

## YOUNG OFFENDERS: CHILDREN IN NEED OF PROTECTION

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### Abstract

The Institute of Public Policy Research recommended that the government in England and Wales should establish a unified youth justice system, based on the Scottish Reporter system, for assessing the nature of intervention needed by young offenders. This article examines the Scottish youth justice system, the French youth justice systems and the youth justice system in England and Wales. The article contends that in England and Wales there already exists an agency and a legislative framework, similar to the Scottish and French examples, which has the power to assess the nature of intervention needed by young offenders and which has the authority to require that appropriate welfare or support services be provided. Therefore a new legislative framework is unnecessary; instead attention should be paid to the proper resourcing of the current system.

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### A. INTRODUCTION

In an influential report, published in 2002, the Institute of Public Policy Research (IPPR) judged the criminal justice system in England and Wales to be an unsuitable response to juvenile offending (Sparks and Spencer 2002). The Institute for Public Policy Research is a leading centre for New Labour intellectuals. Their report is based on an eighteen month 'Crime Forum', which brought together academics, senior police, prison officers and other criminal justice practitioners. This report asserted that the children who are most likely to become persistent offenders are also most likely to have childhood experiences of victimisation and to have educational

difficulties. The IPPR advised that if the statutory principal aim of the youth justice system “to prevent offending by children and young people”<sup>1</sup> is to be realised, then consideration needs to be given to the home circumstances and the quality of life of young offenders. The report recommended that the government should establish a new ‘unified’ system, based on the Scottish Reporter system, for assessing the nature of intervention needed by young offenders. This system would receive referrals from police, schools and parents and have the authority to require that services be provided.

This article will examine the Scottish juvenile justice system and assess its advantages and disadvantages. For comparative purposes the youth justice system of France will also be considered as this model also endeavours to tackle juvenile offending within the context of the juvenile’s life circumstances. The youth justice system of England and Wales will then be studied in order to establish whether the IPPR’s recommendations are appropriate, and accordingly whether there is a need for the introduction of a wholly new approach to tackling youth crime in England and Wales.

## **B. YOUTH JUSTICE IN SCOTLAND**

The origins of the Scottish system of juvenile justice date back to the report of the Kilbrandon Committee (Kilbrandon Committee 1964). The Kilbrandon Committee believed that in terms of the child’s actual needs, the legal distinction between juvenile offenders and children in need of care or protection was very often of little practical significance. Kilbrandon asserted that juvenile offending behaviour was generally indicative of a failure in the young person’s upbringing.<sup>2</sup> The committee argued that more often than not the problems of the ‘child in need’ and the ‘delinquent child’ can be traced to shortcomings in the normal upbringing process in

either the home, the family environment or in the schools. Such children, whether they were children in need or offenders, were described as “hostages to fortune” and it was considered essential to extend to this minority of children the measures that their needs demand and of which they have previously been deprived.<sup>3</sup>

The reasoning of the Kilbrandon Committee has been comprehensively confirmed by over fifty years of criminological research. Every study of the personal and social experiences of known juvenile offenders reveals that almost all of them have endured various kinds of abuse, neglect, deprivation and misfortune (Graham & Bowling 1995). Young offenders are far more likely than the general population to have experienced child abuse and to have been in local authority care (Utting et al. 1993). Parents who rely heavily on harsh punishment or who are erratic in their discipline are twice as likely to have children who offend (Newson & Newson 1989). Neglect by parents, poor domestic care, family conflict and the absence of a good relationship with either parent have all been shown to increase the risk of behaviour problems and subsequent juvenile offending (Farrington 1996; Yoshikawa 1994). These findings suggest that children are less likely to offend if their physical, emotional and social needs are met throughout childhood with protection from all forms of neglect, abuse or exploitation. The recommendations of the Kilbrandon Committee lead to the establishment in Scotland of the Children’s Hearing System, founded upon the Social Work (Scotland) Act 1968. The Children’s Hearing System remains substantially the same under the Children (Scotland) Act 1995. The Scottish Children’s Hearing system is founded upon the fundamental principle, expressed in the report of the Kilbrandon Committee, that measures to promote the welfare and best interests of children should be taken within a unified system of justice and welfare based on ‘needs’ rather than solely on ‘deeds’. Thus the ‘troubled’ and

‘troublesome’ were to be treated in accordance with a perception of their need for help and pursuit of their best interests.

The key component of the Scottish Children’s Hearing System is the office of the ‘Reporter’. The Reporter is an independent, locally based official who receives and investigates referrals concerning children in difficulty. All cases concerning children and young people are initially referred to the Reporter from a range of bodies including social work departments, the police and education authorities. The Reporter then has a duty to make an initial investigation before deciding what action, if any, is necessary in the child’s interest. The Reporter must decide whether referrals should be discharged with no further action;<sup>4</sup> whether they should be referred to a local authority social work department for whatever advice, guidance and assistance is needed;<sup>5</sup> or whether the case should be referred to a Children’s Hearing.<sup>6</sup> A decision to take ‘no further action’ implies only that there is no need for compulsory measures, rather than nothing is being done. The Reporter must either be satisfied that action is already being taken to meet the child’s needs (Kuennsberg 1997); or that the event which led to the referral is unlikely to be repeated; or the grounds of referral are simply not serious enough to raise any real concerns for the welfare of the child (Norrie 1997). If some form of compulsory action is required the Reporter must refer the case to a Children’s Hearing.

The Children’s Hearing is a lay tribunal composed of three members charged with making decisions on the needs of children. The lay panel includes male and female members who are selected to be representative of the community in terms of age, ethnicity and occupational background. The panel is concerned with the wider picture and the long-term welfare of the child and the measures it decides on are based on the best interests of the child. The grounds on which a child may be brought

before a Children's Hearing are set down in the Children (Scotland) Act 1995.<sup>7</sup> The main grounds for referral to a Children's Hearing are that: the child is in need, has offended or has been offended against, has truanted, has misused drugs or alcohol, has been physically, emotionally or sexually abused, has fallen into bad associations, is in moral danger, needs care and protection or the child is out of control. No distinction is made between children referred on an allegation that an offence has been committed and children referred on any of the other grounds. The Hearing can only proceed if guilt is admitted. If a child, or parent, denies the commission of an offence then the case is referred to the Sheriff court for the offence to be proved or disproved. If proved the child is referred back to the Children's Hearing to decide a future course of action. The Hearing's task is to decide on the measures of supervision which are in the best interests of the child. The Hearing takes account of all aspects of a child's conduct and not simply any offences that may have been committed. The panel considers findings from, amongst others, social workers, school officials, children's homes and psychiatrists. The panel also considers what other people have done, and failed to do, for the child; it recognises that the incident of an offence for which a child might be referred may be only one of several aspects involved in relation to a child's welfare (Hogg 1999).

Following a Children's Hearing a number of options are available; the referral can be discharged;<sup>8</sup> a supervision order may be made;<sup>9</sup> or the panel may make a residential supervision order requiring the child to live at home or some other specified address.<sup>10</sup> A supervision order can include a large range of conditions applicable to the child, including who the child is to live with, who they may have contact with and even secure accommodation can be authorised. A supervision order is flexible enough to be interpreted as a probation order, a community service order, a

reparation order, or any combination of these, depending on the precise circumstances of the child's case.

The Scottish system has won praise throughout the world for the relaxed and informal way in which it deals with children who have committed crimes (see King 1997; cf. Whyte 2003). The advantages of the Scottish youth justice system include its child-centeredness, its focus on welfare, the avowed avoidance of punishment and its holistic approach, looking beyond the deeds of young offenders to identify and address their needs and 'best interests' on an individual basis. The Scottish system provides an integrated system for dealing with children in difficulty whether they have been referred for reasons of allegedly committing an offence, non-attendance at school, or as victims of neglect or ill-treatment. The Scottish youth justice system appreciates that, while there will always be a need for the criminal justice system as a last resort, it is not reasonable to expect the criminal justice system to improve young people whose deviant attitudes and ways of life have been ingrained from an early age and are continually reinforced by their social situation (Hallett 2000). These are the features which the IPPR suggested were absent from the juvenile justice system in England and Wales.

This unified approach to tackling youth offending is also prevalent throughout Europe. For example the Scottish system is similar to the system in France where the 'juge des enfants' deals with both young offenders and children in need of care. In the next section I will examine the youth justice system in France.

### **C. YOUTH JUSTICE IN FRANCE**

In France the Order of 2<sup>nd</sup> February 1945 constitutes the fundamental text governing the penal code for juveniles. This law created a specialised jurisdiction

with a specific juvenile court judge (*juge des enfants*) who has jurisdiction over both civil and penal matters. Since that law of 1945 was passed, the judge tries to understand juvenile offending behaviour in the context of the juvenile's life; the offending behaviour is thus considered as a sign of a need to intervene. Because of the court's dual jurisdiction for 'children in need of care' and 'juvenile delinquents', the juvenile court judge is in an unparalleled position to identify and react to the risk/needs factors most often associated with young offenders. The '*juge des enfants*' undertakes the criminal investigation; orders social psychological and family studies; and integrates educational, occupational, medical and psychiatric services for the young person and their family. Most of the procedures involving children and young people take place in the informal settings of the chambers of the '*juge des enfants*' where the judge usually dispenses with the legal formalities which are obligatory with adults (Ely 1990). In France the view is that delinquency will be prevented, and the risks to vulnerable children reduced, if those condemned can keep or establish a place within conventional society (Blatier and Corrado 2001). Hence the juvenile court judge is charged with the task of facilitating the young persons' 'inclusion' into conventional life by bringing their influence to bear on the education, social work, leisure, housing and other relevant systems (Ely 1990).

The judge receives referrals from many sources: schools, social services, police, children's organisations, parents or even children themselves. While cases involving serious or persistent offending may be referred for trial (Garapon 1995), for the vast majority of cases the judge typically requests that a social and educational worker assess the family environment in which the youth is being raised (Investigation d'Orientation Educative). This inquiry focuses on the problem profile of the youth's family, the extent of the youth's criminal record, and the youth's school

behaviour. After this preliminary investigation the juvenile court judge has a wide range of options at his/her disposal to respond to the problem profile of the youth and the family. These options include, but are not limited to, placing the juvenile in a children's home (*jugement de garde*); appointing a social worker to assist the youth and family (*liberté surveillée*); placing the youth into the care of a special educational establishment where the child may be ordered to see a psychiatrist, psychologist or vocational guidance expert (*consultation d'orientation éducative*); placements in local activity schemes designed to steer adolescents away from opportunistic petty offences (*observation en milieu ouvert*); community service order for offenders between sixteen and eighteen years of age (*travail d'intérêt général*); or placing the youth in custody if necessary (*detention*) (Blatier and Corrado 2001). The most common outcome that results from the information provided to the juvenile court judge is Educative Action in an Open Environment (*Action Educative en Milieu Ouvert*). This order requires that the child live with the parent(s), and that the family meet regularly with a social worker. The social worker evaluates the young person and the family and draws up a plan. The social worker works directly with the young person to help them implement the plan. The situation is evaluated within six months after the order is issued to determine whether to extend or terminate the order. The focus is on evaluating the risk posed to the child if he remains within the family. Where it is deemed necessary, experts will also be consulted to assess the specific risk factors in health, mental health, and school. In addition, the juvenile court judge has the option of retaining the youth under the court's protective care until age twenty one. During this period, the judge considers the specific problems that are inhibiting the youth's ability to reintegrate into the community. The judge also has the authority to devise,



implement, and monitor a plan of intervention that can include, but is not limited to, foster care, special education, and training programs (Blatier 1999, 1998).

The French approach to juvenile crime is imaginative and flexible and could be a model for a humane and effective treatment for young offenders (Ely 1990). The French model has many advantages, it is based on informal procedures and powers that maximise the quantity and quality of information the judge is able to utilise in devising, implementing, and monitoring the outcome of individual cases. The French youth justice system places priority on understanding the juvenile's actions and offering therapeutic interventions rather than condemning the child. The aim is to take into consideration the personal situation of the juvenile in order to prevent further offending behaviour. The extraordinary powers of French 'juge des enfants' allows them to influence and direct access to state resources or programs. The youth court judge in conjunction with social workers acts at a critical moment of the young person's life "when destiny is still flexible" (Garapon 1995). The focus of judicial intervention is on the family, rather than on ascertaining the precise actions that have taken place and on characterising specific acts as criminal or as child abuse.

#### **D. CRITICISMS OF THE FRENCH AND SCOTTISH YOUTH JUSTICE SYSTEMS**

Many of the strengths of the French and Scottish systems can undermine their ability to deal effectively with young offenders. For example one of the strengths of the Scottish Children's Hearing System is its ability to provide a flexible and individualised response. However the effect of this is that similar deeds may be treated differentially on the basis of dissimilar needs. Consequently the systems offers the potential for individualised attention but without the strict proportionality associated with more formalised and exclusively justice based jurisdictions (Hallett et

al. 1998). Also the emphasis placed upon the co-operation of the young person in implementing supervision requirements can lead to the paradoxical position that if co-operation is not forthcoming, then it may be necessary to terminate the supervision requirement despite the fact that the offending behaviour might be serious (Hallett et al. 1998). The Children's Hearing needs to have more disposals to choose from, such as mediation, fines, attendance at alcohol or drugs awareness training or anger management programmes for example. Otherwise the Scottish system is failing to provide a broad range of effective disposals for the most problematic young people. The Scottish Executive is so concerned about the effectiveness of the Children's Hearing in dealing with persistent offenders that it has suggested the introduction of anti-social behaviour orders, parenting orders, electronic monitoring for under sixteen's, more secure accommodation places and the introduction of a Youth Court to 'fast track' young persistent offenders aged sixteen and seventeen years (Scottish Executive 2002a, 2002b).

Both the Scottish and French youth justice systems aim to encourage greater dialogue about what is in the best interests of a young person in an informal setting, freed from the constraints of the courtroom and formal legal rules of evidence and procedure.<sup>11</sup> However this welfare approach has not been universally acclaimed in its practical application. In the USA by the late 1960s serious concerns were emerging over its efficacy and the informality of the procedures accompanying its use. These doubts were reinforced by the United States Supreme Court decision In Re Gault<sup>12</sup> which condemned a system whereby juveniles could be subjected to long periods of detention in various forms of institutions without rights to due process, such as the right to counsel, rights against self-incrimination and other procedural protections automatically accorded to adult defendants in criminal trials. The Supreme Court held

that due process of law is the primary and indispensable foundation of individual freedom. Gault also highlighted a second failing of the welfare approach, namely the lack of proportionality and the potential for indeterminacy in disposals. The United States Supreme Court believed that an individualised welfare approach could lead to indeterminate sentences in the name of treatment, in circumstances where if an adult had committed the offences they would have been treated more leniently.

Although the Scottish system has won much international acclaim, the system is not perfect and has attracted the censure of many commentators (for example see United Nations Committee on the Rights of the Child 2002). By international standards the age of criminal responsibility in Scotland at age eight is very low. In practice the rate of prosecution of children in the criminal courts in Scotland is low (Hallett 2000). Nonetheless children as young as eight years apprehended for offending behaviour will be eligible for referral to the Children's Hearing System. If the offence is serious they may be prosecuted in a criminal court, provided the Lord Advocate has agreed with this course of action. Likewise by comparison with many European countries, the age of criminal majority in Scotland, at sixteen years, is low. This contrasts with most European countries where the age of criminal majority is fixed at eighteen and there is a growing tendency to extend the ambit of youth justice to include young adults (Dunkel 1996). Steps have been taken to redress the low age of criminal majority in Scotland, for example it is possible for young people already on a supervision order to be retained in the Children's Hearing System until the age of eighteen and the Criminal Procedure (Scotland) Act 1995 makes provision for adult courts to remit offenders under the age of eighteen to the Children's Hearing System for advice or disposal. However in practice for the majority of young people the supervision requirement is terminated at the age of sixteen and any subsequent

offences are dealt with in the adult courts (Kennedy & McIvor 1992) and the provisions of the Criminal Procedure (Scotland) Act 1995 are rarely used (Kennedy & McIvor 1992).

The Scottish Executive undertook a review of the youth justice system in Scotland and concluded that the Children's Hearing system was basically sound in its principles for dealing with young people who offend. Disturbingly the Executive found that due to gross under-resourcing the Children's Hearing system was incapable of responding to and meeting the needs of that minority of young people who persistently and seriously offend (Scottish Executive 2000). Furthermore Audit Scotland confirmed that the system was not well resourced either in terms of staffing or services for dealing with persistent offending (Audit Scotland 2002; also Scottish Executive 2002c). Audit Scotland found that 63 per cent of resources for youth justice were spent on reaching decisions and it recommended that the balance shift towards providing direct services for young people. Substantial investment in specialist provision is needed if the Children's Hearing system is to deal effectively with young people who are experiencing multiple difficulties and are persistent in offending.

Notwithstanding these criticisms, what is distinctive about the Scottish and French systems is their focus on children as vulnerable beings in need of assistance. In France and Scotland the prevention of delinquency and juvenile criminal activity is seen in relation to a general concern for the mental and physical health of children as a means of promoting in the long term the mental and physical health of the community. Both of these youth justice systems provide a multi-disciplinary assessment of the child, which looks beyond their offending behaviour to assess the nature of the intervention needed. All aspects of young people's lives are taken into consideration in an attempt to integrate them or include them in mainstream social,

economic and political life. This involves recognition of their social, employment, health, educational, housing and financial needs amongst other things. In the next section the youth justice system in England and Wales will be examined in order to assess whether it incorporates any of the features of the Scottish and French youth justice systems, and accordingly whether there is a need to legislate in order to ensure that resources of the right kind are available for young people who offend.

## **E. YOUTH JUSTICE IN ENGLAND AND WALES**

Since the 1990's policy responses to juvenile offending in England and Wales have been founded on the image of juvenile offenders as threatening and lawless as distinct from vulnerable, threatened and disadvantaged children (Goldson 1999). Young offenders have been conceptualised as violent predators warranting retribution, rather than as wayward children in need of a guiding hand. For example the Children Act 1989 removed from the juvenile court the power to order a young person into the care of a local authority.<sup>13</sup> Care and supervision orders can now only be made in the Family Proceedings Court, leaving the youth court to deal exclusively with criminal matters. The Criminal Justice and Public Order Act 1994 lowered the age at which children could be detained in custody for grave crimes such as manslaughter or other crimes of violence<sup>14</sup> from fourteen to ten years of age. The 1994 Act also introduced a range of measures which extended the courts remand and sentencing powers to younger offenders by introducing secure training orders for twelve-fourteen year old persistent offenders, increasing the maximum length of detention in a Young Offenders Institution from twelve to twenty-four months for fifteen-seventeen year olds and allowing the court to remand twelve-fourteen year olds. The Crime and Disorder Act 1998 reflects an ideological conviction in favour of punishment in which

more and more young people are brought within the criminal justice system for an ever growing range of criminal behaviour. Section 73(2)(b) of the 1998 Act gives the Secretary of State power to make custody available for children under the age of twelve and courts will be able to use it where necessary for the protection of the public from his further offending, whether or not the offences are serious. Section 130 of the Criminal Justice and Police Act 2001 grants the courts new powers to remand into secure accommodation persistent young offenders aged twelve-sixteen. Also the presumption of *doli incapax* was abolished by section 34 of the Crime and Disorder Act 1998, a measure that erodes the special protection historically afforded to children (Bandalli 1998a, 1998b) thus rendering English and Welsh children almost alone in Europe in being regarded as criminals at the age of ten.

In October 2002 the United Nations Committee on the Rights of the Child expressed continued concern that in England and Wales the treatment of children in conflict with the law has worsened. In particular the UN Committee were concerned that the age at which children enter the criminal justice system is low; that the principle of *doli incapax* was abolished; that an increasing number of children are being detained in custody at earlier ages for lesser offences and for longer sentences; that children between twelve and fourteen years of age are being deprived of their liberty; and that deprivation of liberty is not being used only as a measure of last resort and for the shortest appropriate period of time.<sup>15</sup>

If children are to be protected from the disastrous consequences of their offending behaviour, then juvenile offending prevention strategies have to be part of a much wider consideration of how justly life chances are distributed to our children. Youth justice cannot simply be about their just treatment within legal or formal systems of control, important though that may be, it has to be about the way life

chances and opportunities are provided for children. The IPPR stressed that securing the well-being of children, protecting them from all forms of harm and ensuring that their developmental needs are responded to appropriately, are all effective ways of inhibiting anti-social and offending tendencies. It is therefore imperative that general social policy provides a coherent and comprehensive welfare safety net so that vulnerable children are protected from the adverse environmental, familial and socio-economic circumstances that can encourage criminal behaviour (Arthur 2002). The IPPR believed that these objectives will only be achieved by the introduction of a wholly new youth justice system. It is on this latter point that I disagree with the IPPR.

I believe that tools needed for addressing the risk factors which predispose young people to offending behaviour are already in place; therefore it is not necessary to legislate in order to ensure that resources of the right kind are available to prevent juvenile offending. For example section 65 of the Crime and Disorder Act 1998 provides that a police officer can respond to a juvenile's first offence with a final warning depending on its seriousness. When a final warning is administered, the police officer is required to refer the young person to the local youth offending team for 'assessment'.<sup>16</sup> The youth offending team (YOT) comprises representatives from the police, probation, education and health authorities and the local authority. The YOT has primary responsibility for providing a multi-agency service for children and young people who are involved in offending behaviour and working with young offenders in order to prevent further offending,<sup>17</sup> thus guaranteeing that teams of trained professionals with specific disciplines work together to prevent youth offending. If the 'assessment' indicates the need for assistance, and the presumption is that it will (Home Office 1997a) the youth offending team will draw up a detailed

rehabilitation programme whose over-riding objective will be to prevent re-offending by addressing the causes of the young person's offending behaviour (Home Office 2000). Youth offending teams have taken the lead in creating schemes to provide purposeful and engaging activities to young people who have offended or are at risk of offending. Examples of such schemes include: Youth Inclusion Programmes (YIPs) which offer a structured and supervised environment to provide an alternative activity for young people who might otherwise become involved in crime; and Splash Schemes which aim to reduce offending in high crime areas by engaging thirteen-seventeen year olds in constructive and relevant activities during school holidays when they may otherwise be unoccupied and thus at risk of engaging in offending behaviour. Youth offending teams have also developed extensive 'Mentoring Programmes'. Many young offenders lack a stable adult presence in their lives, someone who is prepared to provide them with the advice and support they need as they face the challenges of growing up. Mentors can provide this support and show young people that there are alternatives to offending. By training and supporting adults to form relationships with young offenders, mentors can provide a healthy role model sometimes for the first time in a young person's life and offer advice on key areas of the young person's life such as family issues, education and training.

Parenting programmes are also an important tool available to youth offending teams. Parenting orders are an initiative, introduced in the Crime and Disorder Act 1998, which involve the court ordering parents of children convicted of an offence to go on corrective courses to learn to keep their children out of trouble, exert control and authority over their children (including operating curfews where appropriate) and ensure their school attendance. The relevant condition that has to be satisfied is that the parenting order would have to be desirable in the interests of preventing any



repetition of the kind of behaviour which led to the order being made and the prevention of further offending by the child or young person. The parenting courses cover experiences of parenting, communication and negotiation skills, parenting styles and the importance of consistency, praise and rewards. The aim of the order is to help support and encourage parents to address the child's anti-social and offending behaviour and to prevent offending. Should a parent fail to comply with the requirements of the order they may be returned to court and will be liable on summary conviction to a fine not exceeding £1000. Developing the skills of parents to deal with difficult and challenging behaviour of their children can be vital in restoring family relationships and providing the structure and support that a young person requires to change their behaviour and desist from further offending behaviour. While the supportive aspects of the parenting order are attractive, it is surely questionable that using compulsion and the threat of fines and imprisonment will change the behaviour of parents and their children (Arthur 2002; Gelsthorpe and Morris 1999; Henricson et al. 2000; Hope 1998). However the parenting courses have proved so popular that some YOTs are offering them on a voluntary basis, in fact about 60 per cent of participants are voluntary rather than on orders (Youth Justice Board 2002a).

ASSET is the assessment profile that the Youth Justice Board has developed with the Centre for Criminological Research, Oxford University for use with all young people who enter and leave the youth justice system. ASSET allows YOTs to assess the needs of young people and to match these needs with appropriate intervention programmes. ASSET provides a structured, comprehensive and consistent means of assessing the needs of young people and the risk of their re-offending or causing harm to themselves or others. The profile covers all areas of the young person's life linked to their offending behaviour, including: living

arrangements, family and personal relationships, education, employment and training, lifestyle, substance abuse, physical health, emotional and mental health and cognitive and behavioural development. The main function of ASSET is to identify needs before interventions are planned and implemented (Audit Commission 2004).

Youth offending teams are thus offering a large selection of youth crime prevention programmes which aim to tackle juvenile offending behaviour at the different stages of its development. YOTs are capable of acting speedily and effectively to prevent young people from offending by providing help with their physical and mental welfare and any family problems they may be experiencing. The Youth Court also has a number of sentencing options available which aim to respond to the needs of young people in trouble. For example the Youth Justice and Criminal Evidence Act 1999 introduced a new primary sentencing disposal – the referral order – for ten-seventeen year olds pleading guilty and convicted for the first time. The disposal involves referring the young offender to a youth offender panel (YOP). The youth offender panel includes lay members from the community and one member of a local youth offending team. The YOP provides a forum where the young offender, members of his family and, if appropriate, the victim can consider the circumstances surrounding the offence and the effect on the victim. The youth offender panel then establishes a ‘programme of behaviour’ with the young offender to address his offending behaviour which the child will be obliged to observe. The programme of behaviour can include: financial or other reparation to the victim; mediation with the victim; unpaid work or service in the community; attendance at school, educational establishment or work; participation in specified activities such as alcohol or drug treatment, counselling, courses addressing offending behaviour; or education or training. The principal aim of the programme of behaviour is the prevention of re-

offending by the child.<sup>18</sup> Part III of the Powers of Criminal Courts (Sentencing) Act 2000 provides that the referral order is to become the standard sentence imposed by the Youth Courts, or other Magistrate Court, for all first time offenders under the age of eighteen unless their offending is so serious that it warrants custody or the court orders an absolute discharge or makes a hospital order. An eighteen-month evaluation of referral orders in eleven pilot areas in England and Wales in 2001 found that most youth offender panels had established themselves as deliberative and participatory forums in which the central parties felt able to participate (Newburn et al. 2002).<sup>19</sup> Furthermore the research found that in 70 per cent of observed panels young offenders acknowledge full responsibility for their offending. Most of the young people interviewed, and their parents, were positive about the experience of the referral order, they believed that it gave them a chance to speak for themselves; think about their actions and the impact of their offending on others. In fact young people completed the contract successfully in 74 per cent of cases where a panel met. The victims' experience of the panel meetings was also overwhelmingly positive. Most victims (70 per cent) felt that the panel had taken account of what they had said when deciding what should be done. By the end of the panel meeting the majority of victims (69 per cent) felt that the offender had a proper understanding of the harm that had been caused.

Although the Children Act 1989 removed from the youth court the power to order a young person into the care of a local authority,<sup>20</sup> it is still possible for a juvenile offender whose home circumstances are thought to contribute to offending to be placed in local authority accommodation. A supervision order can be made in relation to an offender aged ten-seventeen years old found guilty of any offence other than an offence of murder.<sup>21</sup> The effect of the supervision order is to place the young

offender under the supervision of a local authority, probation officer or member of the youth offending team, whose duty is to “advise, assist and befriend the supervised person.”<sup>22</sup> Programmes designed to address the offending behaviour will be undertaken, for example the supervision order may require the young person to remain for specified periods at a specified place, to refrain from participating in specified activities, to submit to medical or psychiatric treatment, to make reparation (provided the victim consents to this),<sup>23</sup> or require the young offender to live in local authority accommodation (known as a ‘residence requirement’).<sup>24</sup> The requirement to reside in local authority accommodation was introduced by the Children Act to replace the courts’ previous power to make a care order in criminal proceedings.<sup>25</sup> The intention was to retain some provision for removing a child from home for a limited period in order to provide an opportunity for both the young person and their family to address any specific issues which are giving rise to offending. The residence requirement represents an acknowledgment of the close relationship between ensuring the welfare of the child and addressing juvenile offending behaviour. Its purpose is not punitive;

“it is designed to help a young person to work through his problems. A young person’s circumstances may contribute to his offending: for example, he may be living rough and stealing to survive; he may have experienced a lack of parental control; or his life at home may be unsatisfactory in other respects ... It therefore follows that the role [of those who are] responsible for him must be to care for and assist him” (Department of Health 1991).

The supervision order is designed to cater for a complexity of criminogenic needs and to provide a response for high tariff offending. In general, the supervision order is appropriate “when an ... extended period of supervision is required because of the frequency or seriousness of the offending. It should ... tackle the full range of offender needs associated with offending” (Youth Justice Board 2002c).

The youth court also has the option of making an action plan order,<sup>26</sup> a reparation order<sup>27</sup> or an attendance centre order<sup>28</sup> if the court considers that to do so will prevent re-offending or rehabilitate the offender. These orders will require the offender to, respectively, comply with a three month action plan supervised by a probation officer, a social worker or a member of a youth offending team; to make specified reparation to the victim(s) of his or her offence; or to attend a local centre for a maximum of three hours per day where they will receive instruction on social skills and physical training.

It is evident that a considerable range of initiatives intended to discourage juvenile antisocial and offending behaviour have been introduced, together with a growing understanding of the parameters and requirements of appropriate provision to meet the individual and diverse needs of young people who engage in antisocial and offending behaviour. In England and Wales, similar to the Scottish and French examples examined, there exists a legislative framework which has the power to assess the nature of intervention needed by juvenile offenders and which has the authority to require that appropriate welfare or support services be provided. How far the youth crime preventive aspects of the Crime and Disorder Act and the other programmes described in this article will fulfil these aspirations will depend on the resources made available, the kind of policies and programmes developed and how the services are delivered. However the evidence suggests that adopting a holistic response to youth crime is a low priority (Wiles et al. 1999). The Scottish and French approaches to youth crime are underpinned by a philosophy of treatment that removes any lingering distinction between children who offend and those who need care and protection. The causes of offending and deprivation are seen as the same; both types of children suffer from essentially the same problems and have the same treatment

needs. In contrast from the 1990s onwards in England policy responses to youth offending have become predicated upon a conceptualisation of a demonised and menacing youth as distinct from a child in need (Goldson 1999). This trend reached fever pitch after the tragic murder of James Bulger in February 1993 when the then Prime Minister, John Major, declared that ‘society needs to condemn a little more and understand a little less’.<sup>29</sup> The significance of John Major’s statement was profound in signalling the shape that subsequent developments in policy and legislation would take. This harsh stance set the tone for refocusing policy and practice in relation to children in trouble upon punishment, retribution and the wholesale incarceration of children.

New Labour, with its focus on individual and parental responsibility and its desire to cement its position on the law and order high ground has continued this trend (Muncie 1999). Legislation introduced since 1997 continues to reflect an ideological conviction in favour of punishment in which more and more people, including children, are brought within the criminal justice system for an ever-growing range of criminal behaviour. This stance is indicative of the Labour government’s avowed attempt to ‘talk tough on crime’ (Goldson 1999). Consequently the innovative initiatives introduced in the Crime and Disorder Act 1998 are not prioritised, are under-resourced and are being implemented partially. For example, for the period 2002-2005 the Youth Justice Board plans to spend just 0.28 per cent of their total budget on directing young people at risk of offending to mainstream services; a further paltry 0.83 per cent of their budget for this three year period is allocated to reducing the number of young people who offend (Youth Justice Board 2002b). The effect of this budget allocation is that the youth crime prevention schemes described in this article are being developed and implemented in a piecemeal and incremental

fashion. In 2002 there were 150 Splash schemes in operation throughout England and Wales. The Youth Justice Board is currently funding about eighty-four mentoring programmes, of which thirty-four are intensive mentoring for minority ethnic and other hard to reach young people and the remainder are mentoring help with literacy and numeracy. Only 1.11 per cent of the total budget for the next three years will be allocated to these projects. There are seventy Youth Inclusion Programmes, all of which have been guaranteed funding until March 2006. Yet the Chairman of the Youth Justice Board, Lord Warner, conceded that to have a real impact on youth crime prevention more than three hundred of such schemes were needed across England and Wales (Warner 2002). Lord Warner also highlighted the need for three times as many parenting courses as have been offered up to now.

The youth justice system as it stands is not perfect, however it is not the youth justice system itself that is failing as the IPPR have suggested. Rather, the failing in the current system is in the application and operation of legislative provisions. As a result of low political priority and a lack of resources, effective social programmes to provide necessary support for young offenders are not being adequately developed.

## **F. CONCLUSION**

A thought from Tolstoy's 'Resurrection', written in 1854, seems to be as relevant today as it was then;

"It is quite obvious this is no extraordinary villain but just an ordinary person ... and that he became what he is simply because he found himself in circumstances which create such people. And so it seems obvious that if we don't want lads like this we must try to wipe out the conditions that produce such unfortunate individuals."<sup>30</sup>

This article has demonstrated that many of the tools for addressing the risk factors which predispose young people to offending behaviour are already in place in

England and Wales. The youth justice system represents potentially a very responsive and effective framework for preventing juvenile offending. There is no need for the development of a new system to tackle juvenile offending behaviour as the IPPR recommended. What is required is a fundamental rethink about the way in which resources for crime prevention are allocated. If the government is serious about tackling juvenile offending behaviour then resources must be allocated to intervene positively in young people's lives to prevent them engaging in offending behaviour. Without such an agenda all that is left is a series of ad hoc, short term and low financial initiatives which may provide some temporary relief for a few, but leave the majority of marginalized youth untouched, unsupported and vulnerable to criminalisation.

If the youth justice system is ever to accomplish its primary aim of “prevent[ing] offending by children and young people”<sup>31</sup> ways need to be developed which target young people who are in danger of becoming offenders long before they fall into this category and therefore prevent young people from coming into the courts or to the attention of YOTs in the first place. Preventing young people from ever offending could have a greater impact on the level of youth crime than any changes to the youth justice system; preventing youth crime offers the prospect of reduced pressure on the resources of the youth justice system, an end to overcrowding in young offenders institutions and fewer young offenders leading adult lives damaged by their early involvement in crime and the criminal justice system. Without this realisation we are doomed to repeat flawed youth justice policies time and again while ignoring promising opportunities for the next generation.



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## NOTES

<sup>1</sup> Crime and Disorder Act 1998: section 37

<sup>2</sup> Ibid.: para. 72

<sup>3</sup> Kilbrandon Committee HMSO 1964: para. 251

<sup>4</sup> Children (Scotland) Act 1995: section 56(4)(a)

<sup>5</sup> Ibid.: section 56(4)(b)

<sup>6</sup> Ibid.: section 56(6)(b)

<sup>7</sup> Ibid.: section 52

<sup>8</sup> Ibid.: section 69

<sup>9</sup> Ibid.: section 70

<sup>10</sup> Ibid.

<sup>11</sup> Kilbrandon Committee 1964: para. 74. The juvenile judge is charged with the task of facilitating the young persons' 'inclusion' into conventional life by bringing their influence to bear on the education, social work, leisure, housing and other relevant systems (Ely 1990).

<sup>12</sup> 387 US 1 (1967). See also Kent v United States 383 US 554 (1966)

<sup>13</sup> Children Act 1989: sections 90(1) and (2) respectively repealed Children and Young Persons Act 1969: section 1(2)(f) and section 7(7).

<sup>14</sup> Under Children and Young Persons Act 1933: section 53(2), now repealed and re-enacted in the Powers of Criminal Courts Act 2000: sections 90-92

<sup>15</sup> United Nations Committee on the Rights of the Child 2002: para. 59

<sup>16</sup> Crime and Disorder Act 1998: section 66(1)

<sup>17</sup> Crime and Disorder Act 1998: section 41

<sup>18</sup> Crime and Disorder Act 1998: section 8(1)

<sup>19</sup> This evaluation examined the implementation processes and the impact of referral orders on the agencies and individuals involved and on sentencing and re-offending between March 2001 and August 2001

<sup>20</sup> Children Act 1989: sections 90(1) and (2) respectively repealed Children and Young Persons Act 1969: section 1(2)(f) and section 7(7).

<sup>21</sup> Children and Young Person Act 1969: section 7(7)(b)

<sup>22</sup> Children and Young Persons Act 1969: section 14. Also Powers of Criminal Courts (Sentencing) Act 2000: sections 63-68

<sup>23</sup> Crime and Disorder Act 1998: section 71 strengthens the supervision order by enabling conditions requiring reparation to the victim of the offence or to the community at large to be attached as part of the order.

<sup>24</sup> Children and Young Person Act 1969: section 12AA, as inserted by Children Act 1989: Schedule 12, para. 23.

<sup>25</sup> Under Children and Young Persons Act 1969: section 1(2)(f) and section 7(7)

<sup>26</sup> Re-enacted in Powers of Criminal Courts (Sentencing) Act 2000: section 69

<sup>27</sup> Powers of Criminal Courts (Sentencing) Act 2000: sections 73-75

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<sup>28</sup> Powers of Criminal Courts (Sentencing) Act 2000: section 60

<sup>29</sup> Daily Mail, 22 February 1993

<sup>30</sup> Crime and Disorder Act 1998: section 37

<sup>31</sup> TOLSTOY, L.E. (1854) Resurrection pp.166-167

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