

Making sense of the melting pot: multiple discourses in youth justice policy

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Abstract

The paper proposes a framework for politically-informed analysis of policy processes, to enhance understanding of the inconsistencies of youth justice policies. It begins from the importance of political discourse and argues that multiple discourses reflect political tensions which produce inconsistency. It focuses on the punitive detention of young people, and the paradoxical disjunctures between policy and practice in the 1980s. A second example concerns young people's rights. These analyses highlight the importance of theorising differences between the rhetorical, the codificational and the implementational modes of the policy process, particularly with regard to governance, and the power of front-line staff.

Key words: discourse, policy process, detention, rights

Introduction

If New Labour's youth justice policies in England and Wales are, as many suggest, 'a melting-pot of contradictions, ideas and ideologies which may militate against each other' (Gelsthorpe and Morris, 2002: 247; see also Fionda, 1999; Muncie, 1999), understanding the sources of their heterogeneity and the processes of their implementation are necessary

precursors to making sense of the inconsistencies they embody. This requires attention to policy making and policy implementation as related processes that are fundamentally political in character. There is of course no shortage of broadly political analyses of crime control (e.g. Newburn and Sparks (2003) (eds)). But there is very little available by way of political analysis of the policy processes of criminal justice. Nor has any coherent theoretical framework for such an analysis been applied.

The principal purpose of this paper is to propose such a framework, and to point the ways in which its political grounding might enhance understanding of the inconsistencies and contradictions of accumulated youth justice policies. The paper begins from the importance of political discourse and argues that multiple discourses reflect political tensions capable of producing significant inconsistencies and direct contradictions between policies. It then offers a brief reflection on one aspect of the early years of New Labour's youth crime prevention policies. Two specific examples are considered. The first concerns policies determining the punitive detention of young people, and focuses especially on the paradoxical disjunctures between policy and practice in the 1980s. This example provides a particularly fruitful illustration of the gaps between rhetoric, policy and practice that opens up other important questions about understanding policy processes in youth justice. The second example concerns policies determining young people's rights. This brings out tensions between different political positions on rights. In the course of these analyses, it is argued that discourses must also be understood in ways that recognise crucial differences between the rhetorical, the codificational and the implementational modes of the policy process, particularly with regard to power in general and the powers of quasi-autonomous front-line staff in particular.

Political discourse and policy

The most obvious and widely recognised example of contradictory discourses in youth justice concern the uneasy co-existence of policies inspired by welfare on the one hand and justice on the other that grew out of the post-war welfare settlement (R.Smith, 2005) and that still underpin so many of the workings of the youth justice system. Contemporary observers identify the ambivalent and ambiguous character of New Labour's copious youth justice policies, insofar as they advance, qualify or are actively inimical to foundational principles of welfare (Goldson, 2000). Fewer recognise the depth of the ideological and discursive tensions between welfare and justice.

A range of key discourses much wider than those that capture the welfare-justice binary has much to offer here. Muncie and Hughes (2002) list them as 'welfare paternalism, justice and rights, responsabilisation, remoralisation, authoritarianism and managerialism' (16). Discourses are closely associated with political-philosophical traditions. The significance of these associations is easily underestimated, even where it is acknowledged. The justice lobby, for example, derives much of its vigour from liberal political theory; authoritarianism owes its political-philosophical force to conservatism; and so on. Ignoring these connections isolates the discourse from its antecedents, and overlooks the centrality of ideas and social values to discourses, and the policies they influence.

Discourses that underpin contemporary youth justice policies are also clustered in ways that are important to making sense of the policies that flow from them. Authoritarianism and remoralisation, for example, are quite distinct policy drivers in post war youth justice policies but they share roots in conservatism. The logic that gives the state the right to punish and to

incarcerate young people aged twelve and above (in England and Wales at least) also imposes on it the duty to pursue their moral improvement. In traditional conservatism, the god-given hierarchical position that allows those in power the authority to secure social order makes reciprocal demands on the privileged guardians of the natural order to act in ways that are capable of restoring miscreants to salvation. Post-war one-nation conservatism gave considerable precedence to the duties of office that manifested themselves more as paternalism than as salvationism – making conservatism a key ingredient in the interventionist welfarism of New Labour. The more recent neo-conservatism of the political right takes authoritarianism and remoralisation back in the direction of ‘traditional conservatism’ but with a tough modern edge that legitimises inequality, and asserts the existence of evil and innate tendencies to wrong-doing against which states must protect their subjects, as per the ‘new punitiveness’ (Pratt et al., 2005)). Seen in this context authoritarianism and remoralisation take on a different, connected, hue.

By similarly grounding other discourses in their political-philosophical origins they assume far greater resonance, not just as guiding policy principles, but as realisations of more profound projects that are intensely political. So discourses of responsabilisation and of managerialism both have important historical traces to neo-liberalism, in terms of the primacy of the individual, the competitive pursuit of efficiency and excellence, the reward of enterprise, the consequences of indolence etc. There are also strong connections with the classical liberalism of the justice movement. A human rights discourse shares some links with the welfare half of the welfare-paternalism coupling, grounded as it is in social democratic thinking but also in other more radical traditions of the left.

The fundamental nature of the tensions and disjunctures between these discourses is shown in much sharper relief when they are grounded in this way. Responsibilisation and authoritarianism, for example, have diametrically opposed understandings, at root, of the fundamental sources of sanctioned or miscreant conduct, and of the bases of human motivation and social responsibility through which it might be corrected. The pursuit of welfarist objectives through managerialist means evokes critical contradictions in the values underpinning means and ends. Quite elementary differences separate the understanding of rights that is the wellspring of liberal justice from that of human rights discourse. And so on.

There has also been a tendency to associate particular discourses with particular 'eras', the post war period being archetypally that of welfarism, the 1980s justice-driven, the present period characterised by managerialism, and so on. Clarke (2007) draws attention to Williams' (1965) insistence that epochal classifications of social formations should be viewed sceptically, and never supplant the principles of authentic historical analysis; and Clarke himself cautions against dominant formations being seen as unitary or static at any historical moment. Exactly the same logic can be applied to discourses. More often than not, more than one discourse can be detected in the rationale for a policy shift or a new piece of legislation. Different elements of the policy or legislation derive from different discourses. Welfare-paternalist interventions may have reserve punitive authoritarian teeth (often identified as 'care and control') to keep miscreants actively within the reformatory frame, for instance. Highly managerialist policies may serve to delimit the inroads of policy into the rights of children by dint of their propensity to monitor outcomes thoroughly.

There is an even more significant reason to caution against over-ready classification of policies as falling within a single discursive framework. This teases apart the constituent

elements of what policies are and how they are presented, applied and enacted, in ways that do not take any aspect of policy at face value. It recognises that no party has unique or extensive control over all stages of the legislative-policy nexus. A wide range of factors from perverse media interpretation to highly localised subversion by practitioners is constantly in play. It also recognises that the architects of reforms are entirely capable of presenting them in one way, applying them in another and evaluating them in a third. What constitutes the 'essence' of the policy is unclear. Any of its bureaucratic framing, how it is imagined by the public for which it is intended, its diffuse impact on the ground, or the managerial summation of its effects can lay claim to being the 'reality' of the policy. And each, it is important to note, may reflect a distinctive discursive association.

Levels of policy and multiple discourses

Newburn's (2002) analysis of youth justice measures under New Labour's first term of office concludes: 'As in so much that is New Labour, the contemporary politics of youth crime prevention has a tricky balancing act at its heart.' (460). One way of understanding this would be to emphasize his distinction between tough talk and enlightened practices (453). Clearly, how governments present policy rhetorically, how they codify it, and how those policies are played out in practice are critically different facets of the policy process, not least because they are under the direct influence of different people with differing priorities. If we take this interpretation, policy contradictions may be less matters of substance or inconsistencies, and more matters of what has to be presented publicly to be politically acceptable; of what can be enshrined in policy directives which are open to public scrutiny; and of how policy and legal prescription are interpreted through the practice knowledge bases of youth justice workers, police officers, magistrates, and so on. Put simply, the distinctions between policy as rhetoric, policy as codification and policy as the 'lived experience' of

implementation are not just different levels but different modes of policy. On this view, inconsistency is inevitable because the same policies are constituted differently, through different process and different categories of actors in these different modes. But even within each mode, differences are to be expected rather than explained away. To the extent that administrations like those of New Labour are overtly indifferent to the philosophical grounding of their projects, and equally overtly driven by pragmatic ‘what works’ and ‘evidence led’ approaches (D.Smith, 2006), inconsistency measured against the benchmarks of political discourse serves as a badge of working ‘beyond ideology’.

Do these different modes of the policy process (the rhetorical, the codificational, the implementational) correspond to different discourses? At the level of rhetoric, it is now fairly commonplace to note that New Labour’s high-profile pronouncements about being ‘tough on crime’ and tackling antisocial behaviour correspond closely to the authoritarianism of the preceding administration (Muncie, 1999). They also correspond to a re-moralization discourse which envisages correction and betterment. But the primary rhetorical response to anti-social behaviour draws on discourses of responsabilisation that give priority to instilling self-management in miscreants, amid notions of empowering embattled communities. Politically these discourses have different provenances. Authoritarianism and remoralisation have distinctively conservative origins grounded in hierarchy, position and behavioural codes, while responsabilisation has an unmistakably neo-liberal hue that gives primacy to both the freedom of the individual and his or her responsibility to facilitate the equal freedom of others. Even at the rhetorical level, then, there is both a call on identifiably politically grounded values, and some hybridisation of the sources of those values.

In implementation mode, though, New Labour's affinity for managerialism appears dominant. It is famously directly influenced by the work of the Audit Commission (1996) and heavily inflected by the corporatism of the 1980s (Pratt, 1989). The Youth Justice Board's highly bureaucratized processes of monitoring epitomise managerialism. Its standardisation of risk assessments and its pursuit of accountability, efficiency and value-for-money are totemic (McLaughlin, Muncie and Hughes, 2001). Policies of crime prevention/reduction in particular are activated through managerialism. Actuarialism, the overt insistence on evidence-based policy making, the analysis of statistical data capable of showing patterns of association between offending behaviour and risk factors, the importance of assessing outcomes against variables – all call for the core tools and procedures of managerialism. Once patterns of association and 'predictors' of offending behaviour have been established, it follows that targets need to be set (e.g. time reductions, fast tracking), their attainment needs to be checked, and the theorems of prediction need to be refined in the light of new evidence. The installation of coherent systems, and all the instruments and procedures associated with them (e.g. ASSET standardisation), then become essential. Arguably, this element of a 'crime science' approach to prevention (see for example Laycock, 2005) is only attainable through processes of managerialism.

Pragmatism, demonstrating *that* a strategy works, rather than *why* it works, still less what its political-philosophical origins might be, is what counts. Seen in this light, managerialism is a contentless tool-box which takes its ideological orders from above, or from those who have their hands on the tools, from supra-local managers to case workers. And however much the capabilities, limitations and blind-sides of its techniques embody predispositions to one mode of understanding over another, they do not of themselves contain that understanding. As Muncie and Hughes (2002) argue, managerialism has a kind of

ideological neutrality in that it 'lacks any higher purpose' (16) than its own technocratic objectives. Arguably, the predominant and most significant transformation of the practices of youth justice workers has been to put managerialism at the centre, and thus to manage practice around a set of tools and procedures that is, discursively speaking, polyvalent: that is, it can adopt the ideological complexion of its prevailing environment, in variable and adaptive ways, that mask its political character and origins.

This characterisation of managerialism opens up a quite critical set of possibilities for the co-existence of policy and legislation that are founded in ostensibly contradictory discourses. Newburn (2002) argues that there is indeed more than one face to managerialism, and points to a system which has produced an 'organizationally more creative and coherent environment, and one that is significantly better funded, and therefore potentially better placed to deliver necessary services'(460). So for example, many of the now extensive and ostensibly conservative-authoritarian Orders which arose in New Labour's first term could be read as having a predominantly welfarist-paternalist slant. The powers to require more active parental intervention, or the concern they represent for child safety/support, expressed through the work of the Social Exclusion Unit, both speak to this. Here, then, highly regulated (managerialist) intervention and the well-being and protection of vulnerable, disorderly or offending young people seem to converge. But another face of the state is presented if the active requirement to provide/accept welfare is refused. Non-compliance with some Orders (now 'Opportunities') potentially escalates mildly miscreant (antisocial) behaviour from civil to criminal status, with long periods of imprisonment allowable in some instances. 'Support' of this sort depends on prior criminalisation or at least on prejudicial actuarial predictions of propensity to offend, as envisaged in the Action Plan (Social Exclusion Task Force, 2006) and in Blair's (2006) speech in which it was trailed, which

draws heavily upon the risk-factor analyses of Farrington (2006). Here, the need for a managerialist set of devices to ‘have teeth’ appears to result in a switch-over from a welfare-paternalist to an authoritarian-punitive approach. Walters and Woodward’s (2007) analysis of the application of parenting orders in Scotland similarly focuses on the policy slippage between the rhetoric of voluntarism and inclusiveness and the punitive and retributive approaches of implementation.

So not only is managerialism itself capable of absorbing or manifesting different political-discursive roots, there are clear indications from this brief survey that different modes or levels within one policy area are also capable of reflecting different discourses with dissonant political-philosophical provenances. In other words, understanding policies and the sources of their complexity and contradictions entails two sets of considerations. The first is the ideas and values which inform policies, notably those that constitute coherent clusters, in the form of discourses with identifiable political-philosophical origins. The second is the differing modes of policy broadly classified as rhetorical, codificational and implementational. How these two frameworks intersect is critical to a deep understanding of policy. Each is of limited value without the other. Which discourse is in play depends upon which mode is being considered: policies are not monolithic, they do not have invariant ‘essences’ that fix them regardless of whether we are considering how they are proposed, how they are captured in directives, or how they are implemented. Equally, recognising the crucial distinction between these modes does not in itself explain anything: it is the nature and origins of the driving ideas and values held by different groups of actors that begins to make sense of differences in the ‘direction of travel’ in different policy modes.

So far, the emphasis has been on discourses as sources of ideas and values. A clearer understanding is also needed of the distinctions between the modes regarding the complexities of the policy process from conception to implementation. Before we consider these distinctions, a specific example of a policy area will illustrate these modes and their intersection with differing discourses.

Punitive detention: multiple discourses, multiple modes, multiple actors

The development of policies concerning the punitive detention of children offers telling examples of multiple discourses in different modes of the policy process. It is most readily identified with a discourse of authoritarianism (see e.g. Goldson, 2002a; Goldson and Coles, 2005). On this view the state acts to assert its right to uphold certain values and standards of expected behaviour by removing those who do not conform: as a punishment exacting societal vengeance, as retribution and as a deterrent. The protection of society from the ill-effects of offending is achieved by imprisonment. However, the use of incarceration is not solely to be explained in terms of this discourse. There are strong elements of a particularly paternalistic welfarist discourse in play at some junctures; and remoralisation and responsabilisation also exert some influence, as evidenced for example by the Detention and Training Order, currently the main custodial sentence in England and Wales.

Of particular interest here is how the influence of different discourses is visible in different contexts within the same policy determinations. In which manifestations does authoritarianism or welfarism prevail? What facets of policy reflect its most authentic discursive complexion? Goldson's (2002a) analysis highlights some remarkable paradoxes in the deployment of discourses that suit the climate of the moment. During the period of high Thatcherism, the infamously 'law-and-order'-driven Conservative party, elected on

commitments to punitive measures and tough sentencing for juveniles, presided over 'one of the most remarkably progressive periods of juvenile justice policy' (Rutherford, 1995). Goldson identifies three causes of the near-decimation of the rate of custodial sentences imposed on juveniles between 1981 and 1990. Two are ostensibly outwith the political process. Academic research confirmed the counterproductive effects of incarcerating children. Professional practice made innovative explorations of programmes of diversion and decarceration. But the third political ingredient was critical: the imperative to reduce public spending as part of the economic liberalisation of cutting personal taxation. Successive legislation and Home Office directives between 1982 and 1991 bore down upon custodial sentencing and provided unequivocal support for the development of cautioning initiatives to divert children from the formal criminal justice process.

Equally transparently political was the reversal of the decarcerative policy trend. The recession of the early 90s brought high youth unemployment, concerns about joyriding and a range of other high-profile youthful misdemeanours. But the reversal owed most to a volatile climate in which fears grew about immigration, the rise of victim movements, and the growth of a US-driven global trend towards increased punitiveness (see O'Malley, 1999) - and the emergence of New Labour ready to appropriate the Conservatives' law and order mantle as Conservative popularity in the polls fell. The reversal of policy to reclaim a threatened political position was palpable in the demonisation of persistent young offenders following the murder of James Bulger, but it was clearest in the Secure Training Orders of the 1994 Criminal Justice and Public Order Act, which reversed almost a century of reform by allowing the incarceration of 12-14 year olds.

It would be an error to infer that Conservative ministers had become converted from punitive-authoritarian discourses to welfare-paternalism. Though welfare concerns were central to one-nation sections of the Conservative Party, the dominant discourse was that of managerialism, and its prioritisation of economy and cost-efficiency. But as Goldson (2002a) notes, the reinvigoration of what he terms ‘the punitive politic’ is also inflected with strong traces of re-moralisation and responsabilisation, much of it informed by an inappropriate and unadjusted application of adult standards of responsible and moral behaviour.

Goldson’s (2002a) review of the first term of New Labour finds it facing two ways, manifesting both a punitive edge (with clear authoritarian undertones) and a more benign representation of ‘constructive custody’, for example through Detention and Training Orders. ‘New Labour double-speak’, he argues, ‘is thus applied to the practices of child incarceration in such a way that it can switch interchangeably between ‘tough’ punitive authoritarianism and a more ‘modernised’ benign child-centeredness in order to suit the political moment.’ (394). The expansion and diversification of the juvenile secure estate is, in Goldson’s view, ‘not an alternative to new punitiveness but a peculiar expression of it.’ (395)

Three telling issues emerge from this brief overview. Goldson’s analysis of Conservative and Labour administrations alike strongly supports Newburn’s (2002) claims that there are significant distinctions between the rhetoric of policy, how it is encoded, and how it is enacted. On the face of it, both parties have been tougher in rhetoric than in legislation. Conservative ‘tough on crime’ rhetoric was realised as its very antithesis for part of this period. Labour’s too had a benign edge. But there were also major disjunctures between legislation and practice. During the decarcerative period professional discretion apparently accounted for far more diversionary sentencing than legislation or Home Office

edict stipulated. Over a decade later, however committed New Labour's welfarist intentions, incarceration has increased, not least through privatised provision of secure places (Goldson, 2002b). Different discourses best describe different facets of the same substantive policy.

The second issue concerns the reversal of this 'punitive paradox'. In secure conditions (economic cycle, employment trends, executive power, and electoral advantage) the Conservative government was confident in relaxing its devotion to authoritarian discourses, in order to give sway to its managerial priorities of enhanced economic efficiency and reduced public spending. But there is much to suggest that New Labour has elevated managerialism to a far more central position in its discursive lexicon than did its predecessors (Clarke and Newman, 1997; Clarke et al., 2000). How then is it possible to explain New Labour's obverse devotion to custodial sentences over diversionary and other non-custodial dispositions, when this priority offends against managerial pre-occupations with economy?

The third issue is of potentially major significance. It goes beyond taking the influence and purchase of competing discourses at face value, and beyond identifying contradictions. Instead it recognises that there are many different sources of dominant discourses, and, crucially, it envisages much more heterogeneous, dispersed and differentially networked multiple groups of active agents. This approach has considerably less difficulty in explaining the central paradox of the decarcerative effects of the 1980s authoritarian 'tough on crime' Conservative administration. It sees quasi-autonomous professionals, magistrates and youth justice workers as a distinctive force in their own right. This is not a force that can take control of policy and enact it as it, collectively, wishes. But it is a force that can find the fault-lines of policy, or exploit conjunctural opportunities to gain greater influence when the opportunity arises, for example by reacting against sentencing guidelines. For political-

economic reasons, the framing of policy was, for a period during the 1980s, much more ready than is generally the case to accede powers for disposals of young offenders that would normally be tightly circumscribed. Put simply, it suited a political grouping that was (rhetorically) committed to tough sentencing to give practitioners considerably greater latitude to develop and apply alternatives. How far this was a freak conjuncture (strong economy, high employment, low juvenile crime, politically secure administration etc) and how far it was a particularly lucid manifestation of multiple interlocking powers that are always in play is a key issue for understanding the limits as well as the potential of making sense of policy through the lens of multiple discourses.

Newburn's argument that there is latitude if not purposive slippage between rhetoric, substantive policies and their implementation is cast in a quite different light by this latter interpretation. The ostensible disjunctures between, say, a tough-on-crime rhetoric, the preservation of space for a welfare-paternalist approach within policy and legislation, and an actively welfare-driven agenda amongst practitioners begin to find quite different explanations. Far from being either purposive or disjunctural, the manifest differences between these three modes of policy reflect entirely different ways of understanding the distribution and realisation of power through policy. Different sources and manifestations of power prevail in rhetorical, codificational and implementational policy modes. In the rhetorical mode, the power of professional politicians brings to the fore the punitive discourses founded in conservative-authoritarian values. In the codificational mode, civil servants steer government towards statutes that maintain continuities with the welfare traditions of the preceding era and secure the customary discretion for professional practitioners. And in the implementational mode, this discretion was exercised collectively, in pursuit of rehabilitative welfarist approaches.

Multiple discourses or ‘governing at a distance’?

None of this is in itself new. The recognition of distinctive bureau-professional power as a characteristic of state institutions of welfare is well-established. The critical if circumscribed power of practitioners was established by Lipsky’s (1980) analysis of street-level bureaucracy. The rising power of managers is explored in a literature too extensive to gloss here. And so on. But what remains immensely challenging for the analysis of youth justice policies is to characterise and theorise the relations between the powers of these groups, and their collective powers in relation to governmental power.

The study of policy processes is replete with examples of the ‘gap’ between policy intentions and outcomes. As Pressman and Wildavsky (1973) observed ‘implementation, under the best of circumstances, is exceedingly difficult’ (xxi). Analysis of the difficulties is itself difficult because ‘in the midst of action, the distinction between the initial conditions and the subsequent chain of causality begins to erode’ (xxiii). Three decades on, Pressman and Wildavsky’s methods for fathoming the gap seem formulaic, focusing on a calculus of probability of success that is based on the number of decision points in the implementation chain. Equally, their prescriptions also seem surprisingly anodyne. It is as though the difficulties that beset implementation are more accidents of circumstance or chance combinations of events and changes than manifestations of how power is exercised.

Nevertheless, Pressman and Wildavsky’s analysis established that attempts to understand the policy process as top-down regulation in which edict determined outcome were deeply flawed and required a profound recognition of the actions (if not the powers) of all in the ‘chain of causality’. Not surprisingly, policing frequently emerges as a particularly

rich exemplar of the powers of street-level workers, notably because of police powers over disposals (see Fielding and Fielding (1991), for example). Lipsky (1980) himself drew on the police for many of his assessments of the relative autonomy of street-level staff, considering their powers of control over clients, and the role-conflicts attendant on their powers and the limits to them.

The resultant top-down versus bottom-up debate in policy analysis prevailed for some time. Hill and Hupe (2002) evaluate its course, drawing attention to its limitations and the ultimate sterility that resulted from ‘a pre-occupation with domination [of the policy process] by any single party’ (197). They also reject efforts to explain the process by means of models based on hierarchies, networks and markets, preferring to emphasise the combined effects of issues, interests and institutional arrangements. Importantly, they reach this preferred approach via an awareness of recent paradigm shifts in political theory from vertically conceptualised government towards horizontally conceptualised governance. This recognises relations of dependency in distributed policy processes, but also the value attached to social justice and equity alongside that of optimising the operation of markets. It also recognises that policy processes actively work in networks with other non-governmental public and private actors. In this interpretation government strives to maintain broad control over an infinitely complex network of agencies, interlocking institutions, and disparate, partially autonomous managers and practitioners who interpret legislation and directives in diverse, unpredictable or unintended ways.

Seen positively by governments, this means choosing carefully those limited fields of activity it is possible to control, working closely within a range of networks, and monitoring adherence to policy. Alternatively, governments might be seen as relatively weak bodies that

do not merely attempt Newburn's 'tricky balancing act', or construct hybrid policies which draw eclectically on sometimes contradictory discourses, in the pragmatic pursuit of 'what works'. Rather, their attempts to 're-steer' the state's handling of difficult areas such as youth offending are often, in practice, 'fudges' which look in several discursive directions at once.

Whether this governance paradigm leads to a picture of horizontally organised multi-levelled implementations of policy or fudged policy determinations with messy outcomes depends on how power is understood to operate within it. Governmentality theories based on Foucault's (1991) work go beyond this paradigm and envisage particular rationalities of government (Dean, 1999) and ways of shaping the conduct of populations that both exploit such supposed freedoms as are afforded by 'governing at a distance', and strive to ensure the dominance of particular rationalities and 'ways of seeing' that secure particular behaviours and design-out others. Governments introduce policies in the context of a long history that has shaped how policy implementation works – a history of accreted layers of legislation, procedures, cultures, institutional practices, habits and conventions. On the one hand, their powers are enormously constrained by these factors. On the other, they have exceptional but by no means hegemonic powers to shape thinking in ways that both assign and constrain the powers of groups on whom they depend for implementing policies. Rose's (1999) development of Foucault's work attributes a key place to the formation and direction of the beliefs and ideas of populations, whereby those who wish to govern must harness the freedoms and autonomies of individuals, whether in roles as agents of government, or as their clients, and guide and utilise their actions towards policy goals. The exercise of power involves, in effect, recruiting subjects to a way of thinking in order that they should become self-governing.

These approaches clearly go far beyond top-down / bottom-up. They have considerable potential to make more compelling sense of the near-decimation of youth incarceration rates in the 80s. It appears that a cadre of professionals and practitioners acquired exceptional powers because of a major fault-line in the ruling political elite and a co-incident set of social and economic conditions that allowed them to move beyond the powers normally distributed to them. The importance of such critical conjunctures is also explored in the policy literature (see Kingdon, 2003), but this approach does not explain responses amongst practitioners. Multiple interlocking powers that are always in play appear to account for more than the 'critical conjuncture' explanation. Whether we follow Hill and Hupe's (2002) broader governance model or governmentality theory, how these groups acquire their power, and how it is exercised between them starts to become clear. At its simplest, the dispersal of powers begins to be explained within an explicit theoretical framework for understanding how power circulates.

Does the importance of multiple discourses for explaining policy fall away in the face of these theories of power? Probably not: a great deal remains to be accounted for. To those who continue to believe that policies are imposed from the top, what was remarkable about the paradoxical decarcerative trend of the 80s was that diverse and dispersed cadres of professionals, managers and youth justice workers were able to make their own sense of the scope offered by legislation and policy, and to interpret and enact it as suited a range of local circumstances and predilections. This might be quite unremarkable to a range of commentators, from those like Pressman and Wildavsky, and Lipsky, to governmentality theorists. But their theses too lack a clear explanation for an even more remarkable feature of the decarcerative trend, namely that these cadres of practitioners worked in such consistent ways across occupational boundaries and between localities as to reverse the previous trend.

John (1998), whose major study of public policy processes places them much more deliberately in political context than most other policy analysts, points towards a possible explanation. He argues that rational decision-making techniques are just as political as policy-making itself. Politicians and other authors of policy, he argues, are fundamentally driven by ideas as well as interests, and ideas are part of the formation of their political identities. It would be very difficult to explain why such processes might be any less applicable to the formation and conduct of professionals, managers and front-line workers. All undergo professional training, many are graduates in social sciences, most engage in policy debates. No less than policy-makers, they are exposed to collectively held ideas. When such ideas assume 'lives of their own', become clustered in sets that purport to explain social actions, and gain sufficient currency to constitute widely held beliefs, they have assumed the status of discourses. It is beyond the scope of this paper to consider the processes by which the 'mentalities' upon which governmentality theory is premised come to be formed and promoted (see Dean (1999); Rose (1999)). But discourses are clearly prime contenders for explaining what makes otherwise separated cadres act in ways that are apparently yet unwittingly 'in concert', and in direct contravention to public political rhetoric, as occurred in the 80s. And this exactly illustrates the earlier claim that differing – and sometimes contradictory – discourses circulate, gain dominance and are contested in different modes of the policy process by different actors.

Young people's rights: discourse and legislation

Contradictions in current policies are not, of course, confined to the policy field of custodial sentencing. Others too manifest some of the familiar disjunctures between the

historical layers of their own discursive construction. But do they too show that inconsistencies and contradictions are as much products of their implementation through local agents, managers, case-workers?

Policies concerning young people's rights epitomise the influence of multiple discourses in youth justice. They are associated with a conflation of welfare-paternalist discourses and liberal justice discourses, but they are also recognised as constituting a discursive position in their own right. In post-war policy, it is over the issues of children's rights that the classic opposition between welfare and justice has been most vigorously fought out. As Scraton and Haydon (2002) argue, the dominant welfare approach is characterised as diverting children from the system of criminal justice, replacing punishment and retribution with treatment, care and protection in pursuit of 'the best interests of the child'. Here, the rights of the child are supposedly served through the discretionary practices of experts and professionals who are best placed to judge case by case how the right to care might be exercised effectively. But it is this very discretion, its vulnerability to subjective values, inconsistency, arbitrariness and prejudice concerning class, race and gender that make this version of rights anathema to the discourses of liberal justice. According to its approach, the invariant application of due process through the procedures of a rational and codified system represents the only secure safeguard of just outcomes. That they are applied to juveniles just as they are to adults does not qualify the pre-eminence of these principles. As Asquith (1983) has argued, the attack on the welfarist case for children's rights embraced several elements. It claimed that the welfare approach lacked any clear and sound philosophical base, in particular one that was capable of marking the distinction between therapeutic treatment and control. In practical terms it lacked adequate legal and judicial safeguards. But critics also

claimed that only in a system that was transparent could rights be protected – and that such a system must have the capacity to punish, proportionately and consistently.

However sterile the long-running struggle between positions based in these two discourses, they continue to be present in claims and counter-claims regarding the appropriateness of contemporary policies and the extent to which they serve or diminish young people's rights. And alongside them has developed a distinctive human rights discourse applied to young people. This draws directly on more radical traditions of rights, from those that insist on the political and social contextualisation of rights, particularly with reference to material circumstances (Asquith, 1983; Clarke, 1985), to those concerned particularly with rights as they are codified in international treaties. Scraton and Haydon focus on the United Nations Convention on the Rights of the Child, and argue for a positive rights agenda that is cognisant of the three core principles of the Convention: differentiated responses to children's offending that take account of the individual and the circumstances; the prioritisation of effective welfare treatment at the expense of punishment; and the full participation of juveniles in decisions affecting their lives. On these criteria at least, it is clear that current policies fall short. The exceptionally low age of criminal responsibility in the jurisdictions of the UK, the abolition of doli incapax in the 1998 Act, and the incarcerative policies described above alone put UK policy at odds with the Convention (see also the UN Committee's more recent criticisms; United Nations, Committee on the Rights of the Child (2002)). But what is of particular interest here is that the Government's response to the UN Committee (UK Government, 1999) makes a strongly asserted case in defence of the benign and constructive welfare intentions of these measures. The capacity for early intervention triggered by prosecuting twelve year olds, and by detaining them in secure accommodation, is variously construed as being 'for their own good' and as an enhancement of rights through

promoting responsibility (thereby invoking another key discourse founded in the political principles of neo-liberalism).

Setting these various discursive sources of the ‘rights’ debate in their political context once again offers some insights into the competing rationales at work in current policies. In particular, recognising the political complexion of these contending positions serves well to highlight the profoundly contradictory claims and understandings of the conducts, needs and motivations of young people that underpin policies concerning the rights they enjoy or are denied.

Even from this brief discussion it is clear that, in rhetorical mode at least, another set of policies embraces several largely incompatible discursive positions. This returns us to the critical questions we considered earlier. In the field of children’s rights, the distinctions between policy as rhetoric, policy as codification and policy as implementation remain central. But the scope that remains for dispersed and highly differentiated actors, local authorities and institutional cultures to vary and interpret outcomes on the basis of their own interpretations may prove to be quite different from the very particular conjuncture that allowed a major trend of decarceration to occur in tandem with a sustained punitive rhetoric in the 1980s.

There is not the space here to explore these differences. But there is a strong – and theoretically crucial - prima facie case that governmentalist analyses are considerably less tenable whenever the codification of policy is in legislation and statute. In the end, no amount of local discretion, professional closure or practitioner subversion can spare even the youngest of violent offenders the retributive force of law. Whether governmentality theory

has any purchase in such policy fields, beyond the irreducible discretion of magistrates, recorders and the judiciary, is fundamental to assessing its reach and even its credibility as a framework for making sense of the policy processes of youth justice. But quite independently of such assessments, it is clear that an awareness of multiple discourses and their contrasting political-philosophical provenances greatly illuminates some apparently paradoxical policy positions on the rights of young people.

Concluding comments

That policies of youth justice are a sometimes puzzling melting pot of contending, competing or directly contradictory measures is undisputed. On the basis of this review, there is little doubt that distinctive and competing discourses do much to ‘account for’ this – not just by highlighting the fundamentally differing origins of policies, but also by recognising that different discourses are influential in different modes of the policy process at the same time. Grounding these discourses by connecting them more firmly to their political provenances considerably sharpens the accounts each discourse offers, and serves to clarify the often quite profound nature of the tensions and disjunctures between them. But identifying the discursive drivers of policies does not of itself make sense either of the policy process that puts in place divergent and dissonant measures, or of the radical reach and efficacy of some policies compared with the very limited purchase of others.

It is clear that a considerably more nuanced analysis of the policy process is needed to achieve specific understanding of the fortunes of specific policies. And as Jones and Newburn (2007) observe, there is a ‘relative dearth of empirical studies of the policy-making process in the sphere of criminal justice and penal policy...there has been remarkably little

interest shown by political scientists in the sphere of crime policy ...[and]...criminologists have paid relatively little attention to the processes of policy making...' (20). As a political scientist, John (1998) is a partial exception. His extensive analysis concludes that combinations of ideas and interests constantly seek to dominate decision-making and to interact with institutions, patterns of interest groups and socio-economic processes which are also slowly changing and evolving over time. His prescription for policy studies is that 'Investigators need to appraise this context and find out exactly how all the elements fit together.' (195). It is a tall order. It entails growing a methodology that has at least the following characteristics:

- A capacity to engage empirically in every policy mode, from political and bureau-administrative formulation to managerial implementation and street level operationalisation
- An understanding of the origins of the policy rhetoric in political discourse, as a well-spring of the ideas of policy-implementers as well as policy authors, that may subsequently be hybridised in pragmatic and potentially contradictory ways
- A recognition of the tensions between the processes of founding policies politically, presenting them rhetorically, formulating them administratively, and implementing them managerially, and the contributions to those tensions arising from the prevalence of competing discourses at different levels
- A more dynamic awareness of the processes of implementation that appreciates the powers and variable autonomies of actors at all these junctures
- A countervailing recognition of the influences and pressures on such actors, and on policy 'subjects', as put forward by governmentalist theories.

Yet without such methodologies, and without frameworks of the kind that have been explored here, it is difficult to assess with any confidence how it might be that glaring disjunctures arise between clusters of policies, and between the rhetorical, the codificational and the implementational modes of policy. If we cannot find ways of developing these frameworks, *and* theorising their premises, we may remain puzzled by the unpredictable and often unintended effects of inconsistency in policy. More importantly, we may also retain quite obsolete understandings of who and what really makes the difference in envisioning, proposing, formalising, and most of all enacting youth justice policies.

References

- Asquith, S. (1983) 'Justice, Retribution and Children', in Morris, A and Giller, H, *Providing Criminal Justice for Children*, London, Edward Arnold
- Audit Commission (1996) *Misspent Youth: Young People and Crime*, London, Audit Commission.
- Blair, T. (2006) 'Our Sovereign Value: Fairness', speech given at Joseph Rowntree Foundation, York, 5th September
- Clarke, J. (1985) 'Whose Justice? The Politics of Juvenile Control', *International Journal of the Sociology of Law*, 13(4) 407-21
- Clarke, J., Gewirtz, S. and McLaughlin, E. (2000) 'Reinventing the Welfare State' in Clarke, J., Gewirtz, S. and McLaughlin, E. (eds) *New Managerialism, New Welfare?* London, Sage
- Clarke, J. (2007 forthcoming) 'Subordinating the Social: Making Sense of Post-welfare Capitalism', [to be completed at proof stage]
- Clarke, J. and Newman, J. (1997) *The Managerial State*, London, Sage
- Dean, M. (1999) *Governmentality: Power and Rule in Modern Society*, London, Sage
- Farrington, D. (2006) 'Childhood Risk Factors and Risk-focussed Prevention', www.number10.gov.uk/output/Page_10035.asp. (Accessed 11.9.06)
- Fielding, N and Fielding, J. (1991) 'Police Attitudes to Crime and Punishment', *British Journal of Criminology*, 31(1) 568-90
- Fionda, J. (1999) 'New Labour, Old Hat: Youth Justice and the Crime and Disorder Act 1998', *Criminal Law Review*, (1) 36-47
- Foucault, M. (1991), 'Governmentality', in Burchell, G., Gordon, C. and Miller, P. (eds) *The Foucault Effect*, Hemel Hempstead, Harvester

- Goldson, B. (2000) 'Children in Need or Young Offenders?', *Child and Family Social Work*, 5(3), 255–65
- Goldson, B. (2002a) 'New Punitiveness: the Politics of Child Incarceration', in Muncie, J. et al (eds)
- Goldson, B. (2002b), *Vulnerable Inside: Children in Secure and Penal Settings*, London, The Children's Society
- Goldson, B. and Coles, D. (2005) *In the Care of the State? Child Deaths in Penal Custody in England and Wales*, London, INQUEST
- Gelsthorpe, L and Morris A. (2002) 'Restorative Justice: the Last Vestiges of Welfare?' in Muncie, J et al (eds)
- Hill, M. and Hupe, P. (2002) *Implementing Public Policy*, London, Sage
- John, P. (1998) *Analysing Public Policy*, London, Pinter
- Jones, T. and Newburn, T. (2007) *Policy Transfer and Criminal Justice*, Maidenhead, Open University Press
- Kingdon, J. (2003) *Agendas, Alternatives and Public Policies*, (2nd edition) New York, Harper Collins
- Laycock G. (2005) 'Defining Crime Science' in Smith, M.J. and Tilley, N.(eds) *Crime Science: New Approaches to Preventing and Detecting Crime*, Cullompton, Willan
- Lipsky, M. (1980) *Street-level Bureaucracy*, New York, Russell Sage Foundation
- McLaughlin, E., Muncie, J. and Hughes, G. (2001) 'The Permanent Revolution: New Labour, New Public Management and the Modernisation of Criminal Justice', *Criminal Justice*, 1, 3, 301-18
- Muncie, J. (1999) *Youth and Crime: A Critical Introduction*, London, Sage.
- Muncie, J. and Hughes, G. (2002) 'Modes of Youth Governance: Political Rationalities, Criminalisation and Resistance' in Muncie, J.,et al (eds)

- Muncie, J., Hughes, G. and McLaughlin, E. (eds) (2002) *Youth Justice: Critical Readings*, London, Sage
- Newburn, T. (2002) 'The Contemporary Politics of Youth Crime Prevention', in Muncie, J et al (eds)
- Newburn, T. and Sparks, R. (2003) (eds) *Criminal Justice and Political Cultures: National and International Dimensions of Crime Control*, Cullompton, Willan
- O'Malley, P. (1999) Volatile and Contradictory Punishment, *Theoretical Criminology*, 3(2), 175 - 196
- Pratt, J. (1989) 'Corporatism: the Third Model of Juvenile Justice', *British Journal of Criminology*, 29(3), 236-254
- Pratt, J., Brown, D., Brown, M., Hallsworth, S., and Morrison, W. (eds) (2005) *The New Punitiveness*, Cullompton, Willan.
- Pressman, J. and Wildavsky, A. (1973) *Implementation*, Berkeley, University of California Press
- Rose, N. (1999) *Powers of Freedom: Reframing Political Thought*, Cambridge, Cambridge University Press
- Rutherford, A. (1995), 'Signposting the Future of Juvenile Justice Policy in England and Wales', in Howard League for Penal Reform, *Child Offenders*, London, Howard League for Penal Reform
- Scruton, P. and Haydon, D. (2002) 'Challenging the Criminalisation of Children and Young People: Securing a Rights-based Agenda', in Muncie, J. et al (eds)
- Smith, D. (2006) 'Youth Crime and Justice: Research, Evaluation and "Evidence" ', in Goldson, B. and Muncie, J. (eds) *Youth Crime and Justice*, London, Sage.
- Smith, R. (2005) 'Welfare versus Justice - Again!', *Youth Justice*, 5 (2) 3 - 16.
- Social Exclusion Task Force (2006) *Reaching Out*, London, Cabinet Office, September

UK Government (1999) *Convention on the Rights of the Child: second report to the UN Committee on the Rights of the Child by the United Kingdom*, London, HMSO

United Nations, Committee on the Rights of the Child (2002) *Consideration of Reports Submitted by State Parties under Article 44 of the Convention*, CRC/15/Add.188, 9th October

Williams, R. (1965) *The Long Revolution*, Harmondsworth, Penguin

Walters, R. and Woodward, R. (2007) 'Punishing "Poor Parents" – "Respect", "Responsibility" and Parenting Orders in Scotland', *Youth Justice*, 7 (1), 00-00

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