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## Young People, Crime and Justice in Northern Ireland

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### Introduction

Mirroring broader developments in criminology, within the field of youth justice there has been increased interest in the extent and impact of policy transfer in UK jurisdictions and the influence of devolution. Common themes underpinning approaches to those in conflict with the law or deemed 'at risk' of offending include a 'culture of crime control' (Garland 2001), the criminalisation of social policy (Rodger 2008) and the expansion of 'risk focused prevention' (Farrington 2007). Goldson and Muncie (2006: x) argue that, while there is some distinction, Scotland and Northern Ireland have adopted comparable priorities to England and Wales in that:

Politically derived anxieties and the steadily developing conflation of 'crime', 'disorder' and 'anti-social behaviour' is similarly serving to legitimise expanding and diversifying modes of intervention, regulation and governance targeted especially at troublesome, or potentially troublesome, children and young people.

Regardless of declining crime rates in England and Wales (ONS 2013), Scotland (Scottish Government 2014) and Northern Ireland (Campbell and Cardogan 2013), there has been a persistent 'obsession with the crimes of the young and a growing number of programmes aimed at identifying and targeting potential offenders' (Armstrong 2006: 269). Media and political discourses reinforce unfounded concerns about youth crime and negative stereotyping has resulted in the vulnerabilities of young people being overridden by their representation as 'threats' or 'problems' requiring greater control (see Hendrick 2006). Kemshall (2008: 22) notes that the problematisation of youth has produced a 'blurring of social policy and crime policy in which *social* problems are reframed as *crime* problems and crime control strategies are increasingly deployed to manage intractable social ills'.

The ideology and politics of risk upon which these trends are based have been traced across the penal and welfare systems of many Western societies, demonstrating the regulation of marginalised populations (Pollack 2010). Grounded in the process

of ‘responsibilisation’, UK welfare and justice practices have promoted self-regulation to ‘correct’ behaviours defined as ‘risky’, ‘harmful’, ‘anti-social’ or ‘offending’ (see Kemsall 2010). For those in conflict with the law, interventions have focused on provision of additional support to help the individual ‘self-regulate’ or more coercive disciplinary techniques aimed at the child, young person or their parents (Sharland 2006: 255).

Despite some commonalities, the policies and practices of individual countries or jurisdictions are affected by their political economies (Downes 2012) and historical, social and cultural contexts (Muncie 2011). A focus on specific youth justice systems reveals the basis upon which broader trends have been ‘challenged, rebranded, versioned, adapted or resisted’ (Muncie 2011: 41). Criminal justice reform can be ‘a key element of the nation-building narrative’ (Muncie 2011: 41). This is particularly pertinent for Northern Ireland, a society in transition from conflict and in the process of re-imaging itself on the world stage. While policy transfer from Westminster has undoubtedly had an impact on youth justice in Northern Ireland, key reforms demonstrate the uniqueness of a system informed by the legacy of conflict and experience of conflict transformation.

This chapter outlines the evolution of youth justice policy as Northern Ireland emerged from the imposition of ‘direct rule’ to devolution, examining three specific forms of state intervention—early intervention targeting those ‘at risk’ of offending, restorative justice, and imprisonment—while also noting the non-state interventions experienced by many children and young people. Drawing out comparisons with England and Wales where relevant, the chapter considers what is unique about policy and practice in Northern Ireland and assesses whether claims made about implementation of human rights standards match the reality of young people’s experiences.

## **Young People, Crime and Justice in Northern Ireland: 1990s–2014**

Prior to devolution, welfare and criminal justice policy in Northern Ireland generally mirrored developments in England. Although the youth justice system was ‘protected’ from the counterterrorist and security-focused nature of the broader criminal justice system during Northern Ireland’s conflict (O’Mahony and Campbell 2006), poor relationships between communities and state agencies, including the police, meant that these lacked legitimacy and thus (potentially) effectiveness (Doak and O’Mahony 2011).

Lack of trust in the police within some communities led to a ‘crime prevention vacuum’ (O’Mahony and Campbell 2006: 100), prompting the emergence of community-based forms of regulation and control in which paramilitary organisations provided ‘protection’ from external threats and ensured ‘appropriate’ behaviour

through warnings, exiling, public humiliation, beatings and shootings targeted at those accused of criminal, 'anti-social' or 'anti-community' behaviour (Smyth et al 2004). Young people under the age of 25 accounted for the largest proportion of those experiencing such punishments (Knox 2002). At the same time, suspicion towards statutory agencies and state institutions led to a strong community and voluntary sector, which offered community-based alternatives to these forms of 'rough justice' (see the chapter by Eriksson in this volume). Primarily diversionary in nature, evaluation has highlighted the perceived value of these schemes (Mika 2006). However, they have only operated in a few communities and promotion of their success masks the 'informal' justice which continues in some neighbourhoods.

Recognising need for change as part of the conflict transformation process, the 1998 Good Friday/Belfast Agreement included commitment to a wide-ranging review of policing and criminal justice intended to embed human rights, accountability and transparency into all institutions and practices (see the chapter by Harvey in this volume). While children and young people were not a major focus of the Agreement, emphasis on 'human rights for all' equally applied to them. The subsequent Criminal Justice Review (2000) detailed the international human rights instruments bearing on youth justice arrangements. Proposing that the youth justice system 'pay particular regard to the provisions of the United Nations Guidelines for the Prevention of Juvenile Delinquency, and the duty to regard the best interests of the child as a primary consideration under Article 3 of the United Nations Convention on the Rights of the Child' (UNCRC), it noted the merit of enshrining this principle in future juvenile justice legislation (CJRG 2000: 237).

Many of the Criminal Justice Review Group's recommendations were legislated within the Justice Act (Northern Ireland) 2002 which, consistent with the Crime and Disorder Act 1998 in England and Wales, established that the 'principal aim of the youth justice system is to protect the public by preventing offending by children'.<sup>1</sup> Those exercising functions in relation to the youth justice system are expected to encourage children to 'recognise the effects of crime and to take responsibility for their actions'<sup>2</sup> while also considering the welfare of children with a view to 'furthering their personal, social and educational development'.<sup>3</sup> Although an important counter to the responsabilising agenda, this welfare orientation does not establish the best interests of the child as the *primary* consideration.

After many years of policy development within the context of direct rule, the Hillsborough Castle Agreement led to the devolution of policing and criminal justice powers and the establishment of Northern Ireland's Department of Justice in 2010. Included among this Agreement's priorities was a review of how children and young people are processed at all stages of the criminal justice system to ensure compliance with international obligations and best practice (Hillsborough Agreement 2010: section 1, paragraph 7). Incorporation of the best interests

<sup>1</sup> Justice Act (Northern Ireland) 2002, pt 4, s 53(1).

<sup>2</sup> *ibid*, s 53(2).

<sup>3</sup> *ibid*, s 53(3).

principle into the aims of the youth justice system was again advised, alongside a further 30 substantive recommendations (YJRT 2011: 10–14 and 113–18).

The Youth Justice Agency (YJA) was established by the Justice Act (Northern Ireland) 2002. In addition to custodial provision for 10- to 17-year-olds, the YJA provides a range of services to implement the disposals incorporated into the 2002 Act. Youth justice initiatives in Northern Ireland now encompass responses including: early intervention programmes to prevent offending; civil Anti-Social Behaviour Orders; diversionary measures;<sup>4</sup> community-based restorative justice schemes; various non-custodial disposals;<sup>5</sup> and custody. The following sections outline how the local context has informed developments in Northern Ireland, exploring key tensions between policy principles and practice concerning early intervention, restorative justice, custody and ‘informal’ justice.

## Early Intervention

As in Britain, prevention and early intervention have been prioritised in Northern Ireland social policy since the late 1990s. ‘Prevention’ services available through universal provision are intended to stop problems arising in the first place, while ‘early intervention’ is expected to limit the development of evident problems by targeting assistance at those considered ‘vulnerable’ or ‘at risk’ of ‘negative’ outcomes (see Statham and Smith 2010). Significantly, in Northern Ireland emphasis has been placed on a ‘whole child’, ‘family support’ based approach to addressing children’s needs *and rights* (see McTernan and Godfrey 2006). In contrast with the emphasis in England on reducing ‘negative’ outcomes and managing ‘risk’ (see Turnbull and Spence 2011), promotion of positive outcomes is prioritised (see, for example, OFMdfM 2006). Reference in policy and practice to children ‘at risk’ generally relates to ‘child protection’ concerns, with those requiring additional support more often defined ‘vulnerable’ (Haydon 2014).

Attempts to instigate punitive, mandatory ‘support’ targeting young people deemed ‘at risk of offending’ and ‘the most troublesome families’ (Northern Ireland

<sup>4</sup> All decisions regarding diversion are within the remit of the Public Prosecution Service which, following advice from the Police Service of Northern Ireland (PSNI), YJA and others can impose one of three disposals (which are incremental): informal warning, restorative caution, and diversionary youth conference. Before a diversionary measure can be considered there has to be a clear admission of guilt, the offence must not be considered serious, and the young person must not be deemed a persistent offender. Although not a conviction, a record is kept on the young person’s criminal record for 12 months for an informal warning and 2.5 years for a restorative caution or diversionary youth conference.

<sup>5</sup> The range of non-custodial disposals available for 10- to 17-year-olds includes: Probation Order, Community Service Order (16+), Combination Order (16+). Community-based measures (implemented by the YJA) include: an Attendance Centre Order, a Community Responsibility Order, a Reparation Order and a Youth Conference Order.

Office 2008: 30) have been resisted by the devolved Department of Justice (DoJ). It has defined interventions during the early years and key transition periods as 'positive child-focused support services rather than "crime prevention" strategies', in which the justice system is intended to play 'a supportive role' (DoJ 2012: 16). Among those consulted during an inspection of early youth interventions there was consensus that criminal justice agencies should jointly fund early intervention programmes and be able to refer young people, although it was agreed that the justice sector 'should engage in a non-direct way' to avoid stigmatisation or bringing young people further into the criminal justice system and that the family support model was more appropriate (CJINI 2012a: viii).

The Youth Justice Review Team (YJRT) (2011: 35) recommended delivery of early intervention services 'on the ground by trusted voluntary agencies working in partnership with universal service providers such as health and education'. In 2013, the Department of Justice produced a *Strategic Framework for the Prevention of Offending*. Highlighting need for government commitment to address the root causes of offending, it stated that this extended beyond the criminal justice system. This Framework includes the core principles of 'respect for human rights', 'prevention and early intervention' (DoJ 2013).

In practice, similar to pre-crime interventions targeting children in England and Wales (see Armstrong 2004: 103–04), an 'Early Intervention for the Prevention of Offending Programme' (the Programme) was introduced in Northern Ireland in 2008. Research conducted during 2010 with those delivering the Programme highlighted implicit tensions between welfare and justice priorities. Contrasting with policy emphasis on addressing 'vulnerability' or 'need', this Programme targeted 8- to 13-year-olds deemed '*at risk of offending*' and their families. Despite intended outcomes emphasising the personal and social development, well-being and educational progress of referred children, plus increased access to support for their parents, *prevention of offending* was prioritised in the Programme title and longer-term objectives (SHSSB 2007).

Demonstrating the influence of the 'risk factor prevention paradigm', linking antecedent risk factors with potential involvement in offending (see Farrington 1996), 'risk and protective factors' grouped under specific domains (individual, family, school, community) formed the criteria for referral in four of the five projects established by the NGOs commissioned to deliver the Programme (Haydon 2014). However, practitioners highlighted the difficulty of separating children 'in need' from those 'at risk of offending'. The majority of those referred to the Programme were *not* known to the police but experiencing a range of significant issues in their family, school and community. Project staff suggested that the capacity of their parents to provide appropriate care and socialisation was 'compromised' by previous experience of abuse, domestic violence, bereavement, depression and poor mental health, substance use, poverty and social isolation, illustrating how extensive welfare 'needs' have been redefined as 'criminogenic risk factors'. Although they described their work as non-stigmatising, strengths-based support to children and their parents, practitioners acknowledged that use

of offending-related risk factors as referral criteria was ‘almost criminalising, in a way, a *helping process*’ (Haydon 2014: 6).

The risk factor domains in intervention referral and screening tools include the child’s social and economic circumstances, yet assessments focus on the individual’s attitudes and behaviour. For practitioners delivering Northern Ireland’s ‘Early Intervention for the Prevention of Offending Programme’, the behaviours triggering a referral were perceived as symptomatic of unmet need. Poverty, ‘informal’ regulation in communities, unnecessary police monitoring of children in public spaces, ‘normalisation’ of interpersonal and inter-community violence were recognised as significant issues. Practitioners raised concern about the child’s behaviour becoming the focus of attention, but programmes of work with individuals mainly concentrated on helping them develop strategies to change their behaviour and ‘get on better’ with family members or friends—reinforcing self-regulation by the child rather than addressing the broader social, cultural and economic factors affecting their circumstances and opportunities (Haydon 2014).

Case (2006: 173) argues that the ‘welfare-oriented and rights-based provision of universal and needs-based’ services has been ‘undermined by the retrenchment of the welfare state and the burgeoning popularity of deficit models, which target interventions on the most “at risk”, failing, and, by implication, most likely to offend, young people’. However, involvement in ‘anti-social’ or ‘offending’ behaviour is just one *potential* outcome for those identified as requiring early intervention. Classification of children and young people as either ‘vulnerable’, ‘troubled *non-offenders* who require ‘care and protection’ or ‘troublesome’ (potential) *offenders* who require greater regulation and support to change their behaviour leads to a loss of focus on the individual child and the common needs of both groups (Goldson 2000a; McGhee and Waterhouse 2007).

At a legislative level, the Children (NI) Order 1995 actually incorporates those ‘at risk of offending’ within the remit of children ‘in need’ as authorities are expected to take steps to reduce proceedings, including criminal proceedings, and encourage children not to commit criminal offences.<sup>6</sup> In Northern Ireland, and England and Wales, removal of ‘prevention of offending’ from the remit of the youth justice system, together with raising the age of criminal responsibility from 10 to 16 in line with other social responsibilities, would commit early intervention and diversion to welfare priorities. Thus, children’s ‘problematic’ behaviour would be viewed ‘as a symptom of disadvantage and need, rather than indicative of criminality; as a failure of society and responsible adults rather than of the individual child’ (Bateman 2012). In this, more onus would be placed on parents, community members, teachers, health professionals, youth and community workers identifying the child or young person’s personal, social, educational and material needs and/or the causes of ‘problematic’ behaviour with the aim of providing appropriate support to meet their developmental needs and well-being. This may include helping individuals understand the impacts of and take responsibility for

<sup>6</sup> Children (NI) Order 1995, sch 2, art 8(a)(ii) and (b).

their behaviours and actions, but within the context of recognising their evolving capacities, ensuring their entitlements to ongoing care and protection, promoting their participation and social inclusion.

## Restorative Justice

Linked to preventative early intervention is the promotion of diversion from the criminal justice system for children and young people involved in the early stages of 'anti-social' or 'criminal' behaviour. While restorative justice approaches exist elsewhere, they are at the centre of the youth justice system and its philosophy in Northern Ireland, largely informed by community models in existence prior to devolution. Grounded in and reflective of a society emerging from conflict, methods of conflict resolution (such as mediation and dialogue) have been adapted for use in the criminal justice setting (McVie 2011; Muncie 2011). Doak and O'Mahony (2011: 311) note, for example, the paradigmatic overlap between the principles of transitional justice and restorative justice: 'truth, accountability, reparation, reconciliation, conflict resolution and democratic participation'.

The Justice Act (Northern Ireland) 2002 formalised restorative justice approaches by integrating youth conferences into the youth justice system. As the main non-custodial disposal, referrals to the Youth Conference Service (YCS) can take two forms—diversionary (ie, diverted from court on the recommendation of the Public Prosecution Service) or court ordered.<sup>7</sup> Intended to be victim and community-orientated, and restorative in ethos, a youth conference typically entails one or a series of meetings between the young person, their parent or an appropriate adult, the victim or a representative, a police officer and a youth conference coordinator (who will have met the victim and young person separately in advance to prepare for the meeting).<sup>8</sup> The expectation is that the young person is confronted with the impact of their behaviour and acknowledges any harm done. A Conference Plan is drawn up for the young person and agreed by all present. This comprises of actions intended to meet the needs of the victim and prevent further offending. A Diversionary Youth Conference Plan is presented for approval to the prosecutor while a plan resulting from a court ordered conference is subsequently agreed by the court and forms the basis of a Youth Conference Order.<sup>9</sup> Between 2007/08 and 2011/12, the number of young people each year receiving YCS referrals ranged from 1636 to 2012 (McAvoy 2012: 16).

Youth conferencing in Northern Ireland has been promoted as an example of international best practice. The Youth Justice Agency (2010: 12) define it as 'a world leader' in addressing youth crime, the concerns of victims and the safety of

<sup>7</sup> Justice Act (Northern Ireland) 2002, ss 58 and 59 respectively.

<sup>8</sup> *ibid.*, pt 3A, s 57(2).

<sup>9</sup> *ibid.*, ss 58 and 60 respectively.

communities 'in a balanced way', while the Youth Justice Review Team (2011: 12) describe it as offering 'an inclusive, problem-solving and forward-looking response to offending in which the victim plays an important role'. Reviewing the English youth justice system, the Independent Commission on Youth Crime and Antisocial Behaviour (2010) recommended consideration of Northern Ireland's restorative model to see what lessons could be learned. While Northern Ireland has often been subject to policy transfer 'in' from England, the restorative approach is an example of policy transferred 'out'.

In terms of critique, evaluation has noted the satisfaction of victims (Campbell et al 2005) and lower rates of reoffending in comparison with other disposals (YJRT 2011: 15). However, questions have been raised about the philosophical approach and its impact. Reporting mixed experiences of the process and long-term outcomes, some young people have found the youth conference to be positive and associated it with desistance from offending while others have described the experience as oppressive, punitive and shaming (Maruna et al 2007). Despite inclusionary aims, some report having limited input during meetings, finding the tone 'lecturing' and 'berating' (Maruna et al 2007: 3). Emphasis on acceptance of responsibility also led some to feel that the process was unfair because behaviour is often more complicated than implied by a focus on individual responsibility. Maruna et al (2007) note that such experiences may elicit feelings of frustration, resentment and defiance, resulting in the conference having no, or a negative, impact. Young people feeling that they have little choice but to accept rather than 'negotiate' the conference plan has also been highlighted as a concern (O'Mahony and Campbell 2006), raising questions about the extent to which restorative practices are truly inclusive. A consistent finding is that those who have experienced multiple youth conferences report limited impact (Maruna et al 2007; CJINI, 2008a).

While such disposals may be viewed as less punitive given their focus on diversion, restoration and alternatives to custody, Muncie (2008) cautions against assessing 'punitiveness' too narrowly. Eliaerts and Dumortier (2001) note that restorative justice can mask what are essentially punitive practices. The youth conference procedure and outcomes (ie, the duration of the conference plan and the requirements it places on an individual) can be experienced as punitive. Further, Snacken and Dumortier (2012: 4) argue that 'non-custodial sanctions, restorative justice or treatment programmes can also be "punitive" measures by their interference in the fundamental rights and freedoms of offenders'. Diversion from the criminal justice system is often assumed to be in the best interests of the child and more effective than processing individuals through the formal system. However, diversionary conferences are a diversion from court proceedings only. The young person has to admit guilt, agree to meet the victim and agree a plan. While a Diversionary Youth Conference is not classed as a criminal conviction, details of a recent conference will be disclosed under standard or enhanced criminal record checks (AccessNI 2014). A court ordered Plan is recorded on the young person's criminal record in the same way as any other court disposal.

Questions have also been raised about whether participation of the young person is really 'consensual', with anecdotal evidence from NGOs in Northern Ireland suggesting that children were not always aware their agreement to a Youth Conference Plan involved admission of guilt and a criminal record (Haydon 2008: 46). Commenting on experiences of the process in England and Wales, Hudson (2003) suggests that some young people, even if not guilty, may admit guilt and agree to a diversionary conference rather than face attending court—a situation confirmed by many who participated in an evaluation of the scheme in Northern Ireland during the mid-2000s (Doak and O'Mahony 2011: 318).

Alongside issues concerning procedural safeguards are deeper questions about whether restorative justice can fulfil its intended aims. Gray (2005) notes that in England, emphasis on responsabilisation detracts from the restorative potential. In Northern Ireland, the requirement to admit guilt and accept responsibility also demonstrates a strong responsabilising ethos. Thus, while restorative justice is grounded in multiple rationales (diversion, restoration, responsabilisation, reintegration), responsabilisation is most prominent (McAlister and Carr 2014; Gray 2005). As restorative justice measures do little to alter structural disadvantage or young people's experiences of social and economic marginalisation their reintegrative potential can be limited, hampering the long-term potential of diversion. These critical issues receive limited attention in policy accounts of restorative justice and youth conferencing in Northern Ireland.

In theory, early intervention programmes and youth conferencing represent efforts to divert young people from the criminal justice system, with custody reserved for the most serious and prolific offenders. The juvenile custodial population in Northern Ireland appears relatively low in comparison with other UK jurisdictions. However, as with early intervention and restorative justice, a deeper analysis reveals long-standing problems and the continued over-representation of disadvantaged and vulnerable young people in this population.

## Custody

Hagell (2005: 157) notes that levels of custody 'do not necessarily reflect levels of juvenile crime nor do they particularly reflect evidence of its effectiveness'. Custody rates can be affected by political or financial priorities and policing practices, and reoffending is higher among those receiving custodial sentences than for those receiving pre-court disposals (Bateman 2013). Levels of custody have been identified as an area of divergence in UK youth justice policy. The 'rush to custody' and penal expansion that occurred in England and Wales (Goldson 2006) was not replicated in Northern Ireland where, following changes initiated by the introduction of the Criminal Justice (Children) (Northern Ireland) Order 1998 and the Criminal Justice Review in 2000, the number of young people held in custody has progressively fallen. While under-18s have been detained in Hydebank

Wood Young Offenders Centre, the focus of this chapter is detention in the Juvenile Justice Centre (JJC) for those who are sentenced, on remand, or held under Article 39 of the Police and Criminal Evidence (NI) Order 1989 (PACE), which was amended in 1998 to include a JJC as a 'place of safety' after arrest.

Northern Ireland's three JJC<sup>10</sup> were reduced to one in 2003, comprising updated accommodation on the Rathgael site. This resulted in a decrease in the capacity of the system from 110 to 40 places for girls and boys, aged 10–17, of any religion (Kilkelly et al 2002: 4). The Rathgael Centre was superseded in 2007 by a newly built 'state-of-the-art' secure facility operated by the Youth Justice Agency. Woodlands JJC can hold up to 48 young people but is rarely full. In 2011/12 the average population was 28, the maximum was 36 (McAvoy 2012: 11). During that year the number of initial (new) admissions to the JJC was 400, of whom 347 (87 per cent) were male. Illustrating the continued over-representation of looked after children, 67 (17 per cent) of those initially admitted to the JJC were subject to a Care Order with a further 59 (15 per cent) from Voluntary Accommodation. The majority were aged 16–17 (33 per cent were 16, 34 per cent were 17) with 26 per cent aged 14–15 and 8 per cent aged 10–13 (McAvoy 2012: 11).<sup>11</sup>

As in England and Wales (see Bandalli 2000; Fortin 2009: 690–93), the rebuttable presumption of *doli incapax* for 10- to 13-year-olds was abolished in Northern Ireland under Article 3 of the Criminal Justice (Northern Ireland) Order 1998. The Justice Act (Northern Ireland) 2002 made provision for children aged 10–13 to serve a custodial sentence in secure accommodation but this provision has never been enacted. Although only one young person in this age group was sentenced to custody between 2007/08 and 2011/12, initial admissions to the JJC during 2011/12 included eighteen 10- to 13-year-olds under PACE and thirteen on remand (McAvoy 2012: 13).

The Criminal Justice (Children) (Northern Ireland) Order 1998 stipulates that a child or young person should be remanded in custody for public protection or if the alleged offence is serious. In 2011/12, remand to the JJC comprised 36 per cent of initial (new) admissions and 47 per cent of total admissions (ie, new admissions plus internal change of status such as movement from PACE to Remand or from Remand to Sentence) (McAvoy 2012: 11–12). Inappropriate use of remand has consistently been noted as a more pronounced problem in Northern Ireland

<sup>10</sup> The three Juvenile Justice Centres were all former Training Schools. St Patricks in West Belfast mainly held Catholic boys before being closed in November 2000. Rathgael in Bangor, Co Down, accommodated 'non Roman Catholic children' until the introduction of the Criminal Justice (Children) (Northern Ireland) Order in 1998 and then accommodated girls plus a small number of younger or vulnerable boys. St Patricks and Rathgael were open institutions, although both had some secure facilities. Lisnevin in Millisle, Co Down, was a secure centre built on the model of a Grade C prison and accommodated 25–30 boys of any religion. It closed in October 2003 (Kilkelly et al 2002: 4).

<sup>11</sup> Reflecting similar characteristics, during the same year in England and Wales 94 per cent of young people in custody were male and 96 per cent were aged 15–17 (MoJ/HO/YJB 2013: 38). Of the 15- to 18-year-olds detained in Young Offenders' Institutions in England and Wales during 2011/12 who responded to a survey by the Inspectorate of Prisons, 30 per cent had been looked after at some point (Murray 2013: 8).

than elsewhere in the UK (CJINI 2008b: vii; CJINI 2011: 4).<sup>12</sup> Criminal Justice Inspectors have highlighted that many remanded children are neither serious nor persistent offenders but ‘troubled children’ (CJINI 2008b: vii), most of whom are subsequently bailed and do not go on to serve a custodial sentence. According to the Youth Justice Review Team (2011: 55), ‘the courts are using custodial remands wrongly—as a kind of “short, sharp, shock” or more benignly to secure the young person’s safety’.

In 2011/12, 59 per cent of initial admissions to the JJC were via PACE (McAvoy 2012: 11). Given that these children generally stay for less than 24 hours, the Criminal Justice Inspectorate commented that this ‘begs the value of admitting them to custody in the first place’ (CJINI 2011: 4). The justification presented to inspectors was that JJC placements were used for some children ‘in the absence of alternative accommodation when they presented chronic social problems’ (CJINI 2011: 4). Use of PACE to remove disruptive children from care homes has been identified as a particular problem (CJINI 2008b). The Youth Justice Review Team (2011: 54) recommended development of an appropriate range of supported (if necessary) secure, accommodation which is accessible at short notice.

The number actually sentenced to custody is relatively low, representing a small proportion of those in the JJC.<sup>13</sup> The ‘constant churn’ (YJRT 2011: 76) of children passing through Woodlands is expensive, at around £4,000 per week for each child, and also causes significant disruption. Staff capacity to meet individual needs and address behaviour related to offending is affected by the accommodation of convicted and non-convicted children, aged from 10 to 17, detained for varying lengths of time, in the same facility. Unlike previous JJs, the physical environment and facilities at Woodlands are modern and well designed. Those detained have access to high standards of education and health care (CJINI 2011), including programmes to address offending behaviour, specialist mental health services and health promotion. Young people value the safety and support provided by staff in the Centre (YJRT 2011: 75). However, while the JJC is a ‘model of good practice’ with a ‘strong childcare ethos’, it is ‘fundamentally a custodial facility’ (CJINI 2011: v). That some children consider themselves to be ‘better off in the JJC than living at risk in the community or in residential care’ (CJINI 2008b: 5) is an indictment of care and provision in their communities, and indicative of the difficulties they face before and after release.

As Goldson and Muncie (2008: 63) state, young offenders—particularly those in custody—are ‘routinely drawn from some of the most disadvantaged, damaged and distressed families, neighbourhoods and communities’. Many have experienced an accumulation of deprivation and unmet needs (see Jacobson et al 2010). Young

<sup>12</sup> Young people on remand accounted for 24 per cent of the total population of young people in custody in England and Wales during 2011/12 (MoJ/HO/YJB 2013: 35).

<sup>13</sup> In 2011/12 the number of initial admissions sentenced to custody was 24 (6 per cent) while the number of total admissions who were sentenced was 53 (10 per cent) (McAvoy 2012: 11–12). The court is obliged to provide justification for each Juvenile Justice Order (a custodial sentence, half of which is served under supervision in the community).

people who have been in conflict with the law in Northern Ireland describe the impacts of exclusion or truancy from school, undiagnosed special educational needs, poor mental health, drug/alcohol/solvent use, lack of routine, few leisure opportunities, difficult family relationships, negative experiences of care, homelessness, and feeling marginalised and unsafe in their communities (Haydon 2009; Include Youth 2011a). The legacy of the conflict is an added dimension, leading to young people being both the victims and perpetrators of sectarian-related offences and experiencing actual or threatened regulation through 'informal' justice (CJINI 2012a: 10–11).

Given their vulnerabilities, the complex circumstances of their lives, and limited access to appropriate support in their communities, it is not surprising that some appreciate the routine, safety and individualised provision they receive while in custody, describing it as providing an opportunity to 'detox' and 'get fit' (McAlister and Carr 2014). Rather than indicating beneficial aspects of detention, this reveals the significant shortcomings of community-based welfare, health and education services. Since these are the communities to which young people return on release from custody, it also highlights the importance of holistic resettlement support which should be coordinated across the statutory, voluntary, community and private sectors to include: suitable accommodation in a community where the young person feels safe and comfortable; education, training and employment opportunities which are accredited and reasonably paid; access to counselling, substance misuse services and health care; constructive activities; personal development and preparation for independent living; ongoing support and guidance to help them achieve positive changes in their lives and deal with the difficulties they face (see Bateman et al 2013; Include Youth 2011b).

## Informal Justice

The previous sections outline key issues concerning 'formal' interventions by, or on behalf of, state agencies. Yet some of the most marginalised young people continue to experience 'informal' regulation and punishment within their communities. Despite decommissioning of arms and the negotiated withdrawal of paramilitary activity, 'paramilitary-style' intimidation and violence are endemic in some communities. Of the 272 recorded casualties from 'paramilitary-style' shootings and attacks between January 2008 and December 2010, 47 per cent were young people under the age of 25 (PSNI 2011). This figure is likely to be an under-representation due to under-reporting. In 2008, the Northern Ireland Commissioner for Children and Young People expressed concern to the UN Committee on the Rights of the Child that punishment beatings against children and young people 'have not been traditionally dealt with as child abuse by relevant authorities' (UK Children's Commissioners 2008: 16).

The issue of informal regulation and punishment has consistently emerged in research with children and young people in Northern Ireland (see Roche 2008;

McAlister et al 2009; Harland 2011) yet is rarely the focus of literature on paramilitarism. Young people struggle with the morality of this form of control, perceiving it to be a particularly harsh and violent form of ‘justice’ applied disproportionately to them. However, in the absence of ‘normal policing’, some feel there is a need for internal regulation within communities (McAlister et al, 2009; Harland 2011). The impacts of ‘double punishment’ are most harshly felt by young offenders—punished formally within the youth justice system and also informally in their community (Haydon 2009; McAlister and Carr 2014).

Formal policing has also been experienced arbitrarily with young people reporting discrimination, antagonism and harassment (CJINI/NICCY 2007: 12) and being treated disrespectfully by police officers (McAlister et al 2009). The Youth Justice Review Team (2011: 39) commented that its discussions with young people suggested ‘too many officers are still adopting a judgemental and prejudicial, even antagonistic attitude towards some of the young people they encounter’. While relations between young people and the police undoubtedly continue to be affected by family and community experiences during the conflict, negative representations of young people in media and political discourse also impact on their interactions.

The Northern Ireland Policing Board (NIPB 2011: 13–15) acknowledges that negative stereotyping ‘feeds perceptions of anti-social behaviour’, reinforcing the ‘demonisation’ of young people. Noting that perceptions rarely match the actual level of such behaviour in a community, it argues that negative stereotyping and inaccurate perception ‘almost certainly results in increased numbers of reports and therefore an increased focus by the police in response’ (NIPB 2011: 15). Since the introduction of civil Anti-Social Behaviour Orders to Northern Ireland in 2004, on average 41 per cent have been granted against young people aged under 18 (CJINI 2012b: 58), raising concerns about discriminatory use against young people and the potential for them to enter the criminal justice system via this route (CJINI 2012b: vii).

While young people’s accounts often reveal high levels of monitoring and control—from parents, community members, the police and paramilitaries—the populist view is of a ‘post-conflict generation’ lacking guidance and regulation (McAlister et al, 2009). Their demonisation, however, underplays their status as victims of intolerance, harm and crime. Further, the rights agenda has not been extended to children and young people considered ‘anti-social’ by virtue of how and where they spend their free time, or those experiencing ‘informal’ justice within their communities.

## Conclusion

Within the UK, ‘distinctive approaches to youth justice’ have been identified (Goldson and Hughes 2010: 215). Areas of divergence include differing outcomes

(for example, in relation to rates of custody, use of diversionary and restorative methods, the minimum age of criminal responsibility) and dominant agendas broadly defined as ‘risk’ in England, ‘welfare’ in Scotland, ‘restoration’ in Northern Ireland and ‘rights’ in Wales. Points of convergence include policy discourses of ‘youth crime prevention’, ‘early intervention’, ‘better integrated and co-ordinated provision’, a shared ‘commitment to target anti-social, as well as criminal, behaviour’ and promotion of ‘restorative justice’ (Muncie 2011: 4). Significantly, all UK jurisdictions also ‘ostensibly seek to comply with the benchmarks for practice’ established by the UNCRC and European Convention on Human Rights (Muncie 2011: 43). However, these common priorities have been emphasised to different degrees in each jurisdiction, informed by the social, political, historical and cultural context at national and local levels.

Northern Ireland’s commitment to criminal justice reform as part of the conflict transformation process has impacted significantly on the structure and philosophy of its youth justice system. Restorative justice, reflecting and potentially propelling ‘the values of political transition’ (O’Mahony et al 2012: 271), is now a central element of responses to young people in conflict with the law. Informed by the commitments of the Good Friday/Belfast Agreement, the rights discourse has been firmly embedded in reviews examining the criminal and youth justice systems. The language of rights and a *stated* commitment to achieving positive outcomes for all children and young people is evident in key policies (OFMdFM 2006; DHSSPS 2009; DoJ 2012, 2013). Yet effective implementation of rights-based policy has been minimal.

Given that the system of government in Northern Ireland involves a mandatory coalition of the five main political parties, securing and progressing shared priorities is difficult.<sup>14</sup> As there is ‘no principle of collective responsibility’, the result is often ‘policy impasses’ or a ‘lowest common denominator approach’ (Birrell 2011) with ‘individual ministers presid[ing] over personal fiefdoms in which they can act with virtual impunity’ (Carmichael and Osborne 2003: 213). Significantly, the Criminal Justice Inspectorate’s first report monitoring progress in implementation of the 2011 Youth Justice Review recommendations found that 50 per cent of the 45 sub-recommendations showed limited or no progress (CJINI 2013: 7). Demonstrating the disjuncture between discourse and implementation, 14 years after the initial recommendation that the aims of the youth justice system should

<sup>14</sup> The 12 government departments in the Northern Ireland Executive are allocated using the D’Hondt system of proportional representation. Using a mathematical formula, departments are assigned one at a time beginning with the party gaining the highest total number of seats in the election. In June 2014, the First Minister was from the Democratic Unionist Party and the deputy First Minister was from the Republican Party Sinn Féin. The ministers for Health, Social Services and Public Safety; Finance and Personnel; Enterprise, Trade and Investment; and Social Development were from the Democratic Unionist Party. The ministers for Education; Agriculture and Rural Development; Culture, Arts and Leisure were from Sinn Féin. The ministers for Employment & Learning and Justice were from the Alliance Party; Environment was from the Social Democratic Labour Party; and Regional Development was from the Ulster Unionist Party.

include the 'best interests' principle, the Executive has drafted legislation with this objective.<sup>15</sup>

International standards explicitly define the rights to which all children, including those in conflict with the law, are entitled. General Comment No 10: Children's Rights in Juvenile Justice (UN Committee on the Rights of the Child 2007), provides a detailed statement of the relevant principles and provisions of the UNCRC and guidance about the measures required for a rights-based approach to the administration of youth justice. According to Kilkelly (2008: 191) standards concerning youth justice are 'too vague on detention as a last resort', 'too weak on the age of criminal responsibility', 'incomplete on the trial process, sentencing and serious crime', 'give states too many options—such as whether to divert children away from the criminal justice system to social services—without requiring them to do so' and, in the absence of effective enforcement mechanisms, states can ignore them. Despite these limitations, the standards 'are consistent with regard to a commitment to age-appropriate treatment, the importance of diversion and the imperative of rehabilitation' (Kilkelly 2008: 188).

Yet rights have an offensive as well as a defensive role (Tulkens 2012), acting 'as a bulwark against, but also a motor for, criminalisation' (Snacken and Dumortier 2012: 14). Under the remit of 'preventing offending', pre-emptive early intervention programmes can potentially label children at a young age and net widen: bringing to the attention of state agencies, including the police, those experiencing difficulties at home, in school and in their communities. This may actually be damaging in the longer term (McAra and McVie 2013). In Northern Ireland, policing interventions targeting children thought to be involved in 'anti-social' behaviour or 'sectarian rioting' on the basis of identifying those requiring support may in fact breach their rights (Haydon et al 2012). Packaged 'as a courtesy to the child', such interventions may 'criminalise the most structurally vulnerable children' (Goldson 2000b: 52) but also increase their susceptibility to 'informal' regulation and punishment. While negative representation of young people has been identified as an issue throughout the UK, the existence of quasi-paramilitaries who continue to regulate behaviour carries additional consequences in Northern Ireland. Focus on the risks or 'nuisance' posed by young people shifts emphasis away from the risks experienced by them and adult responsibility for ensuring their care, protection, development and well-being.

Ironically, promotion of human rights can lead to implementation of policies and practices which are actually experienced punitively and may contain fewer procedural safeguards than formal criminal justice processes (Eliaerts and Dumortier 2001). While restorative justice 'has become prominent in an era of rights' (Hudson 2003: 91), the potential for denial of rights to voluntary participation, legal assistance, due process protections and proportionality is concerning (Eliaerts and Dumortier 2001). These issues are particularly pertinent in Northern Ireland, where restorative approaches are a central element of the youth justice

<sup>15</sup> Justice Bill 2014, pt 8, para 84.

system. Further, despite relatively low rates of youth imprisonment, custody is not being used as a last resort for those presenting a risk to themselves or others. Use of remand and PACE as a punishment, or because there is a gap in suitable alternative provision, is inappropriate and breaches international standards.

While it might be argued that Northern Ireland's youth justice system has 'benefited' from conflict transformation in ways that the systems of other conflict affected societies such as South Africa have not (see O'Mahony et al 2012), rights discourses have not always been translated into practice. Key Northern Ireland policies refer to respecting children's rights but, as in other UK jurisdictions, the UNCRC has not been incorporated into domestic legislation so its standards are not enforceable in courts. However, legal defence of rights implementation offers only one safeguard against current breaches. More significant is changing perceptions about children and young people—challenging negative stereotypes, separating rights from responsibilities, recognising and addressing individuals' needs and vulnerabilities. Fundamentally, this means responding to all under-18s as 'children', entitled to non-stigmatising support in which the primary consideration is the best interests of the child and the objective is their personal, social and educational development.

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