Youth justice

Youth Justice

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> In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. (Article 3: United Nations Convention on the Rights of the Child)
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> Penal discourse is as much concerned with its projected image, public representation and legitimacy, as it is with organising the practice of regulation. (David Garland, Punishment and Welfare, 1985)
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> Just because they're young doesn't mean they're not human beings – they're still people and they still have rights. (Cohort Member aged 18, Edinburgh Study of Youth Transitions and Crime)

Introduction

This chapter explores the founding principles, operational functioning and impact of the institutions which have evolved across the four nations in the United Kingdom to deal with children and young people who come into conflict with the law. Its principal empirical focus will be the shifting patterns of control which have emerged over the past twenty years: a period defined by major transformations in the architecture of youth justice in a wider context of rapid social, political and economic change. As I aim to demonstrate, this recent history has been characterised by a persistent disjuncture between: (i) normative claims about youth justice (as exemplified by the best interests principle of the United Nations Convention on the Rights of the Child, cited above); (ii) the ways in which policy discourse on youth justice has been utilised as part of an on-going legitimation (statecraft) project in response to a range of global and sub-state dynamics; and (iii) the impact of youth justice practice on the lives of the young people who are made subject to its tutelage, with research indicating that, despite a welcome reduction in the number of young people entering the youth justice system, interventions are often experienced as dehumanising and undermining of basic entitlements (McAra 2016, McAlister and Carr 2014, Webster 2015, Goldson 2013). My overall argument will be that, unless there is better alignment between these three dimensions - the normative, the political and the experiential - justice for children and young people cannot and will never be delivered.

As highlighted in the editors' introduction to this volume, the Oxford Handbook of Criminology should be regarded as a living archive. Each of the past 5 editions has included a chapter on youth justice, and whilst the overall structure and content of these chapters has changed over time (as has the authorship), together they provide a weighty and authoritative body of knowledge about the history and development of youth justice (especially in England and Wales). In this new chapter, I do not intend to replicate this history but rather to explore its legacies with regard to the nature and function of youth justice as it has evolved into the second decade of the 21st Century.

The chapter begins with an exploration of the normative framings of youth justice as found in the raft of international conventions to which the UK is currently signatory, and the dominant paradigms which have come to shape both criminological and political debate. It then tracks in more detail the changes made to youth justice policy across the four nations and interrogates the drivers of these variant transformations. This is followed by a review of recent research on young people's experience of contact with systems of justice. The chapter concludes with some reflections on the future of youth justice in these uncertain and somewhat turbulent times.

Part 1: Key paradigms and normative framings

The categories of childhood, adolescence and youth are highly contested and their deployment in policy debate is often closely tied to particular ideological visions for society: as Sukarieh (2012) reminds us, we always need to pay critical attention to '[who is doing] the talking, in what contexts and to what political and economic ends' (pp 427-8).

At the global level normative framings of youth justice in late modernity have been characterised by the search for a universe of discourse – a shared set of narratives with which to promote a sense of common purpose amongst a community of states and to enable judgements to be made about the moral efficacy of particular systems of justice. International rights conventions and associated protocols are of course exemplars of this cosmopolitan dynamic. By contrast at the state or sub-state level, framings have been characterised by greater complexity and contingency, with the ebb and flow of paradigms being more overtly bound up with the politics of place. I'm going to begin this section of the chapter with a critical review of human rights conventions and identification of some of the conceptual and practical limitations of this global project. This will be followed by a review of the more localised paradigms which have been evoked in youth justice policy as it has evolved within the UK. Rather than exploring the contexts of their deployment (picked up in part 2 of the chapter), I am going to treat them as ideal types, offering a deconstruction of their ontological assumptions including the nature of personhood and model of social relations which underpin their core maxims. In doing so the aim is to reconnect the reader with first principles about justice for children.

International conventions and the rights of the child

A range of international rights conventions and protocols offer protections to children who come into conflict with the law, and these form a touchstone against which the precepts, processes and impacts of youth justice systems worldwide can be assessed. These conventions include: the *UN Convention on the Rights of the Child* (UNCRC) (1989); the *UN Standard Minimum Rules for the Administration of Juvenile Justice* (the *Beijing Rules,* 1985); the *UN Directing Principles for the Prevention of Juvenile Delinquency* (the *Riyadh Guidelines*, 1990); and the *UN Rules for the Protection of Juveniles Deprived on their Liberty* (the *Havana Rules* 1990). In addition, the *European Convention on Human Rights* (1959) contains general provisions which also apply to children within signatory states and the more recent *European Charter of Fundamental Rights* (2000) also gives explicit protections to children in EU member states only.

A close reading of these conventions reveals a range of conflicting imperatives, not least the way in which childhood is invoked as a universal category whilst at the same time cultural norms and political specificity are utilised as delimiting criteria (McAra 2010, Put and Walgrave 2004). The search for a global narrative, acceptable to all signatories, has, arguably, resulted in a degree of vagueness in terms of drafting, leaving some articles open to wide interpretation. International conventions, for example, define a child as someone below the age of 18 (UNCRC Article 3, Havana Rules Article 11 a) but do not specify a minimum limit for the age of criminal responsibility, with the Beijing rules (Article 4.1.) stating that it should not 'be fixed at too low a level bearing in mind the facts of emotional, mental and intellectual maturity' –which of course may differ from child to child and be judged differently according to political and cultural context. The Havana rules state that there should be an age limit below which it is not permitted to deprive a child of liberty, but again do not specify what this should be (other than it must be 'determined by law', Rule 11 a).

The Beijing Rules, in particular, contain competing imperatives as between the rights of the child and the needs of society (Rule 2.3); and highlight at one and the same time the need for interventions to be parsimonious (emphasising prevention, diversion and community-based programmes with custody as a last resort - Rules 1.1, 1.2, 1.3, 11.1 to 11.4, and 19.1) and proportionate both to the seriousness of the offence and the circumstances of the offender (emphasising here the provision of care, protection, educational, and vocational skills, Rule 5.1). There is no consideration as to how these imperatives can be balanced. Indeed the rules acknowledge that, in terms of implementation, cognisance needs to be paid to the 'economic, social and cultural conditions prevailing in each Member state' (Rule 1.5), with the implication that there may be widespread variation as to interpretation of need or parsimony. Similarly, Article 40 3 (b) of the UNCRC states that children must be dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence. While the UNCRC foregrounds the 'best interests of the child' as the core principle in decision-making, again there is no clear definition as to what best interests might constitute.

Taken together these conventions and protocols straddle uneasily the precepts of justice and welfare (see table 1 below) - a conceptual mash-up of responsibilisation and child protection – eloquent testimony to some of the ambiguities in contemporary theorising about child development (see Tisdale and Punch 2012 for an overview). The danger in the lack of specificity is that it potentially enables state actors to find ways of finessing shortcomings in protections offered to children without seeming to flout particular articles. As evidence, witness the major variation across signatory states with regard to the age of criminal responsibility: at the time of writing, age 8 in Scotland (although this is currently under review); age 10 across the rest of the UK; contrasted with age 15 in Finland and Sweden and age 18 in Belgium (for most offences) (Goldson 2013).

Aside from these ambiguities the UN conventions and protocols have been criticised because they lack teeth. The principles of the UNCRC are intended to become legally binding norms and the UN has constructed a system for monitoring implementation, which includes periodic reporting by state signatories to which a specially designated UN committee responds (see http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIntro.aspx). However countries are enabled to place reservations on whether they take-up particular dimensions of the conventions and the monitoring committee is considered by some to be weak in term of the powers at its disposal to hold states to account. While the monitoring committee can investigate individual complaints, it relies for the most part on shaming or chastising states in its published responses.

At the time of writing (summer 2016), the efficacy of the rights framework is currently under scrutiny by the UK Conservative government. It was elected on a mandate to abolish the Human Rights Act 1998 (which integrated the European Convention on Human Rights into UK law), with proposals to create a British Bill of Rights. Human rights groups have expressed concerns about the potential for weakened protection that such a development may bring. However, even more pressingly, the result of the EU referendum within the UK (for 'Brexit'), if implemented, will mean that the stronger legal protections for children that currently exist via the European Charter of Human Rights will be lost[1] (see Locke 2016).

[1] The Charter states re children that the best interests principle, the promotion of well-being, and the views of children must inform decision-making. As Locke argues: if an Act of Parliament contradicts the Charter rights any UK court is obliged not to apply that Act in the case before it. By contrast, under the Human Rights Act, (HRA) it is only the senior courts that make a declaration of incompatibility and this does not change the outcome of the case – the Act in question will remain applicable –it merely opens up an 'expedited' route for amending the Act.

Dominant paradigms in UK policy

The conceptual mix of justice and welfare, highlighted above, also inheres in the dominant framings of youth justice which have evolved across the UK over the past 150 years, since the first specialist institutions were developed, to deal with the problems posed by troublesome children. Indeed the youth justice institutional complex arose out of impulsions both to rescue children but also to punish them (Gelsthorpe and Kemp 2013). Children were simultaneously conceived as being vulnerable, lacking in full capacity, requiring intervention to address their needs, and as rationally calculating individuals whose transgressions deserved swift and proportionate sanctioning. The reformatory movement in the 19th Century exemplifies this somewhat internally conflicted approach (see McAra and McVie 2014).

The twenty-year period from the mid 1990s to the present day, which forms the central focus of this chapter, has been characterised by increased complexity in institutional understandings of youth offending and the types of intervention which constitute an appropriate response. Indeed it is possible to identify four key paradigms which have now been grafted onto youth justice systems across the UK: restorative, actuarial, diversionary and desistance. Here I deconstruct their core precepts.

As shown in table 1, the *restorative paradigm* conceives children as having both positive entitlements and rights, with personhood understood as being shaped directly by the community and cultural context (Zehr and Mika 1998). As with the "just deserts" paradigm, offenders are considered to be rational, with the capacity to take responsibility for their behaviour but crucially also acknowledge the suffering which they have caused. The key problematic for this paradigm is to determine the age at which young people can be said to have evolved the capacity to understand the consequences of action, but also its effect on others so that meaningful apology can be made. Victims are a key audience within this paradigm, and intervention is aimed at restoring the harm caused and reconnecting the child with the community.

The *actuarial model* frames the child primarily in terms of his or her capacity or potential for wrong doing with needs constructed as evidence of risk. The nature of intervention deemed suitable in particular cases is calibrated according to the level of risk posed (in extreme cases such interventions may require to be indeterminate in nature), with the objective of protecting society and preventing future victimisation. Expert input to risk assessment is needed, to ensure that early intervention is targeted appropriately. As I have argued elsewhere (McAra 2010), offenders within this paradigm become a commodity to be assessed, with the principal audience for intervention being the wider public. By viewing the child's behaviour and their immediate family and social context as signifiers of risk, this paradigm provides a justification for intervention even before the child is born and also far beyond the transition into adulthood (should risk be assessed as high): a life-course approach to offender management.

The *diversionary paradigm* stems primarily from the work of Smith and colleagues at Lancaster (see Smith 2010), and has been further developed as an ideal type by McAra and McVie (2015). This paradigm is predicated on labelling theory. Whilst the child is conceived as a rights bearer, their identity and sense of self is predominantly a product of social encounters. Where such encounters produce negative or 'spoiled' versions of selfhood, then this undermines the child's right to develop in dignity. The deviant status is a conferred identity, which can be exacerbated by interactions with authority. Regulatory practices always have consequences in terms of shaping the child's sense of self, and in evolving a diversionary practice, the aim is to prevent the emergence and reproduction of deviance as an identity. This involves careful systems management and rational calculation of the potential for harm in terms of intervention. The key problematic for the diversionary paradigm is to ensure that both the age of criminal responsibility and the period of transition to adulthood are managed in non-stigmatising and non-criminalising ways: and this is suggestive of greater alignment

between these ages than in other paradigms (the abolition of criminalisation of children until they reach the age of majority).

Finally the *desistance paradigm* (as exemplified in the work of McNeill 2006, see also Shapland and Bottoms this volume), views identity as a product of soft-determinism. The emphasis of intervention is to support the construction of a non-offender identity, to enable redemption (through "making good", Maruna 2001), with relationships between the practitioner and the child key to personal transformation. However opportunities have to be consciously constructed, so that asset-based approaches to intervention, which build social capital, can be turned into practical action. A key aim of the desistance paradigm is to promote social inclusion and connection. In contradistinction to the diversionary paradigm, the nature of identity does not become stuck or transposed by external labelling processes. It is a more fluid conception, underpinned by a strong sense of self-determination. Intervention is not inherently criminogenic, to the extent that it can facilitate the process of positive change – enabling offenders to reconstruct flawed identities, and overcome the exclusionary dynamics which may inhere within wider society. As applied to youth justice, the key problematic for this paradigm is to gauge the age at which the capacity for self-determination, for understanding the impact of behaviours on others, and to atone for wrong-doing, is reached.

INSERT TABLE 1 ABOUT HERE

The point of deconstructing the above paradigms is to emphasise the major differences between their imperatives and demonstrate the potential for tension and contradiction when they are invoked simultaneously in policy debate. Indeed, as will be demonstrated below, young people today, have to actively negotiate their way through a tutelary complex which simultaneously holds them to account for their actions (as per the justice, restorative and desistance paradigms), whilst acknowledging that their age, stage and circumstance render them vulnerable and lacking in full capacity (as per the welfarist and diversionary paradigms). Such ambiguity has the potential to undermine the legitimacy of youth justice interventions in the eyes of the young people who become the object of regulation.

Nonetheless, ambiguity in normative framings may endure as a political strategy – not least because the young people who come within the purview of youth justice are very rarely (if ever) conceived as a core group to whom governments look, to shore up support. History shows us that conflicted narratives can sometimes attain a degree of hegemony, as witness the longevity of penal-welfarism in the early to mid-twentieth century (see Garland this volume). Indeed, there is evidence from a range of jurisdictions that the law and regulatory orders of late modernity seek to establish authority by deploying narratives of fear and risk at the same time as narratives of intimacy and connectedness, as states grapple with the complexities of 'belongings and otherings' against a backdrop of global and more localised transformations and pressures (McAra 2010). Importantly, there can be a degree of political pragmatism in the selection and deployment of the variant paradigms within the tutelary complex, as much as ideological commitment to their normative underpinnings, and governments often play on the sensibilities (both negative and positive, see table 1) that inhere within core paradigms as a means of asserting the right to rule. What then have been the contexts in which the above paradigms have been invoked across the UK over the past two decades? How has youth justice in practice been utilised as an element of political strategy and with what effects? It is to these questions that the next section of the chapter turns.

Part 2: Youth justice in these Isles

In his seminal 1996 article "The Limits of the Sovereign State," David Garland reviewed the variant penal strategies deployed by governments in so-called high crime societies (including the UK and USA). According to Garland, high crime rates undermined one of the nation-state's foundational claims to legitimacy – namely to provide security for its citizens within its own territorial boundaries. In adaptation to this challenging environment, governments evolved new modes of governing crime, through the promulgation of two distinctive narratives: (i) the criminology of everyday life in which the criminal was constructed as a flawed consumer rather than a pathological misfit, and crime control strategies focussed on empowering citizens and communities to inhibit crime opportunities; (ii) the criminology of the other, which played on popular fears and insecurities by constructing the criminal as an outsider, differentiated from 'us' by labels such as 'sex beasts' or 'yobs', thereby justifying a more punitive and authoritarian response.

Some twenty years later we have come to a new crossroads. Far from remaining a high crime society, recorded crime rates in the UK (and other western jurisdictions) are at their lowest for many decades (see Maguire and McVie this volume). As part of the UK national governments' on-going quests for legitimacy they have had to adapt to a number of critical junctures: the terrorist attacks in New York (9/11), London and Glasgow (7/7), with ongoing implications for national and international security, including the so-called war on terror; the global economic crash in 2008 and its continuing fallout; the constitutional transformations precipitated by devolution across Scotland, Northern Ireland and Wales; and even the more recent turmoil caused by the United Kingdom's referendum on membership of the European Union (which has highlighted populist anxieties around the themes of immigration, asylum and race). Taken together these critical junctures highlight the significance of both globalised and more localised (sub-state) dynamics for understanding the ways in which the power to punish is currently exercised, justified and reproduced. In contrast to the world described by Garland in 1996, youth justice has adapted to these dynamics by the appropriation and deployment of a more complex set of penal discourses than hitherto (as set out in part 1 above), discourses which have become instruments within the broader polity building and democratising projects across the four nations which make up the United Kingdom. As I aim to demonstrate these discourses have come to play more of a role in the construction of a legitimate image for the 'penal state' (Garland 2013), than they have in transforming the organisational practices of youth justice in ways that are experienced as empowering by those who become subject to their tutelage (a theme to which I will return in part 3 of the chapter). I take each nation in turn.

England

The recent history of youth justice in England has been characterised by massive upheaval and change, particularly over the New Labour years from 1997 to 2010 (in which a range of new initiatives was introduced in every single year in the form of programmes, pilot initiatives, action plans, green papers, and statutes). In the more recent era of coalition and then Conservative-led government in the UK, youth justice has become less of a priority, but the turbulence in the system has continued.

(i) 1997-2010: The reforming zeal

The New Labour Government made 'youth justice' a centre piece of its emergent strategy of governance, framed by the mantra 'tough on crime, tough on the causes of crime'. In doing so it

demonstrated a number of stochastic[2] features of 'statecraft' which were also reflected in the devolved nations within the UK as they sought to establish their right to rule. These features were: *differentiation* from the past; construction of new or revised institutional *architecture*; selection and nurturing of new *audiences* (groups to whom policy 'speaks'); and, as has already been foregrounded, introducing greater *complexity* into policy discourse.

In terms of differentiation, the New Labour government sought to distinguish itself from the previous extremely punitive conservative administration, by declaring that the principal aim of youth justice was to prevent offending by children and young people, with system development predicated on the three Rs: Restoration, Responsibility, and Reintegration. In order to deliver the new youth justice, the Labour government grafted onto the existing framework of youth courts, a innovative institutional architecture including the development of a new Youth Justice Board, with statutory authority to monitor, advise on standards and disseminate good practice in youth justice. Additionally, local authority youth offending teams (YOTs), multi-disciplinary in orientation (with representatives from probation, social work police health and education) were conceived to coordinate provision of youth justice services (enabled by the Crime and Disorder Act 1998). Finally, youth offender panels were established (by the Youth Justice and Criminal Evidence Act 1999). The latter comprised two lay members from the local community and a YOT member and dealt with first time offenders under the age of 16 appearing before the courts and who had pled guilty (a contract was to be agreed with the young person which might include reparation or restitution to the victim).

The evolving statutory framework introduced a raft of new orders and schemes (examples are set out in table 2), widening the reach of youth justice to include the troublesome behaviour of those below the age of criminal responsibility (via Child Safety Orders) and taking a more structured approach to police discretion (with the new reprimand and final warning scheme). Controversially the rebuttal presumption of doli incapax was abolished– meaning that for children between the ages of 10 and 14, the prosecution no longer had to prove that the young person was capable of forming the intent to commit a crime, separate from the fact that a crime had been committed (the so-called 'adulterisation' of children, Goldson and Muncie 2006).

INSERT TABLE 2 ABOUT HERE

Importantly, the preventative orientation of youth justice drove an institutional architecture in which risk management narratives could thrive. Access to services was predicated on risk assessment (using tools such as ASSET). The actuarial imperative also extended to the more rehabilitative dimensions of emergent policy such as *Youth Inclusion Programmes* for 13 to 16 year olds (implemented in 2000) or *Positive Action Programmes* for those aged between 8 and 19 (implemented from 2003). These were targeted at young people who had been assessed as being at risk of offending, truancy or school exclusion. A government review in 2007 entitled *Building on Progress Security and Justice,* placed further emphasis on prevention, with YOTs being required to intervene in children's lives at the earliest possible point on the basis of a range of triggering risk factors.

This complex range of orders was rationalised somewhat by the *Criminal Justice and Immigration Act* 2008 which introduced the Youth Rehabilitation Order as a replacement for other court based orders, but this was an order which had 18 different potential requirements! A scaled approach to risk management was also introduced, with the aim of finessing the relationship between risk, the sentence of the court and the nature of intervention. And finally the *Youth Crime Action Plan* of 2008

[2] By stochastic, I mean exhibiting a pattern of behaviour but one which is not always substantively predictable.

set out a target of reducing the number of first time entrants to the youth justice system below the age of 18 by one fifth by 2020, accompanied by a triple strategy of 'non-negotiable' support and targeted interventions for the 110,000 so-called "high risk families" whose children were identified as being most likely to become prolific offenders.

As this overview indicates, the normative framing of youth justice brought together a constellation of different paradigms: justice, welfare, actuarialism and restoration, and generated a new set of audiences including victims and communities. Taken as a whole the new youth justice was underscored by a series of tensions – the promotion of social inclusion and citizenship at the same time as developing exclusionary and incapacitative intervention; increased responsibilisation at the same time as increasing the tutelage of children and their families in every aspect of their lives and at each stage of the youth justice process. Moreover the costs of youth justice programmes increased massively over this period – with a 102% increase in expenditure between 2001 and 2009 (the peak year of expenditure) (see Youth Justice Annual Accounts for the relevant years).

(ii) 2010 to Present: Austerity, diversion and localism

From the reforming zeal of the new labour administrations, the new Conservative/Liberal Democrat coalition government which was elected in May 2010 instituted a change of direction, as the stochastic model of statecraft would anticipate. Greater emphasis was placed on diversion (adding it to the panoply of extant paradigms), and there was a loosening of controls on decision-making practices. For example the police were given greater discretion, with proposals to replace the reprimand and final warning scheme with a system of cautioning (as set out in the Legal Aid, Sentencing and Punishment of Offenders Bill 2012, now enacted). At the same time however proposals were also made to extend curfew hours and the maximum duration of Youth Rehabilitation Orders.

In keeping with rules of statecraft, the immediate response of the coalition government was also to move the furniture around, with plans to abolish the Youth Justice Board and absorb its functions more centrally into a new youth justice division of the Ministry of Justice as part of a broader rationalisation of non-departmental public bodies (although this was never implemented, see Souhami 2015).

The coalition government also published a green paper in 2010 *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, with a new emphasis on payment by results (to be measured principally by reductions in reoffending) and proposals for 'reinvestment grants' to be given to consortia of local authorities to achieve targeted reductions in the use of custody, and to widen the use of restorative justice. Through such measures the government aimed to install what it termed a 'rehabilitation revolution'. However the admixture of rationales in the title of the paper was not suggestive of simplification in the paradigmatic framing of youth justice, with the document also containing the familiar refrains of parental responsibilisation, early intervention and prevention for those at risk. Somewhat ominously, the extremely punitive reaction to the London Riots of 2011 indicated that the veneer of rehabilitation was extremely thin (Bateman 2012).

The publication of new national standards in 2012 was interpreted by some commentators as heralding a less prescriptive era, with the easing of some timescales and what Bateman (2013) has termed the 'less mechanistic' use of risk and needs assessment tools. From 2013 there have been plans to alter dramatically the youth custodial estate, by decommissioning all custodial units for young women – and a consultation was set in motion (Transforming Youth Custody) with proposals

to develop a new secure estate predicated on education (via secure colleges), with some residual secure home capacity for those under the age of 12. However, some elements of the reform programme were halted because of budgetary pressures, with the need to make major savings in the overall running costs: indeed the period of the coalition government was characterised by a major shrinking in total expenditure on programmes (with the annual accounts of the Youth Justice Board showing a reduction of around 50% in total programme expenditure between 2010 and 2014).

Since the election of a majority conservative government in 2015, the future of youth justice has become somewhat uncertain, not least because political debates about youth justice have been notable by their absence. However a review of the youth justice system led by Charlie Taylor and put in place by the former Secretary of State for Justice (Michael Gove), produced its interim report in early 2016. Among the Report's key arguments included a call for educational inclusion and the need for greater devolution of youth justice to local areas (Ministry of Justice 2016). This more rehabilitative ethos is also reflected in the new resettlement consortia pilots, established in 2015/16 by the Youth Justice Board to support young people leaving custody, by linking them with educational or employment opportunities, ensuring availability of appropriate accommodation and access to coaching and life-skills training. It also infuses the more holistic approach to risk assessment being pioneered through AssetPlus (introduced in 2015). Were the May government to embrace the Taylor recommendations and roll out these pilot schemes more widely, then we should expect to see a new set of players and audiences emerge, as more localised agencies and institutions grapple for resources.

Wales

In Wales, devolution was enabled with the passage of the Government of Wales Act 1998. Initially the Welsh Assembly did not have primary law making powers and youth justice was not (and, at the time of writing, is not yet) a devolved matter, nor were other aspects of policing and criminal justice. As such the new Welsh Assembly inherited the architecture of youth justice that was evolving across England and Wales (described above). However the New Assembly did have responsibility for the range of services which would normally partner with youth offending teams in delivering services including: children's services, health, social services, education and housing.

In an effort to establish authority, the Welsh Assembly made a conscious effort to differentiate itself from what had gone before: in the words of Rhodri Morgan, to put 'clear red water' between Wales and England. This included the so-called 'dragonisation' (Edwards and Hughes 2009) of much social policy. In doing so the Assembly embraced more explicitly a child rights perspective, focusing children's services on delivering a series of 'entitlements', which were universal (rather than targeted) and free at the point of need (Haines et al 2013). '*Extending Entitlement'* was published in 2000 and was followed up in 2004 by a commitment to integrate the precepts of the UNCRC into policy-making for children and young people, and the publication of the *All Wales Youth Offending Strategy*. The latter marked a major step away from the hyper-intensive policy activity in England in terms of ethos, underscoring a more holistic (welfarist) approach to dealing with young people who come into conflict with the law, based on the mantra 'children first offenders second'. For the first time concerns were also expressed about the cultural and resettlement needs of young people from Wales who were remanded or served custodial sentences across the border in England. This theme was taken up by the Howard League in Wales in their report *Thinking Beyond Prison* Bars (2009), which stated that Welsh children imprisoned in England was ' the worst possible option' (pp6).

The holistic approach gained further purchase as the devolved arrangements grew in maturity. The Wales Act 2006 gave the Assembly primary law making powers over 20 areas of policy. Importantly this included legislative competence for social services, health and education, which, under the terms of the Crime and Disorder Act 1998, were required to contribute staffing and resources to Youth Offending Teams. Indeed, Drakeford (2010) has estimated that up to 70% of the total budgets for youth offending teams in Wales has come from agencies which are not under the control of the Youth Justice Board and UK central government.

While the Youth Justice Committee for Wales has worked closely with the Youth Justice Board to build a distinctive policy framework for the devolved nation, interrogation of joint documents highlights some of the difficulties in attempting to follow a more progressive agenda within the architecture of a broader system. For example Haines (2009) has pointed to the potential for conflict between different dimensions of the *All Wales Youth Offending Strategy.* Although the Strategy emphasises more welfarist imperatives, it also states a need for balance between the interests of the child and the community, with restorative and punitive measures being highlighted as core components of that balance alongside 'supported rehabilitation'. Such tensions continue to beset the delivery plan for the strategy (published in 2009).

Since 2008, there has been a gradual but marked grafting of the diversionary paradigm onto the wider child rights ethos (as exemplified by the multi-agency Swansea Bureau Model, see Haines et al. 2013), along with early intervention programmes (such as *Families First*) aimed at reducing the numbers of young people coming into the youth justice system. These developments have been followed up by the Welsh Government *Youth Crime Prevention Fund* (delivered since April 2013), to resource diversion schemes based inter alia on education, training, sports, and the arts, and have culminated in the publication of *Children and Young People First* (YJB 2014). The latter is a joint initiative of the Welsh Government and the Youth Justice Board and pulls together and re-emphasises commitments to: the needs of the child, holistic and multi-agency services, as well as early intervention and diversion. It also highlights the importance of reducing the harm that may be caused by criminal justice contacts, with further emphasis on the needs of victims and their capacity to participate in restorative processes. This links too to the enhanced case management approach piloted from 2013/14, predicated on trauma informed practice.

Within Wales, the grafting of new paradigms onto the youth justice complex and the consistent attempts to differentiate approaches from those in England (especially with regard to overall ethos), has been the result of a creative and negotiated set of practices, improvising within the delimits of the devolutionary infrastructure. Following the recommendations of the Welsh Government commissioned Morgan Report on devolution and youth justice (2010), and the findings of the Silk commission on devolution (2011), proposals have been made to devolve youth justice fully to Wales, with a longer term commitment to devolve policing and criminal justice.

Northern Ireland

In Northern Ireland, a devolved Assembly was established as result of the Belfast/Good Friday Agreement 1998 although it has had a somewhat turbulent history and was suspended between 2002 and 2007. As with the other jurisdictions, developments relating to youth justice have followed a similar pattern (differentiation, construction of new architecture and new audiences, and added complexity in paradigmatic framings), but one adapted to the political and cultural dynamics of a post-conflict and traumatised civic society.

Prior to the Belfast Agreement, youth justice in Northern Ireland was broadly shaped by the same legislative and policy developments as in England (McVie 2011). It was primarily a court based model (see McAra 2010) with a dedicated youth court for children aged between 10 and 17, although children, under certain circumstances could be tried in the adult courts. However, under the terms of the Agreement, a criminal justice review was set up, and this included a review of arrangements for children who come into conflict with the law. A particular ambition was to ensure that human rights infused any emergent institutional frameworks. The recommendations of the review were given statutory footing with the passage of the Justice (Northern Ireland) Act 2002. This included a set of specified aims for youth justice, the primary one being to prevent offending (similar to England) but key objectives of the system were also to protect the public and secure the welfare of the child – a somewhat conflicted framework. The Youth Justice Agency was set up in 2003 to oversee developments. (Initially linked to the Northern Ireland Office, the Agency is now based in the Justice Department following the formal devolution of criminal justice in 2010).

A particularly distinctive feature of youth justice in Northern Ireland since the turn of the century, has been the major focus on restorative justice. This focus on mediation and negotiation was partially a result of Northern Ireland's distinctive history of conflict and peace-making. The first conferencing service was introduced in Belfast in 2003 and conferencing was rolled out nationally in 2006. Conferences can be held at different stages of the youth justice process for example prosecutors are empowered to use conferencing as an alternative to prosecution and the courts can issue a conferencing order as disposal on conviction.

Further innovations introduced by the 2002 Act, but which were linked more closely to the public protection and welfare components of the youth justice policy frame, were Community Responsibility Orders (for low level offenders which would involve instruction in citizenship and practical activities, followed in 2004 with an anti-social behaviour agenda) and a Custody Care Order to accommodate young people aged between 10 and 13 in the child care system rather than being held in custody with older children (see O'Mahoney and Campbell 2004 for further discussion). Diversion also came to the fore with a formal Youth Diversion Scheme implemented in 2003 as a replacement for the juvenile justice liaison scheme (which had been in operation since 1975), with specialist officers triaging cases.

From the mid 2000s onwards a particular trend has been increased emphasis on the more welfarist dimensions of the policy frame. The Office of the First Minister and the Deputy First Minister published a ten year strategy for children and young people in 2006 which was predicated on a holistic approach to supporting the well-being of children. Both the *Strategic Framework for Reducing Offending* (Department of Justice 2013) and the *Delivering Social Change document* (Northern Ireland Executive), developed these themes with recognition, respectively, that the root causes of offending generally require interventions that are beyond the reach of the criminal justice system (e.g., improving the well-being and life chances of vulnerable individuals), with explicit commitments to tackle poverty, improve health, and install the UNCRC obligations into frameworks for action. Importantly the demands of the UK government Northern Ireland Office to implement similar arrangements to England for non-negotiable support for at risk children and families, were rejected, with a focus instead on the provision of intergenerational support to build trust and more positive relationships with young people. Following the Youth Justice Review 2011 (see also part 3 below), there has been a rationalisation of youth custody with all young people now being held in Woodlands Secure Centre. Lastly, a more recent emphasis has been placed on desistance, with a commitment in 2015 by the Justice Minister to embed desistance theory into criminal justice policy

and practice, including youth justice. A further paradigm grafted onto an already somewhat complex conceptual mix.

Scotland

Since the Act of Union in 1707, Scotland has always had a separate legal and educational system and the quasi-state which evolved in the form of the Scottish Office enabled a somewhat autonomous approach to matters of justice to flourish. Prior to devolution juvenile justice was characterised by a strong commitment to welfarism, enshrined in the Social work (Scotland) Act 1968 which set in train the children's hearing system and turned over to social work the former remit of the probation service, with a statutory commitment to promote social welfare. The children's hearing (lay tribunal) system is, aimed at early and minimal intervention focused on the needs of the child, and avoiding criminalisation and stigma (see Kilbrandon 1964). Cases are referred to the Reporter who assesses whether there is a prima facie case that at least one ground for referral to a hearing has been met and that the child is in need of compulsory measures of care. Scotland has always been in an anomalous position by dealing with 16 and 17 year olds mostly in the adult criminal justice system (although supervision requirements can be extended up to the age of 18 and the courts can refer young people back to the hearings). Importantly, prior to devolution the children's hearing system became caught up with identity politics, symbolic of difference between Scotland and England (particularly when there was a retreat from welfarism in England from the 1970s onwards, and where such signifiers of divergence within Scotland became part of a constitutional claim of right for self-determination) (McAra 2011, 2016).

Somewhat paradoxically the early years after devolution were accompanied by greater convergence in youth justice, with the new labour/liberal democratic coalition government looking south of the border for inspiration. As with the other devolved jurisdictions, this stemmed from a mode of polity building predicated on *differentiation*. The new era was characterised by major architectural expansion: over a 100 new institutions were created along with the introduction of national standards and fast tracking procedures. Youth courts were piloted, with the then Cabinet Secretary for Justice stating that 'punishment' was key part of the youth justice process (a statement unthinkable 10 years previously). Whilst the children's hearing system remained at the heart of youth justice, a range of competing rationales were imported into policy including restorative measures (police restorative cautioning), actuarialism, as well as just deserts. Victims too became an important audience for youth justice, highlighted as a discrete and morally deserving group. Families of young offenders also began to be the object of regulation. Specific examples of borrowings include the anti-social behaviour agenda from 2004 which introduced ASBOS for under 16 year olds, (only around 15 were ever made); parenting orders (none of which were ever made), and curfews. Stringent targets were set for reduction in the number of persistent offenders by 10% in two years (from a curiously specified base-line of 1201!).

From 2007/08, there has been an SNP administration in Scotland, elected (first as a minority government) on a more progressive social democratic and preventative agenda. This heralded a period of further transformation in youth justice (in accordance with the precepts of statecraft). Existing targets were scrapped, and the overtly tough rhetoric about youth crime was replaced by a more nuanced discourse. The publication of the policy document *Preventing Offending by Young People: A Framework for Action* marked the first major statement of intent. This contained a multiplicity of conflicted ambitions, including a return to a more welfarist approach with an emphasis on health and education and a more holistic approach to child development. Victims and the wider community too were highlighted as key audiences. The document also contained elements

of a "just deserts" paradigm, foregrounding proportionality and responsibilisation. Whilst multi-agency partnership working and early intervention were flagged as key to service delivery, emphasis was placed on the need to build individual, family and community capacities to address barriers faced. This was somewhat akin to the desistance paradigm's asset based approach, but crucially highlighting individual responsibilities and duties.

Once the SNP became a majority administration (from 2011-2015) and following the stochastic dynamic of governance, it made further changes to the architecture of justice, with some degree of centralisation, including the construction of a national children's panel (previously this was locally based), and most notorious of all, the construction of a single national police force. With this rationalisation has come a greater focus on diversion, as exemplified by the Whole System Approach (set out in *Preventing Offending: Getting it Right for Children and Young People* Scottish Government 2015). The age of prosecution has been raised to 12, and serious consideration is being given to raising the age of criminal responsibility from 8 to 12. There has also been legislative change to ensure that offences admitted during children's hearings could be classified as alternatives to prosecution rather than convictions, to remove stigma (see Children's Hearing [Scotland] Act 2011). The wider justice strategy for Scotland is predicated on an inclusive approach – with an overt commitment to the production of a flourishing society. This has made incursions into policies for young people in custody, with Polmont Young Offenders Institution implementing an educational regime, one of great ambition but somewhat challenging to implement (see HMIP 2016). Taken together these more recent developments highlight greater commonalities with the other devolved nations than hitherto, with a degree of convergence between Wales and Northern Ireland in terms of overall ethos and approach.

Final reflections

This short history, has shown how youth justice discourse has been shaped by the imperatives of statecraft and polity building not only across the newly devolved nations but also in England from 1997onwards. Much political effort has been expended to highlight differences from previous modes of governance, and to create a new architecture for a more complex set of paradigmatic framings and audiences. As the quotation from Garland at the head of this chapter states, representation, projected image and search for legitimacy have each underscored key developments. While particular policy narratives come to 'make sense' at key stages (thus restorative imperatives make sense in the context of post-conflict societies, and rights-based child-centred approaches make sense in the context of the more progressive and creative policy-making context in Wales), governments display a high level of pragmatism when grafting new sets of paradigms onto extant frameworks. Thus it is unsurprising that actuarialism was embraced by the government in England (and Wales) in the late 1990s as a means of demonstrating its capacity for control and that diversion has been embraced at a time of economic uncertainty, given that it may reduce reliance on more expensive disposals and help cut the number of young people entering the justice system (see Drakeford 2010). In adapting to these sub-state and more globalised dynamics, systems have transcended the bifurcated strategies described by Garland in 1996, and embraced a multiplicity of 'criminologies' linked to versions of the child offender as: penitent; commodity; flawed identity and the deviant status (see table 1).

How then are these complex framings translated into the day to day practice of institutions delivering services, and how are they experienced by the children and young people who become subject to their tutelage? These are subjects of the third and final section of the chapter.

Part 3: Impacts of youth justice

At the start of the chapter I included a rather heartfelt quotation from a cohort member of the Edinburgh Study of Youth Transitions and Crime, reflecting on his treatment at the hands of the police and the justice system in Scotland. His negative perception, arguably,contrasts quite sharply with what might be seen as the major success story of youth justice in recent years: the sustained reductions (across all UK jursdictions) in the number of young people coming within the ambit of youth justice. Framed by these twin positionings, this final section offers some reflections on the efficacy of youth justice systems, with regard to their capacity to deliver justice to children and young people. It touches on the following three questions: is there any evidence that the activity of youth justice systems across the UK has led to reductions in youth crime; are these systems operating in accordance with the international human rights standards to which the UK is signatory; and how far and in what ways have institutions of youth justice contributed to the well-being and flourishing (best interests) of the young people who become subject to their tutelage?

Have youth justice systems reduced youth crime?

The relationship between crime and punishment has always been a vexed one. As David J. Smith has observed, fluctuations in the crime rate are more likely to have been impacted by social and economic changes, than the influence of the criminal justice system (Smith, D.J. 1999). Research has consistently shown that rule-breaking is widespread in the teenage years, but that only a small proportion of rule breakers are caught and processed by institutions of youth justice. For example the Edinburgh Study of Youth Transitions and Crime found that over 96% of its cohort of 4,300 young people admitted to at least one of the offences included in the questionnaire during their teenage years, whereas only around 12% were ever referred to the Reporter on offence grounds. Research and official statistics also consistently show that the 'captive' population tends to be drawn from the most poor and dispossessed families and neighbourhoods (across all UK jurisdictions), and contains disproportionately high numbers of young people from ethnic minority groups (especially in England and Wales) (McAra 2016, YJB 2015, see also Bowling and Phillips this volume).

Given these selection effects, the relationship between system intervention and crime reduction is likely to be more complex and contingent than policy documents and statements of national standards might suggest. Indeed a linear relationship is often assumed in these documents between interventions and outcomes; by contrast research studies have shown that youth justice outcomes are often confounded by broader contextual factors beyond the control of either the individual child or the deliverers of intervention (Gray 2013). Moreover official targets for crime reduction generally focus on reconviction rather than reoffending rates, and the former are arguably a better measure of institutional activity than they are of individual behaviour.

Much of the knowledge-base about the impact of system contact on behaviour at the individual level comes from research evaluating specialist programmes (as for example the 'what works' literature, see McGuire 1995) and/or exploring the nature and quality of relationships built up between the practitioner and the young person (as found in some variants of desistance research, see also Shapland and Bottoms this volume). Only rarely does research take a more holistic approach to analysis, examining the cumulative effects of systemic processing on young people over time and critically engaging with the wider contexts (social, cultural, political) within which such processing takes place (Smith 2010, McAra and McVie 2007, Gray 2013). Two (potentially interrelated) phenomena might, however, be taken as evidence of system impact: firstly (as noted above) the major reductions which have occurred over the past decade in the numbers of young

people who are caught up and processed by youth justice institutions and secondly the so-called 'crime drop'. I will offer some comments on each in turn.

(i) The shrinking client group

Recent trends suggest that the 'captive' population is in decline across all jurisdictions which make up the UK[3]. Whilst the UK does have an aging population and the number of young people in the general population has correspondingly reduced, this does not in itself explain the shrinking client group of youth justice. As shown in figures 1 to 3 below, when statistics on youth justice activity are expressed as a rate per 1000 population rather than a raw number, the reductions are (with only a few exceptions) both marked and sustained. Thus within Scotland there have been major reductions in the rate of offence referrals to the Reporter since 2005/06 (by 83%). In England and Wales over the same time frame there has been a reduction of 78% in the rate of first time entrants to youth justice[4], with a 21% reduction in first time entrants also evident in Northern Ireland since 2011/12 (analysis is limited here because of data availability). Custody rates too have dramatically declined across the jurisdictions, with a 60% reduction in both the rate per 1000 population of 16 and 17 year olds in custody[5] (Scotland), and 10 to 17 year olds held in the secure estate (England and Wales). Whilst Northern Ireland too has experienced a long term reduction in the use of custody for children, rates have been more stable in years since the new Woodlands Juvenile Justice Centre has been open (since 2007).

INSERT FIGURES 1 TO 3 ABOUT HERE

Part of the decline in the youth justice client group may be attributable to a greater emphasis on diversion within the youth justice policy frames across the four nations (Bateman 2012). However, it is important not to overstate the impact of diversionary policies, as there is evidence of major local variations in terms of youth justice practice within each jurisdiction, at odds with the aggregate national level rates, and some of the reductions highlighted above predate the implementation of diversionary policies (Muncie 2011, Haines and Case 2015, Kelly and Armitage 2015). For example, within Northern Ireland, custody rates were already in decline at the point at which restorative diversionary initiatives were implemented (see Goldson 2011), and within Scotland referrals to the Reporter were on a similarly downward trajectory well before the implementation of the Whole System Approach.

More significantly there is evidence that some systems are rather less successful than others at reducing reconviction rates for those young people who do become sucked into the system. Each jurisdiction publishes data which tracks the subsequent conviction histories of cohorts of young people who have had system contact (although the data are not generated in exactly the same way across the jurisdictions, so extreme caution is required in interpreting trends). The latest figures for

[3] Comparative data are difficult to generate, because of differences in institutional architecture, the age range and scope of youth justice across each of the four nations, and changes in the law and recording procedures which render time trend data somewhat problematic. Gaining access to historical data, including disaggregated data from Wales and England, and clear and consistent data from Northern Ireland has presented some challenges. Scotland has the most comprehensive and accessible statistical resources.

[4] The rate of first time entrants in England and Wales has been calculated from Youth Justice Board statistics and population data from the Office for National Statistics (ONS).

[5] Rate calculated from Scottish Prison Statistics and population data from the National Records of Scotland. Young people under 16 can be held in secure care for offending and for care and protection: these groups are not disaggregated in published data.

England and Wales suggest that reconviction rates amongst recent cohorts have risen by 10% (since 2003) to a peak of 38% for the most recently followed up cohort (YJB 2016). For Northern Ireland, only very short term data are accessible but they too mirror the pattern in England and Wales, with reconviction rates rising by around 18% in the cohorts between 2010/11 and 2013/14 (Youth Justice Agency reports). By contrast, reconviction rates in the cohorts of young people (aged under 21) in Scotland have been declining over time by around 16% (Scottish Government 2015b).

One interpretation of the rise in reconviction rates in both England and Wales and Northern Ireland is that institutions are now dealing with a smaller but more recalcitrant population with highly complex needs (see Youth Justice Board 2016b). This too has been noted by practitioners in Scotland, who have pointed to the major concentration in vulnerabilities amongst the young people who continue to have system contact (a point highlighted in the most recent inspection report of Polmont Young Offenders' Institution, HMIP 2016). However elevated reconviction rates might also be indicative of labelling processes within youth justice decision-making (such that the high concentrations of needs amongst young people who are sucked furthest into the youth justice system, function as stigmata bringing them back into the system again and again, a dynamic which the diversionary dimensions of the youth justice frame currently leave unchallenged, see below).

(ii) The 'Crime Drop'

As noted, the UK (along with many other western jurisdictions) is said to have experienced an overall drop in crime from around the mid 1990s, with youth crime showing a particularly sharp downward trend (see Maguire and McVie this volume). Somewhat ironically much of the evidence mustered by theorists of the crime drop, to demonstrate that such a drop has in fact occurred, comes from official statistics of criminal convictions and police recorded crime (rather than from self-reports). So the 'crime drop' may well be the result of transformations in youth justice activity rather than actual reductions in criminal behaviour.

Potential explanations for the crime drop have focused on a diverse range of factors from the growth of target hardening and other crime prevention measures which have inhibited property crime, to the declining use of lead in petrol (with presumed behavioural impacts) and even the legalisation of abortion (leading to reductions in the population) (see McAra and McVie this volume for further critical discussion). An alternative hypothesis, however, might be that youth crime has not really declined very much, but that traditional modes of counting and recording are not simply agile enough to keep pace with transformations in sites of youthful transgression (see for example Cearoni et al 2012).

Many young people are not 'available' for policing in ways that marked institutional activity in past decades – a shift from hanging around the streets to embracing mobile technologies and the wider digital world somewhere 'indoors'. Here offending might take the form of online bullying, sexual harassment, extreme pornography, trolling, skimming and scamming, to name but a few. Arguably, the fluid nature of youth cultures, the changing modalities of urban governance (see Bannister and Flint this volume), and shifts in patterns of consumption, open up new crime opportunities and new possibilities for the criminal imagination. Moreover the splintering of the borders between the public and private spheres which digital technology brings, may result in new and more intensive forms of vulnerability for those who become the victim of exclusionary practices, not always within the reach of youth justice institutions as currently constituted.

In sum, the answer to the question posed about the relationship between youth justice policy and youth crime reduction is that we do not know with any certainty the causal direction (if any) of the relationship, not least because of the paucity of self-reported offending data, the shifting situational

contexts of crime, and the lack of information about emergent forms of digital and online crime. Whilst the shrinking number of young people caught up in formal measures and the reductions in youth custody are very welcome, without more detailed understanding about the drivers of such processes, the sustainability of these downward trajectories is somewhat open to question.

Do youth justice systems comply with international human rights standards?

There is evidence that the jurisdictions across the UK have systematically flouted aspects of international norms over many years. As highlighted in part 1, the United Nations routinely monitors the progress which signatory states have made in promoting the rights of the child. The most recent UN response was published in July 2016 and highlighted a number of aspects of institutional arrangements and functioning in all four nations which were of major concern. I pick out here some of the core thematics linked to the situation of children who come into conflict with the law.

Firstly, all UK jurisdictions were chided about the age of criminal responsibility, which was considered to be far too low. The use of custody too came under critical scrutiny. Whilst the declining numbers of young people in custody was praised, nonetheless the committee was of the view that they were still disproportionately high. Critical comments were also made about the nature of life sentences for children convicted of murder and the Committee also felt more could be done to make custody a disposal of last resort – with a recommendation to ensure that this was enshrined in statute across all four nations. Linked to this, concerns were expressed about the continued use of solitary confinement and inappropriate use of restraint within secure institutions, as well as lack of access to education and to health services. The Committee's findings in this regard find some support in the recent Panorama programme (January 2016) on Medway Secure Training Centre which uncovered major mistreatment of children, and in the Howard League's review of restraint, solitary confinement and strip-searching of children ten years on from the Carlile Inquiry (Howard League 2016). This latter review found that the rate of restraint had more than doubled over the past five years in England and Wales, that pain was still being used illegally to ensure compliance, and that children were often locked in their cell for 23 hours a day. While a review into conditions at Medway has recently reported, the Howard League's conclusions make for bleak reading.

The UN monitoring committee also made critical comments about police stop and search powers, with concerns expressed about discriminatory practices and the need to end all non-statutory stops. Tasering or use of 'energy projectiles' against children was highlighted as a key problem as was concern about the use of acoustic devices (such as 'mosquitos) to disperse children from public places. Again these findings are reflected in research. For example, within Scotland, Murray (2015) has highlighted the massive increase in police stops over recent years and the ways in which these fall disproportionately on young people from poor neighbourhoods and in England and Wales the Equality and Human Rights Commission (2013) has reported that young people from ethnic minorities are six times more likely to be stopped than other young people.

A further concern identified by the Committee relates to the 'best interests' principle. Here the UK was criticised for failing to install this principle in all decision-making practices relating to children. Linked to this, serious concerns were also expressed about levels of child poverty across the UK, the high levels of inequality as well as discriminatory use of school exclusion. And finally the UN monitoring report noted that the state parties had made insufficient efforts to counter negative public attitudes towards children and in particular older children and those from minority groups, including ethnic minorities and faith groups, travellers, children of asylum seekers and migrants, those with disabilities, and LGBT groups. These comments touch on major concerns (alluded to earlier) regarding the disproportionate number of BME young people within the youth justice

system in England and Wales and particularly within the secure estate. For example, Youth Justice Board figures show that in 2014/15, 40% of prisoners under the age of 18 were from ethnic minority backgrounds. Whilst efforts are being made to develop diversity toolkits (see Youth Justice Board report 2016), and there has been a joint commitment by the Department for Education and the Youth Justice Board to tackle issues of diversity and equality within the care system, more work is urgently needed to address these issues.

Taken together, a reading of the monitoring reports produced since the UK became signatory to the UNCRC, indicates that most of the above issues are longstanding in nature, with seeming recalcitrance exhibited by both the UK national government and the devolved nations in embracing *fully* the child rights framework (as evidence see the similarity between issues raised in the July 2016 monitoring report and the committee's response to the UK and NI period report of 1999, CRC/C/15/add.188, 2002, in terms of age of criminal responsibility, nature and use of custody, poverty and inequality, and discrimination). This is a troubling indictment of institutional practices across England and the devolved nations.

Do youth justice systems contribute to the well-being of young people?

Finally, how far do youth justice systems contribute in practice to the flourishing of the young people who come within their ambit? Whilst there is evidence that committed and highly trained practitioners, well-resourced programmes and carefully managed diversionary initiatives can make a major difference to the lives of young people (see McNeill and Weaver 2014, Smith 2010), there is a growing body of evidence which points to major shortcomings in the capacity of youth justice systems to deliver on some of their fundamental objectives.

Each of the youth justice systems across the four nations does emphasise child wellbeing and highlights the need to partner with other agencies (health, education, social work). However, youth justice is, in itself, a somewhat blunt instrument for the coordination and delivery of holistic services. With greater devolution and an emphasis on localism, there is potential for an uneven spread of services across each jurisdiction and consequently geographic variation in the experience of young people (see Kelly and Armitage, 2014). Additionally, payment by results within England and Wales runs the risk of skewing outcome measures, with further reification of reconviction rates as the principal metric of success. Local level (especially third sector) institutions are likely to become embroiled in a battle for survival, with pressures to deliver results to retain precious short-term funding: a commodification of justice in response to economic pressures to drive cost down (Yates 2012).

Many research projects from across the four nations have found a disjuncture between policy claims, the performance of institutions (in terms of their day to day cultural practices) and the impact on the young people who come under the criminal justice gaze, (McAra 2016, Carr and McAlister 2014). Gray (2013), for example, in her research on YOT partnerships in action in England, has highlighted the ways in which the fusion between needs and risk discourse in contemporary policy framings, means that the wider structural environment in which intervention takes place can never be fully challenged (thus reinforcing and reproducing extant inequalities).

Within Northern Ireland, although the restorative justice interventions here have been highlighted as exemplars of best practice, there is a cumulative body of evidence which suggests that young people often have very negative experiences of conferencing, with lack of participation from young people (including also victims), demeaning modes of questioning and discussions at conferences, exposure to multiple conferences, and disproportionality in terms of outcome agreements (McAlister and Carr 2014, Maruna et al. 2007). As Convery et al (2008) have argued conferencing

requires individuals to take responsibility for their behaviour but does not take account of the damaging and harmful structural contexts of their lives, nor does it afford in practice the active participation anticipated by human rights standards. Moreover whilst restorative justice may come to make sense as a political narrative in the post conflict world, Harland and McCready (2014), have also highlighted the continued negative impact of paramilitary punishments and alternative community codes of justice on young men in Northern Ireland, as a profoundly negative backdrop to their involvement with the formal youth justice system.

(As was noted) just over ten years after the new governance of Northern Ireland was instituted, a major review of youth justice (2011), found that there was still a need to build further trust between children and the police and that young people felt disrespected. While the review was complimentary about restorative processes it made some hard hitting comments about delays in the system, the need for greater involvement of victims, better training for lawyers representing children in the courts, better interagency working and more early intervention. The review also highlighted shortcomings in relations to rights protection. Although the Youth Justice Agency has taken formal steps to address the recommendations of the review, it is acknowledged that this may take many years, with critics noting that some of the more challenging recommendations have met with a 'lukewarm' response (Hamilton et al 2016, pp 9).

Within Scotland a similar disjuncture between policy and practice has been found. The Edinburgh Study of Youth Transitions and Crime, for example, has strong evidence that the youth justice system consistently recycles a group of young people – the usual suspects – mostly drawn from the most impoverished communities, whilst the deeds of their more affluent counterparts are often overlooked. In modelling youth justice decision-making both cross-sectionally and longitudinally, the findings show how the working cultures of key institutions focus on poverty, and previous form (namely warning or charges, referrals to the children's hearing system, referrals to court in the previous year) as key markers for action and/or intervention. These cultures seem impervious to the changing political mores within which they are situated, highlighting a degree of institutional inertia over time in a context of more rapid discursive transformation at the level of policy debate (McAra 20106). The findings also demonstrate that the impact of contacts with the system have deleterious consequences for young people, by entrenching them in poverty and hence reproducing the conditions in which violence has been found to flourish (McAra and McVie 2015). These are the unintended effects of the tendency of governments to deliver policy change by focusing on institutional structures (architecture, as discussed in part 2 above) rather than/or in addition to, the day to day practices or cultures of those who work within the system. While Study findings are supportive of a maximum diversionary approach to dealing with young people in conflict with the law, to diminish the criminogenic effects of agency contact, they also highlight the importance of tackling poverty and promoting a wide social justice agenda as being key to crime reduction and safer communities (McAra and McVie 2015). As the findings from research across the four nations can testify, youth justice systems by themselves cannot deliver on this agenda.

Conclusions

In this chapter I have explored the philosophical framings of debates on youth justice and deconstructed the complex set of discourses which have been deployed across the four nations in the UK over recent decades. Competing versions of childhood, the relationship between citizen and state, and the appropriate modes of intervention, have been grafted onto systems, with limited critical oversight of how contradictions will be negotiated by the practitioners in their day to day encounters with young people nor by the children and young people made subject to their tutelage.

Taken together the sections in this chapter highlight the ways in which youth justice systems are shaped by the evolving social, political and economic contexts in which they are situated, but also can play a crucial role in the reproduction of political power. As I have argued, conflicted narratives come to 'make sense' to policy makers and politicians in a context of localised pressures to establish the right to govern and more globalised pressures linked to economic crisis, and the anxieties and insecurities provoked by the war on terror; pressures which are more multi-layered than those described by Garland in 1996 when setting out the then limits of the sovereign state.

The drivers of polity building across the devolved nations, the impulsion for differentiation, the tendencies to deliver this via architectural transformation, and to introduce greater complexity in the narratives around youth crime and punishment, inevitably mean that governments have focused as much attention on their projected images and public representation as they do on making meaningful change to organisational cultures and their real world impacts on young people. These narratives are also being deployed against a backdrop of systematic violation of core components of international human rights standards, including and especially the age of criminal responsibility.

Youth justice systems are increasingly required to leverage resource and broker relationships between other agencies in order to support the young people in their care. That such activity fails to tackle the structural disadvantages faced by these young people and indeed sometimes serves to reproduce those disadvantages, reinforces the tragic qualities of justice, and create a legitimation gap with profound consequences for the citizenship and inclusion of young people.

Fundamentally, to deliver justice for children who come into conflict with the law we need to reconcile the tensions between normative framings, their political deployment and their impact on lived experience of the young people themselves. As research shows, those who become the object of regulation are amongst the most vulnerable and dispossessed groups in our society. Recognising the fragility and sometime skewed nature of the philosophical and institutional complex of youth justice is a first, but much needed, step towards real world transformation.

Selected further reading

As was noted, the Oxford Handbook of Criminology series constitutes a major archive of research on youth justice in its own right, with important essays by: Geoff Pearson, *Youth, Crime and Society* (first edition, 1994); Tim Newburn, *Youth Crime and Youth Culture* (fourth edition, 2007); Rod Morgan and Tim Newburn, *Youth Justice* (fourth edition, 2007) and *Youth Crime and Justice: Rediscovering Devolution, Discretion and Diversion* (fifth edition, 2012).

The specialist journal *Youth Justice: An International Journal* (Sage publishing), contains a wealth of articles based on original research on aspects of youth crime and justice across the UK jurisdictions and internationally. More particularly each edition contains an overview of policy, research and practice developments curated by Tim Bateman, and commentary on legal developments in youth justice by Nigel Stone. Together these contributions form a rich set of resources for researchers.

Recommended specialist books on youth crime and justice are: John Muncie, *Youth and Crime*, fourth edition (2014); and Barry Goldson and John Muncie's edited collection *Youth Crime and Justice*, second edition (2015). For readers interested in the philosophy of punishment and critical analysis of paradigmatic framings a useful introduction is provided by Antony Duff and David Garland in *A Reader on Punishment (1994).*

Finally readers should always be encouraged to go back to classic texts on crime and punishment. Particular recommendations are: Stan Cohen's *Visions of Social Control: Crime, Punishment and Classification (1985); David Matza's Delinquency and Drift (1964), Geoff Pearson's Hooligan A History of Respectable Fears (1983) ; and David Thorpe and colleagues key text on diversion, Out of Care: The Community Support of Juvenile Offenders (1980).*

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Table 1: Juvenile justice paradigms

	Just deserts	**Welfare**	**Restorative**	**Actuarial**	**Desistance**	**Diversionary**
Personhood	Child as rights bearer Individuals constitutionally self-interested	Child as bearer of entitlements Individuals a product of experience	Child as bearer of entitlements and rights Individuals constitutionally 'good'	Child qualified bearer of rights Individuals potentially 'bad'	Child as bearer of rights Individual identity product of interplay between structure and agency	Child as bearer of rights Individuals product of social encounters
	Offender as rational and responsible The rational man	Offender as non-rational, irresponsible The patient	Offender as rational and responsible The penitent	Offender as dangerous The commodity	Offender as self-determining The flawed identity	Offender adapts to ascribed identities The deviant status
Social relations	Core relationship: contractual, State vs. individual citizen	Core relationships: nested model of State, community family, child	Core relationships: inclusive: child, victim and community	Core relationship: adversarial community vs. potential offender	Core relationship: Inclusive: child and community	Core relationship: reflexive regulatory practices shaping individual sense of self
	Didactic	Transformative	Integrationist	Protective	Redemption	Preventative
	Audience: Citizens	Audience: Offender and family	Audience: Community and victims	Audience: Public	Audience: Offender and community	Audience: The child
	Sensibility: Retribution (Vengeance)	Sensibility: Philanthropy (Paternalism)	Sensibility: Connection (Infliction of shame)	Sensibility: Fear (Hate)	Sensibility: Connection (Exclusion)	Sensibility: Rational calculus (Managerialist)
Intervention	Deter and punish	Diagnose and to rescue	Support victims, restore harm, reconnect child to community, build more cohesive	Diminish current and future risk, safeguard victims and wider community	Support recovery and establishment of 'real me' identity, build effective practitioner-	Diminish negative effects of regulatory practices and support inclusion

			peaceful community		child relationships, asset based	
	Proportionality to deeds, parsimony	Proportionality to needs	Proportionality to harm caused	Proportionality to risk	Proportionality to need for value change and agentic rediscovery in context of wider opportunity	Proportionality to pernicious consequences of agency impact

Source: Adapted from McAra (2010) and McAra and McVie (2014).

Table 2: Examples of new 'orders' and schemes

	Statute
Anti-social behaviour order (for anyone age 10+ acting in a manner likely to cause harassment, alarm, stress to one or more persons)	Crime and Disorder Act 1998
Parenting orders	
Child safety order (for under-10s where behaviour would constitute crime if age 10+)	
Local child curfew	
Reparation order	
Reprimand and final warning scheme	
Detention and Training Order (comprises period in custody and supervision in the community)	
Referral orders Youth offender contracts	The Youth Justice and Criminal Evidence Act 1999
Intensive Supervision and Surveillance programmes	Criminal Justice and Court Services Act 2000
Attachment of electronic monitoring or curfew condition to any community order	
New sentences for under-18s: detention for life; and public protection sentence for serious violent or sexual offences	Criminal Justice Act 2003
Drug Testing and Treatment Order as part of supervision order or action plan order	
Extension of police powers to disperse groups of young people	Anti-social Behaviour Act 2003
Parenting contracts where children excluded from school, truanting or anti-social behaviour	

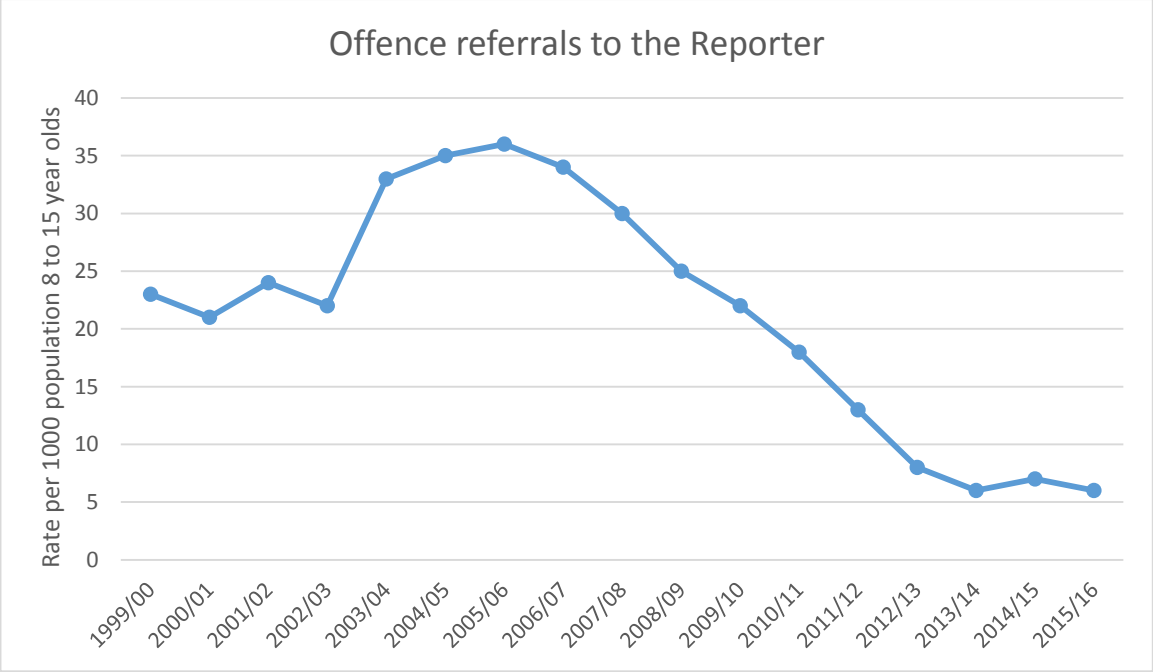

Figure 1: Scotland

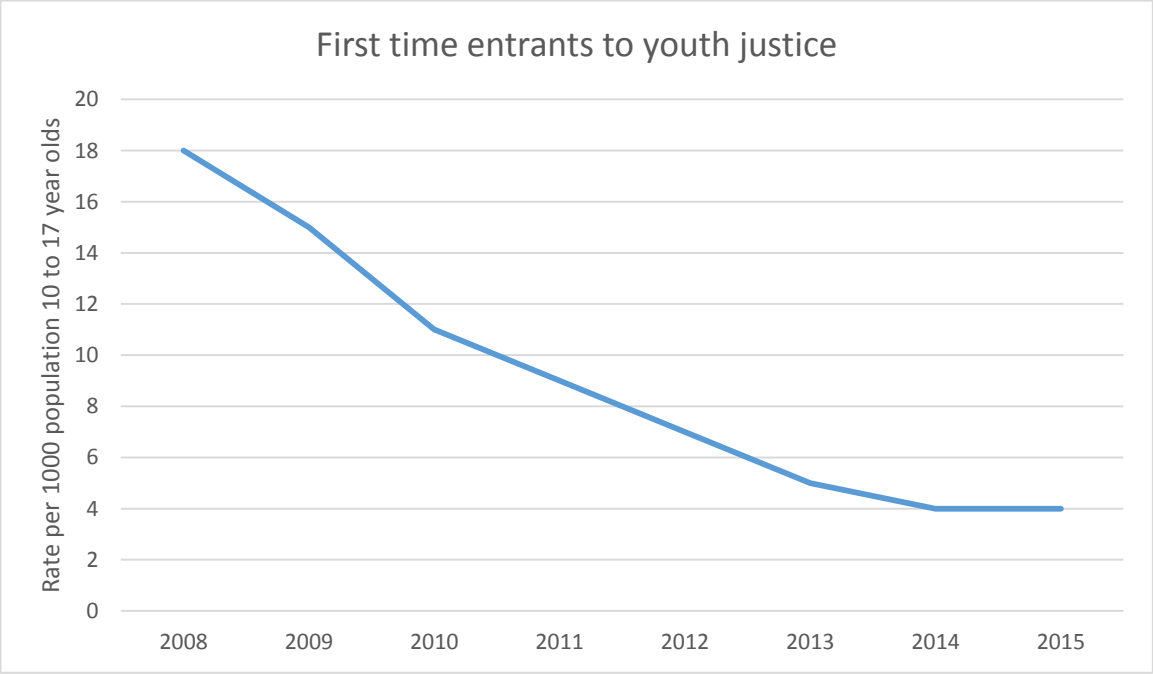

Figure 2: England and Wales

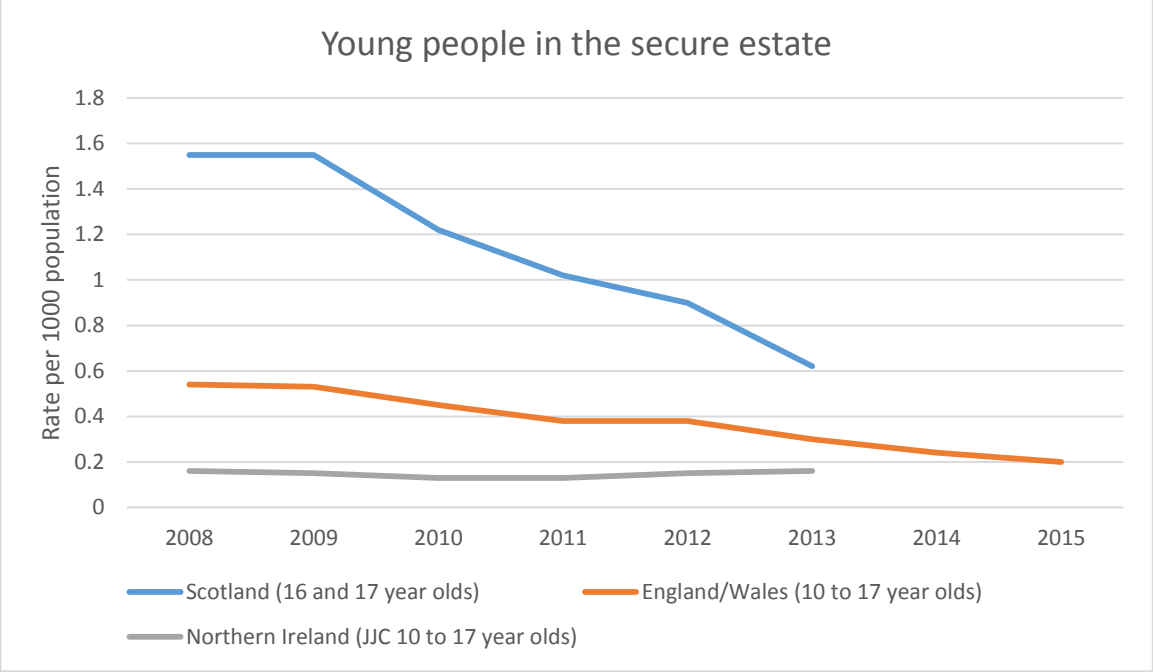

Figure 3: Comparative custody rates