Critical and Radical Social Work

Towards a 'welfare + rights' model in youth justice

--Manuscript Draft--

Manuscript Number:	CRSW-D-14-00038
Article Type:	Academic article
Full Title:	Towards a 'welfare + rights' model in youth justice
First Author:	Roger Smith
Corresponding Author:	Roger Smith
	UNITED KINGDOM
Corresponding Author Secondary Information:	
Corresponding Author E-Mail:	roger.smith@durham.ac.uk
Order of Authors Secondary Information:	
Abstract:	There have been a number of attempts to elaborate 'models' and typologies of youth justice, which are, in turn, associated with particular jurisdictions and youth justice 'systems'. Whilst analyses of this type represent attempts to differentiate according to specific criteria, such as their implicit understanding of the causes of young people's behaviour, it is also a matter of debate as to whether these tend to overstate differences at the expense of commonalities and pressures towards convergence. Despite the unresolved nature of these arguments, the article nonetheless utilises the framework offered by the notion of a 'model' of youth justice to develop an alternative conceptualisation, bringing together, rather than opposing, principles of 'welfare' and 'rights', in order to argue for a progressive and clearly distinctive approach to intervention with young people whose behaviour is seen as problematic, and who are potentially criminalised.
Keywords:	Welfare; rights; models of youth justice; youth justice
Additional Information:	
Question	**Response**
Word Count Academic articles should be between 6000 and 8000 words, including abstract, notes, tables, figures and references.	8182

Towards a 'welfare + rights' model in youth justice

Roger Smith

Surface and depth: changing practice, changing rationales, common threads?

As historical accounts have indicated, youth justice has been a site of continuous change and contention as it has developed over time (Hendrick, 2006; Muncie, 2009). Whilst there has seemed to be an emergent consensus that the troublesome behaviour of young people was indeed a 'problem', the causes of this phenomenon and the appropriate form of intervention have remained in dispute. Such differences of opinion are in turn associated with alternative views of 'childhood', and competing political and ideological assumptions. As Muncie (2009, p. 78) puts it: 'ideas about welfare and punishments, treatment and control, 'moral danger' and wilful criminality continue to circulate around' and impact on policy and practice. As a result, we are predictably able to identify a great deal of variation in the way in which youth justice is organised and delivered, both historically, and geographically. Different phases in the development of youth justice in the UK have long been acknowledged (Hendrick, 2006), with specific eras associated with the dominance of the 'welfare principle' (1948 to the 1970s, according to Hendrick, 2006, p. 9), or with a 'back to justice' movement (the 1980s, according to Muncie, 2009, p. 288), for example.

More recently, it has been suggested that youth justice practices in England and Wales[1] came to exemplify a spirit of 'institutionalised intolerance' (Muncie, 1999), and certainly systemic behaviours and outcomes appeared to be consistent with this characterisation, at least until 2007. Whilst subsequent developments may have prompted a rethink of this formulation, the phrase itself is indicative of a recurrent and deep-rooted tendency to problematise young people and their behaviour.

At the same time as we can observe patterns of incoherence and change in the domestic context, considerable international diversity is also detectable in policy and practice in relation to 'youth crime'. Significant variations in are acknowledged, particularly in relation to key considerations, such as the age of criminal responsibility, or the rate at which young people are placed in custodial institutions (Muncie, 2009, p. 362; p. 363) Whilst Scandinavia, in particular, stands out because of its highly distinctive and 'tolerant' perspective (p. 373), there is nonetheless argued to be evidence of globalising tendencies towards convergence, according to Muncie, associated with '*neo-conservatism* and punitive penal policies' (p. 355).

Other trends and developments in criminal justice can be detected, though, and these may be distinguished according to certain 'typologies' of penal systems, which may in turn be correlated with other aspects of particular political and welfare 'regimes' (Cavadino and Dignan, 2006, p. 441), whether these are distributed geographically or historically. Different orientations to youth justice policies and practice are thereby claimed to be identifiable, typically demarcated by historical phases

---

[1] Whilst I hope to draw on a range of material and make an argument which is at least partly generalisable, my own experience principally relates to England, and so this inevitably influences the way in which this article is framed. Apologies for any unintended ethnocentrism.

or national boundaries, although there is evidence too of 'justice by geography' within jurisdictions, according to some sources (Feld, 1991; Bateman, 2011).

On the other hand, it must be acknowledged that such typologies tend to, and indeed usually intend to portray idealised, and therefore 'unnatural', accounts of the central tendencies of justice systems for the purpose of classification and analysis. Such Weberian 'ideal types' (Weber, 1957) are unlikely to be found in their pure form in practice anywhere; they are more likely to be helpful in exemplifying patterns and trends and perhaps providing a sense of dominant themes and perhaps, offering some idea of the direction of travel of policy and practice at a particular point in time, in a given geographical location.

Even so, the picture may remain confused, as Muncie (2002, p. 156) has acknowledged, in suggesting that the recent history of youth justice in England and Wales can be seen to be characterised by a number of competing perspectives, effectively constituting an 'amalgam of' the following: 'just desserts'; 'risk assessment'; 'managerialism'; 'community responsibilisation'; authoritarian populism'; and 'restorative justice'. He concludes that this 'mélange of measures reveals the fundamental contradictions underlying a youth justice system cemented around loosely defined notions of 'crime prevention and reduction'' (Muncie, 2002, p. 156); although he also acknowledges that common underlying features are still to be noted, especially those of 'responsibilisation' of children and their parents, individualisation of both risk and need, and the imposition of pseudo-scientific concepts of 'risk' and 'performance management' – perhaps implying thereby a form of 'base/superstructure' (Williams, 1973) articulation of the phenomenon.

In making these observations, we should also pause to acknowledge that the articulation and realisation of youth justice policy and practice is historically specific, being grounded ultimately in the prevailing social and structural conditions. In Althusserian terms, the machinery of youth justice performs a dual function as both Ideological and Repressive State Apparatus (Althusser, 1970); and it can only be fully understood as a feature of a particular and concrete configuration of social relations. In contemporary terms, then, this means that we must make sense of the recent evidence of a liberalisation in youth justice (its outcomes, at least: Ministry of Justice/Youth Justice Board, 2013, for example). As Yates (2012) has argued, for example, we need to factor in the rapid abandonment of young people and working class communities by the state. Recent trends do not, therefore, of themselves represent a wholesale or inherently sustainable revision of public or political attitudes and orientations towards young people and their (problematised) behaviour; nor, of course, does it offer much reassurance to those in disadvantaged neighbourhoods whose lives may be disrupted by unacceptable behaviour, as the left realists pointed out in a previous age of neo-liberal retrenchment (Lea and Young, 1984). That is to say, heated debates about the treatment of young people have merely been deferred, and not resolved (and most certainly not in the direction of a more enlightened and constructive approach to dealing with youth crime).

Overall, though, what does seem to emerge from this brief overview is a sense of a disparate and hotly contested terrain, which is both highly politicised and acutely subject to the impact of wider social change, with competing discourses of childhood and a variety of 'drivers' supporting divergent approaches to policy and practice. These conflicting agendas are in turn manifested in partial and often unsatisfactory solutions to the problems which the behaviour of young people appear to pose for society in general. In what follows, I intend first to explore the possibility that an analysis of

'typologies' of youth justice offers some basis for greater clarity and understanding of patterns of policy and practice; and, subsequently, drawing on these insights, I intend to suggest that an alternative model, grounded in principles of 'welfare + rights' offers a distinctive and potentially productive way forward.

Models and typologies: clarifying the issues?

Despite the acknowledged limitations of 'ideal types', it will be useful to reflect on the contribution they are able to make to our conceptualisations of youth justice systems, and also to our capacity to articulate 'possibilities' for practice, especially when these may lead to creative and progressive models of intervention. A number of typologies have been developed, usually drawing on international comparative analysis, and it will be helpful to reflect on some of these attempts initially (Winterdyck, 1997; Bala et al, 2002; Cavadino and Dignan, 2006; Hazell, 2008; McAra, 2010).

Winterdyk (1997, p. xi), for example, initially proposed a six-fold typology of models of juvenile justice, differentiated according to a number of characteristics, including key agency, functions, 'understanding of client behaviour', purpose of intervention and objectives. Differentiated in this way the typology consisted of the following categories, on what he termed a 'continuum' of approaches: 'participatory', 'welfare', 'corporatism', 'modified justice', 'justice' and 'crime control', moving as might be expected from non- to increasingly punitive forms of intervention. Interestingly, at this point, in the late 1980s, interestingly the system prevailing in England and Wales was identified as 'corporatist' (Pratt, 1989).

Writing somewhat later, Cavadino and Dignan (2006, p. 201) have suggested a five-fold typology, which again could be said to reflect a notional continuum: 'minimum intervention'; 'restorative justice'; welfare'; 'neo-correctionalist'; and 'justice', linked in turn to particular ideological and theoretical perspectives. Hazel (2008), on the other hand, suggests that it is the persisting dichotomy between 'welfare' and 'justice' perspectives which has remained dominant in youth justice , and that these should be seen as 'extreme' poles for the purposes of 'mapping, and charting, the movement of systems and policies' (p. 23). He concludes that 'every other model that has been developed in the literature can be traced back to variations of these two basic types of approach' (p. 24), despite his subsequent association of these further variations with clearly identifiable theoretical positions; and more specifically despite his contentious association of neo-correctionalism with the justice model.

McAra (2010) does not agree with Hazel's approach, claiming that it is an over-simplification of the 'myriad principles shaping both policy discourse in contemporary western societies [not to mention other national contexts] and the core imperatives that underpin international conventions (such as the Beijing Rules 1985)' (p. 287). It is evident, for example, that 'justice' based approaches can be seen to differ significantly in their realisation, despite their common rhetorical basis. Arguments for 'justice for children' (Morris et al, 1980) in the 1980s had a strong flavour of children's rights about them, and were invoked to support that decade's liberalising tendencies; whilst due process principles were equally championed during the 1990s with very different consequences (Smith, 2003).

McAra, following Muncie (2002), quite rightly emphasises that there is likely to be a disparity between the overarching goals and intentions of any given youth justice 'system', its infrastructural and organisational implementation and its precise impact and outcomes at the point of delivery. Nonetheless, attempting to articulate 'models' at system level does appear to serve a purpose in her view in that it captures the sense of purpose which shapes specific jurisdictional approaches, and perhaps also offers some clues as to how youth justice cultures and practices may be shaped by the prevailing institutional ethos.

McAra (2010, p. 288) suggests that four 'paradigms…arguably, have come to dominate youth justice discourse: just deserts; welfare; restoration; and 'actuarialism'. Each of these offers a different solution to the problem of balancing the needs of the vulnerable offender with the needs of society', which is identified as the central problematic of 'all youth justice systems'. These paradigms are said to be differentiated across three dimensions, namely, concepts of 'personhood' and 'social relations', and models of intervention, for example. Children are viewed as rights and responsibilities to a greater or lesser extent; their inherent qualities are differentiated; and accordingly, judgements of the appropriate balance between controlling and enabling interventions also vary. Important distinctions are drawn correspondingly between the 'rights' which might be ascribed to children and young people, who are also deemed to be individually 'responsible' for their actions under a 'just deserts' model, and the 'entitlements' owed to them by state and community under the 'welfare' model, in a context where they are not viewed as fully responsible (not least because their needs have not been met). Paradoxically here, the 'just deserts' model applies the principle of proportionality in setting limits to the level of intervention justifiable in light of the specific 'responsible' action of the young person; whereas the needs-based model does not, since the level of intervention is implicitly justified by what is deemed to be required to compensate for or eliminate whatever deficit or disadvantage which the child may be experiencing. McAra (2010, p. 291) argues that the 'actuarial' model is similarly unconcerned with the child as a rights-bearing rational actor, but rather views him/her as a source of calculable risk (see Smith, 2006) which is capable of being managed, and which should be controlled in the interests of the wider society. 'Expert involvement is crucial to the assessment of risk' (McAra, 2010, p. 291), and the nature and level of intervention are determined simply by what is required to ensure public protection and reassurance. It is only the 'restorative' paradigm that attempts to integrate assumptions about children's 'entitlements and rights', and to recognise the 'social' dimension of offending: 'Under a restorative paradigm the aim of intervention is to support victims, restore the harm caused and reconnect the offender to the community' (p. 291). Although the assumption of children's rationality is complemented here by an acknowledgement of the social context of their 'crimes', it is perhaps less clear that a restorative model is inherently concerned with meeting their 'entitlements', particularly as the model is typically constructed as being principally focused on the offence alone, at the expense of the 'connections between the child and their wider social situation' (Haines and O'Mahony, 2006, p. 121).

Despite potential quibbles about the precise characteristics of the paradigms outlined by McAra, they do provide a systematic basis for subsequent reflection, not least concerning the fundamental questions of how we 'assess' their various merits and determine how to intervene in light of them McAra, 2010, p. 291). As she acknowledges, though, attempts to articulate global encompassing frameworks for juvenile justice have themselves been fraught with complexity and contradictions. International conventions have proved unable to resolve inherent conflicts, particularly between

'just deserts and welfarist perspectives'. In highlighting the tensions inherent in the Beijing Rules, for example, she observes that:

> Juvenile justice institutions are charged with the requirement to meet the needs of the child, protect his or her basic rights *at the same time* as meeting the needs of society.... Procedures should protect the rights of the child…, promote participation (including that of parents) and decisions should be in the best interests of the child'. (McAra, 2010, p. 291-2)

Unsurprisingly, perhaps, the practice arena is also characterised by inconsistencies, with 'elements of each of the…four paradigms…embedded in almost all western systems' (p. 292). In England, it is observed, restorative measures such as the referral order sit alongside risk-based assessment mechanisms and rehabilitative interventions (such as the Youth Rehabilitation Order itself); whereas in Scotland, it seems that the longstanding welfare-led system has now been modified with the inclusion of restorative schemes, punitive antisocial behaviour measures and the emergence of the risk factor discourse in the policy domain. McAra concludes, though, that even obvious inconsistencies may not be unduly problematic, in a functional sense, if they offer a pragmatic basis for compromise, acting, in effect, to provide reciprocal legitimation for competing positions (p. 293). Of course, it remains important to consider the practical consequences of interactions between different paradigms, and their relative degrees of influence, as youth justice systems themselves develop and change. The emergence of the restorative justice perspective, for instance, appears to have been relatively recent, and yet also seems to have changed the penal landscape quite significantly over a relatively short period of time (see below). It is also subject to specific localised influences however, and as McAra (2010, p. 312) reminds us 'that the capacity of governments (or, indeed, individuals or agencies) to effect youth justice reform is likely to be constrained by the broader cultural context…'.

It is also therefore important to remind ourselves at this point, that the decision to opt for one or other paradigm represents a normative as well as a practical decision, and it will always remain necessary to acknowledge this dimension in our deliberations over what a youth justice system *should* look like.

Applying models (1): plus ça change…?

As noted previously, there is a tendency in accounting for change in youth justice to make claims of relatively neat periodisations and clear disjunctures, with distinctive phases during which one or another model is dominant, and then becomes subsumed by a radical shift in the direction of another paradigm. This, though, is perhaps to overstate the sense of rupture, and to underestimate the extent of continuity and coexistence between different sets of operating principles. In the 1970s, for example, at the apogee of welfarism in England and Wales, the institutionalisation of young people escalated significantly, both for reasons of 'need' and 'desert' (Thorpe et al, 1980, p. 29). The sense of sudden shifts engendered by the idea of periodization also, perhaps, tends to imply a greater sense of intentionality and coherence about the changes engendered than is the case in practice.

Similar questions are also posed in relation to the arguments recently aired over whether or not there is evidence of global 'convergence' (Cavadino and Dignan, 2006, p. 436) and homogenisation, associated with a particular phase of social and economic development, or whether distinctive 'models' will continue to exist 'linked to differing types of political economy' (p. 452), and perhaps even according to different local and cultural dynamics within jurisdictions, as in the 'dragonisation' thesis as applied to Wales (Haines, 2009). Equally, in the same vein, we might be drawn to the question of when and how new social configurations and possibilities might emerge, which in turn could prompt the articulation of innovative approaches to youth justice, as has perhaps been the case with the restorative movement (Hazel, 2008).

Hazell (2008), though, certainly does not appear to subscribe to the 'periodisation' thesis, viewing all developments in youth justice, including innovations such as restorative practices, as 'really an accumulation of policies and practices developed historically against the background of competing pressures' (p. 67), deriving from international obligations, professional interests, and political and media opinion. Each of the solutions deriving from these pressures can, nonetheless, 'still be considered in the framework of welfarism and justice', determined by the specific contextualised resolution of the tension between the treatment of 'young offenders', as 'young' first and foremost, or principally as 'offenders' (p. 69; and see Haines et al [2013] on 'children first').

This might perhaps be thought to be sufficient to account for the recent rediscovery of 'rehabilitation' by UK governments, and other leading figures in policy formulation in respect of England and Wales, as a straightforward reaction to the dominance of an excessively punishment-oriented regime established over the preceding fifteen years or so. This shift of policy focus in fact pre-dates the interventions of an apparently 'liberal' Justice Secretary in the form of Kenneth Clarke (see Department for Children, Schools and Families, 2008, for example), and appears to have survived his departure, but its acceleration is closely associated with his brief period of office. Making his lack of enthusiasm for the use of custody explicit, he began to argue for measures which would 'break the cycle' of reoffending (Channel 4 News, 7th Dec 2010), and suggested that there is a need to address underlying problems with mental health, alcohol or drugs, in order to discourage recidivism, rather than simply to 'lock them up'. These ideas were articulated rather more fully and systematically in the incoming coalition government's Green Paper *Breaking the Cycle* (Ministry of Justice, 2010):

> Intervening early in the lives of children at risk and their families, before behaviour becomes entrenched can present our best chance to break the cycle of crime....

> We need a local, joined up approach to address the multiple disadvantages that many young offenders have and the chaotic lifestyles....

> We are working with partners to build on existing projects that seek to divert young people to services such as mental health or family support, to help address the reasons why they offend and ensure that young people receive the most appropriate intervention at the earliest opportunity. (Ministry of Justice, 2010, p. 68)

In one sense, this can be taken as a dramatic rejection of developments over the previous fifteen years or so (Briggs, 2013, p. 27), with that period's increased reliance on custody; and its general and pervasive tone of containment and control permeating all aspects of the intervention repertoire,

including community 'punishments'. Nonetheless, it was the previous government which had introduced the Youth Rehabilitation Order in 2010, and had overseen the initial stages of a significant decline in the use of criminalising interventions with young people reported for offending. This was not perhaps the emergence of a new 'model' of youth justice, but the reassertion of a consistent strand in policy and practice ('welfarism') which had simply become less influential in the immediately preceding period of time, as Hazel (2008) might have anticipated, perhaps.

Indeed, as long as fifty years previously, government had been committed to a 'rehabilitative' perspective:

> it is important to ensure that one whose delinquency results from more deep-rooted causes and calls for lasting treatment should receive the kind of help and guidance he needs at the earliest possible stage.... (Home Office, 1960, p. 4)

And, later in the same decade, notwithstanding a change of government, 'welfare' arguments were reiterated, more strongly, if anything:

> It has become increasingly clear that social control of harmful behaviour by the young, and social measures to help and protect the young, are not distinct and separate processes. The aims of protecting society from juvenile delinquency, and of helping children in trouble to grow up into mature and law-abiding persons are complementary and not contradictory. (Home Office, 1968, p. 4)

Thus, perhaps, the contemporary language of 'rehabilitation' is not so much a 'revolution' as a reassertion of a long-established and continuing strand of conventional wisdom in the youth justice arena (Hendrick, 2006; Hazel, 2008). Some of the proposals associated with its contemporary appearance do offer the appearance of innovation, of course, such as the 'payments by results model' proposed in *Breaking the Cycle* (Ministry of Justice, 2010, p. 39), but the 'results' specified are couched in the conventional language of rehabilitation, public protection and punishment, with a brief nod in the direction of reparation (p. 40). Rehabilitation was thus promoted as a counterweight to the overwhelming emphasis on containment and control, evident in youth justice policy for a period of at least fifteen years, beginning in the early 1990s – and, ironically, triggered in part by the intervention of the self-same political figure of Kenneth Clarke in his earlier stint as Home Secretary, when he promised new custodial measures to deal with 'really persistent, nasty little juvenile offenders' (The Independent, 28 Feb 1993).

Similarly, the occurrence of a 'punitive turn' in New Zealand (McAra, 2010, p. 311) might be associated with the reassertion of a 'justice' (just deserts) perspective in the context of a long-established welfare-oriented model of practice in youth justice, perhaps. Parallel concerns have been expressed about developments in Scotland, too, where threats to its predominantly welfarist orientation have been identified periodically (McAra, 2004, for example).

These developments may at the same time suggest a continuing challenge for those working in youth justice, associated with the limitations imposed by the boundaries of what is 'thinkable'; that is, the extent to which the ways in which a phenomenon is conceptualised are bounded by cultural or political constraints, which may render a particular way of framing the problematic behaviour of young people more or less acceptable, and in some cases literally 'inconceivable'. The common

tendencies of welfare and justice models alike to individualise, problematise, decontextualise and 'other' young people in trouble may be examples of these kind of unacknowledged constraints on our ways of thinking, just as they may represent shared failings in the attempt to develop a fully rounded view of the problem represented by 'youth crime'.

Applying models (2): discontinuity and distinctiveness

There are others, however, who would argue that youth justice is not trapped in a never-ending cycle of action/reaction between the polar opposites of 'welfare' and 'justice' models, but that contemporary developments have indicated the possibility of thinking more widely and more creatively about the possibilities for transformation. According to this perspective, more recently emerging models, such as 'actuarial', 'restorative' and 'participatory' approaches (Winterdyk, 1997; McAra, 2010) are not mere 'variations' on the longer established themes of welfare and justice (Hazel, 2008, p. 26), but represent entirely new thinking and possibilities.

The emergence of the 'risk factor paradigm' (Case and Haines, 2009), and actuarial intervention strategies, in the late 1990s (Smith, 2006; Briggs, 2013) might be held to represent a distinct departure from previous approaches, reflecting wider developments in the political economy (Beck, 1992). This perspective maintains a punitive ethos in the same way as might some interpretations of just deserts principles, for example, but departs from them significantly in the sense that it no longer views the young person as a rational actor, but merely as a source of quantifiable threat. Hazell (2008) makes this distinction clearly, associating each of these positions with different ideological perspectives as well ('classical' vs 'right realist', p. 25).

The assumptions underpinning the actuarial approach are exemplified, of course, in the proliferation of risk-based assessment tools, and graded interventions which are believed to be 'evidence-based', and objective. The distinctive views, needs and interests of young people equally become discounted in this model:

> *The Scaled Approach*… describes the need for targeted interventions based on each person's level of risk but makes no mention of the need to involve them in either the assessment of that risk or determining the interventions that will help them (Hart and Thompson, 2009, p. 13)

Briggs (2013) has confirmed the dominance of 'risk' in shaping the practice of those engaged in youth justice assessments in England and Wales, as effectively prescribed for them by the mandatory *ASSET* assessment tool; although he also acknowledges that practitioners 'have… attempted to create their own rules regarding the allocation of treatment/welfare based interventions' (Briggs, 2013, p. 25), demonstrating a degree of 'resistance' and continuing commitment to welfare-based practice.

Similarly, the recent emergence, legitimation and expansion of the place assigned to restorative practice in the youth justice system might also be seen as the incipient stages in the establishment of a credible alternative to conventional models; and the extension of scope for this kind of intervention under the post-2010 coalition government (Smith, 2013) might also be viewed as

providing further impetus behind this. This government made clear, for example, its intentions to leave the resolution of social problems to communities, and for the state to step back:

> The solution to your community's problems will not come from officials sitting in the Home Office working on the latest national action plan. They will come from the homes of our citizens, from the heads of our police officers, council employees and housing associations, and from the hearts of our social workers….We will put power into the hands of our citizens. We will put our trust into the professionals. And we expect everybody to take responsibility, take action, get involved…. (May, 2010)

The restorative model as envisaged here, and indeed as realised in some practice settings (Haines and O'Mahony, 2006), can be distinguished from conventional welfare/justice approaches in a number of respects, including the diminution of the role of the state in favour of community-based offence resolution (McAra, 2010, p. 291). It is also distinctive (but not exclusively so) to the extent that it sees children reported for offences as rational actors, and as having a proactive role in contributing to what is essentially an 'integrative' rather than punitive process. Whilst some clearly envisage restorative justice becoming the dominant frame through which youth offending will be seen and resolved (Walgrave, 2008), an important distinction is made between 'restorative justice' and 'restorative approaches', with the implication that the latter can indeed be subsumed under conventional justice-oriented systems:

> The theory-based distinctiveness of restorative vs. traditional justice is obviated once the objective of implementing a *wholly restorative justice-based system* is compromised by the enduring presence of retributive/punitive elements. From here on, it is no longer possible to talk about restorative *justice* as such. Restorative *approaches* on the other hand, can be implemented, in both theory and practice, amongst a range of other sentencing options… within traditional justice models. (Haines and O'Mahony, 2006, p. 118)

Certainly, the latter portrayal is redolent of the very hesitant and limited incorporation of 'restorative' measures into the reformed youth justice system under New Labour (Smith, 2013), and this in turn appears to offer partial vindication of Hazell's (2008, p. 54) implicit conclusion that, empirically at least, restorative practice can only be assessed as a 'middle ground' variation of traditional welfare/justice models.

Developing alternative models: towards 'welfare + rights'?

If we are to conclude that the recent emergence of new models, such as the actuarially-based 'risk factor paradigm' and the 'integrative' restorative justice approach, is indicative of the capacity for reframing youth justice outside and beyond the traditional welfare/justice dichotomy (accepting that this is not a 'given'), might it then also be possible to conceptualise and develop other systemic models, drawing upon and extending existing theories and practices which have at least sown the seeds of such developments. Indeed, earlier typologies have offered such possibilities already, with Winterdyk (1997, p. xi) outlining what he describes as a community-based 'participatory' approach relying on principles of minimum intervention, to be found in practice in Japan (Yokoyama, 1997) (although see Fenwick, 2006, for a rather different view of trends in that country, just a few years

later). Cavadino and Dignan (2006) also include 'minimal intervention' as the defining characteristic of one of the 'alternative models' offered in their typology, characterised somewhat surprisingly by Scotland, in their view – England and Wales during the 1980s might have been a better exemplar, although here too the question of whether it became the prevailing ethos, or merely reflected a pragmatic (and as it proved, unsustainable) accommodation with welfare/justice ideologies was unresolved (Smith, 1989).

By contrast, certain recent developments might give further support for the recognition of a systematic and distinctive 'model', consistent with notions of 'welfare rights'. A supporting rationale for this paradigm has been articulated by Scraton and Haydon (2002), who drew attention to the increasing prominence of notions of 'rights' and 'participation' in the context of childhood, and suggested that this might form a principled framework for progressive developments in youth justice. Starting from a similar position as McAra (2010), they view 'welfare' and 'justice' approaches as being 'integrated' (Scraton and Haydon, 2002, p. 311), rather than exclusive of each other, they argue instead for a systematic incorporation of rights into the heart of practice. They question the potential for developing genuinely restorative interventions when they 'are not imprinted on a clean slate' but are 'attempted in a reactive context of crime and punishment' (p. 316). Rather, consideration should be given to 'universal' statements of rights to act as the starting point for resolving the range of conflicts and harms, including 'youth crime', which characterise and impact upon society in a general sense.

Acknowledging the shortcomings in the implementation of rights instruments such as the UN Convention on the Rights of the Child, and the undoubted hostility to 'children's rights' in the public and political arena (p. 323), they nonetheless argue for the implementation of the convention 'grounded in a welfare approach' which would recognise the distinctive features of childhood (see Smith, 2010), but also recognising the specific participation rights associated with this. In contrast to conventional 'welfare' approaches, this perspective 'does not mean a return to hidden, arbitrary and discretionary punitive welfare interventions' (p. 324), but offers safeguards, grounded in children's capacity to speak and act on their own behalf:

> The real potential of a positive rights-based welfare approach is its challenge to constructions of children as innocent, vulnerable and weak through promoting their right to information, expression of views and their participation in decision-making. (Scraton and Haydon, 2002, p. 325)

Putting it into practice?

There are, indeed, some examples of practice initiatives which begin to exemplify this kind of orientation to youth justice. Thus, the National Youth Agency (2010) identifies a number of Youth Offending Services and/or Teams where children's rights are incorporated in principles and practice. One YOT is reported to have 'adopted Article 12' of the United Nations Convention on the Rights of the Child (p. 8) as a core element of its 'overall mission', whilst others are reported to have created 'youth participation' roles within the team:

> Our head of service is the driver behind the creation of the participation officer role.... (YOT team member, quoted in National Youth Agency, 2010, p. 9)

For several YOTs, participation has been prioritised as a management issue, and is embedded in routine operational and strategic processes, in principle. Sometimes, this might involve the head of service meeting directly with young people, to discuss 'service issues'.

In one area, the entire Youth Offending Service aspires to implement the established 'Hear by Right' participation standards across its functions (p. 10). Some, too, could provide evidence of engaging young people in policy development, quality monitoring (p. 15) and staff recruitment (p. 16), as well as encouraging 'young people's involvement in the design and delivery' of services (p. 11); whilst it was also reported that in some cases young people were able to contribute towards the planning and management of their intervention plans.

In some cases, too, it appears that young people have been engaged in strategic and developmental roles, such as contributing to the design and organisation of specific interventions, such as ISSP (Intensive Surveillance and Support) and YISP (Youth Intervention and Support) programmes. Other examples of proactive approaches to participation included encouragement and use of meaningful feedback, rather than standardised forms which might be viewed as unhelpful (p. 11).

So far the evidence for such developments may be viewed as limited, and there is no strong indication that any statutory service has managed to achieve participation in a thoroughly developed sense. In fact, the National Youth Agency inquiry found a number of significant barriers to progress, including inhospitable statutory requirements and an unwelcoming 'culture'; lack of time and resources to engage young people; conflicting organisational expectations; lack of knowledge or understanding within staff teams; and a general absence of a strategic commitment to participatory principles. Indeed, the structural location of Youth Offending Teams and prevailing emphases on actuarial, risk-based and managerial frameworks for intervention (Smith, 2006; Case and Haines, 2009; Souhami, 2011) indicate that the prospects for progressive development within a tightly circumscribed service setting are extremely limited.

Nonetheless, a participatory approach is also a strong feature of the recently established Swansea Bureau, which adopts a diversionary approach to youth justice, explicitly located 'within a children's rights agenda that seeks to emphasise the centrality of youth participation and engagement… this approach seeks to give expression to Article 12 of the United Nations Convention on the Rights of the Child' (Haines et al, 2013, p. 180). The Bureau seeks to pursue a 'children first, offenders second' intervention strategy with the concurrent aims of diverting 'young people away from the formal YJS and [preventing] re-offending via a child-appropriate, children first (offence/offender second) approach… through non-criminogenic, UNCRC-compliant, pro-social intervention' (Haines et al, 2013, p. 181). This approach is explicitly differentiated from a ''pure' (non-interventionist) diversionary approach'; distancing it from 'minimum intervention' models, which arguably do not address the 'social' processes and influences contributing to young people's entry into the criminal justice system. Notably, though, this formulation does not entirely dispense with an acknowledgement of the (albeit residual) status of the 'child as offender' with its implicit endorsement of a crime prevention/crime control rationale, even if subsidiary (see McAra, 2010).

Thirdly, and also articulating a participatory ethos, whilst spared the constraints of the formal justice system, a practice model has recently been developed which seeks to embed participation in a more thoroughgoing manner into the justice process. UR Boss is a lottery-funded project, initiated and run by the Howard League, which has its roots in the organisation's concerns at the shortcomings of conventional agencies, both legal and welfare, to recognise or address their needs and entitlements, or to provide an opportunity for young people to express their own wishes and concerns in this respect. The consequences for young people appeared to the Howard League to be a loss of access to their rights across the board, whether these are seen as 'process' rights (to do with the administration of the justice system), 'situated' rights (to with the specific judicial requirements imposed), or 'generic' rights (universal rights pertaining to all children and young people irrespective of their circumstances).

Recognising that involvement with the justice system might involve more than a curtailment of 'freedom', but the infringement of common standards of treatment, the Howard League concluded that a purely legalistic approach could not encompass all aspects of young people's entitlements, and that a different frame of reference would be required. The project would be grounded in the organisation's legal service, but would reach beyond it to enable young people to be heard:

> Young people will be at the heart of the legal service they will shape [and] manage and [they will] tell people about their lives and what they want and need. (Howard League, 2009)

When it was established, UR Boss therefore sought to incorporate a broad view of participation in its approach to intervention with young people, and to ensure that they are given a voice in key issues which affect them, within and beyond the legal system.

In its early days, UR Boss largely adopted a 'casework' approach, developing the legal service available so that it had the capacity to respond not just to judicial matters and aspects of their treatment within the justice system, but to advocate for young people in other respects, such as their accommodation, educational and welfare rights:

> Our lawyers will take direction from the young person about what they want, what their priorities and needs are, and how they want to proceed... We will work with them to identify the best way to resolve their issues.... (Howard League, 2009)

Initial findings from the project evaluation suggested that this is an effective and well-received service (Smith and Fleming, 2011). Young people uniformly expressed strong praise of the support they were offered, both in feedback comments, and in follow-up interviews undertaken by the evaluators.

Young people's responses reflected the 'all-round' nature of the service, from addressing restrictions on the religious freedoms of Muslims in custody, to resolving the failure of local authorities to provide after care, and even to the extent of providing emotional support:

> It has almost been like counselling at times. (Young person, UR Boss client)

The commitment of the legal team to 'their' young people was a very strong common theme, evident both in the responses of the young people, and in the words of the UR Boss lawyers themselves in describing their approach to the work:

> We are persistent and can go the extra mile – we can do work beyond legal aid, if we feel it is really necessary. (UR Boss solicitor)

The Howard League has also sought to utilise the learning from its UR Boss programme to promote a wider incorporation of participatory principles in youth justice policy and practice (Smith et al, 2013). Young people have thereby taken a proactive role in determining the priorities to be pursued in achieving recognition of and access to their rights at all levels of the youth justice system.

Emerging models of youth justice: challenges and possibilities

In examining the development and application of 'models' of youth justice, I have sought to explore the conceptual and practical value of this kind of 'ideal type' in framing and accounting for the interplay between ideas and practice, and indeed, in shaping particular approaches to intervention. Broad agreement over the viability of this kind of heuristic tool as a means of characterising and understanding distinctive perspectives on youth justice suggests that there is some value in applying this sort of explanatory frame. There is clearly a significant measure of disagreement, though, about both the articulation of specific models, and the dynamic relationships between the different paradigms postulated; I have tended to side not with those analyses which see models of the youth justice 'system' as fixed in a constant and constricted relationship (Hazell, 2008), but rather with those who have seen them as negotiable and interactive (McAra, 2010), to the point of suggesting that there is scope for articulating a distinctive and progressive model geared towards 'welfare + rights'. Some early examples of practice developments which exemplify elements of this model have also been sketched out here, although it is acknowledged that these represent possibilities and prospects rather than the finished project.

A 'welfare + rights' model
Key agency – Hybrid welfare/advocacy provider
Tasks – Provide support/secure rights
Understanding of young people's behaviour – 'Fettered' choice
Purpose of intervention – Enhance access to social goods
Objectives – Social inclusion, 'citizenship', participation
(after Winterdyk, 1997, p. xi)

The emerging interest in applying principles of rights and participation in the sphere of youth justice is significant because it offers a means of reframing our assumptions about both basis and substance of intervention with young people who are identified as offenders. The notion that children hold certain inalienable rights irrespective of their situation or behaviour should provide food for thought (quite literally, if we take account of the UR Boss report of poor diets in custody; Howard League 2011a!), and should prompt us to rethink the problems associated with access to educational opportunities or decent accommodation which compound the 'punishment' experienced by some young people, but clearly form no justifiable part of any penal sanction. One such right, of course, is the entitlement to be heard, and this further supports consideration of the place of 'participation' in helping to shape the collective response to behaviour by young people which is identified as problematic. If we start from this position, this will necessitate rethinking and reconstructing the youth justice system, in ways which are being modelled in some practice settings, in some forms of

'engagement' and participation identifiable in statutory youth offending services, and elsewhere, such as the UR Boss initiative.

In pursuing the argument here in essentially abstract and idealised terms, I am conscious that I have not directly addressed the major contemporary social and structural challenges facing us, although I certainly do not want to convey the impression that they can simply be 'wished away'. Nor is any of this to ignore the substantial challenges faced in gaining legitimacy for an approach which appears to be granting special privileges to young people whose rights are properly forfeited in the eyes of many by the very fact of their proven involvement in criminal or antisocial activities. It is unsurprising, therefore, if participation is interpreted in the minds of many practitioners merely as an indicator of compliance and the effectiveness of interventions (see Ipsos MORI, 2010, for example). But should practice and practitioners be judged (or make judgements) simply in terms of whether young people are 'engaged', or comply with the terms of their sentence, in any case? And should they be concerned only with outcomes in the form of reoffending rates, given how little we know about the relationship between practice and the likelihood of young people committing further offences – and how counterproductive the youth justice system often seems to be in this respect (McAra and McVie, 2007, for example)? Why should practice be defensive, rather than asserting the importance of universal rights, and making a case for interventions to be judged first and above all in these terms? So, for instance, access to a decent diet should not be an afterthought or a matter of chance in a justice system which recognises these rights (Howard League, 2010); education to the same standards as every child can expect should be a given; the entitlement to somewhere to live should not be forfeited by virtue of a prior offence; and, the same safeguards and protections should apply as to any child or young person. If interventions with young people in the justice system put these principles first, irrespective of the sanctions applied, young people would clearly be better served; and wouldn't we all?

References

Althusser, L. (1970) *Lenin and Philosophy and Other Essays*, London, New Left Books

Bala N., Hornick J., and Snyder H (eds) (2002) *Juvenile Justice Systems: An International Comparison of Problems and Solutions*, Toronto, Thompson

Bateman, T. (2011) '"We Now Breach More Kids in a Week Than We Used to in a Whole Year": The Punitive Turn, Enforcement and Custody', *Youth Justice*, 11, 2, pp. 115-133

Beck, U. (1992) *Risk Society*, London, Sage

Briggs, D. (2013) 'Conceptualising Risk and Need: The Rise of Actuarialism and the Death of Welfare? Practitioner Assessment and Intervention in the Youth Offending Service', *Youth Justice*, 13, 1, pp. 17-30

Case, S. and Haines, K. (2009) *Understanding Youth Offending*, Cullompton, Willan

Cavadino, M. and Dignan, J. (2006) 'Penal policy and political expediency', *Criminology & Criminal Justice*, 6, 4, pp. 435-456

Department for Children, Schools and Families (2008) *Youth Crime Action Plan*, London, The Stationery Office

Feld, B. (1991) 'Justice by Geography: Urban, Suburban and Rural Variations in Juvenile Justice Administration', *Journal of Criminal Law and Criminology*, 82, 1, pp. 156-210

Fenwick, M. (2006) 'Japan: From Child Protection to Penal Populism' in Muncie, J. and Goldson, B. (eds) *Comparative Youth Justice*, London, Sage, pp. 146-158

Haines, K. (2009) 'The Dragonisation of Youth Justice', in W. Taylor, R. Earle and R. Hester (eds) *Youth Justice Handbook: Theory, Policy and Practice*, Cullompton, Willan, pp. 231-242

Haines, K. and Case, S. (2010) http://embed.policyreview.tv/media/documents/LI291_EDDIS_ISLES.pdf

Haines, K. and O'Mahony. D. (2006) 'Restorative Approaches, Young People and Youth Justice', in Goldson, B. and Muncie, J. (eds) *Youth Crime and Justice*, London, Sage, pp. 110-124

Haines, K. and Case, S. (2009) *Understanding Youth Offending: Risk Factor Research, Policy and Practice*, Cullompton, Willan

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, pp. 167-187

Hart, D. and Thompson, C. (2009) *Young people's participation in the youth justice system*, London, National Children's Bureau

Hazel, N. (2008) *Cross-national comparison of youth justice*, London, Youth Justice Board

Hendrick, H. (2006) 'Histories of Youth Crime and Justice', in Goldson, B. and Muncie, J. (eds) *Youth Crime and Justice*, London, Sage, pp. 3-16

Home Office (1960) *Report of the Committee on Children and Young Persons (Ingleby Committee)*, London, HMSO

Home Office (1968) *Children in Trouble*, London, HMSO

Howard League (2009) *UR Boss Business Plan*, London, Howard League

Howard League (2010) *Life Inside 2010*, London, Howard League

Lea, J. and Young, J. (1984) *What is to be Done About Law and Order?* Harmondsworth, Penguin

McAra, L. (2004) 'The Cultural and Institutional Dynamics of Transformation: Youth Justice in Scotland and England and Wales"' *Cambrian Law Review*, 35, pp 23 – 54

McAra, L. (2010) 'Models of youth justice', in Smith, D. (ed) *A New Response to Youth Crime*, Cullompton, Willan, pp. 287-317

McAra, L. and McVie, S. (2007) 'Youth Justice? The Impact of Agency Contact on Desistance from Offending', *Criminal Justice*, 5, 1, pp. 5-35

May, T. (2010) Speech, Coin Street Community Centre, 28 July

Ministry of Justice (2010) *Breaking the Cycle*, London, The Stationery Office

Ministry of Justice/Youth Justice Board (2013) *Youth Justice Statistics 2011/12*, London, Ministry of Justice

Muncie, J. (1999) 'Institutionalised Intolerance: Youth Justice and the 1998 Crime and Disorder Act', *Critical Social Policy*, 19, 2, pp. 147-75

Muncie, J. (2002) 'A new deal for youth? Early intervention and correctionalism', in Hughes, G., McLaughlin, E. and Muncie, J. (eds) *Crime Prevention and Community Safety: New Directions*, London, Sage, pp. 142-162

Muncie, J. (2009) *Youth and Crime (3rd edition)*, London, Sage

National Youth Agency (2010) *Voice and Influence in the Youth Justice System*, Leicester, National Youth Agency

Pratt, J. (1989) 'Corporatism: the third model of juvenile justice', *British Journal of Criminology*, 29, pp. 236-254

Scraton, P. and Haydon, D. (2002) 'Challenging the criminalisation of children and young people: securing a rights-based agenda' in Muncie, J., Hughes, G. and McLaughlin, E. (eds) *Youth Justice: Critical Readings*, London, Sage, pp. 311-328

Smith, R. (1989) 'Diversion in Practice', MPhil thesis, University of Leicester

Smith, R. (2003) *Youth Justice: Ideas, Policy Practice (1st edition)*, Abingdon, Routledge

Smith, R. (2006) 'Actuarialism and early Intervention in Contemporary Youth Justice', in Goldson, B. and Muncie, J. (eds), *Youth Crime and Justice*, London, Sage

Smith, R. (2010) *A Universal Child*, Basingstoke, Palgrave Macmillan

Smith, R. (2013) *Youth Justice: Ideas, Policy Practice (3rd edition)*, Abingdon, Routledge

Smith, R. and Fleming, J. (2011) *Welfare + Rights: UR Boss Legal Service*, London, Howard League

Smith, R., Fleming, J. and Hine, J. (2013) *UR Boss: Campaigning for change*, forthcoming

Souhami, A. (2011) 'Inside the Youth Justice Board: ambiguity and influence in New Labour's youth justice', *Safer Communities*, 10, 3 pp. 7-16

Thorpe, D., Smith, D., Green, C. and Paley, J. (1980) *Out of Care*, London, George Allen & Unwin

Walgrave, L. (2008) http://www.unicef.org/tdad/2lodewalgrave.pdf

Weber, M. (1957) *The Theory of Social and Economic Organisation*, Chicago, The Free Press

Winterdyk, J. (1997) 'Introduction' in Winterdyk, J. (ed) *juvenile Justice systems: International Perspectives*, Canada, Canadian Scholars' Press, pp. vii-xxx

Yates, J. (2012) 'What Prospects Youth Justice? Children in Trouble in the Age of Austerity?' *Social Policy & Administration*, 46, 4, pp. 432-447

Yokoyama, M. (1997) 'Juvenile justice: an overview of Japan', in Winterdyk, J. (ed) *juvenile Justice systems: International Perspectives*, Toronto, Canadian Scholars' Press, pp. 1-28