvenile nuisance.’ (Audit Commission, 1996: 96)

The New Labour government responded to the Audit Commission’s verdict on the youth justice system in the Consultation Paper *No More Excuses – A New Approach to Tackling Youth Crime in England and Wales* in which it suggested that up until 1997 youth offending had been greeted with excuses instead of action (Home Office, 1997a: 1). *No More Excuses* proposed a ‘root and branch’ overhaul of the youth justice system and a breaking with the philosophy of the 1969 Act (Home Office, 1997a: 9.2). Consequently section 37 of the Crime and Disorder Act establishes preventing offending by children and young people as the principal aim of the youth justice system and places all those working in the youth justice system under a duty to have regard to that aim in carrying out their duties. Welfare concerns are also ominously absent from the Youth Justice Board’s ‘Strategic Objectives for 2008-11’, these objectives are to: prevent offending and reoffending by children and young people under 18 years; to increase victim and public confidence; and to ensure safe and effective use of custody. (Youth Justice Board, 2008).

Prior to taking office as Prime Minister, Tony Blair expressed his view that ‘duty’ was at the heart of creating a strong society, “bonds of duty allows us to be much tougher and hard-headed in the rules we apply and how we apply them” (Blair, 1995). This notion of ‘duty’ and responsibility underpins New Labour’s approach to crime and disorder. New Labour emphasised the need for citizens to share risks and responsibilities with the state, reflecting a discourse which increasingly draws upon the lexicon of obligations rather than rights (Lister, 1998: 313). New Labour’s approach created a channel for shifting blame from the government to citizens and allowed for the welfarist paternalist approach to be replaced by a new crime prevention agenda. This approach to tackling youth offending places less emphasis on the social contexts of crime and measures of state protection and more on prescriptions of individual/family/community responsibility and accountability (Muncie, 2005). Thus the centrality of welfare issues in sentencing has been changed in favour of more retributive sanctioning that regards young offenders as rational choice actors who should be held accountable for their behaviour. The primary aim of youth crime prevention signals a political preference for a punitive response to young people’s behaviour (Pitts, 2001; Muncie, 2002) and potentially allows for welfare considerations to be circumvented. This crime prevention aim allows for young people to be portrayed as threats to public safety and the youth justice system is cast in the role of preventing this threat being realized (Arthur, 2010). Neo-conservative principles of remoralization and authoritarianism allow the state to represent crime as indicative of the break-up of the moral fabric and cohesion of society. As shadow Home Secretary Tony Blair characterised youth offending as a descent into ‘moral chaos’ (Haydon and Scraton, 2000). Consequently the police need to be ‘tough on crime’ to substitute for the vanished social cohesion which had previously kept crime at bay. Crime prevention is provided as a means to micro-manage behaviour in order to ‘remoralise’ the recipients (Muncie, 2006: 782). In this representation the young person’s welfare needs can easily become a secondary concern (Smith, 2006: 97-98; Mason and Prior, 2008: 280).

In the White Paper *No More Excuses* the government stressed that it did not see any conflict between protecting the welfare of the young offender and preventing that individual from offending again, ‘preventing offending promotes the welfare of the individual young offender and protects the public’ (Home Office, 1997a: 2.2). However this is not a viewed shared by the courts. In the case of *R v Inner London Crown Court, ex p N. and S.* ([2001] 1 Cr. App. R. 343) Rose LJ examined section 37 of the Crime and Disorder Act 1998 and stated that the need to impose a deterrent sentence may take priority over the provisions of section 44(1) of the Children and Young Persons Act 1933 which requires the court to promote the welfare of individual offenders. Thus despite the government’s assurances in *No More Excuses* to protect the welfare of young people who engage in offending behaviour, section 37 of the 1998 Act ignores the potentially corrosive impact of custodial life upon a young person’s development (Stone, 2001) and allows the youth court to impose a deterrent sentence with the aim of preventing young people in general from offending, but which does not necessarily serve the welfare of the individual offender. Foucault believed that this emphasis on crime prevention has allowed the penal system to increasingly shift away from a concern with catching those responsible for crimes to identifying who might be at risk of deviance:

‘Thus, the purpose of the sanction will not be to punish a legal subject who has voluntarily broken the law; its role will be to reduce as much as possible—either by elimination, or by exclusion or by various restrictions, or by therapeutic measures—the risk of criminality represented by the individual in question.’ (Foucault 1994: 198)

**Impact of pursuing a crime prevention agenda**

The crime prevention agenda has allowed for a shift in focus towards increasingly punitive forms of governance and behavioural regulation which envelop and obscure the relevance of socio-economic factors within a broader policy concern with the incarceration and (re)moralisation of specific groups (Donoghue, 2011). Neo-liberal imperatives involve responsibilization, managerialism, risk management and restorative justice. Effective processes of internalised control have also long been identified as a critical foundation for the stability of liberal states (Day Scalter and Piper, 2000). The corrosive impact of these imperatives can be seen in four areas of the youth justice system: *doli incapax*, restorative justice, use of custody and making parents responsible for their children’s behaviour.

*Doli incapax*

Under successive New Labouradministrations, it has become increasingly common to treat young offenders as entirely rational, fully responsible young adults rather than children, thus justifying their subjection to the full rigours of the criminal law. This allows them to define social problems in terms of individual rather than state responsibility (Bell, 2009). This portrayal of young people as fully responsible young adults has greatly undermined the potential of disposals which encourage an approach towards youth offending which concentrates predominantly on the welfare of young people (Bell, 2011: 77-78). An example of this can be seen in the attitude of the New Labour government to the issue of children’s capacity to commit crime. In the White Paper *No more excuses* the Labour government made several recommendations about improving the youth justice system (Home Office, 1997a). One aspect of this radical reorganisation was to modernise ‘the archaic rule of *doli incapax*’; the government believed that the ‘notion of *doli incapax* is contrary to common sense’ which is ‘not in the interests of justice, or victims or of the young people themselves’ (Home Office, 1997a: 4.4). Following this White Paper, section 34 of the Crime and Disorder abolished the presumption of *doli incapax*. Consequently a child aged 10 years of age can be considered as legally responsible for their actions as an adult. Such a child is no longer presumed incapable of evil. Thus England and Wales now has a law:

‘which holds that a person is completely irresponsible on the day before his tenth birthday, and fully responsible as soon as the jelly and ice-cream have been cleared away the following day’ (Smith, 1994: 427).

*Doli incapax* reflected a concern that ‘using criminal penalties to punish a child who does not appreciate the wrongfulness of his or her actions lacks moral justification’ (Penal Affairs Consortium, 1995: 5). The abolition of *doli incapax* removes an important principle which had acted to protect children from the full rigour of the criminal law. Bandalli argues that the abolition of *doli incapax* reflects a steady erosion of the special consideration afforded to children and is ‘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). Bandalli stressed that the presumption of *doli incapax* operated in a protective manner ‘shielding the child from the damage that might otherwise be done by being absorbed into the criminal justice system’ and that its removal makes childhood irrelevant to criminalisation (Bandalli, 1998). This portrayal of young people as fully responsible young adults has allowed England and Wales to take a markedly more punitive approach to this issue than comparable countries. The impact of the English approach is that young defendants with impaired mental capacity are exposed to the full rigours of the criminal justice system. This is exactly the type of situation in which the presumption could have acted as a safeguard.

Restorative justice

By 1997 New Labour wanted to incorporate restorative principles and practices into the new youth justice system in order to create a victim-centred system while also encouraging offenders to take responsibility for their actions and prevent future offending (Home Office, 1997a). New Labour saw restorative justice principles as a vehicle for achieving its pledge to be ‘tough on crime, tough on the causes of crime’. The main thrust of restorative justice in the English youth justice system is to promote more effective ways of preventing offending by young people by undertaking early interventions that seek to address the known causes of their anti-social and offending behaviour. These efforts aim to make young people accountable for what they have done by requiring them to undertake some reparation to the victim and/or the community. Statutory Guidance outlines the forms of reparation that are considered appropriate as including letters of apology, restorative conferences, and practical reparative activity related to the offence (Home Office, 2000: 55). This process offers victims a chance to speak about how they have been affected by what has happened, to say what might repair the harm done to them, and to ask questions and get answers from the one person who can answer them, namely the offender. For offenders, it offers the opportunity to take responsibility for what they have done, to apologise for the harm they have caused and to make amends.

Rose suggests that in a neo-liberal society one of the fundamental tasks of ‘control workers’, including police, is to identify ‘the riskiness of individuals, actions, forms of life and territories’ (Rose 1999: 263). The final warning is a sanction which combines notions of deterrence, via formal procedures that make clear the consequences of further criminal activity, and reform, from the inclusion of a requirement for referral to the Youth Offending Team (YOT) for assessment and a ‘change’ programme (Hine, 2007). The final warning combines a formal verbal warning given by a police officer to a young person who admits their guilt for a first or second offence with an assessment to determine the causes of the young person’s offending behaviour and a programme of activities designed to address these causes. A young person can only get one final warning, any further offending will usually always go to court. Thus the final warning ignores the possible benefits of a further warning. This inflexibility has ensured that the police have lost their discretion to deal with cases informally and has resulted in the youth court being inundated with petty cases. This rigid approach risks undermining efforts to divert large numbers of young people from the youth justice system and risks prematurely launching children into the criminal justice system. *R* v *Durham Constabulary and another ex parte R (FC)* ([2005] UKHL 21) involved a 15 year old youth who had received a final warning for indecent assault. The House of Lords, acknowledged the lack of flexibility in final warnings and felt that this was inconsistent with the objective of diverting children from the criminal justice system and that it seriously risks offending against the principle that intervention must be proportionate both to the circumstances of the offence and the offender. Also final warnings remain on the Police National Computer for a period of five years and are cited in court hearings if a young person engages in subsequent offending. Compliance and non-compliance with a final warning programme is cited in Youth Offending Team court reports. Thus a young person’s engagement with a final warning programme can have a potentially detrimental effect on future sentencing options for the young person. Moreover, any young offender in court charged with an offence within two years of receiving a final warning is unable to be given a conditional discharge, unless the circumstances are exceptional. Instead the young person will receive a penalty, probably a referral order, thus progressing further down the road to a serious criminal conviction.

In England and Wales the restorative elements are peripheral to the work of the youth justice system. These local approaches to crime control operate in an uneasy tension with harsher and more punitive approaches. They are additions rather than defining components of a youth justice system that is committed to punishment and incarceration. In Scotland and New Zealand where the children’s hearing system and family group conference have both succeeded, the restorative justice arrangements are substitutes for court appearances and not additions to the system. Thus it is important that restorative justice processes are used as an alternative criminal justice response, rather than an additional one.

Use of Custody

The Crime and Disorder Act 1998 created the generic custodial sanction of the Detention and Training Order (DTO). A DTO can be given to any 15-17 year old for any offence considered serious enough to warrant custody and to 12-14 year olds who are considered persistent offenders. The orders are for between four and 14 months. Half of the order is served in the community under the supervision of a social worker, probation officer or a member of a YOT and the other half is served in custody. The detention and training order was heralded as a measure to ensure that custody for children was a constructive experience with an appropriate focus on education and training (Home Office, 1997a; Youth Justice Board, 2000). The rationale behind the order is the belief that the increased emphasis on a clear sentence plan to tackle the underlying causes of offending and on community supervision after release from custody would provide a ‘clearer, simpler, more flexible and more consistent custodial arrangement for young offenders’ (Home Office, 1997a: 6.20). However it represents a substantial increase in the custodial powers of the youth court and a loosening of the conditions which must be satisfied before custodial orders can be imposed on children aged between 12 and 14 years (NACRO, 2000). England and Wales lock up more young people than any other country in Western Europe, these young people are incarcerated in overcrowded conditions with little scope for rehabilitation and education. Large numbers of these young people sentenced to custody do not pose a serious risk to the community, and indeed, by leading to broken links with family, friends, education, work and leisure they may become a significantly greater danger upon their release (Goldson and Peters, 2000). The practice of imprisoning children also appears to run counter to the aim of preventing offending. When a young person is in custody they are making no reparation to the victim or society. Child imprisonment makes little if any positive effect in preventing offending, patterns of reconviction with regard to children, following release from all forms of custodial institution are exceptionally high (Goldson, 2005: 82). Hagell and Hazell (2001) also noted with concern that child imprisonment compounds the likelihood of reconviction and that this has been a recurrent and enduring historical theme of youth imprisonment. In the early 1990’s custody was described as ‘an expensive way of making bad people worse’ (Home Office, 1990: 27) and Miller acknowledged that ‘the hard truth is that … juvenile penal institutions have minimal impact on crime [and if] most prisons were closed tomorrow, the rise in crime would be negligible’ (Miller, 1991: 181-182). These views echo those expressed by Mary Carpenter in the 19th century when she described prisons as being ‘most costly, most inefficacious for any end but to prepare the child for a life of crime’ (Carpenter, 1853: 13). The current approach to using custody in the English youth justice system fails to address the underlying causes of offending, does not prevent offending and is very expensive. Expenditure on custody accounts for almost 70 per cent of the Youth Justice Board’s expenditure. The Crime and Society Foundation found that countries with higher rates of welfare investment are likely to enjoy lower rates of custody and conversely countries with the highest rate of imprisonment, including the UK, all spend below average proportions of their GDP on welfare (Downes and Hansen 2006). Similarly the Audit Commission stressed that if effective early intervention had been provided for just one in ten young offenders in custody, annual savings in excess of £100 million could have been achieved (Audit Commission 2004). Social investment in family offers a promising prospect for both reducing crime and maximising the human capital that the young represent. A progressive approach to youth crime prevention is ultimately bound up with the pursual and resourcing of mechanisms for social justice. The government must ensure that social justice extends to all members of society. According to this view the state must acknowledge that it, as well as the offender has some responsibility for youth crime and that society can justifiably punish young offenders for their crimes only to the extent it has fulfilled its obligations to those young people and their families as members of society.

Making parents responsible for their children’s behaviour

Punishing parents is part of a rationale which emphasises punishment and retribution in the context of the social moralisation of ‘flawed parents’. However the emphasis is placed on ‘good’ parenting as predicated upon individual responsibility, rather than supported and facilitated by state social responsibility (Donoghue, 2011). The Crime and Disorder Act 1998 introduced the ‘parenting order’ which enables the court to require the parent of every convicted young offender to attend parenting programmes and if necessary to control the future behaviour of the young person in a specified manner. The parenting programmes deal with issues such as experiences of parenting, communication and negotiation skills, parenting style and the importance of consistency, praise and rewards and can include a residential element. In effect, the parenting order requires a parent to attend counselling or guidance sessions once a week for a maximum of 12 weeks. Parents may also be required to apply control over their child, for example they may be ordered to ensure their child attends school or avoids associating with particular individuals who are adversely affecting their behaviour. The Anti-Social Behaviour Act 2003empowers Youth Offending Teams (YOTs) to apply to the courts for parenting orders where the YOT suspects that the parent is not taking active steps to prevent the child’s anti-social or criminal type behaviour, and it is clear that this behaviour will continue. Section 24 of the Police and Justice Act 2006 allows registered social landlords to apply for a parenting order where they have reason to believe that a child is engaged in anti-social behaviour. Accordingly parents who have not committed any crime can receive a parenting order in response to their children who have not committed any crime (Holt, 2008: 204).

In 1997 the Home Office consultation paper *Tackling Youth Crime* first detailed the underlying principle of the parenting order, which was to make ‘parents who wilfully neglected their responsibilities answerable to the court’ (Home Office 1997b: 32). This consultation paper was followed by the White Paper *No More Excuses: A New Approach to Tackling Youth Crime in England and Wales* (Home Office 1997a) which stated that the government intended to make parents more responsible for their children’s behaviour by making available sanctions for parents who evade their responsibilities. Laws that penalise parents for their children’s behaviour cast parents as ‘failures’ and confront them with the prospect of financial penalties and potentially imprisonment. Parental responsibility laws also serve to fragment the government’s approach to both tackling youth crime and supporting families in crisis. In 1997 the government stated in *No More Excuses* that ‘as they develop, children must bear an increasing responsibility for their actions, just as the responsibility of parents gradually declines’ (Home Office 1997a). The government believed that to prevent offending and reoffending by young people, society must stop making excuses for youth crime. According to this view children aged 10 years and above are generally mature enough to be held accountable for their actions and the law should recognise this. Yet parental responsibility laws are built upon the idea that parents have caused their children to offend. Rather than parental responsibility decreasing when the child is held criminal responsible, both parent and child are held legally liable regardless of the actual or indeed presumed capacity of the child, and consequently there is no diminution in parental responsibility as the child gains responsibility (Hollingsworth, 2007). Kempf-Leonard and Peterson express this contradiction succinctly:

‘If youths are to be processed using adult criteria and held responsible for their delinquent actions as individuals capable of making rational decisions, it is an incompatible dichotomy to hold parents responsible for these capable youths as well.’ (Kempf-Leonard and Peterson 2002: 445)

Parental responsibility laws not only reduce the responsibility of the child but obscure the fact that the government can be implicated in the causes of anti-social and criminal behaviour. The recognition that there may be a link between parenting and family circumstances and the chances that a child becomes involved in offending behaviour is not a new one. For example, Aristotle asserted that in order to be virtuous ‘we ought to have been brought up in a particular way from our very youth’ (quoted in McKeon, 1941). Nineteenth and twentieth century theorists concur with this view. From the concerns of those in the Child-Saving movement in the nineteenth century (Andry, 1957; Bazelon, 1976) to the present (Farrington, 1996; Shoemaker, 1995), the family has been regarded as a major influence in the presence or absence of youth offending behaviour. The American criminologist, Hirschi, characterised the nature of the parent-child relationship as a ‘bond of affection’ whose strength can later determine the degree of resistance to breaking the law, ‘the important consideration is whether the parent is psychologically present when temptation to a crime appears’ (Hirschi, 1969). However the fact that parental behaviour is related to youth offending does not provide sufficient reasons for imposing sanctions on parents. The challenges that confront children who are engaging in anti-social and offending behaviour, their families and the various professionals who work with them are complex, deep-rooted and multi-faceted. Many youths entering the youth justice system have serious multiple problems in terms of their school achievement, psychological health, alcohol and drug abuse. The Labour government’s response to youth offending ignores the complex patterns and interrelated problems that young people endure. These laws are both moralizing and individualised. Children are characterised as perpetrators of antisocial behaviour and criminalised. Parents are cast as ‘bad parents and insufficient attention is paid to the ways in which parental capacity is affected by the financial and material circumstances within which parenting takes place (Lister, 2008: 393). Thus there is a need for prevention policies and interventions to avoid a narrow focus on parents and to take into account the family, social and contextual factors that are frequently associated with youth offending. Given the need to make families function better, the objective of youth crime prevention initiatives must be to develop and provide the environment, the resources and the opportunities through which families can become competent to deal with their own problems. The family should be assisted in guiding and nurturing the child, through the provision of resources and support services which equip them to be good parents, reduces their isolation and promotes the welfare of parents and their children.

**Conclusion**

New Labour wished to distance itself from the traditional ‘liberal’ politics of the children and Young Persons Act 1969 and instead embraced a mixture of neo-liberal, free-market philosophies and traditional conservative values which prioritised the defence of the hierarchy and the desire to restore traditional morality. New Labour’s ‘Third Way’ focussed on an ‘enabling state’ with a firm emphasis on the individualised duties and responsibilities of citizens (James and James, 2001: 211). New Labour created a youth justice system which is increasingly characterized by a culture of control and an atmosphere of hostility towards children and young people. Interventions which are supposed to be directed towards preventing youth crime rely on punitive and custodial measures. For example the abolition of *doli incapax* coupled with the low age of criminal responsibility,places England and Wales further out of step with most jurisdictions in the rest of Europe. The 1998 Act contains a range of orders such as the anti-social behaviour order, the child safety order and the child curfew, where there is no requirement for the commission of, or conviction for, a criminal offence. The 1998 Act places an increased emphasis on responsibility for offending including both the young person and their family. The emphasis on individual responsibility has served to allow for crime to be disassociated from its social roots and masks the fact that the state and the law-abiding majority also have responsibilities (Jamieson and Yates, 2009). Within a neo-liberal context, young people are culturally positioned as learners who must be carefully guided towards suitable degrees of self-regulation, in order to become legitimate citizens. This carries specific implications for how they are perceived and treated by agents of the state such as social workers and police (Kennelly, 2011). This has allowed for a shift in focus away from the provision of universal welfare services towards targeted provision of resources and services to high risk neighbourhoods and populations.

Welfarism has been increasingly critiqued for encouraging state dependence, overloading the responsibilities of the state and undermining the ability of individuals to take responsibility for their own actions. Consequently welfare concerns have been eroded by the individualisation of risk, earlier intervention, a focus on ‘deeds’ at the expense of ‘needs’, responsibilization, and a growing penal populism. In England and Wales, the youth justice system combines a mix of proactive welfare measures with overt reactive and punitive measures. It demonstrates an uneasy mixture of welfarist, actuarialist and retributive impulses with an emphasis on responsibilization and earlier intervention in the lives of young people and their families. However, the emphasis is very much on managing individual offenders rather than on addressing wider socio-economic constraints. An effective youth crime reduction and prevention philosophy is one that addresses the life experiences of children and in which prevention is promoted through the collaborative and integrated activities of a range of services which they previously had been denied. Policy responses to youth offending should no longer be based upon a misguided notion of a threatening and lawless youth, but instead should reflect the view that most young offenders have suffered a vulnerable, abusive and disadvantaged childhood.

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