

Abstract

In contemporary youth justice in England and Wales, there is too much emphasis on offence- and offender- focused approaches and an insufficient focus on promoting positive outcomes for children in conflict with the law. What is more, since the Crime and Disorder Act 1998, the voices of children embroiled in the Youth Justice System have been marginalised and their participatory rights rendered invalid. Both children and Youth Offending Team workers are finding involvement in the Youth Justice System (e.g. assessment, planning, intervention, supervision and review) to be a *disempowering* and *disengaging* experience. In this paper, we outline a number of contemporary tensions and conflicts in relation to youth justice law, policy and practice: the highly political context of youth justice, the criminalising risk, prevention and early intervention agendas and the unique and specialised nature of youth justice services. We also introduce a focus for future developments and 'creative possibilities' for youth justice. Specifically, we advocate for *Children First, Offenders Second (CFOS)*, a progressive and principled model of youth justice that advocates for child sensitive, child appropriate services, diversion and the promotion of positive behaviours and outcomes for children, underpinned by evidence-based partnership working and the engagement of children (and parents) at all stages of the youth justice process.

6 Key words: Youth justice, children first, engagement, participation, positive prevention

Youth justice: Past, present and future

Youth justice is a messy, complex and contested area (Smith 2007) that has seen dramatic changes in its nature and implementation over recent decades. Developments in youth justice policy and practice during this period have been characterised by a hotchpotch of punitive and welfarist interventions rooted in a range of confused philosophies, ideologies and approaches. Moreover, in contemporary youth justice systems (notably, but not limited to, the system in England and Wales), there is a lack of focus on the voice and views of children in shaping assessment, planning, intervention, supervision and review processes. Rather than privileging children's insights – in an engaging and participatory way - it appears that the Youth Justice System (YJS) and its processes often marginalize their voices through unequal power relations: what children who offend say is often not accorded sufficient recognition. Children and their supervising Youth Offending Team (YOT) workers are finding that being involved in the YJS is a disempowering and disengaging experience (Haines and Case 2015; Case and Haines 2015).

Against this backdrop recent academic and practice literature has called for a move towards an alternative philosophy incorporating a range of more positive, rights-based, children first approaches (Haines and Case 2015, ; Goldson and Muncie, 2015; National Association for Youth Justice , 2015; Robinson, 2014; Smith, 2014a, b).

We will outline a number of contemporary tensions and conflicts in relation to youth justice law, policy and practice: the highly political context of youth justice, the criminalising risk, prevention and early intervention agendas and the unique and specialised nature of youth justice services. We go on to outline and explore a specific focus for future developments and 'creative possibilities', the *Children First, Offenders Second (CFOS)* model of positive youth justice, which incorporates a range of more positive, rights-based approaches and emphasises diversion, positive promotion and children's participation and engagement in youth justice practices and services.

The volatile political context of youth justice

The history of youth justice is one of 'conflict, contradictions, ambiguity and compromise... act[ing] on an amalgam of rationales' (Muncie and Hughes 2002: 1). It has been an area steeped in public and political controversy, generating intense media interest. Swinging between the 'caring ethos of social services and the neo-liberalistic ethos of responsibility and punishment' (Muncie and Hughes 2002: 1), youth justice policy is often largely dependent on political imperatives with regard to which approach is favoured resulting, largely, in policies shaped by the political rhetoric of punitiveness (Downes and Morgan 2012).

Nonetheless, the welfare perspective has been present, in the eyes of the law at least, since the 1930s. More specifically, section 44 of the Children and Young Persons Act 1933 states that: 'every court in dealing with a child or young person who is brought before it either as an offender or otherwise shall have regard to the welfare of the child or young person'. Throughout the 1960s and into the 1970s welfarism was widely evident in youth justice policy and practice responses (See Blagg and Smith, 1989). The Children and Young Persons Act (1969) placed the

welfare of the child as paramount as it sought to deal with youth crime through civil mechanisms under the supervision of social workers, as opposed to via the labelling processes of criminal justice. Such responses were criticised by those on the right of the political spectrum who argued that the system was being 'too soft'. Conversely, throughout the 1970s, children were often exposed to excessive 'welfare' treatments based on perceived need. In much contemporary practice children were 'doubly punished' in that they were sentenced for their poor circumstances alongside the criminal act, which inevitably led to a disproportionate sentence (Morris, et al. 1980). There were also critics amongst the academic community who described such 'wide-ranging' approaches as unfair and discriminatory that often led to unintended consequences or in other words 'more harm than good' (Thorpe, et al., 1980). Indeed, it was felt that welfarism enabled legal safeguards to be abandoned and due process to be violated by 'leaving children to the discretionary, permissive powers of professionals while subjecting them to indeterminate measures without recourse to review or accountability' (Scruton and Haydon, 2002: 311).

A resulting pendulum swing away from 'welfare' and towards justice-based notions of 'just deserts' and 'anti-welfarism' became manifest in the 1990s. This 'landmark case' generated immense fear amongst the public, in particular the feeling that youth crime (and children) was out of control. During this time there was an already worried public as the media reported heavily on car crime ('joy riders') and those seemingly offending with impunity ('bail bandits'). Here political parties were engaged in somewhat of an 'arms race' regarding who could be the more 'tough'. The Conservatives responded fiercely by introducing 'tough legislation' namely the Criminal Justice Act 1993 and the Public Order Act 1994 (Rogowski 2013). Similarly a re-branded 'New' Labour government responded by setting out its 'no more excuses' agenda in the late 1990s, which heralded a 'new youth justice' (Goldson 2000) of punitiveness, criminalisation, responsabilisation and interventionism with a focus on the offence and the offender (as opposed to the whole child).

Criminalising children through risk-focused prevention and early intervention

In 1997, the Labour administration swept to power and in so doing moved away from longstanding debates between welfare and justice and towards risk-led

managerialism as the driver of 'crime prevention' (Case and Haines 2009). New Labour introduced criminalising modes of (risk) assessment and preventative and early intervention, each informed by the Risk Factor Prevention Paradigm and its central tenet that crime could be 'nipped in the bud' (Home Office 1997) by the early and robust identification and targeting of 'risk factors' in childhood (Case and Haines 2009). Further measures of surveillance and control were pursued in order to 'curb' involvement in criminal activity and anti-social behaviour at the 'earliest opportunity' (Kemshall 2008). Here, what were promoted as value-free, scientifically objective, actuarial measurements of risk were promoted premised on the idea that predicting future offending is commonsensical and unproblematic; overlooking the commonsense view that the behaviour of children is generally unpredictable (Case and Haines, 2009; Creaney 2013; O'Mahony, 2009). To complement this approach, the principles of so-called 'effective' practice (namely risk classification, criminogenic need, responsivity, community base, treatment modality and programme integrity) and offence and offender focused 'what works' interventions have been prioritised as the tools to prevent and reduce offending. Such mechanised, numbers-heavy, pseudo-scientific 'evidence' has offered the governments a form of certainty and tidiness to the unpredictable reality of 'youth offending' and a touchstone against which to manage and prescribe practice. However, it would be naïve to assume that this narrow and restricted form of evidence can be absolute: in a modernist sense the search for a definitive universal truth or one size fits all 'holy grail' of intervention or the idea of a 'royal path to success' is a misnomer – a futile exercise - especially when considering the complexity of children's lives and the diversity of influences children are subject to. We agree with David Smith's (2006: 88) assertion that 'what they (e.g. politicians, practitioners) ought to expect are empirically informed ideas about what looks promising, what, if "properly" implemented... will work, for what people and what purposes, and in what contexts'.

The New Labour government embraced the approach of risk-driven regulation, modification and control of behaviour pursuing a 'get tough' politics and arguing that responsibility lies with the individual: 'an alleged 'culture of excuse' was to be replaced by a culture of responsibility' (Smith, D 2006:79). The Crime and Disorder

Act 1998 sought to criminalise 'all manner of behaviours' (Muncie, 2002: 142) as New Labour continued the tough on crime rhetoric from the previous government. This tough stance was in response to criticism that it was, previously, 'soft on crime and its causes'. Consequently, the UK Government developed an obsession with managerialism, risk and intervention in the lives of helpless and hopeless, yet somehow dangerous and responsible children. Despite statistical 'success' since 2007/08 in reducing the numbers of children arrested and entering the YJDS for the first time, New Labour created a YJS that was more 'controlling' than 'caring', 'stubbornly blind' when it concerned a child's *welfare* and less concerned with age appropriateness and child friendliness (see Fionda 1998).

The Conservative-led Coalition Government (formed in 2010) has continued a 'get tough' politics, independently of any attempt to tackle the social roots and context of youth crime or address the child at the centre of the debate (Smith, 2014a). Youth justice polices have continued to demonstrate a move away from a social democratic ideology/philosophy, towards a politics of blame and individualised responsibility. Youth justice remains underpinned by neo-liberalism (free markets, reductions in public spending, less state intervention, responsabilising young people), with youth crime increasingly 'seen [by Westminster politicians] as a matter of opportunity and rational choice' (Rogowski, 2013: 2). This has intensified in recent times with the financial cuts to social service department budgets and resulting measures of economic austerity.

Unique and specialised sanctions

Despite contemporary moves towards a restricted range of undesirable, negative, mechanised practices with children, exploring the history of youth justice policy and practice reveals a field of policy-makers and practitioners unafraid of change. The range of new orders and working practices introduced over the years is unparalleled in other areas of criminal justice. From the 'Referral Order', introduced by New Labour in the Youth Justice and Criminal Evidence Act (1999), which promised space for children to express their opinions and repair the harm caused by offending, to the recent developments in tackling anti-social behaviour in the Anti-Social Behaviour, Crime and Policing Act of 2014 (see Hopkins Burke and Creaney 2014

for a critique) to proposals for the building of future 'secure colleges' intended to incarcerate and educate, a common thread through much of this practice is the lack of opportunity for children to put forward their viewpoints in any meaningful, open and honest way (Haines and Case 2015; Creaney 2014; see also Little's article in this journal).

The various levels of success and failure characteristic of youth justice policy and practice is indicative of a continuous cycle of reinvention. This is particularly apparent in the persistence of custody as a response to youth crime and the reinvention of custodial institutions (Bateman, 2014). The long-term relationship between youth justice and incarceration persists despite very little (if any) faith amongst academics and researchers that imprisonment is anything other than damaging (Goldson, 2002 a, b). Research has repeatedly highlighted the serious, harmful consequences of locking up children (Goldson and Kilkelly 2013; Lord Carlile, 2014) and yet this evidence has to an extent been ignored in national policy and legislation. The use of research findings is inevitably selective particularly in terms of whether it is compatible or not with political intentions and complies with 'pre-existing values' (Bateman and Pitts, 2005). This is one of many examples of the disconnect that is apparent between research evidence and current approaches to youth justice practice. The connections between the abundance of compelling research evidence and national youth justice policy are, at best, fragile and, at worst, hostile. There is little or no robust evidence base for the efficacy of risk-led prevention and (early) intervention approaches or for the increasingly punitive, controlling and restrictive treatment of children who come into conflict with the YJS – an alarming contradiction for practice across a purportedly 'evidence-based' field.

The positive potential of youth justice practice

The politicised, unique and specialised nature of youth justice does not necessitate ineffectual or negative practice; indeed, it opens up the space and opportunity for positive, progressive **and principled work with children**. An illustrative example of this potentiality can be found in the use of *diversion*. As an approach, diversion is intended to reduce the risk of labelling and the subsequent harmful impact contact with the justice system can have on children who offend; premised on the belief that

offending is a normal part of adolescence that children will 'grow out of' (Rutherford, 1986). However, its use with children has been erratic.

As a form of youth justice practice, diversion was very popular in the 1980s, when a 'quiet consensus' (Haines and Drakeford 1998) emerged between policy makers and practitioners with regard to its 'effectiveness'. Moreover, a bifurcated response to youth offending was observed: children who committed less serious offences were diverted away from the system and those who committed more serious crimes were diverted away from custodial institutions and into intensive community alternatives. The rise of diversionary practices was to be short-lived, as the New Labour government replaced the practice of diversion, and ideological commitments to minimal/non-intervention, with its antithesis - early preventative intervention that served to criminalise. However, recent Coalition Government policy (e.g. the 2010 (Ministry of Justice) 'Breaking the Cycle' Green Paper) has championed an increased emphasis on practitioner expertise and discretion, complemented by an increased emphasis on the use of diversion through the abolition of the inflexible pre-court sentencing system of Reprimands and Final Warnings. Although evidently such approaches are not a 'rebirth' of those used in the 1980s (Bateman 2012), this is a promising development, as such strategies reduce opportunities for 'repeated' and 'amplified' contact with the formal youth justice apparatus (McAra and McVie 2010). Smith (2014b) argues that this is, at least in part, evidence of a form of 'liberalisation' in the way children who offend are now dealt with by the YJS. Indeed, changes have now been made to the previously rigid out-of-court system (i.e. replacement of Reprimands and Final Warnings with Community Resolutions, Youth Cautions and Youth Conditional Cautions) in order to introduce a much more flexible system with 'no escalatory process... and so any of the range of options can be given at any stage' (Ministry of Justice and Youth Justice Board 2013: 7).

Positive youth justice: *Children First, Offenders Second*

The rise to prominence of diversion within contemporary youth justice practice offers hope for a reorientation of policy and practice towards the pursuance of children's rights, needs, quality of life and positive outcomes, subsuming any deleterious master status of 'offender'. The *Children First, Offenders Second* (CFOS) model of

positive youth justice (Haines and Case 2015) coalesces a series of positive, child-friendly and child-appropriate principles for the treatment of children in the YJS, notably the aforementioned diversion from the formal system, a positive, promotional approach to preventative activity and a youth justice process informed and shaped by children's meaningful and legitimate participation and engagement. In contemporary youth justice policy and practice circles, however, matters of participation and engagement are partial and peripheral. *CFOS*, on the other hand, promotes children's rights, in particular, children having a say on matters that affect them and encouraging the use of practice intervention that is timely, appropriate and realistic 'capturing and giving expression to children's feelings and priorities' (Robinson, 2014: 268). It is child-friendly and child-appropriate prioritising children's own goals and aspirations not organisational or professional agendas. In so doing it embraces an understanding that 'the worker will...[never] know more about children and their problems than they (i.e. children) do themselves' (Smale and Tuson, 1993: 16). *CFOS* promotes voluntariness not enforcement, coercion, compliance, compulsion and - as is so often the case - adult-led intervention (Haines and Case 2015). This model encourages the enhancement of children's personal, social and emotional development, the instilling of hope and self-confidence and an examination of the full complexity of their lives, experiences, perspectives and needs (Haines and Case 2015).

CFOS challenges the idea that children who commit criminal acts are in need of punishment – a claim exacerbated by political rhetoric, media sensationalism and misrepresentations of public opinion. It challenges adult centric decision-making processes. What is more, labelling children as 'offenders' is counterproductive and destructive, presenting significant barriers to change as it instils a sense of failure and deficit in representations of children (McAra and McVie 2007, 2010). *CFOS* promotes positive aspects of a child's life, positive behaviours and positive outcomes. *CFOS* rejects the term 'offender' on ethical, moral and 'effectiveness' grounds, instead prioritising a focus on the inherent 'child' status of children in conflict with the law (hence 'children first').

Positive promotion

The principle of *positive promotion* offers an alternative to the standard risk-based preventative and early intervention strategies of the 'new youth justice'. Positive promotion challenges the labelling effects of formalised, negative prevention and early interventions by working against the stigma of prevention and addressing positive factors related to behaviour, outcomes and available services, support and guidance (Case and Haines 2015). Its starting point is the placing of the child at the heart of the system through providing the mechanisms to influence the design and delivery of services. Participatory practices are promoted in order to enhance children's engagement with youth justice processes and interventions. Opportunities to share unique insights into experiences of the YJS are vehemently encouraged here (Haines and Case 2015). This is in contrast to contemporary youth justice practice that is dominated by a context of enforcement, compliance, control, regulation and surveillance, that is court ordered, compulsory and often non-negotiable. Practising in such an environment can constrain professionals and make the development of innovative, bespoke and responsive engaging practices - that capture children's varying needs - problematic. In order to prevent children feeling disempowered, *CFOS* promotes flexibility whereby children are encouraged to engage in the process of change as partners: intervention is not done *to* but *with* the child (Haines and Case 2015). Traditional power imbalances are reduced as children are encouraged to exercise greater choice over provision and influence the direction of the work through explaining 'what works' for them - thus 'recognising and acknowledging the 'reality' of the 'lived experiences' of children' (Prior and Mason, 2010: 215).

Unlike those in receipt of a service on a voluntary basis children involved in youth justice processes are required to comply with the conditions set out. Such court ordered compulsory nature of the work serves to disengage children and professionals and contrasts somewhat with the literature on engagement and participatory principles, specifically: empowerment, advocacy trust and respect (Haines and Case 2015). Professionals may find themselves working with children in the YJS who are, it appears, reluctant to change and engage in designing the agenda, perhaps also resentful of any intervention - regardless of the benign intentions of practitioners. The *CFOS* model promotes a culture that embraces the 'active' engagement of children to overcome such issues (Haines and Case 2015). In

particular if there is belief and commitment in children's ability to influence change with a particular emphasis on seeking the voice of those who are considered 'hard to reach', unwilling, seldom heard - powerless to contribute to the youth justice processes that affect them – this can potentially overcome resistance. Furthermore, practising through an ethical, inclusive, principled, engaging and participatory lens - with sufficient guidance and encouragement - can be of 'real' benefit to children.

Alongside such articulated intentions, those tasked with working with children should strive to develop a positive working relationship, based on openness and honesty. Any disempowerment/disconnection could make the young person/worker relationship problematic. The relationships between children and those around them are critical. Within the formal and semi-formal structures of child intervention, the way that a scheme of work is implemented, including relationships, approaches and techniques, determines its level of success. Current rehabilitative interventions with children have been critiqued for being excessively prescriptive and narrow in focus, and for paying insufficient regard to the practitioner-child relationship as well as to the wider social contexts. In other words, engaging and participatory relationships have been marginalised. With that said the new *AssetPlus* purports to be holistic, sensitive and has been promoted by the Youth Justice Board as a positive assessment and interventions framework (YJB 2013). It prioritises a prospective focus on problems, needs and strengths (as opposed to risks) and resilience, desistance, engagement, participation and other positive outcomes (as opposed to the prevention of negative behaviours/outcomes) (cf. Case and Haines 2015). There is greater emphasis on 'self-assessment' as the emphasis has shifted somewhat from adulterised and adult-centric assessments and the neglect of children's voices and perspectives in the assessment process. However, *AssetPlus* is a technique without an underpinning philosophy that still appears to prioritise the likelihood of risky behaviours through quantification that individualises and responsabilises children at the expense of structural and socio-economic influences.

Conclusion

In this paper, we have critically explored the highly political context of youth justice, the criminalising risk, prevention and early intervention agendas and the unique and specialised nature of youth justice services. Specifically, we criticised how, in many

respects, youth justice practice continues to be punitive, coercive and offender focused, fixated by the idea of quick fix 'solutions' driven by neo-liberal correctionalism and responsabilisation (Haines and Case 2015). Furthermore, despite some evidence of progressive practice the voices of children who offend continue to be marginalised: children's participatory rights are largely invalid once they enter the Youth Justice System. In contrast, the alternative *Children First, Offenders Second* (CFOS) model incorporates a range of more positive, rights-based approaches that encourage child-appropriate diversion, participation, engagement and the promotion of positive behaviours and outcomes for children in conflict with the YJS (Haines and Case 2015; Creaney 2015). CFOS counters the neo-liberal, responsabilising agenda of contemporary youth justice that blames children for their unfortunate circumstances and replaces this perspective with a progressive, principled, engaging and participatory model fit for the modern era.

Implementing Children First, Offenders Second

For youth justice policies to be implemented effectively in practice, they must have clear, overarching objectives and be targeted on three key practice areas along a continuum of youth justice:

Prevention (Positive Promotion): CFOS requires the promotion of positive behaviours, outcomes, services and opportunities for all children, within and outside of the YJS. The positive promotion approach has been evidenced as *effective* in improving positive outcomes (e.g. increased access to rights and entitlements, enhanced school performance) and reducing negative outcomes (e.g. offending, substance use, exposure to risk) when applied as a policy and practice principle (Haines and Case 2015). CFOS can be animated by adult service providers designing and delivering services in partnership with children; services that prioritise children's consultation, participation and engagement in all decisions that affect them;

Diversion: CFOS supports a *progressive diversion* - diverting children into positive, constructive interventions that promote success, achievement, capacity-building, access to entitlements and support services) and produce reductions in negative outcomes (e.g. entering the YJS for the first time, obtaining a criminal record, reoffending, reconviction, punishment, labelling). The *effectiveness* of progressive diversion in meeting these objectives has been evidenced by the Bureau model (now rolled out across Wales), which prioritises *systems management* (child-focused decision-making at all stages of the youth justice process) and *partnership* between practitioners (e.g. police, youth justice staff, teachers), children and families (Haines, Case, Charles and Davies 2013);

Intervention: all CFOS intervention in the formal YJS should be child-friendly and child-appropriate. Policy-makers and practitioners should prioritise children's *participation and engagement* in the design, delivery and evaluation of services. The YJS should embed a *systems management* approach to intervention planning that is *evidence-based* (not pre-judged, pre-formed, 'off the shelf' interventions) and achieved through *partnership* between children, practitioners, policy-makers and researchers. Such *consultative* and *inclusionary* ways of working with children in the YJS have been found to be *effective* internationally in relation to promoting positive outcomes (e.g. children's perceptions of the increased *legitimacy* of their treatment, increased *access to their entitlements*) and decreases in the negative outcomes targeted by interventions (Haines and Case 2011; Case, Clutton and Haines 2005).

A CFOS approach to youth justice founded on positive promotion, diversion and intervention can be achieved within current legislation in England and Wales (along with other countries internationally). It does not require seismic policy shifts or huge injections of money in the short-term. What CFOS requires to make it work is a change of *attitude* and a change of *practice*. CFOS and the interventions it delivers are child-friendly and child-appropriate, working to the central principles that prevention is better than cure and that children are part of the solution, not part of the problem.

Word count: 3619

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