



**Re-considering youth justice in the context of radical moral  
communitarianism**

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## Abstract

The New Labour social policy and criminal justice agenda between 1997 and 2010 was influenced by a communitarian philosophy that had come to prominence in the USA during the 1980s, which proposed that individual rights as promoted by traditional liberals needed to be balanced with social responsibilities (Etzioni 1995a, 1995b). Nowhere was this influence more apparent than in the flagship criminal justice legislation, the Crime and Disorder Act 1998, the creation of the contemporary youth justice system (the Youth Justice Board and Youth Offending Teams) and the mantra of Prime Minister Tony Blair 'tough on crime, tough on the causes of crime'. Thus, young people who offend should take responsibility for their actions while, at the same time, the new system should seek to ameliorate the personal and social conditions that had impacted negatively on their behaviour. Critics of the pragmatic implementation of these communitarian policies were to nevertheless observe an authoritarian overemphasis on the responsibilities of individuals, to the detriment of their rights, and this was to become readily apparent to critics of a youth justice system which had absorbed an increasing number of young people into its ever widening net (Hopkins Burke, 2008). This paper briefly considers the notion of communitarianism, its influence on the contemporary youth justice system and contemplates the implications for that system and young people by the adoption of policies based on the notion of radical moral communitarianism (Hopkins Burke, 2014a, 2014b), with its notions of consensual interdependency, a fair and (more) equal division of labour and an appropriate balance between the rights and responsibilities of all citizens in society.

## Introduction

The contemporary youth justice system was established by the Crime and Disorder Act 1998 and introduced by a New Labour Government strongly influenced by the political philosophy of communitarianism, which had emerged in the USA during the 1980s proposing that individual rights, vigorously promoted by traditional liberals, need to be balanced with social responsibilities to the communities in which people live (Hopkins Burke, 2008). It is the critique of the one-sided emphasis on individual civil – or human – rights, promoted by liberalism, that is the key defining characteristic of mainstream communitarianism. ‘Rights talk’, it is argued, corrupts political discourse, impedes genuine discussion and is employed without a corresponding sense of responsibilities (see Emanuel, 1991; Glendon, 1991; Etzioni, 1993, 1995a, 1995b). It is a perception of the individual as a ‘disembodied self’, who has been uprooted from cultural meanings, community attachments, and the life stories that constitute the full identities of real human beings. Dominant liberal theories of justice, it is observed, as well as much of economic and political theory, presume such a self (see Etzioni, 1993).

Communitarians, in contrast, shift the balance and argue that the ‘I’ is constituted through the ‘We’ in a dynamic tension. Significantly, this is not, in terms of mainstream communitarianism, an argument for the restoration of traditional community with high levels of mechanical solidarity (Durkheim, 1933), or a repressive dominance of the majority or the patriarchal family. In short, the intention is to restore an appropriate balance between the rights of the individual and their obligations and responsibility to the community. These ideas became very influential with New Labour while the party was in opposition during the 1990s, and were carried on into government when they were elected in 1997 (see Blair, 1998).

In contrast to the traditional liberal idea that members of a society may be simply entitled to unconditional benefits or services, it was now proposed that the responsibility to care for each individual should be seen as lying, first and foremost with the individual and their families. This ‘third way’, emphasising the importance of civil society, was proposed as avoiding the full-on atomistic egotistical individualism entailed by the Thatcherite maxim that ‘there is no such thing as society’ and, on the other hand, the traditional social-democratic recourse to a strong state as the tool by which to realise the aims of social justice (Giddens, 1998). The state, it was argued, has a role to play, but as a facilitator, rather than a guarantor, of a flourishing community life.

Dissenters were nevertheless to observe that the subsequent New Labour agenda took a different, more authoritarian course; centred more on the use of a strong state apparatus to deliver particular outcomes than was suggested by the rhetorical appeal to the relatively autonomous powers of civil society to deliver progress by itself (see Driver

and Martell, 1997; Jordan, 1998). This outcome is perhaps not surprising when considering that the concept of civil society has itself attracted considerable criticism.

Civil society is a social sphere separate from both the state and the market. The increasingly accepted understanding of the term civil society organisations is that of non-state, not-for-profit, voluntary organisations, formed by people in that social sphere. It is a term used to describe a wide range of organisations, networks, associations, groups and movements that are independent from government and which sometimes come together to advance their common interests through collective action (Alagappa, 2004). Civil society thus includes all organisations that occupy the 'social space' between the family and the state, excluding political parties and companies. Some definitions also include certain businesses, such as the media, private schools, and for-profit associations, while they are excluded by others (Edwards, 2004).

This is of course all problematic with state involvement in the funding and establishment of civil society and non-governmental organisations, which may well blur the boundaries between state and non-state bodies. Moreover, these institutions are not protected from the economic demands of market forces; nor wider society from the philosophical and material interests of moral entrepreneurs, who have a clear capacity to influence the agenda (Hopkins Burke, 2012, 2013). The notion of the neutral civil society organisation is thus clearly contentious with democratically elected governments having both a legitimate right and definitely a responsibility to intervene in these processes ostensibly in the interests of the greater good.

Thus, it was New Labour *neo-communitarian* credentials that were clearly apparent in the establishment of a contemporary youth justice system epitomised by the central state control of Youth Offending Teams (YOTs) by an autocratic Youth Justice Board.

### **New Labour and re-integrative tutelage**

New Labour youth justice policies can be best explained as being part of a wider set of communitarian-driven government strategies introduced to help reintegrate those sections of the population that had become increasingly socially and economically excluded during the previous years of major economic re-structuring. These reintegrative strategies included (1) measures to support families, including assistance for single parents to get off benefits and return to work; (2) policies to help children achieve at school, including steps to tackle truancy and prevent exclusions; (3) the provision of opportunities for jobs, training, and leisure; and (4) action to tackle drug misuse (Hopkins Burke, 1999, 2008). This *neo-communitarian* youth justice strategy, located in the context of a wider multi-intervention strategy against social exclusion, is summarised in Table 1 below.

**Table 1: The reintegrative tutelage model of youth justice**

- Based on the left realist notion that crime requires a comprehensive solution and there must be a 'balance of intervention'.
- Young people who commit crime must face up to the consequences of their actions and take responsibility (rational actor model of criminal behaviour).
- An effective intervention needs to address the causes of offending as well as punishing the offender (predestined and rational actor model).
- Part of a wider set of educative and welfare strategies that seek to reintegrate socially and economically sections of society. (Hopkins Burke, 2008)

Two major theoretical influences on the generic criminal justice policy of the New Labour Government elected in 1997 can be identified. First, some criminologists on the political left had become worried that the debate on crime control had been lost to a populist Conservative government that favoured a rigorous punitive intervention. These 'new realists' proposed that those arguments that denied working-class crime to be a real problem and which concentrated instead on 'crimes of the powerful' (see Hall et al., 1978; Cohen, 1980; Box, 1983; Scraton, 1985) were ignoring the widespread plight of working-class victims of predatory crime. There was thus an identified need for a 'radical realist' approach that recognised the impact of crime, but which also addressed the context in which it occurred (Lea and Young, 1984).

Inasmuch as 'right realists' had focused their efforts on targeting the person who offended as a criminal justice strategy (see Wilson, 1975), 'left realists' now emphasised the need for a 'balance of intervention' targeting both the crime and the context in which it occurred. Crime was identified as a function of (a) the state, principally through the process of labelling; (b) the victim, who may encourage perpetrators through inadequate defence, or may even precipitate crime through their life-style or personality; (c) society, through which the various forces of social control are exercised; and (d) the people who offend, their number, their rate of offending, and the type of crimes they commit.

Moreover, it was recognised that crime occurs not only as an outcome of these four factors, but as a consequence of the interaction between them. Intervention must, therefore, take place at a number of different levels in order to be effective and must take account of all the causes of crime, accounting for the interactions between the

state and its agencies such as the police, the community, people who offend and victims (Young, 1986, 1994). In short, the necessity and desirability of people taking responsibility for their actions is emphasised (rational actor model of criminal behaviour) but, at the same time, account must be taken of the circumstances in which the crime takes place (predestined actor model) (Hopkins Burke, 2014a). It is an approach to crime and criminal behaviour summarised and popularised by the oft quoted sound-bite of Tony Blair, ‘tough on crime, tough on the causes of crime’.

The second theoretical contribution to New Labour criminal justice policy was provided by the influential Australian criminologist John Braithwaite (1989) who had developed a theory of ‘predatory’ crime – those crimes involving the victimisation of one party by another – where he argued that the key to crime control is a cultural commitment to shaming in ways that he describes as ‘reintegrative.’ In doing so, he makes a crucial distinction between shaming that

*leads to stigmatising, to outcasting, to confirmation of a deviant master status ... [and shaming that is] ... reintegrative, that shames while maintaining bonds of respect or love, that sharply terminates disapproval with forgiveness. The latter controls crime while the former pushes offenders toward criminal subcultures.*  
(Braithwaite, 1989: 12–13)

Braithwaite argues that criminal subcultures become attractive to those who have been stigmatised by their shaming because they can provide emotional and social support for those who feel rejected by conventional society. Participation in these subcultures can supply criminal role models, knowledge on how to offend and techniques of ‘neutralisation’ (Matza, 1964) which, taken together, can make the choice to engage in crime more attractive and likely. Therefore, a high level of stigmatisation in a society is a key factor in stimulating the formation of criminal subcultures. The other major societal variable that encourages the formation of these is the ‘systematic blockage of legitimate opportunities for critical fractions of the population’ (Braithwaite, 1989: 103).

In short, societies with low crime rates are those that ‘shame potently and judiciously’ (Braithwaite, 1989: 1). Moreover, it is societies or cultures that are communitarian, made up of dense networks of individual interdependencies characterised by mutual help and trust, rather than individualistic societies, that are capable of delivering more potent shaming and shaming that is reintegrative.

It is this notion of reintegration back into the community that explains the approach to youth justice favoured by New Labour: a distinctive approach that was part of a wider

set of government strategies that sought to reintegrate those sections of the population that had become socially and economically excluded during the previous twenty years of significant economic restructuring with the not totally unintended consequences of mass unemployment in many parts of the country.

This unwritten and unspoken government strategy of 'reintegrative tutelage' (Hopkins Burke, 1999, 2005, 2008) was nevertheless fraught with difficulties in changing economic circumstances, not least the virtual impossibility of getting a large number of uneducated, non-skilled youths into employment in a difficult, complex and highly competitive labour market. Thus, Fergusson et al. (2000) argued that the prevailing discourses of transition, from school to employment, were no longer sufficient to explain the experiences of that substantial minority of young people who had become located in socially excluded 'underclass locations'. Indeed, it was becoming increasingly apparent that the whole notion of social reintegration was a fatally flawed strategy in society as it was currently structured.

In short, the whole notion of reintegrative tutelage on which the New Labour neo-communitarian strategy was founded, appeared to be based on rather fragile socio-economic foundations, with the economy unable to provide accessible, legitimate and sustainable opportunities for increasingly large sections of young people, even in the credit-driven economic boom pre-2008. The situation was to become significantly worse from that date onwards.

### **Austerity, Coalition Government and Neo-liberal Communitarianism**

The world-wide 'credit crunch' in September 2008 brought to an end the long-run, world-wide economic boom of at least the previous ten years. It heralded a global financial crisis, unprecedented in recent times, a major economic recession with many business collapses, rising unemployment and, in many countries (such as the UK), a new austerity politics aimed at reducing high and unsustainable levels of national debt. The General Election in 2010 produced the first coalition government since the Second World War, formed between the Conservatives and the Liberal Democrats and centred on the former's economic policy of eliminating the UK's structural deficit by 2015, based primarily on public spending cuts rather than on tax rises. The Spending Review later that year announced an initial series of measures including an average 19 per cent cut across departmental budgets, an extra £7 billion in cuts to the welfare budget on top of £11 billion already announced, and a major reform of public-sector pensions (HM Treasury, 2010). It is a situation that has not eased during the intervening years, with two influential think tanks warning that austerity measures in the UK could still be in place when the 2020 election takes place. The Institute for Fiscal Studies and the Institute for Government (both of them far from radical left-wing outfits) have said, 'we

are still as far away from the (budget deficit) target as we were in 2010. ... Indeed, it would not be surprising if not just 2015 but also 2020 was an 'austerity' election' (BBC, 2013).

It is in this context that some have argued that the last decades of the twentieth century saw the replacement of 'welfarism' as a regime of social regulation by neoliberalism in post-industrial Western societies (see Lacey, 2013), with neoliberalism often considered a monolith, solely responsible for the harsher penal regime of the last few decades (Cavadino and Dignan, 2006), which has helped discipline and tutor a recalcitrant working class population in the interests of a neoliberal economy (Wacquant, 2009). Houdt and Schinkel (2013) have pertinently observed that neoliberalism essentially operates in combination with elements from other rationalities, in particular, communitarianism. Thus, neoliberalism is not completely opposed to communitarianism; while a harsher penal climate is not solely attributable to neoliberalism, but is actually compatible with a communitarian governmental rationality. The emphasis on 'responsibility' in communitarianism is hence compatible with the notion of 'responsibilisation' in neoliberalism, in other words, a neoliberal communitarianism.

Houdt and Schinkel (2013) thus argue that neoliberal communitarianism is a strategy of governmentality that combines the main features of neoliberal governmentality (Foucault, 2004), with those of governmental communitarianism (Delanty, 2003; Ross, 2003; Adams and Hess, 2001; Van Swaaningen, 2008), consisting of a combination of new public management and the outsourcing of responsibility. It combines scientific measurement and treatment of social problems with the stimulation of 'active citizenship' and the rational governing of community, and the authors illustrate how neo-liberal and communitarian elements have combined in crime policies over the last decades with reference to three crucial trends.

First, there is 'the prioritisation of crime and the intensification and pluralisation of punishment', where we have seen increasing 'selective incapacitation' and 'selective rehabilitation' (Downes and Van Swaaningen, 2007). This involves a broader range of possible punishments, including restorative justice and a variety of tactics deployed to suppress 'risky' behaviour, while punishment has become plural in that it is executed and conceived by a broader circle of actors and agencies than has traditionally been the case (not only the sovereign state but also local governments and administrations).

Second, there is the 'actuarialisation of crime' where there is a transformation from the criminal subject as causally determined towards one who is a bundle of risk factors, with a focus on choice and the discovery of culture as a risk factor. Thus, risk has become dominant in the field of crime regulation (O'Malley, 1992), where a 'reinvented

government' (Osborne and Gaebler, 1993), uses measurable risks to increase the efficiency, effectiveness and legitimacy of public policy and interventions, and where this new penology and actuarial justice is based on (selective) incapacitation, preventive detention and profiling.

Third, there is 'the institutional transformation of crime regulation' where penal welfarism came under attack for being 'inefficient' and 'ineffective' and which involved: (i) a disciplinarianisation of the state through managerial principles (where a business model was introduced to make criminal justice both more 'effective' and 'efficient'); (ii) an extension of state competencies and capacities, where the critique of penal welfarism was to involve a targeting of society as a whole from a criminal justice perspective (thus under the dual flag of prevention and repression the criminal justice system casts a wider net with a thinner mesh (cf. Cohen, 1979)), with harsher punishment, new prisons, less tolerance and alternative punishments; (iii) the incorporation of privatisation and facilitative and repressive responsabilisation, where governments came to recognise that they were unable to cope with crime alone, leading to the mobilisation of individual citizens and civil society, including local government and the private sector, to take responsibility (responsibilisation), and fight the control problem with special programmes targeted at the socially excluded underclass in particular. If this new (and at least potentially) dangerous social class could not be reintegrated then they had to be controlled in the most cost-effective way possible.

Hopkins Burke (2012, 2013), with his left realist hybrid model of criminal justice development, argues that the practitioners, professionals and experts that have implemented these strategies contribute, invariably unknowingly, to the increasingly pervasive socio-control surveillance matrix of the carceral society, which is encouraged and legitimised by a depoliticised general public, ultimately but again usually unwittingly, in the interests of society and enhancement of the neoliberal market economy.

### **Emile Durkheim and radical moral communitarianism**

It is the work of Emile Durkheim and his observations on the *moral* component of contract and the division of labour in society which provides the theoretical basis of a radical moral communitarianism, which challenges the orthodox articulation and its hybrid neoliberal variation. It is a formulation which actively promotes the rights and responsibilities of both individuals and communities, but in the context of an equal division of labour. Moreover, it is a communitarianism based on a particular conception of (French) individualism, which provides the basis of a rather different form of social organisation than those which emerge from rival conceptions (Anglo-Saxon and German) of individualism (Hopkins Burke, 2014a, 2014b).

It is a social policy agenda which provides the basis of a genuine moral communitarianism founded on notions of appropriate contributions to society (obligations and responsibilities), suitable fair rewards (rights), and consensual interdependency with others we all recognise, identify and respect as fellow citizens and social partners, not as people of no consequence to be ignored, avoided and, in criminological terms, identified as potential legitimate crime targets. Radical moral communitarianism promotes a fairer, more equal world, based on mutual respect between all citizens, but with commitment to and involvement in society being a central component of a new social contract.

Table 2 provides a brief summary of some of the fundamental closely-linked rights which it is proposed should be available to citizens of all ages, alongside their simultaneous responsibilities, in a radical moral communitarian society built on mutual trust and respect in the context of an equal division of labour (Hopkins Burke, 2013, Hopkins Burke, 2015 forthcoming).

Policies should be introduced on the basis that people and communities have both rights and responsibilities and that there is an essential need for a fine balance between them. This balance will invariably require negotiation and renegotiation on a regular and reflective basis and it is beyond the parameters of this paper to elaborate on the political mechanisms that will need to be applied and implemented to bring about these very significant socio-economic changes. This paper moreover provides only a brief introduction to the suggested generic policy implications of radical moral communitarianism for all citizens, with the emphasis below being on those suggested for young people who offend. Hopkins Burke (2015, forthcoming) provides a comprehensive discussion of the generic policy proposals.

| <b>Table 2: Rights and responsibilities in a moral communitarian society</b>   |  |
|--|--|
| <i>Rights</i>  | <i>Responsibilities</i>  |
| 1. The provision of an adequate income on which to live at the appropriate stage of life   | 1. To play an active role in the economy while fit and healthy and of working age  |
| 2. The provision of good quality affordable accommodation/housing of an acceptable size and proper rights of tenure                                    | 2. Being a good neighbour and a responsible member of the community and not engaging in anti-social behaviour to the disadvantage of fellow citizens |
| 3. To be treated with fairness and respect by all agencies, institutions and individuals regardless of age, disability, ethnicity, gender and religion | 3. To treat others with fairness and respect regardless of age, disability, ethnicity, gender and religion   |
| 4. The provision of good quality health care   | 4. To maintain a reasonable standard of natural health where possible  |
| 5. The provision of a high quality education and training  | 5. To fully engage and participate in education and training and behave appropriately  |
| 6. To be protected from crime and anti-social behaviour in our communities   | 6. Not to engage in crime and criminal behaviour   |
| Based on: Hopkins Burke, 2014a   |  |

The first policy proposal is that all citizens should have access to an acceptable level of income at all stages of their life. This is clearly commensurate with the provision of an adequate benefits system and a reinforcement of the basic right that all citizens enjoy in the appropriate circumstances. It should nevertheless be the responsibility of the individual to make an active contribution to society and the economy, wherever possible, in some form or another and they should certainly not refuse suitable work that becomes available. At the same time, there should be no hounding of the sick and disabled who are unable to work.

Second, all citizens should have access to suitable, good quality, affordable accommodation of an acceptable size with proper rights of tenure, with the rent paid linked to the ability to pay. There should also be an end to the stigmatisation of local authority and housing association estates referred to as ‘social housing’, with the

provision of accommodation to a much wider section of the population as part of a process of community regeneration.

Third, all citizens should be entitled to respect and be treated fairly by all agencies, institutions and individuals regardless of their age, disability, ethnicity, gender, religion and sexuality. It will be the responsibility of all individuals to reciprocate this behaviour or face appropriate sanctions. Mutual respect should be central to any moral communitarian project, but will be difficult to achieve in a society epitomised by an excessively unequal division of labour. Conversely, a more equal division of labour with more equitable pay differentials will help provide a culture of respect for different occupational groups.

Fourth, there should be the provision of good quality health care for all citizens which means supporting the National Health Service. It will nevertheless be the responsibility of the citizen to actively pursue good health and the failure to do so will involve a state health and welfare (not criminal) intervention against, for example, those with alcohol, drugs and dietary (obesity) problems. The key to this strategy is the progressive decriminalisation, but not the legalisation, of drugs.

Fifth, all citizens should have access to good quality education and every effort should be made to ensure that standards are maintained, improved and appropriate to the skills and aptitudes of individuals, with a close fit and links to employment opportunities. Nevertheless, not all people take advantage of these opportunities and it is their responsibility – and crucially that of the parents and carers – to ensure that they do so with appropriate sanctions taken against those who do not and/or are disruptive.

Sixth, all citizens should receive appropriate adequate public sector protection. It is thus the responsibility of citizens to not engage in criminality but it would clearly be overly utopian to suggest that everyone will abstain and desist from offending. Those who do not accept this responsibility to society should be targeted and dealt with efficiently and appropriately by the agencies of the criminal justice system but with the recognition that our prison system is full of people who could be dealt with without that sanction and for whom imprisonment is at best non-productive and at worst wholly destructive.

These six policy suggestions are all closely linked and appropriate for all citizens; those which follow are specifically proposed for young people who offend, but should be considered in this wider generic context.

**The policy implications of radical moral communitarianism for young offenders**

Table 3 below provides a summary of the additional basic rights and responsibilities to be afforded to young people who are clients of the contemporary youth justice system based on the values and principles of a moral communitarian society. The first three of these policy proposals can be located in the context of generic policy six (GP 6) which focuses on crime and the criminal justice system.

The first proposed policy for young people who offend is that the upper-age limit for the jurisdiction of the youth justice system should be increased to 21. There is a well-established movement involving professionals and influential charities, in particular the Barrow Cadbury Trust (2012) and T2A (Transitions to Adulthood), who seek to establish transitional arrangements for young people involved in the criminal justice system between the ages of 18 and 25. The evidence they have gathered provides compelling arguments for raising the upper age limit in the youth justice system from 18 to 21 in the first instance. It is thus proposed that young people age 21 and below should accept that they are part of this extended youth justice jurisdiction, accept its authority and behave accordingly as a part of being treated in an age appropriate fashion. This policy would be a central component of a moral communitarian response to youth offending.

| <b>Table 3: Rights and responsibilities of young people who offend in a moral communitarian society</b>  |  |
|--|--|
| <i>Rights</i>  | <i>Responsibilities</i>  |
| 1. Young people age 21 and below should be dealt with by the youth justice system not the adult criminal justice system  | 1. To accept that they are part of this extended youth justice jurisdiction, accept its authority and behave appropriately     |
| 2. The youth justice intervention should be appropriate to the level of maturity of the young person and the level of risk they pose to themselves and others              | 2. To accept responsibility for their actions, the need for reparation to their victims and co-operate with intervention plans |
| 3. Punishment in the community should be pursued in all but the most exceptional cases involving very serious crimes and individuals who pose a high risk to the community | 3. Full cooperation with community sanctions and restorative justice interventions   |

|   |   |
|---|---|
| 4. A comprehensive intervention in the welfare needs of the young person at an appropriate level  | 4. Full cooperation with all proposed appropriate welfare interventions |
| 5. Appropriate training and education opportunities provided appropriate to the needs and skills of the individual and their employment prospects | 5. Full cooperation and involvement in educational opportunities        |
| 6. Proper employment opportunities provided where appropriate as part of a macro full employment strategy   | 6. Full cooperation with all employment opportunities provided          |

Second, the nature of the particular youth justice intervention should be appropriate to the level of maturity of the young person and the level of risk they pose to themselves and others and is clearly closely linked to the first policy proposal. Maturity is one of the most prominent themes in the literature about young adults with many, if not most, considered to be youths rather than adults on a transitional spectrum (T2A, 2009.) Prior et al. (2011) reviewed three key strands of empirical research (neurological, psychological and criminological) and supported this view concluding that the current transition point to adulthood (18) in the criminal justice system is illogical.

The Barrow Cadbury Trust (2005) recommends that ‘maturity’ be taken into account when sanctioning young adults. The T2A (2009: 27) further advocates that ‘youthfulness’ should be a ‘mitigating factor’ when dealing with this age group, with assessments carried out by the probation service before young adults face a criminal trial. The concern is to divert young adults away from the criminal justice system, thereby avoiding a criminal record and the subsequent stigmatisation, and allowing them to ‘learn from their mistakes’ (T2A, 2009: 25). This would seem a valid approach as the evidence shows that the peak ages for offending are between the ages of 19 and 24 (Von Hirsch and Ashworth, 2005).

Undoubtedly, introducing a scheme where sentencers were required to consider the maturity of a young adult could provide benefits for individual young adults and improve their future prospects. Where the young adult has offended for the first time and has committed minor crime then this would seem a suitable and fair option, but it can be argued that for those people stuck in the ‘revolving door’ cycle the issue of maturity, whilst it should be seen as a mitigating factor, cannot be the only consideration. It should also be borne in mind that, as Prior et al. (2011) note, maturity is an elusive notion and not a ‘wholly objective, measureable concept’ by any means. This could

raise difficulties for sentencers when attempting to determine how mature or immature an individual may be and leaves individuals subject to discretionary subjective opinion.

This approach is nevertheless used in Germany which offers an interesting international comparison. In Germany the judge takes into account an individual's personality and maturity level and then a decision is made to either prosecute a young adult (in Germany 18–21) through adult or juvenile law. We should also note that Germany has a 'lower crime rate, a lower incarceration rate, and lower reoffending rates than the UK' (T2A, 2009: 25). Removing discretion and subjective interpretation would point to all young people aged 18–21 being treated as juveniles and logically in the extended youth justice system.

The third policy proposal for young people who offend is that punishment in the community should be pursued in all but the most exceptional cases involving very serious crimes. Children and young people would be expected to offer full cooperation with community sanctions and restorative justice interventions. The most effective community supervision programmes have been shown to reduce offending 15 per cent more than a prison sentence and, while there is still a lack of clear information (the Home Affairs Select Committee in 1998 had found 'the absence of rigorous assessment astonishing' (T2A, 2009: 32), there is an increasing amount of evidence as to the effectiveness of community penalties. Moreover, they are considerably cheaper. It costs, according to estimates, £42,000 per year to lock up a young person, but the costs of the most frequently used community sentences range between £2,000 to £4,000. The basic fact is that custody costs about twelve times more than a community sentence.

The use and experience of custody is itself problematic, and it is argued that short sentences cause particularly difficult disruption to the lives of children and young adults. Reoffending rates are high, making the supposed rehabilitative purpose of custody seem ineffective, despite the huge costs (Cavadino and Dignan, 2007). Statistical evidence emphasises this with reconviction rates at 59.9 per cent. Incarceration moreover damages individuals and removes children and young people from having a 'normal life' (T2A, 2009), appreciably affects their chances of getting a job, and is regarded as a 'counterproductive tool' (Barrow Cadbury Trust, 2005).

Organisations promoting reform for young adults advocate greater use of community orders because they can divert young adults from the harmful effects of custody and provide other benefits such as keeping them closer to their families (Howard League, 2012). Research into community order schemes, used predominantly with young adults aged 18-24, is very limited, with results ambiguous (Make Justice Work, 2011), but one thing is certain, community sanctions are significantly cheaper.

The use of custody can result in a 'revolving door' cycle affecting young adults who continuously go in and out of the justice system. There is a clear need for a specialist service for dealing with young adults when they leave custody, but currently the only one available is the adult probation service, which provides nowhere near the intensive support offered by YOTs for the younger age group. Young adults are invariably 'left out on their own' and require 'more attention than they currently get' (Make Justice Work, 2011: 44). However despite greater efforts being made to help those on probation, there are still many young adults failing and reoffending due to lack of support that could be provided by an enhanced youth justice system incorporating this age group.

The Transforming Rehabilitation agenda, which is radically changing the way in which probation services are delivered, is unlikely to help. The results from the payment by results pilots in Peterborough and Doncaster prisons in 2014 show that both projects failed. Peterborough missed its target of reducing reoffending by 10 per cent, and Doncaster did just enough not to lose any money, but not enough to make a profit (Crook, 2014).

Supervision and support for those released from Peterborough prison after serving short sentences was funded by substantial additional money through social impact bonds. This extra investment from the lottery and charitable trusts could have been allocated to good causes. The government plans to take money from probation to give it to private companies or consortia, to manage people coming out of prison or on community sentences.

Under Transforming Rehabilitation, services need to be provided to at least 50,000 people emerging from short prison sentences but no more money will be available (Crook, 2014). In the Peterborough project intensive and specialised services were provided by experienced charitable organisations, who still failed to make any significant impact on reoffending, because they were given the impossible task of undoing the damage done by the prison. The expansion of the scheme nationwide will be impossible to achieve without considerable expense, and there is little likelihood of proper rehabilitation. Non-custodial sentences provide the most likelihood of successful rehabilitation and they will certainly be much cheaper.

The fourth policy proposal for young people who offend is that there should be a comprehensive intervention regarding the welfare needs of the child or young person, at an appropriate level for the individual, with full cooperation expected for such interventions. Appropriate accommodation (GP 2) and income needs (GP 1) are part of the generic moral communitarian intervention welfare strategies, but a significant issue

for many young people who offend, including young adults, is problematic involvement in drugs and alcohol (GP 4). It is proposed that these issues should be addressed through a welfare not criminal justice intervention.

Drug and alcohol use are considered a significant causation factor for criminal behaviour among children and young adults, while the misuse of illegal and legal substances is arguably more detrimental for those in these age groups than others (Devitt et al., 2009). These individuals have greater demographic variables when compared to other age groups, including, in the case of young adults, homelessness (T2A, 2009), and in the higher age range they are more likely to be persistent users (Devitt et al., 2009). Many young adults are still in a difficult transitional stage between childhood and fully formed adult status, with many not having 'finished school, not been in any employment, usually have been excluded and previously been in youth offending' with 'acquisitive offending' linked closely to a drug and alcohol fuelled lifestyle (see Parker, 1996). Statistical evidence suggests that drug and alcohol use is significantly more common among people who offend (Devitt, 2011).

The Barrow Cadbury Trust (2005) suggests that NOMS (National Offender Management Service), the National Treatment Agency and the Department of Health should all work together with the drug rehabilitation teams in prison to 'find the best way of working with young adults with drug problems in the CJS'. Although this is a sensible recommendation, there is a drug and alcohol community order already in place which magistrates are free to use (Ashworth, 2010). This would perhaps provide a better starting point than attempting to bring in a multi-agency approach, which may be more difficult to achieve, and YOTs have considerable experience in dealing with such cases with the younger (under 18) cohort. It would again be eminently sensible for YOTs to have responsibility for this older age group.

The fifth policy proposal for young people who offend is that they should be provided with suitable training and education opportunities appropriate to the needs and skills of the individual and their employment prospects. The young person's full cooperation with the educational and training opportunities provided is a mainstream policy proposal (GP 5). The words 'suitable' and 'appropriate' are central to this strategy and closely linked to employment opportunities available in a moral communitarian society and a re-structured inclusive labour market. Central to this strategy is the recognition that not all worthwhile employment requires an expertise in differential calculus, nor is it necessary or sensible to keep all young people in education until they have mastered this. Education and training needs to be appropriate to the young person, their potential and aptitude, while recognising a potential problematic initiative that could exclude many

able, but disadvantaged and excluded, young people from good quality educational opportunities they might master with the appropriate educational input in their lives.

The sixth policy proposal for young people who offend is that proper employment opportunities should be provided where appropriate, as part of a macro full employment strategy to be pursued as part of a restructured economy in a moral communitarian society with full cooperation expected from the young people (GP 1). Access to employment is seen as one of the most important ways of deterring young adults from crime, through providing them with a stable job and lifestyle (T2A, 2009.) Fifty per cent of young men are unemployed before being sentenced to prison, so it is clear that half of this age group are affected by this problem (Howard League, 2012). Moreover, following conviction they must disclose this to employers when seeking work which can have an extremely negative impact on their job seeking chances (see Parker, 1996).

The Barrow Cadbury Trust (2005) has made a number of recommendations about improving standards and increasing the ability of young adults to gain employment. These include multi-agency responses and more learning programmes for young adults in custody, allowing them to gain better qualifications whilst in prison. The most interesting recommendation is to make it a legal requirement that young adults under 23 years of age do not have to disclose their convictions to employers, unless it is for a violent or sexual offence. It could be more politically acceptable to apply this recommendation to those aged 21 and under, especially if these young people were to come under the jurisdiction of the youth justice system until that age.

## **Conclusions**

This paper has argued that the removal of youth justice support for young people who offend when they reach the age of 18 is rather arbitrary, and given the relatively high level of investment in working with young people and the levels of expertise developed this does suggest a poor use of resources. Extending the upper age limit to 21 thus seems to be eminently sensible and cost effective.

It is proposed that this new expanded youth justice system should intercede incrementally in the lives of children and young people who have offended in accordance with a realistic assessment of the level of risk they pose for reoffending. It is nevertheless important to remember that only 3–4 per cent of young people who offend are persistent in their offending behaviour (Hopkins Burke, 2008) and thus in need of a more rigorous intervention in an appropriate setting. The system should thus be underpinned by an awareness of the dangers of ‘net widening’ and the incorporation of a large, relatively non-problematic group of young people, tangentially involved in ‘offending’, into a spiral of increased surveillance and intervention. The nettle must be

grasped and a previously over-eager youth justice system, professionals and politicians must accept that increased intervention in the lives of young people, 'for their own good', is often far from their best interests.

Significantly, young people must be dealt with in a holistic way, in the context of a reformulated reintegrative tutelage strategy which fully addresses the social context of their behaviour. The youth justice system in a moral communitarian framework should be part of a rebalanced economy where all mentally and physically 'able' citizens are economically active. In this reformulated positive environment, all young people should be given legitimate opportunities which will enable positive engagement, involvement and participation in a society where they have appropriate rights and responsibilities based on their aptitude and potential. For too many young people who have come to the attention of the youth justice system, their experience of (often multiple) factors of social exclusion and their paucity of legitimate life chances has made involvement in criminality as a long term career option a rational choice. The task for a radical moral communitarian society is to make such choices far less rational.

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