



# Diversion, Rights and Social Justice

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Youth Justice

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## Abstract

This article draws on historical understandings and contemporary models of diversion in order to develop a critical framework and agenda for progressive practice. The argument essentially revolves around the contention that typically diversionary interventions have been constrained by the contextual and ideological frames within which they operate. They have in some cases been highly successful in reducing the numbers of young people being drawn into the formal criminal justice system; however, this has largely been achieved pragmatically, by way of an accommodation with the prevailing logic of penal practices. Young people have been diverted at least partly because they have been ascribed a lesser level of responsibility for their actions, whether by virtue of age or other factors to which their delinquent behaviour is attributed. This ultimately sets limits to diversion, on the one hand, and also offers additional legitimacy to the further criminalisation of those who are not successfully 'diverted', on the other. By contrast, the article concludes that a 'social justice' model of diversion must ground its arguments in principles of children's rights and the values of inclusion and anti-oppressive practice.

## Keywords

advocacy, children first, diversion, offender management, rights, targeted intervention

## Introduction: Diversion and Progressive Practice

Juvenile (or youth) diversion may not seem intuitively to be the obvious place to start from when developing arguments for more progressive forms of practice in dealing with young people identified as offenders. The typical field of operation for diversionary schemes or decision-making processes lies at the entry point to the justice system, and, as conventionally practised, its remit tends to be restricted to relatively minor, uncontroversial and uncomplicated matters, such as shop theft or graffiti, perhaps. It apparently has little purchase on what happens subsequently, notably for those who are not diverted and become the subjects of more intrusive and punitive impositions by criminal justice agencies and the judicial apparatus. This is not entirely the case, of course, since the 'diversionary impulse' can be brought to bear in these contexts as well, in pursuing bail decisions,

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for example, or in arguing for alternatives to custodial sentences. Here, though, both room for manoeuvre and the terms of engagement are constrained, and, if anything, diversion becomes almost synonymous with mitigation. Crucially, it does not call the established framework and rationale of criminal justice into question when embedded in conventional processes in this way. Here, the aim is to concentrate our attention on the pre- and out-of-court decision-making arenas, in order to propose a more radical and, ultimately, further reaching formulation of diversion, which in part, at least, acts as a direct challenge to accepted and deeply rooted ideas and practices in criminal justice.

This article will move from initial reflections on the origins and practices of diversion in youth justice, via a consideration of alternative diversionary methods and strategies, to unpack the ideological assumptions and conflicts underpinning these. From this point, we will then be able to explore these tensions and the possibilities they open up for transformative models of practice, in their active resolution. In this way, diversion can be represented not simply as a modification of the justice system, but potentially as a radical form of practice, incorporating and realising the logic of rights and social justice in its delivery. This may be dismissed as wishful thinking, but it remains important both to aspire to radical change, and to highlight aspects of existing practice, which at least point the way forward.

## **Where Have We Come From? The Emergence and Evolution of Diversion**

There are a number of sources which helpfully map out aspects of the history of diversion in youth justice (Mays, 1965; Shore, 1999; Smith, 2018), and these tend to suggest a process of progressive recognition, formalisation and incorporation within the criminal justice system. Thus, there are indications that the informal exercise of leniency by police became a recognised element of that agency's practice, just as modern policing itself became established as a key feature of society, and guarantor of public order. Later developments, too, seem to coincide with particular social and political turning points, with the pioneering Liverpool Juvenile Liaison Scheme being established in the late 1940s, at a point where social and family welfare were clearly viewed as national priorities. The infusion of the Liverpool scheme with arguments about diversion as a vehicle for promoting improvements in family functioning and children's well-being is perhaps unsurprising in that context.

Following this initiative, similar schemes were established quite widely, and, in effect, this played a large part in establishing the legitimacy of 'diversion' as a form of intervention at the door of the justice system. Once, legitimised, however, diversion perhaps became an object of scrutiny, and contestation, in ways, which had not perhaps applied previously. It became visible.

Subsequently, attention turned to the problem of 'net-widening', and the question of whether diversion, along with other child welfare practices, was actually drawing children into the justice system by 'labelling' them (Ditchfield, 1976; Lemert, 1967), rather than decriminalising their behaviour, as intended. Here, the very success of the model of diversion developed in Liverpool became identified with the notion of 'unintended consequences' and a process of parallel expansion, which resulted in young people being diverted into the expanding and overlapping care/justice complex, as tellingly documented by Thorpe and

colleagues (1980). As has been clearly documented more recently (McAra and McVie, 2007), the interventionist impulse risks overriding diversionary intentions, with the result that any form of 'system contact' could result in a greater likelihood of becoming 'known' and thus further problematised in the future.

However, at this point, a combination of practitioner and agency reflexivity, the emergence of a stronger rhetoric of rights and justice, and a government driven by an agenda of efficiency and state withdrawal led to a rapid reversal of previous trends. The 1980s have become identified as the 'age of diversion', when patterns of intervention changed dramatically, and children and young people were, indeed, progressively decriminalised (and decarcerated). Thus, for example, between 1977 and 1991, the overall number of young people cautioned or found guilty in England and Wales fell from 184,000 to 105,000, while at the same time, the relative proportion of those cautioned to those prosecuted increased from just over 50 per cent to around 80 per cent (Smith, 2003: 19). Significantly, the consequences of this significant change of direction were also reflected in a sharp decline in the use of custody over the same period. Here, then, a couple of observations become quite pertinent. First, just as in the phase of welfare expansion following the 1939–1945 war, it seems that the prevailing political and ideological climate, characterised in terms of a strong but minimalist state, was once again influential in perceptibly shaping the pattern of disposal of young offenders. And, second, changing patterns in diversion themselves had wider and potentially significant implications for the organisation, delivery and, indeed, experience of youth justice more generally.

The susceptibility of diversionary practice to the wider political climate and public opinion (or perceptions of it) was further highlighted in the further abrupt change of direction following the emergence of a concerted 'law and order' campaign in the early 1990s, culminating in the campaign for tougher justice, which coalesced around the James Bulger case (see Jenks, 1996). There emerged an apparent political consensus on the need to 'condemn a little more, understand a little less' (in the words of the then Prime Minister), and to be 'tough on crime and tough on the causes of crime' (in the words of the then Shadow Home Secretary). And, at least partly as a result, the figures reflected this new, tougher mood. As cautioning rates fell, prosecutions and custody rates increased (Smith, 2014a: 22).

These trends were further exacerbated, at least in the early days of the explicitly interventionist New Labour government, with the replacement of the long-established 'caution' by the two-step scheme of 'reprimands' followed by 'final warnings'. This structure both formalised and constrained diversionary practices, with the result that, as in previous eras, more rather than fewer young people became embroiled in the criminal justice system, with predictable consequences, and this trend was further compounded by the notorious 'Offences Brought to Justice' target also introduced by this government (Smith, 2014a: 53).

Once again, though, the sensitivity of diversionary regimes to external influences became apparent, when the most recent period of 'austerity' took hold, and once again, this was underpinned by a growing recognition among agencies, practitioners and even politicians that the existing provisions were not doing 'what it said on the tin'; that is, diverting young people from the formal justice system (or from crime).

## Where Are We Now?

From 2008 onwards, with the reversal of the Offences Brought to Justice policy, changes in the success criteria for youth justice agencies, the renewal of progressive practice and the effects of another recession, there emerged a further realignment of the drivers of diversionary practice. Over the subsequent period, the number of children formally processed for offences declined dramatically, with the number of child arrests, for example, falling by around 75 per cent between 2007/2008 and 2015/2016 (Bateman, 2017: 33). The pattern of disposals in this new 'age of diversion' did not quite mirror that of the 1980s, with much greater use of police discretion to use informal disposals in evidence (Bateman, 2017: 34). Bateman's detailed analysis suggests a number of possible reasons for this extended length of time during which diversion has made something of a comeback, at least in the sense that far fewer children became subject to formal proceedings of any kind. First, there may, indeed, have been a long-term decline in the number of offences committed by children. In addition, changing government priorities and the introduction of explicit targets to reduce the number of first-time entrants (FTEs) to the justice system are linked to the sharp reversal of existing trends in 2008 and subsequently. As noted, too, changing patterns of policing and incentives to process offenders differently also coincide with the recorded pattern of disposals (or non-disposals) from around the same point of time. And, finally, as Bateman (2017) again acknowledges, it is also apparent that 'the rediscovery of diversion has been largely a pragmatic response to the imperatives of austerity politics rather than an explicit endorsement of the benefits of minimum intervention' (p. 16).

These conclusions offer support for the overall argument that both the political sensitivities associated with young people's problematic behaviour, and what might be termed the economics of law and order, are highly influential in shaping policy and practice in the field of diversion. Against this, though, we must also set the observation that there is a place for the development and implementation of distinctive ideas and models of practice, grounded in the direct experience and insights of those engaged in youth justice work. While wider ideological and structural factors are clearly of great importance in creating the climate and setting the terms for practice, we should not abandon thoughts of the possibility of original and progressive initiatives emerging 'from below'. Agency is capable of being exercised at every level.

## Diversionsary Practices

As we have relatively recently been reminded, despite the trends and influences outlined above, diversion is not by any means uniform, and the term itself is both definitionally problematic, and operationally imprecise. Kelly and Armitage (2015) refer to 'diverse diversions', capturing a sense of changing patterns of practice, driven by the same kind of influences outlined above. They note, too, the deliberate encouragement of different practice models emanating from the Ministry of Justice (covering England and Wales), in the form variously of 'Triage schemes', 'Youth Justice Liaison and Diversion' (YJLD) pilots and the Youth Restorative Disposal. The differing aims and objectives of these initiatives are noted, whether these be to divert young people 'from crime', from the justice system, towards restorative interventions or into schemes to address underlying welfare needs.

Their research contrasted two ostensibly similar diversion initiatives, with one emphasising diversion as a route to obtaining ‘the help that [young people] need’ (Kelly and Armitage, 2015: 124); and the other emphasised young people’s responsibilities and was more geared to addressing the needs of offence victims. They conclude that the models of diversion they evaluated were both reflective of long-standing concerns with addressing risk or meeting welfare needs, and of a broadening of the scope for intervention, associated with an increasingly disengaged central state. With government guidance providing ‘little detail about intervention requirements’ (Kelly and Armitage, 2015: 130), and a resultant ‘*diversity of practice*’ (their emphasis), they conclude that it would be unwise either to make the reductive assumption that ‘policy represents practice, or that there is a great deal of equivalence ‘even between local authority areas’.

Richards (2014), too, has commented on the very disparate understandings of the term which have tended to bedevil those who try to apply it in practice contexts: ‘diversion’ is variously constructed as channelling offenders from court, custody, the criminal justice system as a whole and even offending behaviour itself (as discussed in more detail in the following section). ‘Diversion’ is constructed as channelling offenders to ‘noncourt institutions, community support services, and treatment programs’ (Richards, 2014: 126). The consequences, for Richards (2014), are a ‘plethora’ of programmes adopting the same definitional label, but leading to an overall sense of confusion about rationale and purpose, even regarding the extent to which programmes ‘intend to intervene *more* or *less* with young people and their families’ (p. 136).

In my own earlier work on this subject (Smith, 2014b), I have commented on the diversity of practice in evidence, which in turn appears to reflect disparate purposes and underlying assumptions about the overarching aims of diversion. Some models, such as the Youth Restorative Disposal and Community Resolutions were designed as relatively straightforward mechanisms for reducing the use of formal disposals, while ‘resolving’ the issues associated with the offence. Principally, though, this was about minimising the level of intervention.

Triage schemes, however, have been designed to offer a kind of diagnostic model, geared towards determining the appropriate response to an offence at the point of entry to the justice system. Here, the young person is subject to an ‘assessment’ and the level and nature of the subsequent intervention plan is determined by the results of this assessment:

Eligible young people receive a holistic assessment looking at all aspects of their lives with the aim of informing a mutually agreed intervention plan between the worker and young person/family. This intervention plan will include work with the Triage worker and is likely to include referrals to other specialist agencies for issues including self-harm, mental health issues and substance misuse. (From Cardiff Triage, <https://yjresourcehub.uk/effective-practice/practice-examples/item/395-cardiff-triage.html>)

Other similar models, such as the ambitious YJLD scheme, also seem to rely on a process of assessment and referral, a form of diversion ‘into’ other services, where appropriate. YJLD projects are to be distinguished on the basis of their more limited focus on health (particularly mental health) needs of young people, their concerns with ‘risk

management' and the specifically 'targeted' nature of the form of diversion associated with that (Haines et al., 2012).

By contrast, the approach to diversion embodied by the Swansea Bureau espoused a 'children first' philosophy, which emphasised the value of diversion as a mechanism for promoting children's general well-being and integration into mainstream service provision, as opposed to a selective and potentially exclusionary model of intervention. The emphasis of the Swansea model was set out as being 'children first through its foci on: (re-)engaging parents/carers in the behaviour of their children, giving explicit place to hear the voices of young people and de-coupling the needs of the victim from the responses to the child' (Haines et al., 2013: 171). The bureau model was explicitly differentiated from both Triage and the Youth Restorative Disposal/Community Resolutions, in that it did not seek to apply any specific interventions relating to the offence in question, whether restorative or rehabilitative. Instead, children would be 'diverted' towards gaining better or renewed access to their normal 'entitlements' (Haines et al., 2013: 172). The explicit sense that the model was seeking to distance itself from other forms of intervention was further strengthened with the claim that

Rather than concentrating on normalising offending by avoiding proactive intervention or stigmatising offending through measures portrayed as potentially-punitive, criminalising and risk-focused by critical academics, policy makers, practitioners and children's rights advocates . . . , the [Swansea] Bureau aims to utilise a child-focused and prosocial approach . . . (Haines et al., 2013: 184)

Intervention to 'support' children and families would be offered, which would be focused on promoting children's well-being and providing opportunities, but it would not be mandatory or conditional, and would not rely on specialist, targeted resources, unlike other diversionary initiatives.

Here, then, we can see that alternative forms of diversionary programmes can be differentiated in terms of their underlying assumptions and operating principles, arguably along certain specific dimensions. Whether or not interventions should be 'targeted' might be one of these distinguishing features, for example, as could the extent to which they should be offence or offender-focused, or oriented towards addressing 'risk' and/or 'need' (Wylie et al., 2019). Similarly, though, there appears to be a dividing line between those programmes which could be defined as proactive or minimalist, in terms of the extent and nature of the supporting interventions themselves.

## **Models of Diversion and Models of Practice in Youth Justice**

These interesting variations in the drivers and shaping of practice in youth diversion can also be viewed as reflecting a wider patterning of approaches and rationales of youth justice in general. Certainly, it appears to be the case that contemporary developments and shifting policy frameworks have prompted a number of distinctive patterns of realignment in youth justice in recent years. Undoubtedly, these have to a considerable extent been conditioned or underpinned by the demands imposed by a period of continuing austerity, and the withdrawal of central government support for local state agencies; impacts which

have been offset by the relative reduction in the intensity of direction from the centre, and aggressive micro-management of local services. Here, perhaps, has emerged a ‘space’ for local and community-based creativity to flower, in the formulation of possible intervention strategies and ‘solutions’ which are not prescribed and enforced from above in quite the same ways as may have been experienced previously. Is this, perhaps, a ‘silver lining’? The recent experiences of diversion itself might suggest that to some extent, with the emergence of the schemes outlined above. Some emerged in the form of ‘pilots’, funded from a variety of sources, but with a relatively free hand in terms of their precise implementation, as noted by the evaluators of the Youth Liaison and Diversion initiative, for example (Haines et al., 2012). Others, though, were much more clearly the product of intensive, localised activity, as in the examples of Swansea and other innovations, such as the ‘Pre-Reprimand Disposal’ (later, ‘Pre-Court Disposal’) in Durham, originating in 2008 (Smith, 2014b). Indeed, many areas began to make similar claims about their own innovations as the central government loosened the tight reins of control, as in the case of Surrey’s Youth Restorative Intervention (Byrne and Brooks, 2015). In this case, as with the Swansea Bureau, considerable evidence is placed on the local nature of the initiative, grounded in strong partnerships with the police, an integrated intervention strategy and committed political support, from the Local Criminal Justice Board (Byrne and Brooks, 2015: 12).

In earlier work undertaken with a colleague, I have also observed and attempted to articulate what seems to be a ‘typology’ of strategic and operational frameworks for the delivery of youth justice (Smith and Gray, 2019). In effect, this three-fold conceptualisation of working models of intervention can be seen to have emerged in response to contemporary influences, notably in terms of resource constraints and associated messages about autonomy, self-sufficiency, self-management, resilience and responsibility. While such messages can be discerned and are found to resonate with greater or lesser strength at various points in both youth justice and wider political arenas, their very logic also allows for variable interpretations and adaptations in light of local configurations of resources and micro-political alignments and realignments.

The typology itself can be characterised under the headings of ‘offender management’, ‘targeted intervention’ and ‘children and young people first’. These distinct positions can be discerned in the ways in which local strategic documents and agency representatives describe their approaches to intervention, set out priorities and shape practice. For those prioritising offender management, for example, the emphasis is very much on delivering services according to national policy targets, meeting agreed objectives, and demonstrating efficient and effective management of offenders. So, for example, in one case, the achievements of an effective early intervention project are justified principally because they release resources for dealing with offenders who are identified as more problematic:

The success of the early intervention work undertaken through Triage means that the Youth Offending Team is working closely with a cohort of young offenders who are amongst the most ‘prolific’ and ‘high risk’ offenders requiring more intense and costly interventions. (Harrow Youth Offending Partnership Youth Justice Plan 2014–2015: 11)

In such examples, we might expect the model of diversion to be pursued to be consistent with the idea of ‘minimum intervention’; that is, the principal purpose of diversion itself is simply to clear the way for the devotion of limited time and money to working with young people who are seen as having a higher priority in terms of the problems they represent. Behind this, though, operates a well-established notion of a tariff, based on offence seriousness and levels of risk, which can mandate increasingly intensive interventions or even court proceedings (Tyrell et al., 2017).

For those youth justice agencies adopting a ‘targeted intervention’ approach, their response to resource and structural constraints appears to be geared more towards specialised rather than minimal intervention. In other words, youth offending services are to be viewed as having a role in addressing those aspects of young people’s circumstances which are linked with their offending. In such examples, young people’s needs would be conflated with the risks associated with their behaviour, and agency representatives would talk in terms of identifying those with ‘the highest needs/highest risks’ as early as possible, in order to develop tailored early intervention programmes focusing on these specific areas of concern (Smith and Gray, 2019: 564). Here then, we could expect diversionary practices to be less constrained by a notional tariff, and to involve perhaps short-term behavioural interventions:

The ND [New Disposal] involved an ASSET-style assessment focused on identifying the welfare needs of the young person (this also triggered a number of other assessments and risk management plans when deemed necessary). Following the initial assessment, the actual ‘work’ for the young person was likely to be a programme of activities to address ‘offending behaviour’ (in areas such as victim awareness, consequences of offending and work with families) and any other ‘need’ the assessment had highlighted. (Kelly and Armitage, 2015: 123)

Importantly, Kelly and Armitage (2015) demonstrate that this approach was quite different from that in another area included in their study, where diversionary intervention could be viewed as ‘taking a more offender-focused approach in considering broader factors including the young person’s offending history, their social circumstances and other factors’ (p. 124). This approach could be associated with the third orientation represented within our typology (children and young people first), where youth offending services are closely aligned with more holistic understandings of young people and their offending, viewing this as critically intertwined with contextual factors and their underlying social circumstances. So, in our study, we noted the manager of one service commenting that the agency’s ‘main role is . . . to support young people, they are not born criminal . . . most of them it’s because of the hand they’ve been dealt . . . it could be neglect’ (Smith and Gray, 2019: 564). Similarly, we noted explicit commitments to the interests of the child at the heart of some agency strategies: ‘the Youth Justice Service does not lose sight of the child at the centre of what we do and will work with the child and their family to seek the best outcomes [for them]’ (Nottinghamshire Youth Justice Plan, 2014–2015: 1).

Within this kind of ideological framing of youth offending, we might expect diversion to take an explicitly child-oriented approach, informed by the dual recognition that the social context matters, and that criminalisation of young people is itself inherently harmful. So, for example, Nottinghamshire’s approach to diversion includes an explicit

commitment to developing interventions to avoid unnecessary prosecutions and criminalisation of ‘looked after children’, and in other areas, there is a clear commitment to providing ‘support’ for children and young people at the point of initial contact with the justice system:

We work with children and young people from an early stage to understand what difficulties they are going through to prevent offending, and also help with other problems they may be facing . . . We identify children and young people who can be diverted from formal legal action and help avoid the stigma of a criminal record through intervention at an early stage. These young people are then supported to steer them away from further trouble. (Hull City Council, <http://www.hull.gov.uk/children-and-families/safeguarding-and-welfare/youth-crime-prevention>, accessed 25.04.19)

Here, then, there appears to be a consistent and systematic relationship between the ‘type’ of approach to youth justice intervention in a given area, and its approach to diversion, according to a number of distinct ideological preferences. These include our underlying assumptions about childhood, the way in which young people’s problems are constructed, the prioritisation of risk or need, choices between interventionism/non-interventionism, ideas about costs and benefits, beliefs about guilt and responsibility, and assumptions about the effects of system contact are all factors which might shape agency decisions about the appropriate framing of their diversionary activities. The resultant differential operational arrangements and practices might be taken to suggest that there are essentially no commonalities in terms of underlying assumptions or indeed the effects and consequences of what appear to be quite different intervention strategies. Conversely, we may view things somewhat differently if we turn our attention to another way of framing diversion; that is, reflecting on its continuing relationship with the logic and processes of the justice system itself, which ultimately gives the idea meaning.

## **Diversion and Criminal Justice: Exploring Common Ground**

Although the term can apply at any point in the criminal justice process, typically diversion is associated with the pre-prosecution stage, and with early and minor offending. Arguably, too, it finds its place readily in youth justice because it can be associated with notions of immaturity and the discourse of diminished responsibility, in this case by virtue of age, as well as other possible factors. In this respect, the question thus arises as to the extent and manner in which the differing ‘models’ of diversion accommodate to or incorporate these assumptions and beliefs into their justifications and mode of operation.

Here, for example, the emerging emphasis on reducing the number of FTEs to the justice system seems closely bound up with implicit assumptions about the capacity for young people to make errors of judgement or uninformed choices, simply because of their stage of development. Indeed, we might even make the assumption that childhood offending is normal. This reasoning, in turn, seems to provide a commonsense justification for the idea of giving a young offender ‘another chance’ (Smith, 2018). Of course, for those services which are procedurally driven, and include a reduction in FTEs as a principal objective, the embedded assumptions behind this are readily incorporated into practice

without question. While this approach also coincides nicely with more radical arguments, such as those associated with labelling theory and the effects of criminalisation, it can also be seen as establishing a relatively limited frame of legitimacy for diversion. There is no scope here, for example, for pursuing multiple informal disposals, or applying a diversionary strategy at other points in the justice system – once young offenders have already become ‘criminalised’, for example, by virtue of their repeat offending.

For those adopting to a ‘targeted’ model of diversion, their justificatory logic can similarly draw on notions to do with experiences of childhood, only in this case these are viewed as exceptional, and as contributory factors in explaining young people’s offending. Committing an offence is less to be viewed as a rational choice here, and more as the product of a particular set of adverse circumstances (criminogenic needs), which must be addressed, principally in order to limit the possibility of the young person re-offending. Here, too, we can also note the space afforded to more progressive arguments about the social causes of crime and the selective effects of these, necessitating compensatory measures to resolve the harms young people may have experienced. The problem for targeted models of intervention, in diversion, as elsewhere, is that they rely on establishing criteria for intervention that distinguish recipients in certain, defined ways from the remainder of the population. Here, the motivation for doing so may be well-intentioned, but the consequences are potentially problematic, in that they invite recipients of ‘help’ to accept a label of some kind, which may be more or less stigmatising; and which may, in turn, become problematic should the planned intervention ‘fail’, by virtue of the commission of further offences, for example. By relying on the creation of ‘exceptions’, and implicitly deferring to the embedded logic of the justice system, targeted approaches effectively limit themselves and set clear boundaries to the scope of diversion.

In the case of ‘children first’ models of intervention, the principal basis of their argument is that children and young people should not be defined by their offending, and that the objective of diversion should be to pursue ‘engagement’ with the normal range of services available to children and families (Haines et al., 2013: 181). Instead of ‘risk-focused’ measures, a children first approach emphasises the offer of ‘supportive intervention . . . , which is focused on engagement and promoting opportunity and positive behaviour’ (Haines et al., 2013: 184). This is decidedly not a non- or minimum intervention approach, with considerable emphasis on working with children and their families, and promoting involvement in conventional activity programmes for young people. For such approaches, though, there do appear to be some constraints. The first is that they are likely to be judged according to their re-offending rates, as are other conventional models of diversion. Thus, the achievements of the Swansea Bureau in this respect are given considerable emphasis in positive accounts of this initiative (Haines et al., 2013: 175). Alongside this, there appears to be a continuing emphasis on achieving behaviour change, whether mediated by parents, or in the form of ‘bespoke services and tailored interventions . . . intended as supportive pro-social mechanisms to meet the needs of . . . young people and to achieve positive outcomes’ (Haines et al., 2013: 185). Here, then, the discourse in use is aligned with the idea of desistance, and assumptions that such nurturing interventions will achieve the dual outcomes of ‘good lives’ and reduced ‘levels of re-conviction’ (p. 185). There is much to be said for this more inclusive and child-centred

approach, of course; but there is also something of a tactical accommodation with conventional expectations and priorities in evidence, which leaves open questions such as the application of a notional ‘tariff’ of disposals, or a ranking of offence seriousness, both of which might establish effective limits to the exercise of diversionary measures.

## **Diversion and Transformative Youth Justice**

Here, in essence, I’d like to make a case for going a bit further, and for viewing diversion as one, but not the only vehicle for delivering an alternative model of youth justice, grounded in principles of rights and social justice, rather than deferring to the conventional individualising and responsabilising logic of criminal justice in general. Here, the central focus of intervention is reversed, problematising a criminalising and oppressive ‘system’ as opposed to the young people (and often their carers) who are typically and conventionally seen as ‘the problem’.

This perspective borrows something from abolitionist arguments which, similarly, question the embedded logic of the justice system, and which align themselves with rights-based movements to promote the rights of those who become the targets of intervention. Originating with the work of Mathiesen (1974), abolitionism has been grounded in the belief that it is dangerous to seek any form of pragmatic compromise with the obvious obstacles associated with conventional criminal justice processes, such as the notions of individual responsibility, blame and the urge to punish. Similarly, though, there are risks associated with adaptations which seek to make exceptions on the grounds of age or diminished responsibility, which may well be applied to children who are identified as offenders. Goldson (2005) has previously made the case strongly that there is no case for ‘child incarceration’, irrespective of the distinctive character or special justifications underlying the provision of custodial institutions for children. In practical terms, he challenges the ‘rehabilitative fallacies’ which offer apparent justification for penal sanctions delivered in the guise of ‘reforming’ or improving the lives of children, citing copious evidence discrediting any such claims. In his view, the case for abolition of such institutions is clear. Goldson also stresses the perfidious logic which blames children’s poor outcomes on them, rather than the endemic shortcomings of the penal system and its oppressive treatment of those who become the subject of its attentions.

At the opposite pole of the penal spectrum, diversion similarly encounters this kind of challenge, framed in discourses of difficult circumstances, diminished responsibilities, second chances and then, chances offered and not taken, defiance, recalcitrance and calls for ‘something to be done’. It is for these reasons that the argument for a principled and uncomplicated ‘abolitionist’ position becomes more persuasive. Here, the responsibility for ‘criminalising’ young people is properly relocated within the systems and structures which are essentially responsibility for its genesis. As Goldson (2005) recognises, this does not even require us to ‘imply that youth crime is not a problem’, or suggest that children who break the law ‘should be left to fend for themselves . . .’ (p. 85). Diversionary initiatives are well placed, in fact, to question directly the system and the underlying logic which suggests that criminalising young people is in any way valid, useful or productive in addressing the issues associated with their problematised behaviour. If we are to follow

this argument through, then, diversion is not simply about doing less, even though this would contribute to the decriminalisation of children. Instead, it must take on a proactive role in terms of reversing the embedded rationale underlying the penal system itself, as well as the exclusionary processes often associated with young people's criminalisation. Schlesinger (2018: 74) makes this case eloquently, in discussing the potential for progressive models of diversion to challenge the racialising tendencies of the justice system. Programme: 'implementation determines much of whether and to what extent formal diversion helps make juvenile justice less punitive and reduces racial disparities'.

We can thus perhaps map out the key elements of a diversionary model which seeks to transform youth justice, rather than, say, mitigating its worst effects, or targeting interventions more effectively. First, young people's rights need to take centre stage as, indeed, suggested by proponents of the 'children first' model implemented in Swansea (Haines et al., 2013: 181). Consistent with this model, too, diversion needs not just to challenge the criminalising tendencies of the justice system, but to advocate for young people's rights in general; that is, to reverse the exclusionary processes so often associated with their initial experiences of the justice system. Advocacy thus extends into the wider spheres covered by the United Nations Convention on the Rights of the Child, where marginalising tendencies need to be challenged, both in their own right and because of their known links with the criminalisation of young people. Rights-based diversion can thus be envisaged as promoting access to the distinctive domains covered by the convention:

- *Universal rights* can be promoted, for instance, through diversion *into* mainstream education and services, and away from exclusionary treatment, within or adjacent to the justice system.
- *Situated or specific rights* may be addressed through diversion *from* criminalisation on the basis of particular characteristics or circumstances, exemplified by the kind of deracialising measures proposed by Schlesinger (2018), or addressing the (criminogenic) risks associated with insecure housing.
- *Process rights* can be pursued by means of active advocacy in pursuit of 'minimum intervention', in the form of diversion *out of* the justice system, and towards other extra-judicial models of intervention to resolve any problems associated with a reported offence.

In this sense, perhaps, we can envisage diversion as a subsidiary function of a more broadly based children's rights service, grounded in local systems and engaging directly with service providers (in education and care systems as well as the police and others), whose remit is to challenge the interlocking circumstances and processes that define certain young people and their behaviour as problematic and, typically, seek to get them redefined as 'someone else's problem'. Some practice models of this kind can be found in existence, but often occupying only limited roles and specialised functions, because of their remit or lack of resources; such as the Howard League's legal service, or the Children's Legal Centre. Probably for a variety of reasons, advocacy and rights-based practice in youth justice seem to be much better established in the United States (Goddard

et al., 2015), and while I am not normally an advocate of ‘policy transfer’ from that source, there may be some useful examples to draw on. Goddard et al. (2015) identify a number of initiatives collectively described as ‘social justice organisations’, whose remit is described as bringing ‘consciousness to carceral and economic issues that penetrate the lives of young people’ (p. 87). These organisations will adopt a rights-based approach, focusing on ‘related issues’, to do with the interconnected disadvantages children experience. The ‘Dignity in Schools Campaign’, for example, links structural failures in the educational system to an ‘over-reliance’ on the police to address school discipline issues, in order to reduce the number of children ‘caught up in the justice system’ (p. 84). Similarly, ‘Sistas and Brothers United’ has been effective in campaigning against criminalising policies and practices, again with a focus on schools, which are a particular focal point for the criminalisation of children in the United States. Citing a number of other examples, Goddard et al. (2015: 87) stress the importance of this kind of advocacy model in ‘mobilizing against’ the ‘criminal justice system’, and this sense of active challenge to established practices and assumptions represents an important underlying principle.

In the United Kingdom, the relative absence of such initiatives has been identified as a cause for concern, significantly:

It is of concern to those involved in this work that providing children and young people in care and in need with a universal right to advocacy has not yet been achieved. (Office of the Children’s Commissioner, 2011: 47)

Just for Kids Law is a current example of a children’s rights organisation which is forthright in its commitment to social justice, and which seeks to combine advocacy and campaigning, in order ‘to hold those with power to account and fight for wider reform by providing legal representation and advice, direct advocacy and support’ (<https://justforkidslaw.org/about-us/overview/>). That is, the organisation rejects arbitrary fault lines between, say, the criminal justice system and other areas of children’s lives, drawing on the principle of ‘holistic support’. Although there are potential risks in relying excessively on a legalistic, individualised conception of children’s rights for such organisations, importantly, they do pose a challenge to approaches which operate at the nexus between welfare and justice, without necessarily challenging their embedded assumptions.

Unfortunately, the reach of such rights-led organisations has typically not been sufficiently great to provide an accessible service at all points in the justice process, particularly at the point of entry, or in every context where it is needed. Undoubtedly, though, this kind of initiative has demonstrable value and acts significantly as an indicator of what may be achieved. Such organisations’ strengths lie in their capacity to articulate young people’s needs in their own terms; in the context of diversion, this also obviates the need for compromise, which is critically important in the wider project of reframing youth justice in accordance with principles of rights and social justice. The practice model signposted here is distinguished by its independence from the justice system, its integrated and inclusive approach to promoting children’s interests, and its unqualified prioritisation of their rights. Diversion is not thus a ‘standalone’ objective, but its contribution to decriminalisation is a necessary precondition for the realisation of children’s rights in general.

This limited evidence of the emergence of models of practice of this kind, particularly at the local level, which pose a direct challenge to the criminalisation (whether explicit or implicit) of children suggests the further conclusion that to achieve a genuinely diversionary and transformative form of youth justice will require a much wider programme of social transformation. Prioritisation of a rights and social justice perspective must span all aspects of children's lives.

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## References

- Bateman T (2017) *The State of Youth Justice 2017*. London: National Association for Youth Justice.
- Byrne B and Brooks K (2015) *Post-YOT Youth Justice*. Howard League for Penal Reform. Available at: [https://howardleague.org/wp-content/uploads/2016/04/HLWP\\_19\\_2015.pdf](https://howardleague.org/wp-content/uploads/2016/04/HLWP_19_2015.pdf)
- Ditchfield J (1976) *Police Cautioning in England and Wales* (Home Office Research Study: 37). London: HMSO.
- Goddard T, Myers R and Robinson K (2015) Potential partnerships: Progressive criminology, grassroots organizations and social justice. *International Journal of Criminal Justice and Social Development* 4(4): 76–90.
- Goldson B (2005) Child imprisonment: A case for abolition. *Youth Justice* 5(2): 77–90.
- Haines A, Goldson B, Haycox A, Houten R, Lane S, McGuire J, Nathan T, Perkins E, Richards S and Whittington R (2012) *Evaluation of the Youth Justice and Liaison (YJLD) Pilot Scheme: Final Report*. Liverpool: Liverpool University.
- Haines K, Case S, Davies K and Charles A (2013) The Swansea Bureau: A model of diversion from the Youth Justice System. *International Journal of Law, Crime and Justice* 41: 167–187.
- Jenks C (1996) *Childhood*. London: Routledge.
- Kelly L and Armitage V (2015) Diverse diversions: Youth justice reforms, localized practices, and a 'New Interventionist Diversion'? *Youth Justice* 15(2): 117–133.
- Lemert E (1967) *Human Deviance, Social Problems and Social Control*. Englewood Cliffs, NJ: Prentice-Hall.
- McAra L and McVie S (2007) Youth justice? The impact of agency contact on desistance from offending. *Criminal Justice* 5(1): 5–35.
- Mathiesen T (1974) *The Politics of Abolition*. Oxford: Martin Robertson.
- Mays J (1965) The Liverpool police juvenile liaison officer scheme. *The Sociological Review* 9(Suppl. 1): 185–200.
- Office of the Children's Commissioner (2011) *Where Is My Advocate?* London: Office of the Children's Commissioner.
- Richards K (2014) Blurred lines: Reconsidering the concept of 'Diversion' in youth justice systems in Australia. *Youth Justice* 14(2): 122–139.
- Schlesinger T (2018) Decriminalizing racialized youth through juvenile diversion. *Future of Children* 28(1): 59–81.
- Shore H (1999) *Artful Dodgers*. Woodbridge: The Boydell Press.
- Smith R (2003) *Youth Justice: Ideas, Policy, Practice*. Cullompton: Willan.
- Smith R (2014a) *Youth Justice: Ideas, Policy, Practice*, 3rd edition. Abingdon: Routledge.
- Smith R (2014b) Re-inventing diversion. *Youth Justice* 14(2): 109–121.
- Smith R (2018) *Diversion in Youth Justice*. Routledge: Abingdon.

- Smith R and Gray P (2019) The changing shape of youth justice: Models of practice. *Criminology & Criminal Justice* 19(5): 554–571.
- Thorpe D, Smith D, Green C and Paley J (1980) *Out of Care: The Community Support of Juvenile Offenders*. London: George Allen & Unwin.
- Tyrell K, Bond E, Manning M and Dogaru C (2017) *Diversion, Prevention and Youth Justice: A Model of Integrated Decision Making*. Ipswich: University of Suffolk.
- Wylie L, Clinkenbear S and Hobbs A (2019) The application of risk-needs programming in a juvenile diversion program. *Criminal Justice and Behaviour* 49(6): 1128–1147.

### **Author biography**

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