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## **Governing young people: coherence and contradiction in contemporary youth justice**

### *Abstract*

This article explores the burgeoning literature on modes and layers of governance and applies it to the complex of contemporary youth justice reform. Globalised neo-liberal processes of responsabilisation and risk management coupled with traditional neo-conservative authoritarian strategies have dominated the political landscape. However they also have to work alongside or within ‘new’ conceptions of social inclusion, partnership, restoration and moralisation. These apparently contradictory strategies open up the possibility of multiple localised translations rather than an often assumed dominance of a uniform ‘culture of control’. The ensuing hybridity also suggests that any coherence within contemporary youth justice relies on continual negotiations between opposing, yet overlapping, discursive practices.

### **Keywords**

Responsibilisation, governance, remoralisation, authoritarianism, neo-liberalism

### **Introduction**

In the late 1990s the first critical commentaries on New Labour’s flagship legislation - The Crime and Disorder Act 1998 – variously described it as ‘institutionalised intolerance’ (Muncie, 1999) and as ‘misguided and misconceived’ (Gelsthorpe and Morris, 1999). Such assessments were based on its explicit grounding in a ‘no more excuses’ mentality which had condemned previous policy and practice as a ‘failure’.

As early as 1993 when the New Labour motif of ‘tough on crime, tough on the causes of crime’ was first formulated, youth justice has been centre stage of the ‘modernising’ agenda. Since 1998 the pace of youth justice reform in England and Wales has been unprecedented. An increasing tendency to responsabilise children, their families and working class communities and a reliance on an expanding control apparatus to ‘manage’ poverty and disadvantage have led to a relentless stream of ‘crackdowns’, initiatives, targets, policy proposals, pilot schemes and legislative enactments. In the process new governable places and people have been created. Not only has it become an arduous task to simply keep abreast of the content of this reforming zeal, it is also difficult to identify any consistent rationale and/or philosophical core. The purpose of youth justice has become obscured as each new wave of reform has been accreted on the previous. What is clear is that traditional justice vs welfare or welfare vs punishment debates are particularly inadequate in unravelling how youth justice acts on an amalgam of rationales, oscillating around, but also beyond, the caring ethos of social services, the neo-liberal legalistic ethos of responsibility and the neo-conservative ethos of coercion and punishment. This article attempts to shed light on this confusion by identifying a wide range of governmental *rationalities* from neo-liberalism to neo-conservatism and a wide range of governmental *technologies* – from the exclusionary to the inclusionary - on which the contemporary governance of young people is now based.

### **Neo-liberal governance and ‘rational’ youth**

It is now commonplace to accept that since the 1960s penal-welfarism has been systematically undermined by the development of forms of neo-liberal (or ‘advanced liberal’) governance. This has been broadly characterized as placing less emphasis on

social contexts, state protection and rehabilitation and more on prescriptions of individual responsibility, an active citizenry and governing at a distance (Rose, 1996b). Beginning with von Hayek's critique of welfare interventionism as inefficient, self-defeating and totalitarian, the principle of freedom based on individual responsibility has now become firmly cemented. The economic argument that the welfare sector is unproductive and parasitic of market capitalism has fed into a range of critiques of social governments as monopolistic, overloaded and as failing to ameliorate social inequalities. Welfare practice and professionals have been attacked from all sides of the political spectrum as unaccountable, overbearing and as destructive of other forms of support such as community and the family. Notions of *social engineering*, *social solidarity*, *social benefits*, *social work*, *social welfare*, it is contended, have been largely dismantled to create the conditions for a responsible citizenship. Rose (1996a), famously, characterized this as a profound shift towards the 'death of the social' throughout entire frameworks of government.

Moreover this neo-liberal project of market freedom, flexible regulation and responsabilisation is widely assumed to be intimately related to processes of globalization. The concept of globalization suggests that shifts in political economy, particularly those associated with international trade and capital mobility, are severely constraining the range of strategic political strategies and policy options that individual states can pursue (Bauman, 1998). The necessity of attracting international capital compels governments (particularly so across the Anglophone global north) to adopt similar economic, social and criminal justice policies. Moreover such policies have become progressively based less on principles of welfare protection and social inclusion and more on social inequality, deregulation, privatisation, penal expansion

and welfare residualism. In effect, global neo-liberalism presages not only the decline of social democratic reformist politics and projects worldwide but a widening gap between the rich and poor both within and between countries (Mishra, 1999).

Numerous authors have remarked upon the impact that these processes have had in a growing homogenisation of criminal justice across western societies, driven in particular by the transfer of punitive penal policies from the USA. Wacquant, (1999) for example, has identified how numerous American state agencies, think tanks, foundations, policy advisors, commercial enterprises and academics have worked with their British counterparts to construct an international law and order consensus on such issues as zero tolerance policing, electronic monitoring, naming and shaming, and curfews, for example. (see also Garland, 2001; Simon, 2001; Pratt *et al*, 2005).

Such developments are likely to have a major impact on child and youth populations. It is they that have traditionally constituted 'the most intensively governed sector of personal existence' (Rose, 1989, p. 121) as well as enduring disproportionate levels of poverty, disempowerment, vulnerability and victimization. Any decline in the ability of nation states to deliver protection and support will have major repercussions for how young people are conceptualized – as vulnerable or as a threat – and on how they should be governed (Muncie and Hughes, 2002).

### ***Responsibilization***

The concept of responsibilisation underpins many of New Labour's youth justice reforms. At its most basic it draws attention to any crime control strategy which aims to make offenders face up to their own responsibilities or which encourages the private sector and communities to take a more active interest in reducing criminal opportunities. Developing the latter, Garland (1996) refers to a community responsibilisation strategy involving central government seeking to act upon crime not

simply in a direct fashion through the established state agencies of police, courts, prisons, probation and social work, but instead seeking also to directly involve non-state agencies and organizations and the forces of civil society. The key message was (and remains) that property owners and manufacturers as well as school authorities, families and individuals all have a responsibility to reduce criminal opportunities and increase informal social controls. No longer can the state be expected to control crime on its own. As a result it has been claimed that processes of 'responsibilisation' lie at the centre of a new mode of youth governance. Rose and Miller (1992) for example, talk of the 'mobile mechanisms' of 'advanced' governance in which governance is achieved 'at a distance'. 'Responsibilisation' coalesces with a number of related developments whereby criminal justice comes to reflect market-like conditions and processes; its welfarist core is eroded; elements of the state sector are privatised; crime control is commodified; and active entrepreneurship replaces passivity and state dependency.

For O'Malley (1992) responsibilisation is but one element of a series of risk reduction or insurance based strategies in which the burden of managing risk is held by individuals themselves. 'Liberated' from an over-protective state, the responsible citizen will take rational steps to guard against injury or loss in order not to be a burden on the state. Investment in security measures becomes an essential element of a newly constituted citizenship (Rose, 2000). Garland (1996), however, is clear that responsibilisation does not simply mean the state is off loading or intent on privatising all aspects of crime control. Rather the state retains its sovereign power whilst taking on new roles of co-ordination and community activation. It works within an inclusionary criminology of the 'rational self' as well as an exclusionary criminology

of the 'demonised other'. Nevertheless within such processes he foresees the possibility not only of greater intervention, but a greater *participation* and *empowerment* of communities (Garland, 2001, p.124).

In the field of youth justice this has developed into a simultaneous devolution and centralization of policy. By the late 1990s all local authorities in the UK had been given the statutory duty to 'prevent offending by young people'. A plurality of expertise – police, probation, social services, health authorities, education authorities – are now required to have regard to that aim. For example, every local authority with social service and education responsibilities is required to formulate and implement an annual youth justice plan setting out how youth justice reform is to be funded and put into operation. It has also been required to establish a YOT (youth offending team), consisting of, on a statutory basis, representatives from each of social services, probation, police, health and education authorities. What were formerly youth *justice* teams have been replaced by youth *offending* teams. These agencies are now designed to 'pull together', to co-ordinate provision, and to deliver a range of interventions and programmes that will ensure that young people 'face up to the consequences of their actions' (Goldson, 2000a). But each local authority youth justice plan also has to be submitted to a national body – the Youth Justice Board – for monitoring and approval which, by 2000, had formulated a set of practice criteria to act as national standards (Youth Justice Board, 2000). Moreover, their work is constantly scrutinized through budgetary planning and auditing for cost and effectiveness by teams of 'regional monitors' employed by and accountable to the YJB. The youth justice plan enables local agencies to be held to account for their 'success' or 'failure'. Local ownership is circumscribed by Home Office and YJB

‘guidance’, national standards, performance targets, statutory responsibilities and time limits (Vaughan, 2000; Muncie, 2002).

The concept of neo-liberal responsabilisation then captures a two pronged attack on the notion of ‘big government’ as the power of individual nation states is apparently diminished in favour of international capital on the one hand and local empowerment on the other. In turn the concept of governance helps to make sense of such developments in that it draws attention to ‘a change in the meaning of government, referring to a *new* process of governing; or a *changed* condition of ordered rule; or the *new* method by which society is governed’ (Rhodes, 1997, p.46). Its principal feature is its break with state-centred thinking about the exercise of political power.

Preference is given to a conception of political authority as the tenuous, unresolved, outcome of struggles between coalitions of public and private, formal and informal, actors. It alerts us to the way in which power is exercised through ‘self-organising, inter-organisational networks’ as contrasted with traditional mechanisms of bureaucratic command and control.

### ***Managerialism***

Managerialism stresses the need to develop a connected, coherent, efficient and above all *cost-effective* series of policies and practices. It is ostensibly governed by pragmatism rather than any fundamental penal philosophy. Managerialism provides the means by which philosophical dispute can be sidestepped. Its concern is not necessarily one of individual reform, training, or punishment, but of implementing policies that ‘work’, whether pragmatically or politically (Clarke and Newman, 1997).

In the field of youth justice the Audit Commission's (1996) 'value for money' report on waste and inefficiency was pivotal. New Labour enthusiastically embraced its agenda and identified new public managerialism (NPM) as the route through which an economical and accountable system could be created. In line with previous public sector reforms, NPM is characterized by the setting of explicit targets and performance indicators to enable the auditing of efficiency and effectiveness; the publication of league tables illustrating comparative performance; the identification of core competencies; the costing and market testing of all activities to ensure value for money; the introduction of market competition, the privatisation and deregulation of designated responsibilities; the encouragement of multi-agency co-operation; and the re-casting of clients as 'customers' (McLaughlin, Muncie and Hughes 2001). Such principles have impacted on youth justice by declaring the past as 'failure' in order to clear the ground (despite the 'successes' of the late 1980s in reducing youth crime and custody rates); identifying risk conditions, rather than causes of youth crime; setting statutory time limits from arrest to sentence; introducing performance targets for YOTs; discovering 'what works' via evidence based research; establishing YOTs to 'join up' local agencies; and constructing means of standardizing risk conditions (e.g. through uniform ASSET assessment tools) (Muncie and Hughes, 2002). It is an environment in which the multi-agency co-operation of 1980s corporatism (Pratt, 1989) and the risk assessment strategies of actuarialism (Feeley and Simon, 1992) are fused into an overarching 'task environment' based on audit, market testing, performance targets, productivity remits, cost-effectiveness and the quantifiable ethos of 'what works'. Within its own terms it is capable of subjugating the entire purpose of youth justice to the meeting of what in crime reduction parlance is termed SMART targets (those that are specific, measurable, achievable, realistic and time-tabled)

(Audit Commission, 1999). The idea of 'joined-up' government to attack multi-faceted and complex problems (such as youth offending) through multi-agency partnerships employing a broad spectrum of social policy interventions represents a definitive break with traditional methods of public administration. It challenges the specialisation of government into discrete areas of functional expertise and, in so doing, defines new objects of governance (Newman, 2001). Youth offending, for example, ceases to be defined only in terms of 'criminality' and subject to the expertise of criminal justice professionals. It also becomes a problem of education, health, employment and, in the argot of New Labour, one of assessing the risks of 'social exclusion' and 'anti-social behaviour'.

### ***Risk management***

The current hegemony of the terms 'risk management' and 'prevention' in the field of youth justice also reflect the growing importance of the new penology of 'actuarial justice'. Transformative and rehabilitative rationales of correctionalism have been increasingly challenged by an actuarialist discourse of calculating risk and the statistical probability of re-offending. (Kempf-Leonard and Peterson, 2000 p. 78). Offender profiling and risk assessment have been eagerly turned to as a means of overcoming the 'nothing works' pessimism that had pervaded youth justice and probation for two decades. Gradually the case was made that *some* forms of intervention can be successful in reducing *some* re-offending for *some* offenders at *some* times. Focussed and structured supervision programmes combining behavioural and skills training, training in moral reasoning, interpersonal problem-solving skills training and vocationally oriented psychotherapy are now widely assumed to be 'successful' (McGuire, 1995). Farrington (2000), the leading proponent globally of

the theory and practice of youth criminality prevention, has now established the ‘risk factors’ of poor child rearing, hyperactivity, low intelligence, harsh or erratic parental discipline, divorce, low family income and poor housing as an almost taken-for-granted knowledge. Numerous governmental agencies (see for example, Sherman et al 1997; Goldblatt and Lewis, 1998) acting on this research have come to claim that the ‘most hopeful’ methods to tackle crime and anti-social behaviour (derived from experimental research in the USA and Canada) are those which involve early intervention such as home visiting by health professionals, pre-school ‘intellectual enrichment’ programmes, parenting education programmes as well as cognitive and social skills training.

Such projects of course provide the (not altogether surprising) lesson that if the necessary educational and economic resources are granted to socially deprived families then their children are likely to benefit. However when attached to a pre-occupation with law and order they are read as the need to discipline ‘failing families’ (Pitts, 2001 p.97; Goldson and Jamieson, 2002). The biggest appeal of this risk factor paradigm of prevention lies not in its scientific rigour but in its fit with prevailing ideological imperatives and its pragmatic orientation for both identifying the inter-related risk factors behind anti-social behaviour and ‘curing’ or managing the problem by means of specific targeted prevention techniques. At its core is the claim that the approach is ‘evidence-led’ and predicated upon the credo of ‘what works’. A burgeoning growth industry in psychological risk profiling is indicative of much contemporary theory and practice in youth crime prevention which combines the techniques of risk calculation with a continuing ‘rehabilitative’ commitment to ‘changing people’. Rehabilitation and treatment programmes are now much more

focused on the 'evidence' of 'what works' and on 'offender accountability' in an attempt to escape the populist condemnation that they are not yet another sign of 'being soft on crime'.

Despite its ubiquity, this 'new' paradigm has not been without its critics. Smith (2003, p. 137), for example, explores how the primacy afforded to intervention has resulted in a relative decline in 'lenient' disposals such as final warnings and fines in favour of community sentences, coupled with rises in custody. Identification of those 'at risk' has simply contributed to a criminalization of younger and relatively minor offenders. Tilley (2003) warns of the methodological and scientific shortcomings of evaluation research which is then uncritically employed to inform policy. He suggests the quest for a universal 'what works' is misguided and unachievable. A more 'realist' approach would be to ask the rather more complex and contingent question of 'what works for whom in what circumstances, and how?' Even then we should not expect replicability across time and space. What works today may not tomorrow. What works with some people in some places will not with others. Pitts (2001) condemns the 'what works' industry as the subordination of science to governance. Research is used selectively and only when it seems to confirm pre-determined governmental policies. This view seems to be reinforced in the way that New Labour has often 'rolled out' pilot programmes before any evaluation has been completed. Either way, actuarial assessments tend to simply focus on that which can be counted (such as the time interval between arrest and court appearance). That which eludes quantification (such as histories of multiple disadvantage) is ignored. Practice becomes geared to meeting (and manipulating) internal targets rather than responding to the needs and circumstances of offenders. Formulaic service delivery negates professional

autonomy and traps decision making within an inflexible ‘technocratic framework of routinized operations’ (Webb, 2001, p.71). It suggests that youth justice work can be value free and objective, existing in some way in a vacuum outside of social relationships and cultural formations. But the unpredictability and variability of local contexts and the complexity of the social and the political in general militates against standardization and uniformity. Actuarialism denies the essential personal and cultural dynamics of youth justice work (Goldson, 2000b). Further the clamour for the pragmatic ‘quick fix’ precludes not only critical research but also policy proposals which might look to the long term and the more fundamentally transformative (Muncie, 2002). A discourse of ‘what works’ is deceptively benign, pragmatic and non-ideological. How could anyone claim to act otherwise and advocate policies that are demonstrable failures? Yet youth justice reform is also clearly driven by assessments of what is electorally popular. Formulating and acting upon ‘evidence based’ policy and practice is not a rational, objective and scientific process, it is also driven by value-laden, political, institutional and economic imperatives.

### ***Restoration and reintegration***

The principles of restorative justice – and its potential for restitution, reparation, informalism, reconciliation, public participation and harm minimisation – have been widely claimed to underpin New Labour’s modernising reforms. In youth justice referral orders and youth offender panels were introduced following the 1999 *Youth Justice and Criminal Evidence Act*. Referral orders are a *mandatory*, standard sentence imposed on nearly all offenders, no matter how relatively minor the offence, as long as they are under 18 years old, have no previous convictions, and plead guilty. The major exception are those sent directly to custody. Following pilots in 11 areas, they went national in 2002. Offenders are referred to a youth offender panel (made up

of local volunteers) to agree a programme of behaviour to address their offending. There is no provision for legal representation. The programme may include victim reparation, victim mediation, curfew, school attendance, staying away from specified places and persons, participation in specified activities, as well as a general compliance with the terms of the contract for supervision and monitoring purposes. Through such measures it has been claimed that youth justice is in the midst of a potentially radical shift from being exclusionary and punitive to becoming inclusionary and restorative (Crawford and Newburn, 2003). Certainly here we can evidence further expression of processes of community responsabilisation.

Critical perspectives on restorative justice have however begun to emerge from a number of different avenues. Evaluations of the referral orders, for example, have lauded the more positive lines of communication that have been opened up between offenders, parents, victims and communities, but have lamented its coercive nature, problems of low victim participation, blurred lines of accountability and a general failure to provide offenders with the socio-economic resources necessary for them to develop a 'stake-hold' in community life (Crawford and Newburn, 2003; Gray, 2003). Gelsthorpe and Morris (2002) contend that restorative principles are additions to, rather than core defining components of, a system that remains built around, and continues to act upon, notions of just deserts, punishment and retribution. Restorative processes simply deal with low level offenders who through a combination of New Labour's other measures in crime prevention and pre-emptive early intervention are being drawn into the youth justice system (and thereby criminalised) at an increasingly earlier age. Neither does restorative justice offer any challenge to risk management strategies. Rather it may serve an integral role in sorting the 'high risk'

from the 'low' (Cunneen, 2003). A danger also remains that any form of compulsory restoration may degenerate into a ceremony of public shaming and degradation, particularly when it operates within a system of justice whose primary intent is the infliction of further harm. Within restorative programmes the burden tends to remain on individuals to atone or change their behaviour, rather than on the state to recognize that it also has a responsibility (within international conventions and rules) to its citizens (Haines, 2000). For example Article 6 of the Human Rights Act provides for the right to a fair trial with legal representation and a right to appeal. The introduction of lay youth offender panels deliberating on 'programmes of behaviour' with no legal representation would appear to be in denial of such rights (Goldson, 2000a; Freeman, 2002). More seriously, many of the principles of restorative justice which rely on informality, flexibility and discretion sit uneasily against legal requirements for due process and a fair and just trial. Further, restoration assumes offenders are fully rational decision makers, yet in most other spheres children are assumed to have a limited capacity.

### **Neo-conservative governance and 'incorrigible' youth**

The prescriptions of neo-liberalism may be evident in the risk management and responsabilizing aspects of modern youth justice but these fail on their own to capture the nuances and complexities of recent youth justice reforms. The continuing problem for neo-liberalism is how to rejuvenate a sense of autonomy without abandoning the simultaneous project of monitoring and regulating social, particularly family, life. As a result the neo-liberal is in constant danger of unravelling in the face of neo-conservative tendencies of remoralization and authoritarianism (Clarke, 2004).

The key question remains: have neo-liberal rationalities necessarily resulted in a decline in the role of the state or a ‘death of the social’?

### ***Remoralization and conditional inclusion***

Whilst responsabilization strategies typically involve a partial withdrawing of state intervention, the techniques of remoralization imply a strengthening and deepening of state interventionist programmes. As the ‘problem’ is perceived to be greater than offending *per se* but rather a generalised lack of respect then a targeting of the ‘disorderly’ and ‘anti-social’ (the non-criminal) is also legitimized. Whilst responsabilization tends ultimately to find individual targets, remoralization – as a mode of governing – is based on the regulation, surveillance and monitoring of entire families and communities. It rests crucially on the identification of a feckless, ‘at risk’ underclass which through a combination of refusal to work, teenage parenthood, single parenting and lack of respectable adult role models threatens to undermine the entire moral fabric of society. What may previously have been an indicator of the need for family welfare support is now read as a possible precursor to criminality. ‘Risk’ is increasingly associated with pathological constructions of wilful irresponsibility, incorrigibility and family/individual failure (Goldson and Jamieson, 2002). To gain access to welfare services, or perhaps more accurately to be ‘targeted’ by an ‘intervention’, children and families must be seen to have ‘failed’ or be ‘failing’, to be ‘posing risk’, to be ‘threatening’ (either actually or potentially). Prior notions of universality and welfare for *all* children ‘in need’, have retreated into a context of classification, control and correction where interventions are targeted at the ‘criminal’, the ‘near criminal’, the ‘possibly criminal’, the ‘sub-criminal’, the ‘anti-social’, the ‘disorderly’ or the ‘potentially problematic’ in some way or another (Goldson, 2005). This overt deepening of early intervention is justified as ‘protecting the welfare of the

young offender' (Home Office, 1997) because 'if a child has begun to offend they are *entitled* to the earliest possible intervention to address that offending behaviour and eliminate its causes' (UK Government, 1999, para 10.30.2, emphasis added). Early and pre-emptive intervention (as distinct from diversion) becomes justified through notions of 'child protection' or 'nipping crime in the bud'. In this climate it becomes possible to 'confidently' claim that 'it is never too early to intervene' (HAC, 2005, p.33).

At the heart of Labour's new youth justice lies a familiar analysis of family breakdown, poor parental control, failing child rearing practices and a dependency culture (Muncie, 2002) despite repeated research findings that young people in trouble with the law have complex and systematic patterns of disadvantage which lie beyond any incitement to find work, behave properly or take up the 'new opportunities' on offer. The percentage of children in poverty is higher in Britain than in any other country in the European Union: rising from some 10 per cent in 1979 to 25 per cent in 2003/4. Family difficulties and prior contact with the care system are also notable characteristics of 'known offenders' (Crowley, 1998; Goldson, 2000b). Ignoring such contexts allows New Labour to persist with populist assumptions about the 'normal orderly family', 'lack of respect' and the necessity of waged labour. New Labour's social basis for inclusion is typically made through appeals to the work ethic, the provision of universal nursery education and measures to assist single parents back to work. Initiatives such as mentoring, the New Deal, Neighbourhood Renewal, Sure Start, Connexions, On Track, Splash Schemes and Youth Inclusion Projects might indeed be viewed as a 'reformulation of holistic social strategies' (Stenson, 2000, p.239) but these particular readings of inclusion do involve a significant re-imagining

of the 'social'. Such programmes 'seek to micro-manage the behaviour of welfare recipients in order to remoralize them ... This is "tough love", "compassion with a hard edge". It is through moral reformation, through ethical reconstruction, that the excluded citizen is to be reattached to a virtuous community' (Rose, 2000, pp.334–335). Welfare states are in the process of being re-imagined rather than abandoned (Clarke, 2004).

### ***Zero tolerance***

Perhaps the greatest anomaly in all modes of youth governance is that however pervasive and seductive their responsabilising, re-integrative or restorative aims, youth justice has also been underpinned by a persistent coercive and authoritarian rationale. Discourses of inclusion, through the taking up of 'opportunities', have always sat uneasily against those of incorrigibility and dangerousness. As Tony Blair put it: 'Don't be surprised if the penalties are tougher when you have been given the opportunities but don't take them' (Blair, 13 June 1997 cited by Vaughan, 2000).

Low level disorder and incivilities have always been a major New Labour target. One of the most radical initiatives of its reforming agenda has been the introduction of new civil orders and powers that can be made other than as a sentence. This 'civilianization of law' blurs the boundary between offending and prior assumptions about risk. Child safety orders, local child curfews, parenting orders and anti-social behaviour orders (all included in the 1998 *Crime and Disorder Act*) do not necessarily require either the prosecution or indeed the commission of a criminal offence. In addition in 2001 a new offence of 'aggravated truancy' was created carrying a fine or 3 month prison sentence for parents who seemed to condone truancy. £90 million was given to schools to develop the electronic tracking of pupils. In May 2002 a mother in

Oxfordshire was imprisoned for failing to ensure her daughters attended school. In 2003 the DfES set up the identification, referral and tracking initiative (IRT). In 2004 Youth Inclusion and Support Panels (YISPs) were introduced to 'identify' the 'most at risk 7-13 year olds' in 92 local authority areas of England and Wales and engage them in 'programmes' (Home Office, 2004 p. 41). As a result New Labour is clearly intent on targeting moral and social, as well as legal, transgressions.

The most controversial measure - the *anti-social behaviour order* (ASBO) - is a civil order which can be imposed by the police/local authority on anyone over the age of 10 whose behaviour is *thought likely* to cause alarm, distress or harassment. Breach is punishable by up to 5 years imprisonment. It has long been subject to a barrage of criticism such as its ill-defined nature, its merging of civil and criminal law, its ignoring of due process, the eligibility of hearsay 'evidence', its criminalization of nuisance and its exclusionary effects (Ashworth *et al* 1998). Though initially justified as a means to control 'unruly neighbours', there is increasing evidence that ASBOs are primarily targeted at youthful behaviour. Their use is also burgeoning particularly in Greater Manchester. In 2001, 84 ASBOs were taken out nationally on 10 -17 year olds, rising to 509 in 2003 (*Hansard*, 4 October 2004, column 1900W; see also Burney, 2004). In Campbell's (2002) review, 74 per cent were made on under 21s. The 'anti-social' is often synonymous with police and security staff perceptions of 'problems' with young people, whether it be their behaviour or simply their dress. Moreover the breach of an ASBO can lead directly to a prison sentence even when the original 'offence' was non-imprisonable. Around 30% of ASBOs are breached and 50% of those breaches receive a custodial sentence. The Anti-Social Behaviour Act 2003 subsequently extended police and local authority powers to confiscate stereos, to

criminalize begging, to give fixed penalty fines for 'disorderly' 16 and 17 year olds and to ban the sale of spray paints and fireworks to those under 18. Significantly it granted groups other than the police, including private security guards, the power to issue fixed penalty fines and allowed courts to 'name and shame' children aged 10 to 17 who had breached ASBOs. (Home Office, 2003). In December 2004 fixed penalty fines were extended from 16 year old to 10 year olds with powers to imprison parents if the fine is not met. Over 57,000 Penalty Notices for Disorder (PNDs) were issued in 2004. The Violent Crime Reduction Bill published in June 2005 gave police the power to issue exclusion notices on anyone considered to represent a 'risk of disorder'. Tackling the 'anti-social', along with fighting terrorism, is now viewed by New Labour as a top priority.

All of these measures legitimate formal intervention on the basis of correlations with factors statistically associated with known offending rather than acting on any hard evidence of legal transgression. As such they might be described as progressively 'defining deviance up', but with the paradoxical result that public tolerance to incivility is lowered (Young and Matthews, 2003). Intensified modes of intervention, premised and legitimised by reference to 'prevention' seem to have no boundaries and make the system insatiable. If anything they draw upon Wilson and Kelling's (1982) influential 'broken windows' thesis which claims a causal, repetitious and vicious circle of anti social behaviour, encouraging crime, leading to neighbourhood decline and so on. Yet numerous researchers reverse this causal logic and contend that the best way to deal with disorder is through regenerating neighbourhoods rather than further demonizing the children of the poor and disadvantaged (Matthews, 2003).

### ***Incarceration***

Some of the most punitive regimes of incarceration have also repeatedly been reserved for the young. The anomaly is somewhat 'solved' by clouding youth incarceration in a welfarist treatment discourse. Thus in England and Wales borstals were places of training. Approved schools were for re-education. Detention centres and youth custody centres were alternatives to prison. And currently secure training centres (for 12–14-year-olds) are ostensibly concerned with education as well as correction (Goldson, 2002). The recurring critique of youth custody in whatever form, is that it is self-defeating and counterproductive. An authoritarian mood has persisted despite compelling evidence of custody's damaging effects. According to Offender Management Caseload statistics released in December 2004 the number of 15 to 17 year olds held in prison establishments in England and Wales rose from 769 in 1993 to 2089 in 2002 (NOMS, 2004). In addition the average length of sentence for 15-17 year old boys convicted of indictable offences, rose from 9.2 months in 1992 to 10.8 months in 2001. Legislative reform has also provided for the detention of younger children. In 1992 approximately 100 children under the age of 15 years were sentenced to custody, in 2001 however, 800 children under 15 years were similarly sentenced: an increase of 800%. Although the baseline comprises relatively small numbers, the use of custody in relation to girls over the last decade has also increased by 400% (NACRO, 2003). This is set against data that indicates that girls have not become more criminally inclined (Gelsthorpe, 2005). Similarly, the substantial over-representation of black children and young people continues to prevail at every discrete stage of the youth justice system from pre-arrest to post-sentence and this is particularly evident in relation to penal detention (Kalunta-Crumpton, 2005).

England and Wales not only has one of the lowest ages of criminal responsibility (surpassed only by Scotland), but they also lock up more young people than any other country in Western Europe (Muncie, 2005). For reasons which appear political rather than pragmatic, the example followed is usually the USA whose punitive values are legendary; so much so that Simon (2001) refers to an emergent 'penality of cruelty' characterized in the US by the death penalty for juveniles (until its eventual abolition in March, 2005), boot camps, juvenile court waivers and numerous shame sanctions. Yet as various campaign groups have maintained, vengeance and retribution through custody are demonstrable failures in preventing re-offending. Young Offender Institutions are beset with brutality, suicide, self-harm and barbaric conditions. Moreover, custody diverts considerable resources from community provision to high security institutions. It has long been maintained that the great majority of young people sentenced to custody pose no serious risk to the community, and indeed, by leading to broken links with family, friends, education, work and leisure they may become a significantly greater danger on their return (Goldson and Peters, 2000; NACRO 2003).

It is difficult to marry the ongoing incarceration of the young with a discourse of crime prevention or a philosophy of acting on the basis of what is known 'to work'. Rather, the rationale for the use of custody must be found elsewhere. The downside of the neo-liberal desire to break state dependency is a growing visibility of the homeless and unemployed young on the streets. This in turn plays into public anxieties and insecurities that creep into everyday life when traditional structures of welfare support have been removed. In the process new conceptions of inclusion and

dangerousness have emerged (Pratt, 1999, p.156) and the prison has been re-legitimated. Exclusion awaits those deemed to be incapable of being 'responsibilised'.

These examples suggest that for all the tendencies of the state to govern at a distance, it continually reasserts a sovereign mode of state action. Youth and criminal justice remain powerful icons of sovereign statehood. Moreover far from responsabilizing or managing, neo-conservative modes of governance appear concerned as much to demonize, and promote fear as they are to encourage inclusion. In the continuing recourse to incarceration questions of 'what works', evidence led policy and effectiveness appear to have no place.

### **Governing through youth and disorder**

It is undoubtedly the case that the core business of juvenile/youth justice systems worldwide is to process those children who are routinely exposed to poverty, abuse, inequality, ill health, poor (or lack of) housing and educational disadvantage, as well as rule breaking (Goldson, 2000b). Or as Amnesty (n.d. p.4) have put it 'when children come into conflict with law, it is most often for minor, non-violent offences - usually theft - and in some cases their only 'crime' is that they are poor, homeless and disadvantaged'. It is a recurring feature that young people are largely defined in terms of what they lack rather than by what they are or do (Muncie, 2004, p.3). This is one reason why they are afforded a central place in law and order discourse. They remain the touchstone through which crime and punishment can be imagined and re-imagined. Simon (1997) has argued that the salience of law and order in the US is such that its citizens are continually governing themselves through their reaction to crime.

Arguably, more accurately, it is the constellation of images thrown up by *youth, disorder* and crime that provide the basis of contemporary contexts of governance. The continual reworking and expansion of youth justice systems; a never ending stream of legislation apparently dominating all other government concerns; the political use of crime as a means to secure electoral gain; the excessive media fascination – both as news and entertainment – with all things ‘criminal’; and the obsession with regulation whether through families, schools or training programmes, all contrive to raise anxiety and encourage a punitive response to disputes and conflicts of whatever sort. Youth, crime and disorder are prioritized as the ‘occasions and the institutional contexts in which we undertake to guide the conduct of others (and even of ourselves)’ (Simon, 1997, p.174).

Such readings of contemporary policy formation seem to give added weight to ascribing the multivariate modes of youth governance to neo-liberal and globalised prescriptions and technologies. It seems to have an even greater resonance when governance is achieved not simply through crime, but also through appeals to disorder, misbehaviour, and presumptions of harm. Fear of crime readily spills over to a fear of difference. A focus on *potential* for harm (rather than harm itself) clears the way for multiple strategies of risk management. ‘Making people feel secure’, through zero tolerance of the ‘anti-social’ for example, necessarily broadens the remit through which voluntary and statutory, public and private, collective and individual agencies can find legitimacy in acting against the ‘undesirable’. Similarly a growing interest in restoration is being used as an alternative to rehabilitation. The emphasis throughout appears to be one of punitive responsabilisation.

Neo-liberal economics, conservative politics, and the possibilities of international policy transfer are clearly encouraging some standardised and punitive response to young offending (Muncie, 2005). But youth justice is also excessively localised through regional and local enclaves of difference. Pressures towards zero tolerance and re-penalisation are mediated by distinctive local, regional and sub-national cultures and socio-cultural norms. In particular community responsabilisation can be expected to provide a renewed emphasis on local governance (local solutions to locally defined problems) which will usually open up spaces for re-working, re-interpretation, avoidance and even resistance. (Hughes and Edwards, 2002). Policy as formulated may look completely different to policy as it is activated in practice (Crawford and Newburn, 2003). Broad governmental mentalities will always be subject to revision when they are activated on the ground. At this level youth justice is likely to continue to be dominated by a complex of both rehabilitative ‘needs’ and responsabilized ‘deeds’ programmes (O’Malley, 2000, p.161). Similarly, the sheer cost of a wholesale adoption of neo-conservative rationalities conflicts sharply with a simultaneous insistence on achieving a neo-liberal and managerialized cost-effectiveness. Modern youth justice then appears as forever more hybrid: attempting to deliver a complex and contradictory amalgam of the punitive, the responsabilising, the re-moralising, the inclusionary, the exclusionary and the protective. It is increasingly difficult to prioritize any one of these modes of governance as ascendant or as above contestation, or indeed as acting in isolation from another. But what is less open to dispute is that a diverse and expanding array of strategies have now been made available to achieve the governance of young people. It is an array that is capable of drawing in the criminal and the non-criminal, the deprived and the depraved, the neglected and dangerousness. This broad ambit is secured because the

discourses of crime prevention/reduction/safety are sufficiently imprecise to be all encompassing. It is generated from the continuing ambiguities surrounding the place of young people. But the complex, diffuse and contradictory nature of modes of youth governance also suggests the possibility of continual negotiation, struggle and subversion. If this is so then contemporary youth justice reform is not simply another indicator of a burgeoning 'culture of control' but will be forever informed by localised disputes, translations and instabilities, providing spaces for contestation, transformational politics and further governmental innovation. Its work, as well as that of the critical analyst, will remain essentially 'unfinished'.

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