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Welfare versus Justice – Again!

Roger Smith

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Abstract

This article reviews recent developments in government policy designed to provide an integrated framework for children's services, in the light of the continuing and long-running debate between principles of welfare and justice. It is noted that at the level of policy, it has repeatedly been argued that responding to the offences of children and providing for their welfare are inseparable. However, this apparent consensus has resulted in a range of different service structures and delivery systems over the years, characterised by 'turf wars' amongst policy-makers and practitioners, and unintended consequences in terms of damaging outcomes for children. The article suggests that the most recent policy initiatives from government leave this tension unresolved; and it concludes that alternative rationales need to be developed to inform interventions with children who offend.

Introduction: 'What Goes Around . . .'

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

(Home Office, 1968)

The Government does not accept that there is any conflict between protecting the welfare of a young offender and preventing that individual from offending again. Preventing offending promotes the welfare of the individual young offender and protects the public.

(Home Office, 1997)

[T]here is no contradiction between protecting the welfare of young people in trouble and the prevention of offending and re-offending.

(Youth Justice Board/Welsh Assembly Government, 2004)

This article was prompted by the flurry of government proposals for the future of children's services in England and Wales which appeared in 2003–4 (Chief Secretary to the Treasury, 2003; Home Office, 2003; Department for Education and Skills, 2004a), culminating in a raft of legislation and policy initiatives (for example, the Identification, Referral and Tracking (IRT) scheme). These developments were heralded as 'a significant step' (Blair, 2003: 2) towards the goal of promoting children's health and security whilst minimising risk of harm to them. Plans for service change emphasised the themes of early intervention and prevention, arguing for an integrated approach to achieve these ends. Significantly, a number of measures were included to promote 'better outcomes' for children by bringing together a range of services within a unified assessment and delivery framework. The IRT scheme, for instance, would provide for a common mechanism for 'flagging' concerns, to be utilised across agency

boundaries, which would trigger appropriate intervention depending on the needs identified, rather than the source of the referral (Chief Secretary to the Treasury, 2003). ‘Risk’ and ‘need’ would be dealt with in uniform fashion, and interventions to promote children’s welfare would be aligned with those concerned with problem behaviour. Additional measures to support this objective would include:

- Combining the roles of chief officer for education and social services.
- Integrating ‘key services for children and young people’ within Children’s Trusts, to be established by 2006 as unified commissioning bodies for children’s services.
- Extending the responsibility of relevant agencies to protect children, with the creation of Local Safeguarding Children Boards. (Chief Secretary to the Treasury, 2003: 67)

Although at this point Youth Offending Teams were not stipulated as core members of the Children’s Trusts, the possibility of incorporating them was made explicit (ibid: 71). Alongside other aspects of the government’s proposals, it seems possible that this might lead to a greater sense of coherence and consistency between youth justice and child welfare interventions:

The key is to ensure children receive services at the first onset of problems, and to prevent any children slipping through the net. We will do this by:

- *Improving information sharing.*
- *Developing a common assessment framework.*
- *Introducing a lead professional.*
- *Developing on the spot service delivery. Professionals will be encouraged to work in multi-disciplinary teams.*

(Chief Secretary to the Treasurer, 2003: 8)

At first glance, then, the government appears to have been involved in revisiting and recasting the integrated approach set out so clearly some thirty-five years previously in the White Papers which preceded the *Children and Young Persons’ Act 1969* (Home Office, 1965; Home Office, 1968). As we shall see, however, all such attempts to integrate policies, agencies and interventions to deal with the parallel problems of children’s needs and their offending behaviour have encountered very substantial difficulties. The questions to be addressed here are: what can we learn from history; what is different this time round; and what needs to be changed to achieve the desired outcomes?

The Lessons of History: ‘We Can be Together . . .’

The reforms of the 1960s, also driven forward by an ambitious Labour government, were based on the belief that much offending by young people could be accounted for by the social conditions which they experienced (Longford Committee, 1964). This was an era of considerable optimism when faith was placed in the twin pillars of state welfare and professional expertise. It was anticipated that methods could be found to ‘treat’ the problems which led to the commission of offences by young people, and that the role of welfare services was to develop effective systems for delivering

interventions to address the underlying needs of children and families. The logical approach, in this rational and liberal era, was to put in place mechanisms for addressing the causes of crime. Proposals emphasised the importance of working in partnership with families, informally, and developmentally. Indeed, elements of ‘restorative justice’ were being promoted by government in the mid 1960s (Home Office, 1965), as part of a wider reform programme. The influential Longford Committee, established by the Labour Party, firmly located the origins of youth crime in family or other personal or social problems, proposing the establishment of a ‘family service’, where discussions could take place about ‘what had gone wrong’ and what steps could be taken to put things right. These ideas formed the basis for the White Paper, *The Child, the Family and the Young Offender*, published the following year (Home Office, 1965).

Subsequent debate, and resistance from certain quarters, including the Home Office, led to a modification of certain aspects of these proposals, and the publication of a second White Paper, *Children in Trouble* (Home Office, 1968). By the time these ideas were brought to fruition with the *Children and Young Persons Act 1969* in England and Wales, there had been some concessions to conservative interests, in particular in retaining the centrality of the courts in dealing with offences; indeed, this was the point at which there was a parting of the ways with Scotland, which essentially took decision-making out of the courts and instituted the children’s hearing system (Muncie, 1999).

Nevertheless, the 1969 legislation provided for a series of alternative means of dealing with the offending of the young, paving the way for Intermediate Treatment and the use of Care Orders in criminal proceedings. In the process of bringing the legislation into being, however, the objective of replacing judicial interventions with welfare measures was compromised. Some key aspects of the programme were not implemented, including the removal of the power to bring criminal proceedings against children under the age of 14; and, in effect, two parallel systems were put in place.

Broadly speaking, the compound effect of the changes (those made and those not made) was to overlay a series of new ‘welfare’ disposals over the existing ‘justice’ system. Neither could claim absolute dominance, and the consequences were problematic. In effect, at a time of expanding state systems, both flourished:

In practice traditional principles of punitive justice were never seriously undermined by the 1969 Act. These remained largely intact, with welfarist principles merely being added to the range of interventions and disposals available to the court . . . the new welfare elements of the system were generally employed with a younger age group of, for example, low-school-achievers, ‘wayward girls’ and truants from ‘problem’ families designated as ‘pre-delinquent’ . . .

(Muncie, 1999: 260)

This is confirmed to some extent by the trends evident in practice during the 1970s, whereby two systems became ‘vertically integrated’. Whilst the number of children in care increased throughout the 1970s, from 90,000 in 1972 to 101,000 in 1977, there was a parallel increase in the use of custody with detention centre orders up from 2,228 in 1969 to 5,757 in 1977 (Smith, 1989). Evidence was also adduced to confirm that there was a ‘push in’ tendency which resulted in the aims of the 1969 reforms being undermined:

[T]he policy of community care endorsed by the 1969 Act has not been implemented in the ways intended. It is relatively frequent for care orders to be made in the case of children for whom informal community support measures have not been tried . . .

(Rutter and Giller, 1983: 82)

In order to draw lessons from this experience for the present day and beyond, it is important to try to offer plausible explanations for this outcome. There may well be a number of factors at play, however, and it is unlikely that it can be attributed to a single cause. Such factors might include:

- A general expansion in services and funding, for which ‘customers’ must be found.
- The relative predominance of ‘justice’ ideologies and structures, which forced proponents of ‘welfare’ interventions to seek easier terrain.
- The absence of a clear overview of isolated trends.
- Competing political, departmental and professional interests.
- Practitioner/managerial uncertainty and pragmatism.

It is this combination which resulted in the kind of ‘unintended consequences’ which characterised the youth justice and care systems in this period. In effect, the original aspirations of the 1968 White Paper to see an integrated approach to the welfare needs of young people alongside their offending foundered on these obstacles of resistance, self-interest and convenience.

The Present Day: ‘A Brand New Start’?

Whilst it seems the government has continued to see a close connection between the social circumstances of young people and their offending behaviour, it has been relatively more difficult to identify any policy shifts to reflect this apparent belief. Indeed, some aspects of the New Labour government’s reforms appeared to be designed initially to cement in place a separation between welfare and justice, building on earlier moves in this direction, epitomised by the *Criminal Justice Act 1991* (Haines and Drakeford, 1998). Thus, the creation of Youth Offending Teams as a distinct entity has been accompanied by the establishment of separate assessment models (ASSET, for instance) and the development of distinctive training routes for staff. At the same time, welfare reforms have targeted a rather different group within the broad umbrella of social exclusion, with very substantial investment being targeted towards young children and their families, notably through the Sure Start programme.

In some ways, *Every Child Matters (ECM)* can be seen as a response to these rather disparate developments, although its final content can also be linked to changes in ministerial responsibilities, as child welfare moved from the remit of the Department of Health to the Department for Education and Skills. *Every Child Matters* is, in part, a response to persisting concerns about the artificial separation of ‘welfare’ and ‘justice’. These are partly reflected in publications such as the Social Exclusion Unit’s report on reducing re-offending by ex-prisoners (SEU, 2002). The link between re-offending and social factors is reinforced by the evidence in relation to those sentenced to custody:

Most juvenile prisoners have experienced a range of social exclusion factors, which may have contributed to their offending behaviour. These include:

- *low educational attainment;*
- *disrupted family backgrounds;*
- *coming from a black or minority ethnic background;*
- *behavioural and mental health problems; and*
- *problems of alcohol and/or drug misuse.*

(SEU, 2002: 156)

Leaving aside the highly questionable association of ethnicity and a series of negative features of social exclusion, the implication appears to be that dealing with offending in isolation is unjustifiable. Young offenders' welfare needs, such as education, training and housing should be addressed as part of their rehabilitation, according to the SEU (2002).

As already noted, *Every Child Matters* takes this further by arguing for an integrated approach to service provision for children across the board. Much emphasis is placed on integration, in terms of common policy objectives, unified structures, and shared approaches to intervention. The call is made to provide services which are child-centred:

We want to put children at the heart of our policies, and to organise services around their needs. Radical reform is needed to break down organisational boundaries. The government's aim is that there should be one person in charge locally and nationally with the responsibility for improving children's lives.

(Chief Secretary to the Treasury, 2003: 9)

These structural changes are to be supported by a range of governmental policy initiatives, including strengthening the duties of a range of agencies to prioritise children's needs; setting out specific targets and standards; integrating inspection regimes; and establishing the role of Children's Commissioner (for England – this had already been achieved for Wales, Scotland and Northern Ireland), who will act as an 'independent champion for children' (Chief Secretary to the Treasury, 2003: 10). Despite these developments, the continuing tension should be noted between strategic aspirations and structural tensions at delivery level, with the continuing exclusion of schools from this framework identified as a persistent shortcoming.

Nevertheless, at the level of practice a number of proposals have been developed, to support children and their parents. There is a strong emphasis on improving the conditions for, and the quality of, parenting, including *generalised* services such as a national helpline and family learning programmes; *targeted* services, including home visiting, parent education and family mediation; and *individualised* compulsory measures, 'building on the success of Parenting Orders' (Chief Secretary to the Treasury, 2003: 43), to deal with problem behaviour of the young which is condoned by parents. This mirrors the three-tiered approach identified in other aspects of government policy to address social exclusion (Smith, 2003: 53). Generalised programmes such as Sure Start and Connexions are devised to tackle broad problems such as parental poverty and educational disadvantage, targeted programmes, including 'parent education

programmes’ (Chief Secretary to the Treasury, 2003: 41); and individualised interventions, such as Parenting Orders and Acceptable Behaviour Contracts are directed at ‘known’ trouble-makers, and their parents (Home Office, 2003; DfES, 2004a).

Associated with this emphasis on good parenting, *Every Child Matters* sets out a range of other practice initiatives which are essentially aimed at achieving effective forms of prevention. These focus on earlier and more systematic information sharing and assessment, using a common framework; shared responsibility across professional boundaries; and co-location of services, so that they are more accessible and less stigmatising.

Youth Justice: Out of Step?

In the light of this commitment to a ‘joined-up’ approach, it might seem somewhat superfluous to produce a parallel document on reforms to the youth justice system (Home Office, 2003). Proclaimed as a ‘companion’ to *Every Child Matters*, this document showed little sign of common authorship or common intent. The ‘basic approach’ would be to:

... continue to operate a distinct youth justice system broadly on present lines, with a clear and visible response to offending behaviour from age 10 upwards.

(Home Office, 2003: 3)

The document offers no sign that there is any commitment to structural integration, of which *Every Child Matters* is much more supportive; in fact, the Home Office response indicates a clear resistance to any notion of incorporating welfare needs into the youth justice process:

Currently the sentencing of young people is subject to several different statutory aims and principles – preventing offending, taking account of welfare and ensuring just deserts. We now propose a single main sentencing purpose of preventing offending.

(Home Office, 2003: 4)

In other words, the welfare needs of children are no longer to have any influence on the decisions of the court in passing sentence. The only concession to ‘welfare’ in *Youth Justice – The Next Steps* is the proposed requirement to consider the offender’s ‘vulnerability’, although this is extended somewhat in the government’s response to consultation, such that, alongside the ‘main purpose’ of preventing re-offending:

Courts will also be required to have regard to other factors including public protection, welfare, punishment and reparation.

(DfES, 2004: Annex B)

Youth Justice – The Next Steps broadens its scope to mention parenting programmes, but only in respect of their potential to reduce offending by young people, and there is some indication that Action Plan Orders could incorporate welfare components, but the emphasis is heavily on coercion and constraint. Other than this, the documents only concession to child welfare is a brief reference to the need to improve protection

for children in custody (see also, DfES, 2004b) – more than somewhat ironic in the light of continuing reports of the deaths of young people in prison establishments (Goldson and Coles, 2005). *The Children Bill 2004* takes this somewhat further in requiring a range of bodies associated with the delivery of youth justice (including police, prisons, youth offending teams and probation boards) to ‘have regard’ to children’s welfare in carrying out their duties, although this falls far short of imposing an obligation to treat their well-being as ‘paramount’, to use the terminology of the *Children Act 1989*, or even ‘first’, as the minister’s foreword puts it in *Every Child Matters: The Next Steps* (Hodge, 2004).

Given the almost wilful rejection of the prime message incorporated in *Every Child Matters* by those concerned with youth justice policy, it is unsurprising that organisations concerned with both child welfare and youth justice expressed strong concern at the implications. Thus, an alliance of family welfare organisations stated:

We are concerned that the government persists in seeing and treating children who commit offences very differently than children who do not commit offences.

(Family Rights Group, Family Welfare Association and Parentline Plus, 2003: 5)

The British Association of Social Workers identified similar concerns, specifically raising the issue of the structural arrangements for dealing with children’s issues. Expressing disappointment at what the association sees as a divisive approach, BASW stated: ‘As long as the Home Office continues to retain responsibility for children involved in offending as opposed to the DfES, this does not bode well . . .’ (BASW, 2003). According to the civil rights group JUSTICE (2003), ‘*Next Steps* regards child offenders as offenders first, and children (often with serious welfare problems) second.’ Similarly, Nacro’s response identifies a number of concrete concerns arising from the separation of youth justice from child welfare in general (Nacro, 2003). The failure to raise the age of criminal responsibility is cited as a prime example of the pre-occupation with offending, whilst, in relation to sentencing:

The repeal of the welfare principle . . . would, without doubt, raise widespread concern . . . with regard to the denial of the right of children to have their best interests as a primary consideration . . .

(Nacro, 2003: 4)

In light of Nacro’s extensive experience of the youth justice field, it is perhaps unsurprising that their response concludes with the observation that: ‘History is littered with legislation that has failed to be implemented in practice, or that has had outcomes contrary to those intended’. (Nacro, 2003: 7)

It should perhaps be noted here that despite the common legislative framework, the tone and approach adopted by policy documents for Wales are quite different to their English counterparts. In effect, the two are diametrically opposed. Whereas in England, it is held to be the prevention of offending that promotes children’s welfare in Wales, the logical connection is reversed. The priority of children’s welfare is explicit:

Promoting the welfare of children and young people reduces the risk of offending and in doing so protects the public. The strategy (for Wales) therefore promotes the principle that young people should be treated as children first and offenders second.

(Youth Justice Board/Welsh Assembly Government, 2004: 3)

Rather than maintaining an artificial separation between welfare and justice, it appears that the intention in Wales is to subsume justice interventions under the broad umbrella of children's services in general.

'One Step Forward, Two Steps Backwards' . . . ?

Given the strength and depth of concern about the direction of policy in England, it might be felt that the government would have to respond positively. The implementation document *Every Child Matters: The Next Steps* (DfES, 2004a) is instructive in this respect. The specific issue of the apparent 'detachment' of youth justice from the mainstream of children's services is acknowledged by the document:

Several areas of concern were raised by respondents including:

- *The welfare of the child should be an integral part of the Youth Justice System . . . ;*
- *. . . Young offenders should not be seen differently from those with other social care needs . . .*

(DfES, 2004a: 9)

So, how did the government intend to deal with fears about the continuing separation of welfare and justice and the likely consequences? And what are the prospects for a re-enactment of the experience of the 1970s, with parallel expansion of welfare and justice systems leading to a new period of wasteful net-widening?

There appears to be some indication of a willingness to move towards greater coherence and co-operation in the organisation and management of services, with a commitment to imposing duties on local authorities and other 'relevant' agencies (including Youth Offending Teams and Connexions) to set up effective partnership arrangements. This might extend to 'integrated commissioning in the delivery of children's services' (DfES, 2004a). However, this is left to local discretion, and does not guarantee closer working arrangements. Even in the event of YOTs operating within multi-functional Children's Trusts (see DfES, 2004a: 16), their true nature should remain explicit:

. . . as YOTs are part of the criminal justice system, they will retain strong links with criminal justice and crime reduction agencies and Local Criminal Justice Boards.

(DfES, 2004a: 43)

Apart from some limited and rather half-hearted concessions to the principle of joint working, the aspirations towards joint working appear rather vague. *Every Child Matters: The Next Steps* does refer to the development of a 'common assessment framework' (DfES, 2004a: 27), but no details are given, and this, in itself, signals a reluctance to express a preference between the holistic approach of the existing framework for assessing children's welfare needs (Department of Health, 2000), or the ASSET document favoured by the Youth Justice Board (YJB, undated).

As a result of this rather tentative approach, it seems that the construction of effective partnerships between child welfare and youth justice is left to local discretion, rather than being led by central government. Whilst there is much to be said for recognising the value of initiatives at the local level, we also have to be wary of the inequitable outcomes associated with ‘justice by geography’ (Children’s Society, 1988). Overall, then, the messages are mixed, and the consequences are likely to reflect this in varying degrees of compromise. Once again, it appears, welfare and justice will have to reach some form of accommodation.

A Theoretical Digression: Two Sides of the Same Coin?

Before concluding with some brief speculation about the possible consequences of the latest burst of policy-making, I want to step back for a moment to consider a number of theoretical issues which can be brought to bear on the welfare versus justice debate as it has re-emerged in the policy arena. This is important because it will help to clarify the aims and strategies of those concerned with promoting a progressive response in the current climate, and making the best of the limited opportunities available.

It is the contested nature of the terms themselves which has contributed to much of the uncertainty and confusion that are evident in the intervention strategies adopted by policy-makers, agencies and practitioners. At the outset, it seems fairly clear that ‘welfare’ interventions were conceived as representing a less damaging and more effective alternative to punitive and oppressive disposals, dating back to the nineteenth century (Muncie, 2004: 249). However, this debate can be characterised in two different ways: either as representing a conflict between those who aspire to ‘softer’ or ‘harder’ means of dealing with young offenders; or, as representing different techniques for responding to youth crime, which share essentially common aims of crime reduction and behavioural change. To add further confusion, the impact of different disposals may also be inconsistent with their aims – the problem of ‘unintended consequences’.

As a result, it has been observed that welfare interventions are not necessarily without elements of control and imposition (Muncie, 2004). For some, indeed, this is to be expected (Cohen, 1985). The result of an over-optimistic commitment to supposedly rehabilitative programmes is ‘repressive welfare’:

The juvenile justice system ... is a mixture of repressive welfarism and straightforward punitiveness that locks up too many young people, with little or no impact on juvenile crime.
(Hudson, 1987: 130)

As is pointed out, it was this rather depressing conclusion which led to the move ‘back to justice’ (Muncie, 2004), with the emphasis on the rights of children to be treated equitably according to principles of due process.

Such arguments have been superficially attractive, since they appear to provide a basis for fair and transparent treatment of illicit behaviour, according to standard measures of gravity and culpability. They also appear to have been effective, in that their period of influence coincided with the liberalisation of youth justice during the 1980s (Smith, 2003). However, there is a notable problem with justice-based arguments, which lies at their very core. This is, quite simply, that they accept as given the principle

of ‘just deserts’, as the basis of all sentencing calculations – and, indeed, other decisions, such as type of remand, or presiding court. One consequence of this is the precision with which attendance requirements are specified, for example, such as those attached to ISSPs. However, the broader implication of this calculative approach is that the relationship between offence and outcome is at the same time, precisely quantifiable, and completely arbitrary, depending on the prevailing assumptions underpinning the sentencing tariff at any given time. Goldson (2002), for example, refers to the specific processes of refocusing our views of children in trouble, which he associates with a particular period of time – following the accession of the New Labour government:

To ‘adulterise’ children in trouble, to ‘responsibilise’ them, to neutralise the aetiological complexities of juvenile crime might . . . save us the messiness of knowing too much about delinquents, their families, their lives, their opportunities, their backgrounds or their experiences. Moreover, it might secure electoral victory in a country where the punitive thirst seems to be almost unquenchable.

(Goldson, 2002: 693)

This process has also been characterised as the ‘criminalisation of social policy’, whereby the consequences of inequality and power imbalances are redefined as problems of disorder and criminal justice. Factors such as social disadvantage, cultural differences or institutional racism become irrelevant to decision-making and interventions in the criminal process.

Furthermore, because it represents an apparently neutral and objective system of calculating blame and apportioning disposals accordingly, the justice perspective offers no safeguards to prevent the kind of massive increase in the use of custody witnessed during the 1990s, and subsequently sustained. Indeed, its appearance of dispassionate neutrality offers a kind of legitimation for this. Nor can it offer any means of redressing injustices which arise because of extraneous factors, such as social exclusion and racial discrimination, which actually compound the inherent unfairness of a socially-constructed system of justice.

We may conclude, then, that neither ‘welfare’ nor ‘justice’ alone offers a sustainable grounding in theory, principle or practice for an effective approach to dealing with the problematic behaviour of the young.

Looking Ahead: ‘There Must be Some Kind of Way Out of Here’

Returning to the present, it is important to reflect on the possible course which is likely to be followed in the light of the re-enacted debate between welfare and justice positions. Past experience, and our theoretical digression, offer some important warning signs, but they may also offer some options for progressive change as well. The aspiration towards developing a positive agenda based on re-working these debates has already been articulated elsewhere (see, for example, Haines and Drakeford, 1998), and the aim here is to build on this work in the light of the preceding discussion.

Firstly, we should note that the very persistence of the debate suggests that neither position offers a conclusive rationale on which to base the youth justice system. This is perhaps borne out by the evidence of practitioners reinserting welfare options into

a structure which is increasingly dominated by notions of just deserts and correctionalism (Smith, 2003; Goodman and Loumansky, 2004; Webber, 2004).

Secondly, neither position is quite as clear-cut as it may first appear. We have already considered the highly interventionist (and oppressive) consequences of the emergence of 'welfare' arguments in the 1970s. It is also clear that the 'justice' position remains permeated with a strong emphasis on children's rights, which might be expected to offer some protection against excessive treatment of one kind or another. Indeed, this theme continues to emerge as a (muted) strand in government policy. So, for example:

When young people need to go to court the process needs to be fair and effective . . . we propose to develop a Young Defendants' Pack to help young defendants and their carers understand and participate in the court process.

(Home Office, 2003: 5)

Thirdly, the search for an accommodation between the two positions has, in the past, led to some unproductive outcomes. The parallel expansion in welfare and justice systems of the 1970s is a notorious example, but the attempt to subsume welfare provision within justice-oriented structures since 1997 is equally open to question. Indeed, it seems that the correctional approach has permeated some quite problematic areas, for example through moves towards the imposition of mandatory parenting programmes, even where no offence has been committed by the young person. The government promises:

. . . compulsory action through Parenting Orders as a last resort where parents condone anti-social behaviour or truancy.

(DfES, 2004a: 6)

In the face of these trends, for those who wish to promote arguments in favour of expanding child welfare provision as an adjunct to youth justice services, the disadvantages are clear. In particular, the search for a form of accommodation between the two positions runs the risk of achieving outcomes similar to those of the 1970s. The promised expansion of welfare services into more areas of children's lives, with a strongly 'preventive' (DfES, 2004a) flavour, may achieve a greater degree of involvement, but without significantly altering the career paths of those whose behaviour brings them into contact with the justice system. Indeed, there is some risk that ill-considered 'early interventions' could actually increase the likelihood of punitive outcomes for some young people (Hunter, 2004).

Nor is it likely to be productive to promote 'welfare' interventions on the grounds of their potential to reduce crime, or as mid-tariff sentencing options. The consequences in terms of net-widening are well-documented, whilst the impact on re-offending rates is, at best, unclear (Pitts, 2002). Indeed, the conclusion to be drawn is that the search for some form of rapprochement between welfare and justice is likely to be fruitless. More positive prospects for youth justice reform lie not in modifying the worst excesses of a pure 'justice' model with arguments based on children's welfare needs (Pitts, 2004), but rather on providing an alternative framework for understanding and responding to the issue of youth crime altogether. In order to achieve this, it is first necessary to establish a coherent set of aims for the youth justice system based

on the principles of inclusion and reconciliation, in place of the ‘prevention of offending’ (Home Office, 1997), for which the responsibility lies elsewhere (Smith, 2003).

At the same time, we need to be a little wary of those strategies which have relied on restating the value of welfare as a guiding principle in youth justice, for the reasons already elaborated. The SHAPE coalition, for example, argues that ‘children’s needs, rights and welfare are at the heart of the youth justice system’ (The Children’s Society, 2004), whilst JUSTICE argues that ‘the welfare of the child’ should be the principle underpinning the ‘youth criminal justice system’ (JUSTICE, 2003). Scraton and Haydon (2002: 324) have taken these ideas somewhat further, with the suggestion that the starting point should be a ‘rights-based welfare approach’. However, as Pitts (2004: 137) observes, the welfare principle itself has been associated with some pretty unsatisfactory outcomes in the past. To put this another way, we need to distinguish between the role of the welfare principle in framing practice within the justice system and thereby setting very tight limits to what youth justice interventions can do to children on the one hand; and, on the other, the requirement for a distinctive rationale and purpose for youth justice, based on neither ‘welfare’ nor ‘justice’, but on ideas such as ‘problem-solving’, ‘offence resolution’, ‘diversion’ or ‘restitution’. Importantly, too, these aims emphasise the notion of children’s ‘agency’, the extent to which their ‘active participation’ should be encouraged (Scraton and Haydon, 2002: 325) and, indeed, the importance of both acknowledging and redefining the nature of their responsibility for their actions (Smith, 1999).

Perhaps encouragingly, some of these aspirations may be pre-figured by the emergence of a new agenda for youth justice in Wales:

A balance between the interests of the child or young person and the interests of the wider community and potential victims can be maintained through early intervention, restorative justice measures, appropriate punishment and supported rehabilitation.

(Youth Justice Board/Welsh Assembly Government: 3)

Although rooted too much in the rhetoric of welfare, this at least articulates a clear vision for a more inclusive and constructive approach to youth offending. If implemented effectively, this agenda could lead to a framework for intervention which ensures that disposals relating to offences by young people may lead to welfare interventions in some cases, or even to some form of punishment in others, but they would be motivated by neither.

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