Developments in the Study of

CRIMINAL BEHAVIOUR

Volume One
The Prevention and Control of Offending

Edited by M.P. Feldman

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Developments in the Study of Criminal Behaviour

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Preface

There is general agreement that conventional penal methods, particularly those involving confinement, are largely ineffective in reducing re-offending and may even increase it. Psychology based alternatives are increasingly in evidence. They have drawn on the two main strands of clinical psychology, the psychotherapeutic and the behavioural, the latter being a more recent development. This book collects together a number of approaches to offender care and rehabilitation, both community and institution based, within the behavioural tradition. Three chapters remind us that innovative programmes have to exist within a framework determined by politicians and civil servants, that police practices are relevant both to prevention and intervention and to re-offending, and that the present interest in the behavioural approaches is not the first 'new look' at the care of young offenders.

Chapter 1, by Norman Tutt, describes the pressures on policy makers concerned with young offenders, and the resulting legislative context provided for those directly concerned with offender care. In the second chapter, Mike Hough and Kevin Heal discuss both conventional policing methods and more recent developments, such as community policing, which aim to reduce police/juvenile conflicts. In chapter 3, Ian Sinclair and Ron Clarke take us through less recent attempts at reforming juvenile offenders in institutional settings. They provide some salutory lessons for the current generation of innovators.

The remaining five chapters all describe programmes of behaviour change. Ian Reid outlines the early days of an institution established for particularly difficult young offenders and emphasizes the necessity for comprehensive planning of all aspects from the design of buildings through the selection and training of staff to the planning, execution and generalization of the programme of change. Susan Spence takes a detailed look of one specific aspect of such a programme, namely social skills training. The chapters by Eugene Ostapiuk and Mary Ann Preston move from institutions into the community. The former emphasizes the use of local resources and provides valuable data on both costs and effectiveness. The latter outlines Intermediate Treatment, a current attempt to maintain juvenile offenders within the community, and describes how she tried to introduce a more systematic approach for this section of young people.

In chapter 8 Derek Perkins reviews a quite different group, that of sex offenders, and describes a long-term programme being carried out at Birmingham Prison.

In the final chapter I have brought together some of the key themes concerning intervention and then moved on to discuss the possibility of prevention through large and small scale social plannings.

I hope that this book will be of interest to social science students, to policy planners, and to professionals concerned with the management of young offenders and sex offenders. I am most grateful to all the contributors for their skill and patience both in their professional work and in the writing of this book.

PHILIP FELDMAN, 1982

Contents

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1

An Overview of Intervention with Young Offenders: The Political and Legal Contexts

NORMAN TUTT

Any overview of a complex social problem such as juvenile offending has to consider at least three major issues. First, the formal context of the problem: in this instance, the formal context will be the stated policy objectives of central and local government in Britain, as articulated in legislation and administrative guidance. Secondly, the informal context of the problem. The formal declarations of policy may have little impact, or even an unpredicted impact, on the actual practice pursued in the social policy arena. An obvious example in the field of adult offenders is the way in which successive Home Secretaries have stated the dangers of over-crowded prisons and the policy objective of reducing the prison population. This objective is supported, in principle, by the Lord Chancellor and through him by the judiciary and magistracy, and yet despite this consensus the number of adults in prison continues to rise. The informal context, then, is what actually happens within the juvenile justice system. Thirdly, there are the significant developments in research and practice. Often research or good models of practice illustrate ways forward for policy, but, even if the ideas win political backing and are taken up into the policy field, there is an inevitable time lag between the appearance, dissemination, acceptance and possible ultimate introduction into policy of research findings and there is then a further time lag before the policy affects future practice. Obviously the interaction of these three facets produces changes and governs developments; for example, the formal policy context to some extent determines what research will be funded. Nevertheless, for the purposes of this chapter, it is intended to look at the three aspects separately and to examine changes in each over the part decade.

The formal context

The major legislation covering the prosecution, disposal and treatment of juvenile offenders in England and Wales is the Children and Young Persons Act (1969). Legislation in Scotland and in Northern Ireland is not only different in kind but in effect, so that the United Kingdom has three markedly different

systems of juvenile justice. The Children and Young Persons Act (1969), hereafter referred to as the 1969 Act, had as two of its objectives:

(a) To shift the emphasis in dealing with juvenile offenders away from a system based on the magistrates courts' power to determine what disposal a child should receive. Instead an increase in formal cautioning by the police would, it was hoped, divert children from the courts. Those children found guilty by the court would be committed to the care of the local authority and specific decisions about the child's placement and treatment would be made by professional social workers.
(b) To replace the traditional institution-based programmes of approved schools with more community-based programmes which would lead to a greater integration of the child, his family and the community.

The sections of the 1969 Act which were agreed by Parliament for implementation finally came into effect in January 1971. Formerly, juvenile magistrates could make, among other dispositions, an approved school order, which ensured the child was placed in an approved school for a minimum of 6 months and a maximum of 3 years. The judicial model, although required to act for the welfare of the child, was replaced in 1971 by a more overt treatment model; now, after a finding of guilt, the only course of action available if the juvenile bench wishes to sanction the removal of the child from home, short of sending him to detention centre or recommending his committal to borstal, is to place the child into the care of the local authority. The actual placement of the child is determined by officers of the local authority, normally social workers. The placement may be in any one of a range of residential facilities, in a foster home, or in exceptional circumstances back in the child's own home.

Prior to 1971 the approved schools, although receiving the majority of their funding from the Home Office, were in the main managed by various voluntary bodies or locally recruited managers. The 1969 Act transferred responsibility for these institutions from the managers to local authorities, and in the process the approved schools were renamed Community Homes with Education (CHE). It was hoped that they would not only be more publicly accountable but would become integrated into the range of children's facilities already managed by the local authority. In addition, the 1969 Act provided statutory powers for the introduction of Intermediate Treatment (IT) which was 'treatment intermediate between a supervision order and the removal of the child from home' (Home Office, 1968; p. 9). Intermediate Treatment was to provide a range of community-based activities which would enable the young offender to be supervised and helped without necessitating his removal from home.

It is equally important to indicate those sections of the 1969 Act which were not implemented in 1971 and still remain unimplemented. Critical sections unimplemented are those which: (a) would have made consultations between police and social services compulsory prior to the decision to prosecute (Section 5); and (b) would have raised the age of criminal prosecution (Section 4). It was

originally proposed that the age at which a child could be brought before a juvenile court to face criminal charges should be raised to 14 years other than in cases of homicide. This remains unimplemented and a child of 10 can still face criminal prosecution. It was also envisaged that the age at which a young person could be sentenced for Borstal training would be raised from 15 years to 17 years of age (Section 7(1)). This section also remains unimplemented and young people from the age of 15 can be sentenced to Borstal training. The 1969 Act also envisaged that expansion of Intermediate Treatment facilities organized by local authority social services departments would eventually replace the need for Attendance Centres (organized by the police on Saturday afternoons) and Junior Detention Centres, specialist Prison Department Establishments to which a young person aged between 14 and 17 years can be committed by a Magistrates court for a sentence of 3 or 6 months duration (Section 7(3)).

Almost immediately after the partial implementation of the 1969 Act there were claims that it was not 'working'. The House of Commons Expenditure Committee established a Sub-Committee in December 1973 to begin an enquiry into the workings of the Act (Expenditure Committee, 1975). At this time the act had been implemented for just under 2 years; indeed the system of Community Homes was only fully established in 1973, and yet the act was already under severe attack. The Sub-Committee, although chaired by a Labour MP and investigating a piece of legislation very much identified with and supported by Labour administrations, appeared to base its investigation on the assumption that the act was not working, an assumption for which there was no evidence except hearsay evidence, rumours and beliefs. The Sub-Committee were not unaware of their lack of evidence and commented in their report of 1975 that:

> No figures are yet available to show whether recidivism figures have altered since the Act was passed, but in any case it is open to question how far the Act could have been expected to influence juvenile offending. The rise in juvenile crime has almost exactly paralleled the general increase in crime. (Expenditure Committee, 1975; p. viii)

In spite of these reservations the Sub-Committee went on to make forty recommendations for the 'improvement' of the workings of the 1969 Act. Two of these recommendations are of specific interest since they represent a train of thinking throughout the seventies that is now coming to fruition. The Sub-Committee obviously felt that the magistrates had lost powers under the 1969 Act, and that they, not social workers, should have the major voice in deciding the disposal of juvenile offenders. The two recommendations were:

> That when a juvenile already the subject of a care order appears before a court charged with an offence, the court shall have the power to make, if it thinks fit, a 'secure care order' requiring the local authority to place the juvenile in secure accommodation for a period not less than that specified in the order. (Expenditure Committee, 1975; p. xlix)

That:
(a) when making a supervision order the court shall have the power to specify conditions with which the subject of the order must comply (such conditions being similar to those attaching to a probation order);
(b) for a breach of any of these conditions the supervisor shall be able to bring the juvenile back to court which shall have the power to deal with the matter, if it thinks fit, by way of a fine or an attendance centre order, whilst continuing the supervision order. (Expenditure Committee, 1975; p. li)

The Expenditure Sub-Committee were not completely agreed about 'toughening-up' the 1969 Act since they also recommended 'that the practice of remanding young persons to adult prisons should cease forthwith' (p. xlix).

The government responded to the report of the Expenditure Committee with a White Paper (Home Office *et al.*, 1976) which, whilst rejecting the idea of a secure care order, accepted the phasing out of remands to prison and the introduction of conditions in supervision orders.

Following consultations with local authority associations, an Order was laid before Parliament under Section 34(7) of the 1969 Act which came into force on 31 March 1977, ending such remands of 14-year-old girls. A similar Order ending such remands for 15- and 16-year-old girls was laid on 24 November 1978 and came into force on 1 March 1979. A further Order under Section 69 of the Children Act (1975) restricting the circumstances under which certificates of unruliness could be issued came into force on 1 August 1977. In the 12-month period after the Order came into effect the number of certificates issued dropped by 28 per cent compared with the corresponding period before 1 August 1977 (DHSS, 1979).

Similarly, after consultation with local authority associations, Section 12 of the 1969 Act was amended by Section 37 of the Criminal Law Act (1977). This amendment gave courts the power to impose requirements on a juvenile when making him subject to a supervision order in criminal proceedings and to impose sanctions on him for breach of these or any statutory requirement.

By the end of the decade, the country was faced with a general election and 'law and order' became an overtly political issue. It had always been an issue which divided the major political parties; after all, at the beginning of the decade it had been a new Conservative government which refused to implement fully the Act passed under the previous Labour government. The Conservative manifesto for the general election in 1979 made specific mention of the intention to restore powers to the magistrates by the introduction of 'residential and secure care orders'. By October 1980 the decade was over and with unintended symbolism the government issued a White Paper outlining its proposals for dealing with *Young Offenders* (Home Office, 1980a). An analysis of that White Paper indicates the ways in which policy has shifted substantially over the decade.

There are several features other than the content of the Young Offenders

White Paper worthy of comment, since they indicate certain substantial shifts in thinking and policy. First, the very title is significant. In the 1960s White Papers were issued with the titles, *The Child, the Family and the Young Offender* (Home Office, 1965), and *Children in Trouble* (Home Office, 1968). Both titles indicate a view of juvenile offending, in which what is stressed is *the child*, with its connotations of immaturity and reduced individual responsibility. The title of the earlier White Paper hints at an underlying causal relationship between the child and his family and subsequent delinquent behaviour. The later White Paper plays down delinquency and uses the less emotive euphemism of 'trouble', i.e. trouble at school, trouble with the police, emotional troubles. Both these White Papers referred continually to children and stubbornly refused to pander to public concern about juvenile crime. Thus, from the 1968 White Paper: 'Much misbehaviour by children is part of the process of growing up, but some has more deep seated causes' (p. 16, para. 49). The 1980 White Paper not only devotes its first ten pages to the Young Adult Offender, but when discussing children it continually refers to juveniles, juvenile crime, and juvenile offending. The image of children misbehaving has gone; instead, 'The Government shares the general public concern about the level of juvenile offending' (p. 11 para. 34).

These features are extremely important. In the early seventies, when responsibility for Children's Services was transferred from the Home Office to the Department of Health and Social Security, consistent attempts were made to erode the division between the 'deprived and depraved'. Juvenile offenders were seen first as children with the same personal, social and educational needs as all other children; they were only secondly offenders who might need control. The emphasis on their immaturity has now been abandoned. The very fact that the current White Paper deals both with the young adult offender and the juvenile offenders without any clear differentiation suggests that offending is now the main focus rather than childhood.

Indeed Ministers have gone even further in public debate, so that at a conference on Intermediate Treatment held in Sheffield in July 1979, Leon Brittan, Junior Minister at the Home Office, stated

> There is a *very real difference* between the many young people who slip into offending as a reaction to the emptiness, boredom and sometimes brutality of their own lives and those who deliberately commit violent or totally uncaring crimes. . . . We agree that for the great majority of young offenders a flexible range of treatment should be provided to meet their developing needs and to prevent them leaving home or being placed in custody unless it is absolutely essential. We also believe that it *is possible to identify* the relatively small minority for whom a deterrent sentence makes sense. (Brittan, 1979a) (author's italics)

Thus the deliberately depraved delinquent has been rediscovered.

The rediscovery of the delinquent and the subsequent policy of control is one of the major themes of the 1970s: the 1980 White Paper merely officially

recognizes it. The tightening-up of the supervision orders in 1977, referred to above, was an earlier official recognition of this shift. The supervision order was created for juvenile offenders in order to align those young people with the children in need of care and protection supervised by the Children's Department rather than identify them with the offenders by expanding the Probation Orders. The changes in supervision orders in 1977, with the introduction of the possibility of a fine or attendance centre as a sanction for breach of the order, firmly re-established an element of control.

A second major theme which has rumbled through the decade and been recognized in the 1980 White Paper is the power struggle between the judiciary and the executive. *The Child, the Family and the Young Offender* (Home Office, 1965) proposed the abolition of the juvenile court and its replacement by a Family Council. Persistent lobbying behind the scenes and more publicly in the correspondence columns of *The Times* succeeded in removing this proposal from *Children in Trouble* (Home Office, 1968). Interestingly, in Scotland, where the juvenile courts had never been well established, it proved possible to push though a reform similar to that envisaged in the earlier White Paper. 1969 Act barely eroded the powers of the magistrate. They still had all their previous powers with the exception of two new orders which did not guarantee that the child would be removed from home in the case of a care order and did not allow magistrates to specify what intermediate treatment activity the child would undertake. This marginal erosion of magisterial power became a 'cause celebre' over which the Magistrates Association kept up a persistent and effective lobby both of the Home Office and in Parliament.

The Home Office were swayed by the pressure of the magistrates and proposed in the 1980 White Paper 'that where a juvenile [sic] already in the care of a local authority as an offender is found guilty of a further imprisonable offence [sic], power should exist for the courts to add a "residential care order", with the effect that for a fixed period not exceeding six months he is not to be allowed to remain at home' (p. 1, para. 1(f)). Assuming this proposal will eventually reach the statute book it represents a victory for the judiciary over the executive.

The third major strand of policy development has resulted from the inconsistent stance which the Home Office has been forced into accepting. The major criminal policy issue facing the Home Office is the need to reduce the adult criminal population. A number of changes—e.g. parole, suspended sentences and community service orders—have been intended to reduce the proportion of adults receiving custodial sentences, although the increased use of fines seems to be the major factor in the reduction which has actually occurred. However, these changes have had little impact on the young adult offender between 17 and 21 years of age. The Home Office have been eager to reform this end of the custodial system but are continually bedevilled by the fact that the fastest-growing proportion at the lower age range are the 14- or 15- to 17-year-olds

in junior detention centres and borstals. Leon Brittan neatly illustrated the problem:

> Let me start by putting the problem into perspective. There is no doubt that recorded crime among juveniles has increased substantially during the past twenty years. But, contrary to the impression usually given, it has not increased more than adult crime. The proportionate increase in the number of offences by juveniles has been about the same as for adults: both have approximately tripled. Nevertheless, serious crimes and offences by girls have risen disproportionately and this must give cause for concern. Where the greatest difference has been is not in the commission of offences but in what happens to the sentenced offender. During the past twenty years, the proportion of convicted adults received into custody has been more than halved. During the same period the proportion of juveniles receiving custodial sentences, and I do not include care orders, has more than tripled. In 1955 an adult was 20 times more likely than a juvenile to get a custodial sentence for an indictable offence. Now he is only twice as likely. (Brittan, 1979)

The Home Office has consistently rejected one option, namely to press for full implementation of the 1969 Act, which would have the effect of removing borstal training and detention centres as a sentencing option for under 17-year-olds (see above). The official explanation is always that public opinion (unspecified) would not tolerate such a move.

Consequently, the Home Office finds itself trying to cobble together a package of reforms which may reduce the proportion of 14–17-year-olds being incarcerated and yet publicly looks as though a 'hard-line' on juvenile offending is being pursued. Thus the number of attendence centres has been expanded rapidly over the past 2 years and their scope enlarged to cater for girls in some areas.

The 1980 White Paper introduces a mixture of proposals for the 14–17-year-olds, including:

> retention of the detention centre, but with shorter maximum and minimum periods of detention;
> powers for the court to impose on offenders aged 15–16 years (who are now liable to be sentenced to borstal training) medium term sentences of youth custody;
> power for the juvenile courts to impose community service orders on offenders aged 16; and *inter alia* the ending of remands for 14-year-old boys from March 1981.

The formal policy context has thus changed substantially in the past decade. The decade started with a formally expressed faith in the 'treatment model' with arrangements made for professionals to decide on the treatment of delinquent children, for treatment programmes to be indeterminate and flexible in order to respond to the changing and developing needs of the child, and for the child to be protected from the stigma of contact with adult offenders. It ended with almost a complete reversal in formal policy with a return of decision-making power to the magistracy, determinacy of sentencing, diversion away from social work agencies and less differentiation between children and adult offenders.

The informal context

Whilst the policy debate has been pursued over the past decade children and young people have continued to pass through the juvenile justice system. The way in which that system has operated has at times been in direct contradiction to the professed aims of the current policy. Therefore it is essential to examine what has actually been happening to children. A number of the issues dealt with in this section will be examined before and after the 1969 Act to demonstrate the marginal impact formal policy may have on actual practice.

Officially recorded offending. The reservations about the use of officially recorded statistics as an index of actual offending behaviour are well documented (Radzinowicz and King, 1977). However, official statistics are unfortunately the only statistics available on a wide basis which can provide any indication of the growth or diminution of criminal behaviour. If the official statistics for the past 20 years are examined two consistent features are obvious: that there appears to be an overall increase in offences recorded, and that the proportion of offences

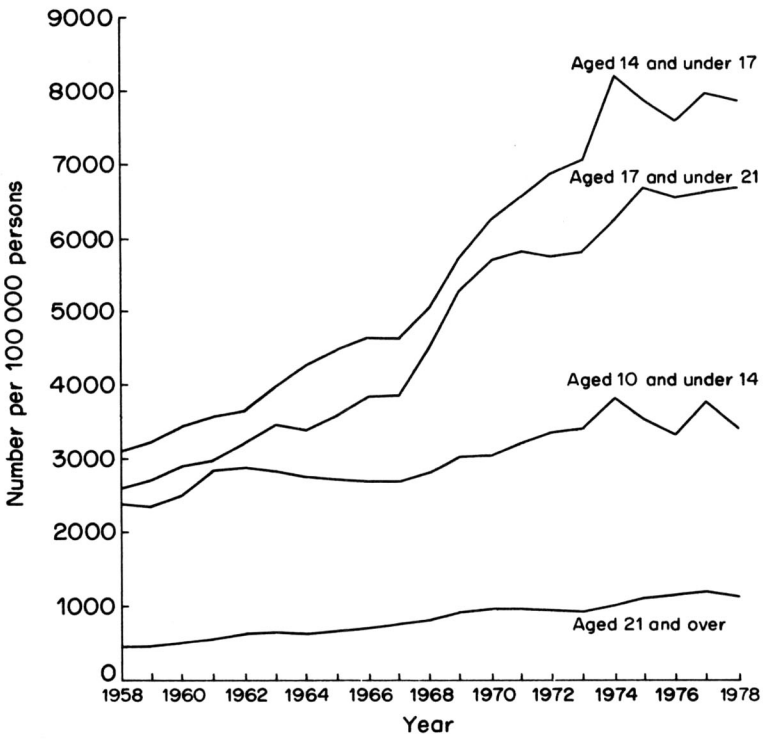

Figure 1 Males found guilty of, or cautioned for, indictable offences per 100 000 population in the age group by age (England and Wales). (Taken from Home Office 1980b)

recorded as being committed by juveniles has remained constant at about one-third of the total offences recorded.

Figure 1 shows the number of persons found guilty of, or cautioned for, indictable offences per 100 000 population covering the 20-year period up to and including 1978 (Home Office, 1980b). Although these figures have been adjusted to take account of the major changes in legislation which affect the statistics, i.e. the raising of the age of criminal responsibility in 1964 from 8 to 10, and changes in the classification of some offences from non-indictable to indictable following the Theft Act of 1968, and the Criminal Damage Act of 1971, it is not possible to adjust for the indirect effects of recent legislation, e.g. the possible changes in attitude of the police and public towards the treatment of juvenile offenders following the introduction of the 1969 Act. As the graph shows, over this period there has been a significant increase in the numbers found guilty or cautioned for indictable offences.

Growth of cautioning

There has been a marked increase since 1967 in the use of cautioning by the police. In recent years, of those persons between 10 and 17 years found guilty of, or cautioned for, indictable offences, about half have been cautioned.

Figure 2 provides an illustration of the growth of cautioning of juvenile offenders between 10 and 17 years of age over the past twenty years (Home Office 1980b) and shows cautioning by the police is the most common disposal. By 1979

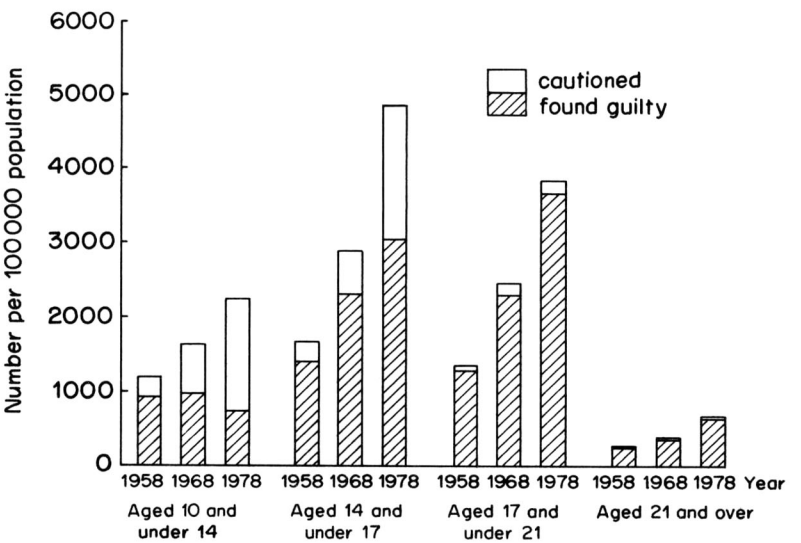

Figure 2 Persons found guilty of, or cautioned for, indictable offences per 100 000 population in the age group by age (England and Wales)