Devils and Angels

Youth Policy and Crime

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Devils and Angels: Youth Policy and Crime

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DEVILS AND ANGELS

Youth Justice is a key area of the criminal justice policy in England and Wales and has been the subject of an inordinate amount of recent legislation seeking to enhance the criminal courts' powers to punish and prevent offending and re-offending by young people. This legislation uses criminal justice measures to prevent offending, but there has been little attempt to use non-criminal or civil law procedures to achieve the same result. This book challenges this approach and questions why delinquency in young people has been so firmly criminalised in this jurisdiction. At an individual level criminalisation has a critical impact on our attitudes towards the young, and the criminalisation of young people's behaviour results in them being labelled as criminal, and often leads to the loss of 'childhood'. In policy terms children become merely part of a crime problem rather than the product of failing social policies in employment, education and youth culture. For society at large the identification of young people with criminal activity and the negative public image that results creates a culture of fear and distrust which may in turn create further possibilities for criminalisation of their behaviour. A comparative perspective in this work examines responses to youth crime in other jurisdictions and questions whether the criminal justice process is an appropriate context in which to deal with young people's problematic behaviour.

In fond memory of Allan Levy QC
1942–2004

ACKNOWLEDGEMENTS

The research for this book began in October 1988, as I sat in an undergraduate Juvenile Justice class in the Law Faculty of Southampton University and furiously took notes as Andrew Rutherford beguiled us all with his erudite and often sardonic observations on criminal policy-making. It was an exciting time in policy terms, and Andrew's significant influence on that exciting and productive era, inspired a captivation and enthusiasm for this subject that I have never lost. This was my first introduction to the field of youth justice and to Rutherford's classic text *Growing Out of Crime*, which remains the most inspirational book on youth justice that I have ever read. Much has happened since that time, both in personal and policy terms, and it is now I that stand before students of Youth Justice at Southampton, at 9 am on a Tuesday morning, imparting a rather more gloomy message about the efficacy of the government's attempts to deal with youth crime. Andrew not only taught me a great deal substantively and ideologically, but also schooled me in scholarly endeavour and the ways of academic life. I owe such an enormous debt of gratitude to Andrew as my tutor, my mentor, a colleague and a friend. His contribution to making me what I have become cannot be over estimated. I shall always aspire to his talent for policy analysis and his inimitable academic flair.

This book is dedicated to Allan Levy, in appreciation for his inspiration as a friend and a colleague. His tireless and life-long campaign for the protection of children in the legal system will ensure that we will all remember him as we discuss the issues addressed in this book and he has left a profound legacy in developing a child-centred focus to the law in this field. On a personal level he gave generously of his time, took a great interest in the development of this book and became my sage as well as a good friend. He will be sorely missed for his generous friendship, entertaining and lively company and his intellectual influence and I am only sorry that I did not work hard enough to ensure that he saw the final product.

I would like to thank Rob Jago for his constant support and companionship over many years. As a friend you have never ceased to give without expectation, to provide constant support and warm-hearted companionship and to offer fun, laughter and good times. As the Jean Paul Sartre to my Simone de Beauvoir, you shared with me your wisdom, insight and humour as we sampled the culture and bars of London, New York and Paris. You taught me what friendship really means and I value the changes that you have inspired in my life. My family have

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Julia Fionda
Dorset, May 2005

CONTENTS

Part I
Devils and Angels

1

Introduction

The photograph on the front cover of this book shows two people sitting on what we suppose is a wall. What do we know about these people? Nothing. We cannot even see their faces. What do we assume about them? That they are young? That they are offenders? We may reasonably assume this because we know that this book is about young offenders, and they appear on the cover. Once we have made this assumption we may look further at the image and find evidence to corroborate our initial assumption. We look at their dress (the jeans, the hat, the hooded sweatshirt). One of them is holding a skateboard. There is graffiti on the wall. They are not doing anything, they are 'hanging about'. The reality is that we know very little about them. Their back is turned to us so we cannot see their faces. We do not know their names or their age and we do not know anything of their history or background. However, such is the power of the image, that we instantly make associations and assumptions about them. Within seconds we may have created a mental image of these two people as part of a deviant group or 'devils'. We may have decided that we do not like them, that we may be afraid of them, that we may blame them for many things (possibly including the graffiti on the wall). They are guilty by association. We categorise them in a social group and they take on the characteristics we have assigned to that social group. There were many pictures to choose from for the front cover, and an alternative choice may have produced very different assumptions. What, for example, might we have assumed if I had chosen a picture of James Bulger for the cover? Or a picture of younger children, with more 'baby-like' faces, playing games, dressing up or going to school? We may then have placed those children in the box labelled 'angels' and assumed those children to be innocent by association.

The problem addressed in this book goes beyond mere labelling; we are all labelled in one way or another and assigned to social groupings with whom we are presumed, rightly or wrongly, to share characteristics. The problem with the labelling of young people is that, in an adult-centric society, it tends to be carried out judgmentally, through fear of the young, and the label assigned to the majority of them is inherently negative. What does it mean to be a devil or an angel in contemporary society? The distinctions between the two groups are dichotomous and over-simplistic, as stereotypical labels often are. To be an angel means to be acceptable to adult society and to embrace the characteristics that adults value,

regardless of what is 'normal', acceptable or valued among young people themselves. This means being innocent (morally and legally), vulnerable, quiet, competent, healthy, dependent and independent of adults in appropriate contexts, and intellectually able (in terms of what is culturally valued as intellectual in adult society). Devils are determined by their failure to live up to these characteristics—they are noisy and boisterous, unruly, lacking in original innocence, 'knowing' in an adult sense, under-achievers educationally and socially, anti-social and problematic. Of course, the dichotomy breaks down, as the angels are sometimes devilish (all children are naughty sometimes) and the devils are sometimes acknowledged to be a product of our social and moral neglect. The murder of James Bulger in 1992 demonstrated how this throws the adult world into confusion and crisis. James Bulger, depicted as the innocent, 'angelic' victim, was being naughty on the day of his murder, proving difficult for his mother to control and facilitating his own abduction. Venables and Thompson were vilified as the 'devils', but not universally; as discussion of the case progressed, more details of their background emerged that led us to question our own social responsibility for the apparent breakdown of moral order among our children and young people. The problem lies in the fact that the falsely dichotomous labels are defined from an adult perspective and framed upon a false memory of our own childhood and unrealistic expectations of what young people can be or indeed, are, in their own social world.

As young people inevitably fail to live up to these impossible expectations, our adult perceptions of them are inherently negative and young people are viewed as problematic, rather than celebrated as a group with cultural value. Both youth social policy and youth justice policy perpetuate the labels of 'devils' and 'angels'. For example, cultural policy directed towards young people in England and Wales, tends largely to address their 'failings' rather than promote youth culture as a fundamental part of our national heritage. The Department of Culture, Media and Sport, and its associated Ministry for Young People, is currently promoting increased investment in sports and 'healthy living' centres for young people, but as part of the government's wider strategy to tackle obesity, crime and educational problems among young people. Announcing an Activity Co-ordination Team as a government initiative to encourage children to play more sport, Tessa Jowell, Secretary of State for Culture Media and Sport stated:

> Tackling the 'couch potato' culture amongst children and young people is a priority for us. We know that physical activity can be an important way of getting young people more engaged. We know that it can help achieve this Government's objectives in health, education and law and order.[1]

[1] Department of Culture, Media and Sport, *Speech by Tessa Jowell, Secretary of State for Culture, Media & Sport to the Tackling Obesity in Young People Conference* Press Release (25 February 2004).

Similarly, cultural activities for young people are being promoted as a means of cutting youth crime, as the success of the government's Splash Extra Scheme boasted that:

> Organised sports and cultural activities for young people in some of the country's most deprived areas last summer helped to reduce street crime and robbery, new figures show.[2]

The promotion of state-funded sporting and recreation facilities for those young people who lack the resources to otherwise participate in them is a welcome development, but as these examples show, the promotion of such schemes seems to have to be justified in relation to encouraging devils to alter their behaviour and engage in what adults perceive to be worthy and appropriate leisure activities.[3] In contrast, what some view as the 'art form' of graffiti, the leisure activities of 'hanging out' in public, skateboarding, listening to loud music and other teenage preferences have been declared 'anti-social', even criminal, as they are considered to be annoying or threatening.[4]

Elsewhere in Europe a more positive perception of youth has been recognised. In the Netherlands for example it is acknowledged that young people are failing to engage in politics, demonstrating growing dissatisfaction with their social situation and developing 'symptoms of psychological instability and abnormal behaviour':

> There are two ways out of this problematic situation. One of them is to intensify control over young people by using repressive measures against abnormality in young people and to reinforce ideology in order to strengthen internal norms. The basic underlying approach is a negative or problem-oriented understanding of young people as a risk group. The alternative is the opposite, namely to rely on young people's creative potential, the capacity for self-confidence of young people, of youth involvement. This approach can be called positive.[5]

Examples of such a 'positive' approach can be found in jurisdictions in Europe where youth policy has been the subject of more proactive and focused government initiatives and legislation. For example, in Sweden, legislation passed in 1999 enacted a wide-ranging set of policies directed at young people, formulated in a white paper entitled *On Their Terms*. The paper sets out the following three underlying objectives of the policy:

[2] Department of Culture, Media and Sport, *Culture Can Cut Crime Says Tessa Jowell* Press Release (13 January 2002).

[3] For example in April 2004 the government announced the investment of £7 million in museums and galleries to 'create opportunities to enrich the learning of school-age children and young people across the country . . . and provide value added learning experiences—through the use of cultural resources—in a classroom, museum or other setting.' Department of Culture, Media and Sport, *Boost for Children and Young People's Learning as Government Announces £7 million for Museums and Galleries Education* Press Release (22 April 2004).

[4] See further Ch 10.

[5] Council of Europe, *Youth Policy in the Netherlands* (Strasbourg, Council of Europe, 2000) p 15.

Objective 1: young people should be given good opportunities for living independent lives;
Objective 2: young people should be given genuine opportunities for participation and influence;
Objective 3: young people's capacity for commitment, creativity and critical thinking is a resource for society and should be made good use of.[6]

The contrasting negative public image of young people in England and Wales may not only be unfair but also damaging, especially in the field of youth justice.

Youth justice has been the subject of intense political interest for many decades, but never more so than in England and Wales since 1997. It has been the focus of inordinate amounts of legislation, seeking to enhance the criminal courts' powers to punish and prevent offending and re-offending by young people. However, the legislation assumes as a given that the predominant means of preventing crime must be the use of criminal measures and that presupposes the definition of troublesome behaviour in young people as 'crime'. Policy makers have become blinded by the label of crime and keep their eyes tight shut in the face of different ways of defining and perceiving it. The criminalisation of young people's behaviour results in them being labelled as 'devils', losing their identity as individuals, much as the two people on the front cover have lost their individuality and are assumed to be members of a distinct social group, sharing common characteristics with all young people who behave, dress and appear in that way. They are commodities to be processed, feeding the criminal justice machinery with its raw material. The youth justice process increasingly denies young offenders their childhood, since as devils, they are assigned adult-like attributes of evil and the competence of free will. Much of the criminal justice process focuses on encouraging them to be accountable for their rational choice of lifestyle and behaviour. If the devilish nature of offending young people can be banished—by coercion if necessary—then the assumption is that they can reclaim their 'childhood' and rejoin the 'angels'. However, the chapters of this book will demonstrate how that process is flawed.

Part I examines how the labels of devils and angels have been developed and applied to young people, through a discussion the development of youth justice policy over the last century, and of social constructions of childhood and their influence over youth justice procedures, particularly the minimum age of criminal responsibility. Part I also examines the nature and extent of youth crime, according to statistical and research evidence and assesses the extent to which the label of devil is appropriate given the aetiology and nature of the youth crime problem. What emerges from Part I is a sense of perceptions about young people and their criminal behaviour which may be more responsible for the application of the label

[6] Faktablad Ministry of Culture, *On Their Terms* (Stockholm, Ministry of Culture, 1999).