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'Objects of concern' or 'risky young offenders'? Assessment and intervention with children in the public care and youth justice systems of England and Wales

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For publication in **Ulmer, J and Bradley, M (Eds.) (2017)** *Punishment Decisions: Locations of Disparity – Volume 2 in the ASC Division on Corrections and Sentencing Handbook Series*, New York: Taylor & Francis

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Abstract:

Experiences of victimization and trauma cannot account fully for the over-representation in the youth justice system of young people with a background in public care. This chapter explores the relationship between the child protection, public care and youth justice systems in England and Wales (United Kingdom). There is a tendency in social work and youth justice practice to make children the objects of risk assessment (in terms of 'risk of harm' and 'risk of reoffending') without paying at least equal attention to the risks posed to children by powerful professionals and the systems they represent. The author duly conducts a risk assessment of the child welfare and criminal justice processes through which such young people typically pass.

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Introduction

A major Inquiry into the relationship between the public care and youth justice systems in England and Wales (Prison Reform Trust, 2016a) has, at the time of writing, recently published an executive summary of its findings (the full Report is due to follow). The central question of the Inquiry, chaired by Lord Laming, was to

> '...consider the over representation of children in care, or with the experience of care, in the youth justice system – why, for example, when only fewer than 1% of children and young people are committed to the care of local authorities, a third of boys and 61% of girls in custody are, or have been, in care...?'
>
> (Prison Reform Trust, 2016b: 1)

It is perhaps also worth mentioning that 30% of young people in penal youth custody are black, and many of these are known to the care system (Bateman, 2015).

At the outset it is important to acknowledge that the impact of abuse, neglect and various forms of family trauma can obviously have a profound effect on the cognitive and emotional development of children (Skuse & Matthew, 2015). Being placed away from a familiar home environment, even in cases where parenting has been extremely abusive or neglectful, is also disorientating for a child. All of this may well go some way to explaining why such young people are vulnerable to future contact with the criminal justice system. Nevertheless, such experiences of victimization and trauma cannot account fully for this over-representation. At the very least it is important to ask whether there are certain aspects of these two systems – and their relationship with one another - that increase the risk of criminalization.

This chapter considers three main dimensions of the subject: disparities of assessment and intervention that arise from social class inequalities; the influence of cultural biases

embedded in institutions, systems and practices; and the role of practitioner agency in relation to clinical and actuarial assessments of risk. An overview of the social and cultural context is followed by a risk assessment of the powerful systems of welfare and justice through which so many vulnerable young people pass. In order to appreciate more fully the salient aspects of these risk assessments it is necessary to provide some detail on the local particularities of the public care and youth justice systems of England and Wales. This is described, respectively, in the sections entitled 'The present youth justice systems in England and Wales: background and context' and 'Entry into the Looked After Children (public care) System'. However, it is important to emphasize the point that the underlying principles of risk-assessing the institutional processes and practices of child welfare and youth justice are transferable across different national contexts.

Historical and cultural influences on prevailing popular attitudes towards young people

It is important to first understand something of the historical, social and cultural context within which the public care and youth justice systems have developed. This has not only shaped the architecture of child welfare and juvenile justice services, but also widely held contemporary attitudes towards young people. In Britain there is a tendency to selectively sentimentalize some children while simultaneously demonizing others as folk devils. These *others*, it is contended, are the 'usual suspects' drawn from the disadvantaged sections of the white workless class and those minority ethnic communities popularly perceived as feckless, ill-disciplined or dangerously unintegrated (Phillips & Bowling, 2002). Britons thus simultaneously venerate their own little angels whilst at the same time seeking to exorcise the demons that animate the offspring of *others* (Hendrick, 1997). When children enter their teenage years, however, a less equivocal attitude is exhibited.

It has been argued persuasively that Britain is a place that does not really like youth (Haines & Drakeford, 1998). Two essentially contradictory - but simultaneously held –

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public attitudes in respect of young people are detected: *envy* and *fear*. In terms of the first sentiment, there is a belief that young people are having such a good time at their wild and orgiastic parties they forget to invite the rest of us. Paradoxically, this attitude is contrasted with a palpable sense of fear.

> 'These are the youngsters who are out of control, who do not know how to behave, who have been brought up by parents who are too soft, who congregate on street corners in order to intimidate passers-by, who have no respect and show no consideration. There is a physical menace which is never far from the surface in these encounters. These young people are dangerous. They need to be avoided or, better still, kept away.'
>
> (Haines & Drakeford, 1998: 3-4).

If the above analysis is correct, it is perhaps unsurprising that the concepts of 'youth' and 'crime' have enjoyed such a long and intimate association in the public mind. Although the term 'juvenile delinquent' – along with the concept of adolescence – is found in the 18th century (Hendrick, 1997), it was in the 19th century that the concept became firmly lodged in wider popular consciousness (Hendrick, 1990). Whilst the concept of juvenile delinquency undoubtedly gained popular currency in the 19th century, it was the creation of the administrative category of 'juvenile offender' that facilitated a process of conceptual concretization. The establishment of a separate juvenile criminal justice system provided a material focus for the anxieties of a nervous middle class public. Their 'respectable fears' (Pearson, 1983) became ever more focused on the emerging 'folk devil' (Cohen, 2002) of 'unruly youth'. As with most debates about crime, the populist 'surface' discourse barely conceals public anxieties about deeper social concerns: structural changes in society, economic instability and insecurities about personal safety.

The highly class-specific image of the 'criminal', especially the young criminal, is – for the most part – accepted uncritically in populist political and cultural discourse. The same can be said for the social construction of 'adolescence' as an essentially troublesome and challenging condition. The psychological and behavioral disorders that are supposed to cluster around young people in their teenage years are commonly regarded as 'natural' and somehow an integral part of child and adolescent development. 'Youth' and 'deviancy' have thus become almost synonymous in public discourses about young people. Although most of Hall's (1905) ideas have been jettisoned, the vivid image of adolescence as a time of *'storm and stress'* with hormonally driven identity crises is one that has become embedded in 'commonsense' folk wisdom. The traces of these ideas are still clearly discernible in many contemporary accounts of youth. Some of the psychological labels attached to 'challenging' (a much favored epithet in 'professional' parlance) young people have seeped into wider public consciousness. Moreover, the news media's concentration on youth offending (Jewkes, 2011) as opposed to other forms of crime (like tax fraud and corporate crime) ensures that the diminutive hooded figure of the juvenile delinquent looms large in the public imagination. Young people, after all, are far more visible on the streets with their distinctively 'scary' haircuts, challenging music and incomprehensible demotic street argot. Youth is highly susceptible to being represented as the dangerous 'other' and 'enemy within' the city walls. The challenges experienced by young people – the delayed and often fractured transitions into the labor market, for example – tend to be presented as social problems for which they themselves are personally and individually responsible (Furlong & Cartmel, 2007). Although there exist middle class versions of youthful delinquency and rebellion involving cautionary narratives of 'falling' into 'bad company' (Cromer, 2004) and 'descending into drug-dependent hells', for the most part the dominant constructions of juvenile delinquency are masculine and class-specific. The feral offspring of the Victorian

'residuum' bear a striking resemblance to later representations of the modern 'underclass' (Murray, 1984, 1990, 1994). Like their 19th century counterparts, the post-modern poor are contrasted with a noble but fast-vanishing working class. According to Pitts (2000: 4), there is nostalgia for the,

> '…vision of a 1950s municipal housing estate where fully employed, skilled, solvent, working class artisans took care of their families and kept their children under control.'

This lament for patriarchal authority needs to be understood in terms of the shifting power relationships between social class, family and the status of children. 19th century constructions of children were not mere 'fabrications'. These constructions were a direct response to material social phenomena. Whilst Aries' (1962) work presents a rather flawed historical account of childhood – the literalist interpretation of European art being a case in point – he correctly identifies the fact that the majority of children in Western Europe once shared the same social space as adults. This included the important public space of the workplace. It should be recognized, of course, that this remains the case for many children in 'developing countries'. At the beginning of the 19th century children were certainly active participants in the economy. At the time there were actually comparatively few voices raised in opposition to their entry into the newly-developing forms of industrialized labor in Britain. However, according to Hendrick (2002) in the period 1780 –1840, a significant shift in attitude towards child labor gathered momentum and achieved critical mass amongst the middle classes. Leaving aside the influence of evangelical Christianity and the sentimentalization of the Romantic movement's construction of childhood (Hendrick, 2002: 24-5), there was growing recognition that children were not genuinely 'free' to enter into meaningful contracts with their employers. This recognition ran counter to one of the principal tenets of classical liberal economics. 'Reformers' duly drew parallels between the

position of factory children at home and the international slave trade. Moreover, there was some disquiet that patriarchal authority – or the proper 'order of nature', as it was known – was in danger of being subverted. The prospect of children usurping a father's role as principal breadwinner risked disrupting the bourgeois 'Domestic Ideal' of 'natural' family life.

It was against this background that the movement to regulate child labor was duly realized in a series of Factory Acts. Whilst this development can be read on one level as humanitarian, at another it represented direct paternalistic intervention in working class life. In the United States Platt's (1974) analysis of the 'child –saving' movement exposed the 'mixed motives' underlying this liberal humanitarian mission. More recently, applying a broadly similar methodological approach to that of Platt, Ward (2012) has laid bare the 'racial' dimension of the black child-saving movement in a compelling analysis: tracing the formal exclusionary practices represented by Jim Crow juvenile justice to the still clearly discernible shadow-lines of this inheritance in the penal classification processes of the contemporary US justice system.

Child welfare, family life and public order

In 19th Century Britain the imposition of middle class assumptions and values brought benefits to children, but it also attracted hardship. Many working class families experienced 'child-friendly' legislative measures as acts of impoverishment. The loss of children's contribution to the family income meant that many parents were required by economic necessity to compensate for the shortfall in income by working longer hours. This inevitably resulted in large numbers of children being left without adult supervision. Contemporary accounts suggest that many of these children subsisted on the margins of the formal economy (Mayhew 1867). Begging and petty theft were also commonplace. It was not long before the

increased visibility of unsupervised children on the streets was problematized in terms of crime, public order and parental neglect. The economic displacement of young people produced the social conditions in which the 'juvenile delinquent' emerged as a distinct and recognizable urban entity. That said, the alarm expressed about the crime and public order problems presented by these young people was tempered with sentiments of genuine concern for their physical and moral well-being. Thus, issues of youth crime and child welfare became conceptually conflated in early constructions of 'juvenile delinquency'.

One of the state's responses to the increased presence of children on the streets was the enlargement of the criminal code. This involved the problematization of certain street activities and the conversion of 'public nuisances' into criminal offences (a process later to be echoed in New Labor's construction of 'anti-social behaviour' in the Crime and Disorder Act 1998 and the Anti-Social Behaviour Act 2003). It is nevertheless important to recognize that the expansion of the criminal code and the formal extension of summary jurisdiction in juvenile matters were not simply manifestations of social authoritarianism. Whilst such repressive impulses were not entirely alien to the governing classes, there was undoubtedly a clear desire in some quarters to soften the impact of the criminal justice system upon children. Peel's criminal justice reforms, for example, were intended to form part of a wider modernization project in which children and other vulnerable groups were offered some measure of protection. The explicit underlying purpose of Peel's review of the criminal law was, '…to look at all the offences which are now punishable by death, (and) to select those…which can be safely visited with a mitigated punishment (Peel cited in Magarey, 2002: 120).

The unintended consequence of this legislative strategy was a widening of the criminal justice net. The Vagrancy Act 1824, for example, captured many children who would hitherto not have been classified as 'offenders'. The statute made it a criminal offence

to be '…a suspected Person or reputed Thief' (Vagrancy Act 1824 in Magarey, 2002: 117) and expanded the category of 'rogues' and 'vagabonds' to include, '…every person playing or betting in any Street…or other open and Public places…at any Game or Pretended Game of Chance' (Vagrancy Act 1824 cited in Magarey, 2002: 117).

The criminalization of comparatively harmless street games clearly placed children at disproportionate risk. The subsequent Metropolitan Police Acts empowered officers to prosecute anyone loitering on the street without good reason (1829) as well as those engaged in a range of popular working class leisure pursuits (1839). Children, once again, formed a significant proportion of this troublesome working class constituency. Meanwhile the Malicious Trespass Act 1827 effectively outlawed many of the economic survival strategies deployed by destitute children.

Criminal justice practitioners (like magistrates, police officers and probation officers) have always played an enormously influential role in interpreting and applying legislation. Thus, police practice in this period was an important factor in determining which offenders were prosecuted. The police not only had as their principal objective 'the prevention of crime' (Magarey, 2002: 117) – a duty that might be interpreted to apply to the street activities of children – but also the responsibility of paying their own legal costs in the event of an unsuccessful prosecution. It is reasonable to suppose, therefore, that prosecutions were likely to be brought against those where a conviction was most likely to succeed. Unsophisticated defendants, like children, were thus particularly vulnerable to prosecution.

Such 'net-widening' practices, like those mentioned above, continued as the century progressed. The Amending Act of 1861, for example, redefined Vagrancy as '…virtually any child under fourteen found begging, receiving alms, of no settled

abode or means of subsistence or who frequented criminal company' (Amending Act 1861 in Shore, 2002: 167-168).

The Consolidating Act of 1866 expanded the category of Vagrancy to include those in need of care because they were, by implication, on the periphery of juvenile offending. Those 'at risk' included '…orphans, children of criminal parents and children whose parents were undergoing penal servitude' (Shore, 2002: 168).

The conceptual conflation of juvenile offenders with those 'in need' was well established by the middle of the century. Indeed, the late twentieth century notion of 'at risk' populations has its roots in this conceptual conflation. The outcome of 19th century net-widening exercises, as Crawford and Russell (cited in Magarey, 2002: 119) observe, was that half of the juvenile prison population was there as a result of the enlargement of the criminal code. This 'criminalization of behaviour characteristic of the poor and urban young' (Magarey, 2002:118) lends support to the assertion that juvenile delinquency was, in a very real sense, legislated into existence.

The emergence of a discrete juvenile justice system and early explanations for youth crime

Nevertheless, a precondition for the birth of 'juvenile delinquency' was the legal system's creation of the category of 'juvenile offender'. The incremental establishment of a separate justice system, despite its undoubted merits, inevitably raised the profile of juvenile crime in the collective consciousness of the public. The emerging juvenile legal system eventually culminated in the establishment of the juvenile court in 1908; a court that dealt with **both** criminal and welfare issues. The juvenile/youth court remains, to this day, an arena in which competing discourses of welfare, justice, punishment and rehabilitation collide.

The introduction of a discrete judicial system, allied with concern about the corrupting effect of adult prisons on children, led to the establishment of separate custodial provision for juveniles. The nature of these regimes had been anticipated by the institutions established by the philanthropic societies at the turn of the century (Shore, 2002: 163-4). Nevertheless, the philosophical ideas of these new, state-run regimes had already had over half a century in which to mature. The philosophical ideas that underpinned the Reformatory (1854) and Industrial Schools (1857) are worth considering briefly. In many respects the creation of these institutions helped to define and operationalize previously held constructions of juvenile delinquency. It is to some of these ideas and discourses to which reference will be made below.

Underlying the debate about the purpose of custody – whether to punish or rehabilitate – lay a deeper question concerning responsibilization. If children were not **fully** responsible for their offending, then punishment was both an inadequate and irrational response to the problem of youth crime. The questions of 'whom' or 'what' was responsible for youth crime had been debated with increasing urgency since the moral panic that engulfed metropolitan areas after the French wars. The authors of the *Report for the Committee Investigating the Causes of the Alarming Increase of Juvenile Delinquency in the Metropolis* (1816) identified four principal causes of crime:

'The improper conduct of parents.

The want of education.

The want of suitable employment.

The violation of the Sabbath and habits of gambling in the public streets.'

(Report for the Committee Investigating the Causes of the Alarming Increase of

Juvenile Delinquency in the Metropolis, 1816: 10)

In addition to these 'primary' causes were auxiliaries that could be organized under three

headings,

'The severity of the criminal code.

The defective state of the police.

The existing system of prison discipline.'

(Report for the Committee Investigating the Causes of the Alarming Increase of

Juvenile Delinquency in the Metropolis, 1816: 11)

It is interesting to note that some of the primary and auxiliary causes are not so very distant

from the contemporary academic and policy discussions around 'risk factors' (Farrington,

2007) and the iatrogenic nature of the criminal justice system (McAra and McVie, 2010).

Rush (1992: 146) has suggested that there were two main ways in which 19th century

reformers responded to the problem of juvenile delinquency. One involved an explanation

based on the 'narrative of place', in which the 'neighbourhood' was portrayed as a breeding

ground for criminal activity. Solutions therefore involved improved housing, urban planning

and communications. The second explanation for crime presented a 'narrative of life' that

included parenting deficits, dysfunctional families and the inculcation of poor life habits. It

was to the second narrative that the Reformatory Movement responded with missionary

enthusiasm. Reformatory Schools set about the task of re-training and, perhaps, even re-

parenting young offenders in accordance with sound Christian principles of honesty, self-

discipline and industriousness.

Mary Carpenter's horizons extended beyond those young people who broke the criminal code. The Industrial Schools Act 1857 (and the 1866 consolidating measure) was the formal embodiment of the concern felt for those young people at risk of offending: children in 'need of care and protection' (1866 Act cited in May, 1973) and those who were 'beyond their parents' control' (1857 Act cited in May, 1973). These embryonic Care Orders effectively brought a wide range of working class children under the disciplinary control of the middle classes. Whilst the classificatory integrity of the child 'in need of care and protection' and the 'moral orphan' or 'juvenile delinquent' needed to be maintained, it was clear that **both** categories of child were in need of comprehensive re-education. Whilst the desire to improve child welfare was undoubtedly a genuine sentiment held by many reformers, public protection (or, to express it another way, the protection of propertied interests) was an equally important consideration.

The removal of children from their parents, families and communities actually ran counter to the classical model of liberal governance. State interference in working class life was, therefore, justified on welfare grounds. For an imperial power, moreover, the removal of children from 'inadequate' parents and morally corrosive neighbourhoods was represented as a legitimate exercise in both 'child salvation' and 'nation-building'.

Like most of her contemporaries, Mary Carpenter subscribed to a class analysis based on the organizing principle of moral hierarchy. This is well illustrated in her social taxonomy of juvenile delinquency (involving six classes of juvenile offender spread across three generic laboring classes: the 'honest', 'perishing' and 'dangerous'). Therefore, when Carpenter spoke of raising a young offender above his class or station, she was not speaking in terms of socio-economic mobility. She was, rather, describing an almost salvational form of moral mobility.

It will be clear from the foregoing analysis that the characteristics of 'juvenile delinquency' – projected as they were on to the institutionally manufactured new category of 'juvenile offender' – were closely related to the perceived attributes of the generic 'social' class from which they hailed. Interestingly, the growth of the human sciences – particularly psychology – contributed to a process in which such socially subordinated groups were pathologized. The new profession of social work, moreover, played an active part in promoting a conservative welfare model. According to Jones (2002) it was the profession's supine adoption of a quasi-psychodynamic casework model that helped to foster an essentially reactionary practitioner culture in which the dysfunctional working class family was perceived to be at the root of most social problems. Even the more recent rhetoric of service-user empowerment, it is implied, is not too far removed from the Victorian belief in moral autonomy and self-help. The profession of social work, it is suggested, continues to recruit legions of willing accomplices to the cause of reactionary practice. Mullaly (1997), though, argues that there are two main traditions in social work. On the one hand, the case-work oriented Charity Organisation Society in which individual, family and moral explanations for problems are advanced. On the other hand, there is the Settlement House Movement tradition which privileges explanations based on social structure. Sometimes, though, it can be difficult to make a distinction between the two. It is perfectly possible, for example, to smuggle reactionary social work practices under cover of welfare rhetoric and the language of service user empowerment. The distinction between twenty-first century empowerment and the mid-Victorian self-help advocated by Samuel Smiles (Smiles cited in Golby, 1986: 106-112) is perhaps not always as clear as some would claim.

Youth justice and the risks of welfarism

It would of course be a misrepresentation of the history of youth justice to suggest that some statutes, policies and practices have not proved to be more child-friendly for young

people in comparison with other measures. Nevertheless, such periods cannot necessarily be identified by whether explicit welfare principles are inscribed in the statutes of the time. One of the paradoxes of youth justice history is that those who desire to promote the welfare of children often do the most harm. Thus, for example, whilst the 1933 Children and Young Persons Act placed the welfare of the child centre-stage it simultaneously created the potential for intrusive state intervention into family life on the basis of 'needs' rather than 'deeds'. Girls and young women, moreover, may have been placed at particular risk by assorted 'child-savers' intent on rescuing them from moral danger or, post-corruption, the moral threat they might pose to men and family life in general (Sharpe & Gelsthorpe, 2015). The history of the social work profession might well be represented in terms of 'humanitarian ideals' and 'harmful therapies' (Smith, 2003: 289). The risk posed by professional welfare to children and young people is well illustrated by the contrasting juvenile justice practices of the 1970s and 1980s. In the 1970s the road to high levels of juvenile incarceration was paved with the good intentions of liberal reformers and 'child-friendly' social workers. Clarke (1985: 292) has identified two such good *intentions* underpinning the Children & Young Persons Act 1969, a statute widely regarded as the high watermark of welfarism: the first was the 'anti-institutionalist and decarcerationist pressure to remove juveniles from state institutions'; and the second was recognition of the ' …class inequalities of juvenile justice'. As far as the latter is concerned, the White Papers that preceded the 1969 Act (Home Office, 1965; Home Office, 1968) certainly acknowledged social problems as causative factors in criminal behaviour; however, this Act was underpinned by an individualized treatment philosophy. As Brown (1998: 59-60) observes, 'Primacy is given to the family and the social circumstances of the deprived and underprivileged whose circumstances caused crime, truancy, lack of control and neglect – but it should be noted that primacy was accorded to individual factors rather than structural factors such as poverty or poor housing.'

The Act's language of welfare, moreover, should not distract attention from the extension of social control over children from poorer backgrounds. This was probably at its most explicit in the statute's creation of so-called 'Criminal Care Orders' under Section 7/7. Thus, Care Orders were available to the Court as a criminal disposal in cases where children had offended (s.1 (3) (c) CYPA 1969). There was also the 'offence clause' (s.1 (f) CYPA 1969) available as grounds for a Care Order application in civil proceedings. In 1989 these criminal routes to public care were duly closed. As Curtis (2005: 54) comments:

'The Care Order, as a criminal disposal, and the offence clause in civil Proceedings, were seen as draconian and contrary to natural justice since, theoretically at least, after stealing a bottle of milk a child of 10 from difficult home circumstances could be placed in local authority care until the age of 18. Thus the consequences of their offending could last far longer for children than for those adults committing the same crime.'

'Care' and 'control' have long been presented, somewhat uncritically, as two sides of the social work coin (Davies, 1986). The harsh language of punishment may be abjured in favour of cosier sounding 'contracts' and the maintenance of 'supportive structures' or 'healthy boundaries', but the actual practice may be no less draconian in effect. When this is understood it is, perhaps, unsurprising that the decarcerationist spirit of '69 should have resulted in a sharp increase in custody rates for young people in the decade that followed. In 1977 38% of convicted juveniles were sentenced to detention centers and borstals compared with only 21% in 1965 (Pitts, 2001: 179). A government report (Department of Health and Social Security, 1981), moreover, identified a fivefold increase in the juvenile custody rate between 1965 and 1980. Part of the explanation for this upward trend lay in the pitfalls of early intervention with young people considered 'at risk' of offending (primarily working

class youth). In 1977, for example, some 12,000 children were participating in the first wave of community-based Intermediate Treatment (characterised by groupwork and supervised 'youth work-style' activities); only 1,500 of these were actually adjudicated offenders. As Pitts (2001: 179) observes:

> '…early informal intervention revealed a tendency to draw youngsters further into the system as the discovery of new needs and new problems appeared to necessitate the formalization of such interventions. In consequence, larger numbers of children were appearing in the juvenile court and a higher proportion of these was receiving custodial sentences.'

Whatever the noble intentions of those social workers operationalizing this legislation, the outcomes were both deleterious to the interests of young people and woefully ineffective as a crime reduction strategy. It was, indeed, very much upon the outcomes of the so-called 'welfarist' movement that the slowly emerging justice movement concentrated its criticisms. The 1969 Act had delegated social workers discretionary powers of intervention in the lives of young people. This discretion – exercised in a dangerously secluded legal vacuum of professional privacy – was, arguably, scandalously misused by the 'child-savers' (Thorpe *et al,* 1980: 6). The absence of 'due process' and the deprivation of legal rights to meaningful defense effectively provided a fast track from 'care' to 'custody'. It is often the case that when treatment appears to fail (as the 'net-widening' strategy of Intermediate Treatment undoubtedly did), punishment almost invariably becomes the next destination for the young person.

What emerges from the foregoing historical narrative account is that the distinction between welfare and punishment has long been rather blurred. The conflation of the 'deprived child' with the 'depraved child' means that there exists a contested space at the heart of the youth justice system. Whilst laying the foundations for the modern youth justice

system through the establishment of the youth court and the formal enhancement of welfare principles, the 1908 Children Act also eroded the boundaries between the old Industrial Schools (for neglected children) and the Reformatories (for young offenders). In doing this, it facilitated movement between these two populations (Stewart, 1995). Thus, there developed a more ambiguous public and professional reaction to young people in the care system. This ambiguity was, as has been mentioned, much later exacerbated by the 1969 Children and Young Persons Act which gave magistrates the power to effectively 'sentence' children to Care Orders. As Hayden *et al* (1999: 24) observe:

> 'In a direct, practical sense this was an attempt to funnel young offenders away from the juvenile justice system and into the care system. The debate on the wisdom of this approach continued throughout the subsequent decade…. What was certainly true was that perceptions of the care system began to change as the nature of its clientele changed. No longer was it an avenue for public sympathy for 'neglected' children. As child care, particularly residential care, began to house relatively older children (fostering, adoption and preventive work catering for most of the others) and more of those who had been in trouble with the law, the nature of the stigma attaching to those in care changed. Children in care (particularly residential care) began to be seen as young criminals being given an easy ride by the courts rather than as those most deserving of public sympathy.'

It could be argued that the sense of stigma described above has survived the abolition of those sentencing powers. Young people in care, particularly teenagers in residential units, perhaps still tend to be associated with trouble rather than vulnerability. Nevertheless, all of these young people will have personal welfare needs. In analyzing political and professional responses to such young people, is it really a question of choosing 'welfare' *or* 'punishment'? A Foucauldian analysis would imply that disciplinary discourse extends well beyond the

prison walls and penetrates the institutions of welfare and education (Petrie, 2003) to create a 'carceral society': the 'clinical gaze' (Foucault, 1973 and 1977) of the psychiatrist and the 'welfare spotlight' of the social worker (Evans, 2010) respectively trained on the patient and welfare client . The warm words of the social worker, it could be argued, are merely an example of the 'anesthetic function of political language' and 'structured bad faith (which) allows indefensible forms of control to look more defensible' (Cohen, 1985: 273). Whether the whole social welfare system can legitimately be described as a 'punitive archipelago' (Cohen, 1985) is a moot point, but the 'dispersal of discipline' analysis (Cohen, 1979) is one that challenges the notion of a straightforward choice between 'welfare' and 'punishment'. Whilst practitioners arguably still retain a reasonable degree of professional discretion in their daily working lives, those decisions are inescapably ambiguous, equivocal and double-edged. Doing the 'right thing' for young people in trouble with the law is a difficult business.

The present youth justice system in England and Wales: background and context

Before proceeding to a risk assessment of the public care and youth justice systems, it is perhaps necessary to provide not only an overview of the framework and institutional architecture of the present youth justice system in England and Wales but also some background to the ideas and political forces that have shaped the contemporary landscape. A summary of the essential characteristics of the corresponding public care system is provided in the section, 'Entry into the Looked After Children system'. The level of detail provided is hopefully sufficient to illuminate rather than obscure the analysis: the aim being to help the non-UK reader discern the wood rather than the trees. It is the conviction of this author that the underlying principles being described contain elements that are universal in character and can therefore be applied comparatively across national contexts.

The present youth justice system has, on the whole, remained intact since it was put in place by the New Labour governments in power between 1997 and 2010. It is helpful to understand the underlying philosophical approach of what came to be known as the 'New Youth Justice' (Goldson, 2000), particularly in such areas as responsibilization and risk management. It is not necessary to detail the contours of the youth justice system which existed immediately prior to New Labour's election in 1997, but suffice to say it was characterised by a 'minimum sufficient intervention' approach that embraced diversionary principles and flexible models of supervision in the community (operationalized by social work trained staff) with the result that relatively low numbers were sentenced to penal custody. It was, however, criticized by the Audit Commission (1996) for – *inter alia* – inappropriate diversion via repeat cautioning and its inefficiently sluggish court proceedings that led to too many adjournments. It should be noted, however, that the Audit Commission's analysis was open to critical challenge on methodological as well as philosophical grounds (Jones, 2001). Nevertheless, the Report – along with the strong public reaction and lurid media coverage of the murder of two year old James Bulger by two boys aged 10 years (Jewkes, 2011) – prepared the ground for subsequent radical changes in the youth justice system.

Although New Labour's record in office can certainly not be read as a direct translation of Third Way political philosophy, policy action in the domain of children and young people was influenced by the concept of the *social investment state* (Giddens, 1998: 99-128). Although Labour's policy in the field of criminal justice - influenced as it was by populist punitiveness (Tonry, 2004) - detracted from the philosophical coherence of *positive welfare*, much of the child/youth social policy agenda is explicable with reference to Giddens' ideas.

This approach argues that whereas the old social democratic state was designed to protect people from the negative effects of the market, the new social investment state aimed to help integrate them into global markets through investment in human capital. Thus,

> 'Social democrats have to shift the relationship between **risk** and **security** involved in the welfare state, to develop a society of 'responsible risk takers' in the spheres of government, business enterprise and labor markets. People need protection when things go wrong, but also the material and moral capabilities to move through major periods of transition in their lives.'

> (Giddens, 1998: 100)

Whilst the redistributive functions of the old welfare state are not eliminated completely, it is to the 'redistribution of possibilities' (Giddens, 1998: 101) to which governmental attention is focused. This is achieved primarily through education and training. However, 'Although training in specific skills may be necessary for many job transitions, more important is the development of cognitive and emotional competence' (Giddens, 1998: 125). Nurturing flexible attitudes towards the labor market and employment practices was part of this policy reorientation; particularly in relation to young people. In the United Kingdom the ultimate aim was to move away from a deficit model and re-cast welfare in more positive terms: 'in place of Want, autonomy; not Disease, but active health; instead of Ignorance, education, as a continuing part of life; rather than Squalor, well-being; and in Idleness, initiative'(Giddens, 1998: 128).

New Labour's approach to young people was essentially twin-track: universal social investment alongside more targeted policies in respect of the socially excluded (Fawcett *et al*, 2004). Thus, for example, all children were beneficiaries of the increased investment in such areas as education. Whilst children may well have benefited immediately from such

measures, the policies were clearly also designed to pay future dividends for wider society. New Labour's overall level of investment in younger children was impressive. Lister (2003) has noted that the amount of money spent on children under the age of eleven years actually doubled between 1997 and 2002. She has also pointed out, though, that older children were less favored under a regime of supportive 'early years' measures. This may be due to an element of instrumentalism on the part of the Blair government; the benefits of investing in older young people being extremely difficult to evidence.

There were, however, groups of older young people who were targeted for additional resources. The Social Exclusion Unit, established when New Labour first came to power, was the government's *de facto* 'Ministry for Troubled Youth'. Its early reports (Social Exclusion Unit 1998a; 1998b; 1998c; 1999; 2003; and 2005) tackled such pertinent issues as truancy, teenage pregnancy, homelessness; the education of Looked After Children; Care Leavers; and young people with complex needs. In these reports the vulnerable position of children leaving public care was highlighted. The case of care leavers was an exemplar of the targeted approach taken by New Labour. The response to this particularly vulnerable group was the Children (Leaving Care) Act 2000. The statute was a serious attempt to respond to the well documented gaps in income maintenance and service provision (Goddard, 2001).

Those who seek to find perfect philosophical coherence in New Labour's approach to crime and welfare issues will be disappointed. Like most elected governments, New Labour's dominant ideological convictions were diluted by the pragmatic need to satisfy competing constituencies of interest. Nevertheless, the Third Way themes of risk and responsibility are discernible in certain aspects of youth justice policy and practice.

Traditionally, the English and Welsh criminal justice system has – albeit grudgingly on occasions – accorded children a special and protected status. The system has traditionally taken account of such factors as age, maturity and social powerlessness. This was even reflected in Home Office advice during the 1990s, a decade that witnessed what Drakeford and Vanstone (2000) described as a 'punitiveness auction' between the two main British political parties. At the beginning of the decade the then Conservative government's attitude towards the principle of *doli incapax* - the notion that, due to lack of maturity, children below the age of 14 years cannot be assumed to have a completely developed sense of moral agency - was described in the following terms,

> 'The criminal law is based on the principle that people understand the difference between right and wrong. Very young children cannot easily tell this difference, and the law takes account of this. The age of criminal responsibility, below which no child can be prosecuted, is 10 years; and between the ages of 10 and 13 a child may only be convicted of a criminal offence if the prosecution can show that he knew what he did was seriously wrong. The government does not intend to change these arrangements which make proper allowance for the fact that children's understanding, knowledge and ability to reason are still developing.'

(Home Office, 1990: paragraph 8.4)

Even in the middle of the decade a Conservative government gave the following advice to juvenile justice practitioners preparing court reports on young people who had been convicted of criminal offences,

> 'When a pre-sentence report is being prepared on a child or young person, the report writer must take account of section 44 of the Children & Young Person's Act 1933 which requires the court to have regard to the welfare of the individual. The UN

Convention on the Rights of the Child…also requires that all actions concerning children shall be the primary consideration. The report writer should therefore take account of the age of the young offender, his or her family background and educational circumstances.'

(Home Office, 1995: 2.35)

In opposition the Labour Party foreshadowed a departure from these protective principles of child welfare in the criminal justice domain: 'Ultimately, the welfare needs of the individual cannot outweigh the needs of the community to be protected from the adverse consequences of his or her offending behaviour' (Labour Party Media Office, 1996: 9).

The audacious repositioning of the Labour Party on 'law and order' following the election defeat of 1992 was a crucial part of the New Labour project being constructed by a younger generation of social democratic Labour politicians. Tony Blair and his contemporaries drew selectively upon the insights developed by Left Realist criminologists (Lea & Young, 1984) as well as the experience of the 'renewed' Democrats under the leadership of Clinton and Gore (Pitts, 2000). Tony Blair's assumption of the Shadow Home Affairs portfolio allowed him to use the now famous soundbite that summarised the emergent position on law and order: *'tough on crime, tough on the causes of crime'*; although it could be argued that a more accurate reflection of the media management strategy was 'loud on criminals, quiet on the causes of crime'.

Although the election of a Labour government resulted in a number of important child-friendly policies – most notably in the area of child poverty with the introduction of various tax credits to support struggling families and community development initiatives such as Sure Start to tackle child poverty – the protected status of children in the criminal justice system was eroded by the first Blair administration. Its attitude to 'young offenders' and

those who allegedly administered the old youth justice system so incompetently was well encapsulated in the title of one of the first documents to emerge from the New Labour tenants at the Home Office. *No More Excuses* (Home Office, 1997a) captured Labour's brand of 'tough love' in this area of policy. The abolition of *doli incapax* was an important statement of intent in relation to children who offend. The presumption that children aged between ten and thirteen years do not have a fully developed sense of moral agency and, as such, cannot understand the full implications of their criminal actions was duly abandoned. This has effectively resulted in an untrammeled age of criminal responsibility that begins at the age of ten years. Gelsthorpe & Morris (1999) regard the abolition of this ancient principle of English law as being deeply symbolic. For them *doli incapax* '…was a statement about the nature of childhood, the vulnerability of children and the appropriateness of criminal justice sanctions for children' (Gelsthorpe & Morris, 1999: 213). This loss of protected status for children in the courts – along with other measures contained in the legislation (Bandalli, 2000; Haines, 2000; Monaghan, 2000) – represents a process that Goldson has described as the 'responsibilisation of children' and the 'adulterization of childhood' (Goldson, 2001).

The foundational statute introduced by New Labour on coming to power was the Crime and Disorder Act 1998. It has been pointed out, however, that the new Labour government's approach to youth justice did not involve *major* repeals or amendments to pre-existing legislation. As Monaghan observed at the time, 'Reform in this sense is sedimentary rather than metamorphic' (Monaghan, 2000: 146). Nevertheless, there is no doubting the fact that the statute transformed the youth justice system and, to a significant extent, practitioner culture.

The aims of the Crime and Disorder Act 1998, inscribed in Section 37, state,

'1. It shall be the principal aim of the youth justice system to prevent offending by

children and young persons.

2. In addition to any other duty to which they are subject, it shall be the duty of all

persons and bodies carrying out functions in relation to the youth justice system to

have regard to that aim.'

The first aim, '…to prevent offending by children and young people…', marked an explicit departure from the received wisdom instilled from previous decades of practice experience. The notion that most children and young people usually went through a phase of offending and subsequently 'grew out of it' with minimal intervention was clearly rejected (with the predictable outcome that penal custody rates rose sharply in the decade that followed the introduction of the Act). The first aim of Section 37 is, quite clearly and very ambitiously, to *prevent* young people from committing offences in the first place. The second aim, meanwhile, alludes to a more corporate, multi-disciplinary and multi-agency approach to youth crime. The vehicles for delivering this corporate response are local authority *youth justice plans* (Crime and Disorder Act 1998: section 40); the co-ordination of comprehensive *youth justice services* (a continuum ranging from crime prevention and community safety measures, through community orders to post-custodial supervision); the establishment of multi-agency *Youth Offending Teams* (Crime and Disorder Act: Section 39); and the creation of a *National Youth Justice Board*, an independent executive body with an ostensibly arms-length relationship with government (Crime and Disorder Act 1998: Section 41 and Schedule 2) in order to oversee the direction and administration of the whole system. The creation of *both* a **corporate** *and* **multi-agency** approach to youth justice was not without inherent tensions. The priorities of the national Youth Justice Board agenda were not necessarily always those shared by the police, let alone the health service. That said, the corporate agenda was clearly privileged in the national Youth Justice Board's early *National*

Standards and the promotion of 'effective practice' guidance (Youth Justice Board, 2000 and 2001). It is also present in Sections 5 and 6 of the statute. Section 5, for example, requires the police and local authority to design and implement local 'crime and disorder strategies'.

In terms of a shift in practitioner culture, it was the establishment of local Youth Offending Teams that most clearly institutionalized the principles of 'joined up', multi-agency working. Whereas previously the responsibility of working with young people who committed crime rested primarily with social workers based in Social Services Departments (usually based in Youth Justice Teams), the new Act widened that responsibility across departments and relevant agencies. Social workers in the old order had obviously needed to co-operate with other agencies in the past, of course, but the 'new youth justice' institutionalized such co-operative relationships and bound them together with common objectives, standards and key performance indicators. In addition to social workers, these new youth offending teams were now required to be represented by staff seconded from the police, probation service, education and health. Other relevant agencies could also be co-opted. Thus, the intervening passage of time has witnessed the arrival of staff from specialist voluntary sector agencies in the fields of accommodation, substance misuse, training and employment. As well as managing the complex inter-professional dynamics of these new institutions, it has been necessary – though in practice this has probably not happened to everyone's satisfaction – for protocols to be developed in relation to information sharing between practitioners from the different agencies. Nevertheless, youth offending teams – or youth offending services, as they are now commonly termed – are by now well-established.

Although there have been changes in the type of community-based orders available to the courts, a consistent theme in New Labour's youth justice policy and practice worthy of mention is the use of restorative justice in the system. Early evaluations suggested restorative processes tended towards a rather routinized approach, low levels of victim involvement and

unrepresentative community participation (Crawford and Newburn, 2002). Moreover, concerns were expressed that oppressive and adult-centric forms of restorative justice could simply be used as another method for responsibilizing children (Haines, 2000). The subsequent move away from the centrally-driven prescriptions of *National Standards* has, though, created opportunities for the development of creative and child-friendly restorative practices at local level.

There are, then, two legacies of New Labour's 'New Youth Justice' that need to be borne in mind in relation to the focus of this chapter. The first relates to the way in which child offenders are heavily responsibilized for their actions. Secondly, the discourse of 'risk' has become embedded in the processes and activities of youth justice practice. Given that the Crime and Disorder Act tasked youth offending teams to prevent offending, the need to identify those most likely to offend and/or reoffend has become central to the youth justice enterprise in England and Wales. Practice has been informed by the Risk Factor Prevention Paradigm (Farrington, 2000) and the application of an assessment tool known as *Asset*. During the summer of 2016 Asset was replaced by *Asset+*, a framework that ostensibly replaces a predictive risk-based model with one that is informed by desistance theory. Whether this new framework will actually effect a real shift in practice remains to be seen. Not only does risk-based practice seem to be inscribed in the institutional DNA of youth offending services, but it would appear the key performance indicators applied by the Inspectorate remain unchanged. Time will tell.

Since Labour lost power in 2010 the youth justice system has remained largely intact. There was an attempt by the Conservative-Liberal Democrat Coalition UK government (2010-2015) to abolish the Youth Justice Board, but this was defeated by the House of Lords. Little has therefore changed in terms of the essential architecture of youth justice, although it should be noted that the prescriptive approach of the Youth Justice Board has been less

pronounced and greater discretion at the local level is now permitted. Since 2010, moreover, both Coalition and Conservative UK governments (2015-present) have been committed to shrinking the state; which means that many of the public services upon which young people depend are unable to offer the level of support previously available. This, of course, poses the question of whether there can be meaningful youth justice without s significant corresponding measure of social justice.

A risk assessment of the public care and youth justice systems

There is a tendency in both social work and youth justice practice to make children the objects of risk assessment (being at 'risk of harm' or 'risk of reoffending') without paying at least equal attention to the risks posed to children by powerful professionals and the systems they represent. It is instructive therefore to undertake a critical risk assessment of the systems with which these children and young people have contact. Such a risk assessment should not be regarded as a completely negative exercise because – as every social work student knows – risks can also often represent positive opportunities.

When discussing systems three points need to be made. Firstly, changing a system – or more often simply tweaking it – can be more effective than focusing all of one's attention on changing the child. The old joke that asks how many sociologists it takes to change a light bulb is relevant here. The answer, of course, is that one doesn't change the individual light bulb because the whole circuit or system needs to be changed.

Secondly, although every system is driven by its own institutional logic and animus, every system is also staffed and operationalized by individual practitioners. Practitioners possess independent agency and the power to use their professional discretion in creative and positive ways, particularly at critical decision points. Even seemingly minor decisions can have significant longer-term effects. Practitioners' encounters with children are therefore of

crucial importance, as are the representations made by professionals on behalf of young people. The reflexive practitioner should therefore be distinguished from the agency-competent trained operative who collaborates deferentially with the decisions of the organization.

Thirdly, the relationship between different systems must be interrogated thoroughly. Systems, even when they are supposed to co-operate closely, have different priorities, pressures, professional values and discourses. Consequently, asynchronous systemic processes may sometimes work against the best interests of a child in conflict with the law. If a young person is at risk of being sentenced to penal custody for an offence being dealt with by the youth justice system, for example, it is probably in the best interests of the child to bring forward a Looked After Children (public care) review meeting in order to consider, *inter alia*, the criminogenic risks of the current placement and how such risks might be reduced; not least because the pre-sentence report author in the youth justice system will need to assess the risk of future offending. Thus, if a residential unit in the public care system is unstable or places the young person at risk of associating with more criminally sophisticated peers, then some kind of action plan needs to be put in place (which can duly be reported to the court). This might include a move to more appropriate and stable placement that reduces the criminogenic risks. The ideal of 'joined-up services' is therefore, quite reasonably, almost invariably considered a desirable one. However, could there sometimes be an argument for applying the principle of domain integrity maintenance (Evans, 2010)? It should be acknowledged, for example, that diagnostic labels may be helpful and appropriate in one domain, but profoundly unhelpful in another; perhaps because the original meaning and significance of an assessment is lost in translation when it migrates from one domain to another. Developing 'communities of practice' (Wenger, 1988) across different occupational groups, agencies and systems is another strategy to help address this challenge.

The sections that follow consider three main areas for risk assessment: the point of entry into the Looked After Children (public care) system; public care placements; and two examples of professional social work practice in the youth justice system – structured risk assessment forms and pre-sentence reports.

Entry into the Looked After Children (public care) System

Given that there exists a strong correlation between a background in public care and involvement in the youth justice system, it is first important to understand how children enter public care in England and Wales; otherwise known as the Looked After Children (LAC) system. Although since 1999 child welfare has been devolved to the National Assembly of Wales, both countries are governed by the Children Act 1989 that established two main routes into the care system: those accommodated with the voluntary agreement of their parents/carers (Section 20); and those made subject to Care Orders (Section 31), which involves the local authority 'sharing' parental responsibility with the parents/carers and in most cases results in removal of the child from the family home. As this author has written previously, 'While social workers are required to work in partnership with children, families and other agencies it is important to acknowledge that the balance of power is weighted in favour of the professional....no one leaves the courtroom doubting that the senior partners in this legal arrangement are social workers' (Evans, 2010: 459)

For a Care Order to be made the court must be satisfied that '...the child is suffering, or is likely to suffer significant harm' (Section 31(2) (a), Children Act 1989. There are four categories of abuse used in the Anglo-Welsh legal-social work discourse: physical abuse, sexual abuse, emotional abuse and neglect (Department for Children, Skills and Families, 2010); these categories account for two thirds of entrants to public care (Prison Reform Trust, 2016a). The concept of 'significant harm' is, moreover, defined in the statute (as amended by

the Adoption and Children Act 2002) as 'ill treatment or the impairment of health or development'. Inadequate or neglectful parenting may be the result of a wide range of reasons and circumstances, including families affected by bereavement, mental health problems, disability and substance misuse issues. Central government guidance on child social work assessment (Department of Health, 2000) that continues to exert an influence on practice locates the young person at the centre of a triangle. The three dimensions of the triangle need to be considered in terms of a dynamic relationship: the child's developmental needs; parenting capacity; and wider family and environmental factors. Thus, for example, parenting capacity – understood as the knowledge, skills and emotional warmth of the primary caregiver/s – are inevitably affected by wider family circumstances, the practical support available, material resources and the nature of the neighbourhood within which the parent/s reside. The emotional impact on parenting of material hardship and the stresses of bringing up a child in a low income high crime neighbourhood needs to be considered. The logic of the much cited East African saying that 'it takes a village to raise a child' suggests capacity-building in less advantaged neighbourhoods is a legitimate policy objective in child safeguarding and family support work.

There is a presumption in the Children Act 1989 that children are generally best placed within their parents and families. This is consistent with Article 16.3 of the United Nations Declaration on Human Rights (UNDHR) that, 'The family is the natural and fundamental group unit of society and is entitled to protection from the State'. As human rights are 'living instruments', of course, the definition of the family now encompasses many diverse forms. Although the family of origin is considered to be of great importance, the welfare principle of the Children Act 1989 – which is entirely consistent with the United Nations Convention on the Rights of the Child 1989 – privileges the welfare of the child as being paramount. Moreover, children are perceived as sentient human beings rather than

'objects of concern' (Butler-Sloss, 1988: 245). Consequently, children are duly constructed as 'rights bearers' just as their parents and other significant adults are charged with responsibilities to these young people. Nevertheless, because parents and other primary caregivers are recognized as being crucial to the health and well-being of the child, the state has a responsibility to support parents in the task of parenting. Section 17 of the Children Act 1989 requires local authorities to support 'children in need' of services and resources that will enable such young people to reach full and healthy development. By providing such support to parents and families, children on the cusp of the 'significant harm' threshold are maintained in their families of origin within the community. It is a power that prevents the extreme intervention of a Care Order and entry into the Looked After Children system. The assessment of which children qualify for 'children in need' status is therefore crucial to the future trajectories of these young people; and this includes placing some of them at risk of negative outcomes, including possible exposure to the criminal justice system.

Given that environmental factors - such as family structure, housing, neighbourhood and access to material resources – impact on parenting capacity, it is unsurprising that children being admitted to the Looked After Children system are drawn overwhelmingly from low income families (including the over-representation of certain minority ethnic communities). Nevertheless, recent research reveals interesting patterns of social work intervention that raise questions not only about differences between geographical areas, but also whether the removal of children from families necessarily follows the consistent application of social work assessment criteria across different local authority areas. If one returns to the previously mentioned assessment triangle, which dimension is privileged by practitioners and managers? Is it the behavioral aspect of parenting capacity or the structural dimension represented by the wider environment of neighbourhood and social inequality?

Explanations for variations in child protection interventions fall broadly into two categories, which Bywaters *et al* (2015) argue are not mutually exclusive: 'bias' and 'risk' (sometimes also expressed as 'need') (Cram *et al*, 2015; Jonson-Reid *et al*, 2009). Another way to express this is in terms of 'demand' for services and the 'supply'. 'Demand-side' explanations for differential interventions include families' socio-economic position, culturally situated patterns of parental behaviour, the influence of aspects of identity (that may be related to 'race' and ethnicity) and the impact of neighbourhood resources, local social capital and community dynamics. 'Supply-side' explanations, meanwhile, are explained in the following terms,

'...the availability, accessibility, appropriateness and quality of services. Again the arguments run in different ways. Raised intervention rates in disadvantaged areas may result from greater surveillance if services are more concentrated, so that fewer children with needs may be missed, or in more affluent areas because services may be more plentiful relative to need and/or because disadvantaged families are more visible (and perhaps stigmatized). Raised rates for Black children may result from biased assumptions by service providers about the parenting capacity of Black parents, while lower rates amongst other minority groups may result from assumptions about enhanced extended family support or community cohesion.'

(Bywaters *et al*, 2015: 99)

In their study of a sample of 4, 546 children on the Child Protection Register (10.6% of the English national total) and 7,210 children in out-of- home care (11.3% of the English national total) drawn from 13 local authorities (LAs) in the English midlands, Bywaters and colleagues compare patterns of intervention with reference to neighbourhoods, which were used as a proxy of socio-economic status. The neighbourhood comparisons drew on the 2011

census and the 2010 scores of the Index of Multiple Deprivation (IMD), a measure which does not rely solely on income data and includes 7 key dimensions and 38 indicators (https://www.gov.uk/government/statistics/english-indices-of-deprivation-2010). Informed by an 'inequities approach' – one that explains differential patterns of service delivery, intervention and outcomes in terms of structured social inequalities (Wilkinson & Pickett, 2011) – the researchers' findings are explained in terms of an 'inverse intervention law' across the social gradient.

> 'Firstly, local authorities (LAs) that were more affluent overall, measured by IMD (Index of Multiple Deprivation) scores, were placing a significantly larger proportion of children on CPPs (Child Protection Plans) or in out-of-home than more disadvantaged LAs, if you compare neighbourhoods with equivalent levels of deprivation. Secondly, this inverse relationship between overall LA deprivation and rates was strong and significant for White children, but not statistically significant, or even not apparent for children from Black and Asian minority ethnic groups, although the quality and size of the data set might be a factor here. Differences in the ethnic demography between more and less affluent LAs have an impact on the size of the inverse relationship in White children but are insufficient to account for it.'
> (Bywaters *et al*, 2015)

The important research cited here is ongoing, so a full theoretical explanation for the reported variations in intervention cannot be presented authoritatively at this stage. Nevertheless, there is evidence that the relationship between geographical patterns of social inequality, variations in local authority budgets and the local responses of social work services are part of that explanation (with practitioner assessment practices possibly not being immune from the influence of local social and cultural norms when determining the appropriateness of intervention with certain 'types' of family).

<u>Looked After Children placements</u>

Having considered some of the issues associated with the selection of children for child protection intervention and entry into the Looked After Children system, attention is now turned to those factors, practices and processes that might be considered potentially criminogenic. Some of the practices and processes to which reference will be made are probably best identified and illustrated by qualitative inquiry, not least because they are brought into the light by case file analysis and the reading of reports by practitioners. Nevertheless, there is quantitative evidence to support some of the insights generated by documentary analysis and interviews with key informants, including young people themselves.

It is important to make the point that an estimated 94% of children in the Looked After Children system do not have contact with the youth justice system (Prison Reform Trust 2016a and 2016b), although it should be noted that the characteristics and outcomes for care leavers in terms of accommodation stability, mental health, educational attainment and engagement with education, training and employment are stubbornly poor in comparison with the wider population (UK Government, 2015). 67 % of Looked After Children are assessed as having special educational needs; the most common being 'behavioral, emotional and social difficulties'. Only around half of Looked After Children have emotional and behavioral health 'that is considered normal'. In 2014, a mere 12 % of Looked After Children achieved five or more GCSEs (a set of public examinations typically taken at ages 15-16 years) at grades A* to C (the 'pass' threshold), including mathematics and English; this compares with 52 % of children not in public care (Howard League for Penal Reform, 2016). The attenuation of support when transitioning from the Looked After Children system to independent living – a perilous journey sometimes embarked upon as young as 16 years - is a continuing cause for concern (Evans, 2013).

As has been noted, the over-representation of the Looked After Children population within the youth justice system has been a longstanding policy issue in the UK. The nature, quality and stability of LAC placements are worthy of a brief risk assessment here. One of the major issues identified has been the problem of multiple placements and frequent changes in social worker. This is disruptive to children on a number of levels, not least in terms of attachment and educational continuity (Evans, 2010). It is ironic that young people's experience of neglectful and chaotic birth families is in too many cases replicated by the neglectful and chaotic corporate parenting practices of many local authorities.

Although some children are placed with family members, most placements take two main forms: foster care and residential provision. Around 75% are placed in foster care (Howard League for Penal Reform, 2016), although many of this group will have initially experienced residential provision. Foster care is not devoid of criminogenic and other risks, but more attention has been given to the role of residential units in criminalizing children (Evans, 2010; Shaw, 2012).

With the exception of secure children's homes, residential units cannot be characterised as total institutions (Goffmann, 1961); although they do share some of the characteristics of youth custodial regimes: the attenuation of family and community ties, albeit sometimes for understandable reasons; and the grouping together of young people who present complex needs, behavioral challenges and experience of victimization. As in custody, inevitably many young people will prioritize a hidden curriculum designed by anti-social peers instead of co-operating with staff (Taylor, 2006: 87). It should also be acknowledged that the quality of residential provision is variable in the mixed economy of Looked After care; approximately 73% of children's homes being located in the private sector (Prison Reform Trust, 2016a and 2016b). Although there are well-run children's

homes in the private sector, local authorities can exert less influence on staff training, practice and the general ethos of homes outside the public sector.

None of this is to suggest that there are not excellent residential units in existence, but institutional life is always replete with risks. One is that the residents are not only highly observed in a 'welfare spotlight', but also their behaviour is recorded in great detail (Evans, 2010). Such behaviour might be the result of normative adolescent behaviour involving boundary-testing or it might be context-specific (Jones, 2016), but the risk of narrative records being shaped to pathologize young people for assessment purposes – sometimes reproduced in pre-sentence reports - is one that emerges in research undertaken by this author (Evans, 2016). Shaw (2012) confirms that many social work residential staff have a tendency to decontextualize young people's behaviour and view them through the prism of individual psychological or family deficits. The vulnerable and disorientated young person in the care of the local authority is thus perceived as a 'dangerous, wilful and agentive child' (Such & Walker, 2005: 41).

The metamorphosis from 'child protection case' to 'young offender' is one that can be accomplished in the residential unit by challenging behaviours that, in the context of most family homes, would result in loss of pocket money and being 'grounded' rather than a phone call to the police, prosecution, a court appearance and criminal record. Despite the introduction of restorative practices in many children's homes, children are still being prosecuted for minor acts of vandalism, theft and disorder (Howard League, 2016). This means that some children can, within a short period of time spent within such criminalizing placements, be categorized as 'prolific offenders' following the commission of relatively minor misdemeanors. Most of these children, it should be noted, will have entered the public care system without criminal records. Such convictions, of course, increase the 'risk of reoffending score' in the actuarial model of assessment used by youth offending services in

England and Wales. This, in turn, makes more intrusive forms of criminal justice intervention likely. The journey from 'child at risk of harm' to 'risky young offender' can often be accomplished in months rather than years.

Professional practice in the youth justice system: risk assessment instruments and pre-sentence reports

This section risk-assesses two aspects of youth justice assessment practice: the risk assessment instrument known as *Asset*; and the pre-sentence report (PSR).

The methodological strengths and limitations of the risk factor prevention paradigm (Farrington, 2007) are well-known and need not be rehearsed here (Haines & Case, 2015; Garside, 2009; Case & Haines, 2009; Case, 2007, 2006). In terms of its application to youth justice practice, a few salient points should be noted. Asset (Baker, 2004) is an actuarial assessment tool that, in the core profile, scores between 0-4 in terms of practitioner-rating of the extent to which particular dynamic risk factors contribute to the risk of reoffending. These risk factors are grouped into 12 preconfigured domains: living arrangements; family and personal relationships; education, training and employment; neighbourhood; lifestyle; substance use; physical health; emotional and mental health; perceptions of self and others; thinking and behaviour; attitudes to offending; and motivation to change. The global score at the end of the assessment locates a young person within the bands of high, medium and low risk of reoffending. The recommended intensity, dosage and areas of intervention are duly identified and calibrated in what is called a 'scaled approach' (Youth Justice Board, 2010; Sutherland, 2009); which has the dubious virtue of sounding both vaguely scientific and measured. There are obvious risks if practitioners apply this approach uncritically, which they are exhorted not to do; but the gravitational pull of the risk paradigm is often palpable.

Firstly, there is a risk of over-weighting some factors more heavily than others through double-counting: 'attitudes to offending' and 'motivation to change' is just one example.

Secondly, those with higher welfare 'needs', by virtue of their structural position in society and service user status (as patients or clients of social services), will be given higher 'risk' of reoffending scores. Thus two co-defendants can, theoretically and in some cases in practice, receive different levels of intervention. Looked After Children are almost by definition assessed by social workers as vulnerable and needy. The social work assessment of 'need' in the Looked After Children system is mistranslated by the criminal justice practitioner as 'risk of reoffending' in the youth justice system. Young people in the public care system will, for the reasons already outlined, score highly in such domains as living arrangements, family and personal circumstances, and education. When these are then added to static risk factors such as criminal history, the young person who has been resident in a criminalizing care home is effectively ascribed an even higher risk of reoffending. It is worth noting here, too, that young black males - because they appear to be subject to institutional biases within the criminal justice system, including such practices as 'stop and search' by the police, greater vulnerability to prosecution and heavier sentences - are more likely to bring longer criminal histories to the risk assessment process (Webster, 2015; Raynor & Lewis, 2011).

As the format of the pre-sentence report requires practitioners to risk-assess the likelihood of reoffending, it is inevitable that there is a relationship between the Asset assessment and this particular section of the document. The penetration of a risk factor discourse into the more established genre of a pre-sentence report will depend on the discretion of the individual practitioner. The social construction and artful (sometimes artless) manipulation of discourses in pre-sentence reports is the subject of an article by this author (Evans, 2016), but suffice to say here that the risks of stereotyping will be apparent. It

should be acknowledged, though, that the PSR author faces a number of very real dilemmas when writing about children with a background in public care. How should these young people be represented? Which information should be included and which omitted when narrating their backgrounds to the court? A detailed account will no doubt elicit sympathy for the child offender (particularly if there has been experience of abuse, neglect and victimization), but perhaps leave the sentencer pessimistic about future prospects. How can the PSR author depict the high levels of welfare 'need' presented by a young person without, at the same time, risking such an account being converted into the criminal justice system's currency of 'risk of reoffending'? Conversely, glossing some aspects of personal background may lead to an under-appreciation of the influence of biographical history on offending.

Another dilemma for the PSR author from a youth offending service is deciding the extent to which s/he should expose the failings of the Looked After Children system (the number of placements, for example), particularly when the practitioner works for the very authority which is responsible for delivering these services. Leaving aside the tribal loyalties a youth justice practitioner will probably feel towards her/his colleagues in Looked After Children services, there are also tangible risks to the young person in court if the credibility of the local authority is undermined by an account of its past failures. Sentencers may be skeptical when they read about the efficacy of yet another new placement, especially when it is weighed against their legal responsibilities to protect the public.

There are, of course, no easy answers to the dilemmas faced by practitioners. It could be argued that, ultimately, the solutions are systemic. In the meantime practitioners must be 'systems aware' and appreciate the risks they, as practitioners from powerful agencies, can potentially pose to young people.

Conclusion

This chapter has explored tentatively some of the possible relationships between the child protection, public care and youth justice systems in England and Wales. In so doing it has attempted to shine a flickering light on a few of the interconnecting subterranean passageways of practice between these different domains. Further empirical research and risk analysis is required if the number of children migrating across these systems is to be reduced. To that end this chapter represents a modest exercise in cartography. Mapping the challenging terrain between the domains of child welfare and criminal justice is a navigational work in progress. It has hopefully been demonstrated that there is evidence of structural factors at work both within and between the child welfare and youth justice systems. Social class and inequality may have been foregrounded in the analysis presented in this chapter, but that is not to deny the importance of 'race' (Webster, 2015), gender (Sharpe & Gelsthorpe, 2015; Shepherd, 2015) and relations between adult professionals and children (Evans, 2014 and 2010) in this complex equation of discrimination. Disaggregating the significance of such variables as ethnicity and social class, for example, is challenging when certain minority communities occupy a structurally subordinate position in British society; which is evidenced in differential educational attainment levels and relationships to the labor market (White *et al*, 2015; Webster, 2015). Meanwhile, the lived experience of racial discrimination in the classroom, street and court also suggest culturally embedded biases at work (Webster, 2015).

Children from low income families and neighbourhoods are clearly over-represented in both the child welfare and youth justice systems. The relationship between low income and the intervention of child protection services is not, however, a straightforward one. More rigorous attempts to interrogate the relationship between social gradient and the granular detail of geographical disparities suggest that more complex processes are at work (Bywaters *et al*, 2015). The apparent operation of an 'inverse intervention law' rather than a postcode

lottery requires closer inspection.   Why do more affluent local authorities place a significantly larger proportion of children on Child Protection Plans and in out of home Looked After Children placements than poorer local authorities? A number of possible explanations, most probably in combination, might account for this pattern. Are better resourced local authorities simply able to assess and intervene more efficiently than their poorer municipal counterparts? Alternatively, are these poor families in deprived neighbourhoods more visible to the clinical gaze of local social workers and particularly if they belong to certain ethnic or religious communities? Are social workers in poorer local authorities with larger populations of low income families in deprived neighbourhoods more inured and desensititized to the corrosive influence of poverty on standards of parenting? These questions cannot be answered conclusively, but two points should be made. Firstly, that social class relations matter. Secondly, this power relationship is mediated by social work practitioners. Practitioners are therefore important; not least because they are gatekeepers to the Looked After Children system.

Once recruited to the Looked After Children system the focus then turns to how some young people are fast-tracked into the youth justice system. The quality of the public care system will, no doubt, be influenced by the resources available to the local authority; which, as has been established, can vary enormously between different areas. It is suggested in this chapter that, in addition to the destabilizing effect of multiple placements, some types of placement are inherently criminogenic and certain institutional practices can criminalize children very quickly. As soon as children are constructed as 'offenders first, children second' the master identity of 'criminal' converts the assessment of their welfare needs into the currency of 'risk of reoffending' scores. Once set on this course, such children are at risk of being escalated up through a sentencing tariff towards penal custody. Practitioner

assessment practices and the quality of pre-sentence reports are important factors on the direction and speed of the journey.

Despite the apparent inevitability of so many young people's passage from public care to a criminal justice system destination, it is important to remember that child welfare and criminal justice practitioners possess agency and can therefore exercise professional discretion in ways that can make a profound difference to outcomes. A critical awareness of the discriminatory processes at work is a pre-requisite for effective, supportive and diversionary interventions in young people's lives. The all too familiar trajectory from family of origin to penal custody is not inevitable. Postcode, or for that matter skin colour, need not be a predictor of destiny. Practitioners possess power and should use it effectively and ethically. Empirical research should therefore further explore how some individual practitioners manage to exercise independent agency - against all the odds - within ostensibly obdurate structures, monolithic institutions and sclerotic systems of power. Sometimes they do so with great ingenuity, creativity and success. The lessons from these 'success stories' for wider policy and practice are invaluable.

In conclusion the point needs to be made that, despite being constructed by powerful adults as 'objects of concerns' or 'risky young offenders', children also possess agency. Despite progress being made since the United Kingdom signed the United Nations Convention on the Rights of the Child (1989), there is still more work to be done on realising the children's participation rights enshrined in Article 12. This means not only listening to what young people say in all matters that affect them directly, including the Looked After Children and youth justice systems, but also ensuring effective advocacy is in place. Their softer voices need to be amplified and made audible if they are to speak truth to power.

Word Count: 13, 824

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