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‘Large, unpleasant thugs’? The Penal Responsibilisation of Young People in France and the United Kingdom

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Most young people who are put into custody are aged 16 and 17 – they are not children; they are often large, unpleasant thugs, and they are frightening to the public. In my judgement, the courts have been quite right to ensure that they are locked up, and locked up for a long time where they have committed grievous offences.

Jack Straw, Minister of Justice, 10th June 2008¹

Les mineurs de 1945 n'ont rien à voir avec les géants noirs des banlieues d'aujourd'hui.

Nicolas Sarkozy, 28th July 2006²

Under successive *New Labour* administrations, it has become increasingly common to treat juvenile delinquents as entirely rational, fully responsible *young adults* rather than *children*, thus justifying their subjection to the full rigours of the criminal law. Indeed, the notion of juvenile responsibility has underpinned many recent penal trends, such as the lowering of the age of criminal responsibility, the increasing incarceration of minors and the creation of a range of new sentences. Although the juvenile and adult penal systems remain formally distinct, the treatment of juvenile delinquents now shares much in common with the treatment of adult criminals, leading one commentator to speak of the ‘dejuvenilisation’ of youth justice.³

It has been argued that this trend is not unique to Britain but that it is common to many Western nations.⁴ France is but one example in which a distinctly ‘welfare-oriented’ approach to the problem of juvenile delinquency is currently threatened by a more punitive approach which emphasises individual over social responsibility. Symbolically, a special commission chaired by André Varinard, appointed by the current Minister of Justice, Rachida Dati, to review the law regarding young offenders, expressly chose to replace the word ‘child’ with that of ‘minor’ in its final

¹ Jack STRAW, *Hansard* [on-line], 10th June 2008. Available at: <http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080610/debtext/80610-0003.htm> [accessed on 27 March 2009].

² ‘The young people of 1945 have nothing in common with the black giants of today’s inner cities.’ Nicolas SARKOZY, 28th July 2006, speech at the *Conseil des ministres*, cited in Hacène BELMESSOUS, ‘La discipline s’impose dès le berceau’, *Le monde diplomatique* [on-line], May 2007. Available at: <http://www.monde-diplomatique.fr/2007/05/BELMESSOUS/14677> [accessed on 27 March 2009].

³ John PITTS, *The New Politics of Youth Crime: Discipline or Solidarity?* Basingstoke: Palgrave, 2001, p. 48.

⁴ John MUNCIE, ‘The globalization of crime control – the case of youth and juvenile justice’, Vol. 9, no. 1, 2005: 35-64.

report.⁵ This paper will seek first to identify the main trends in the treatment of juvenile delinquents in both Britain and France in recent years, before attempting to determine the reasons which lie behind the adoption of such a ‘tough’ approach to children who break the law.

Doli capax?

The most blatant attempt to responsabilise child offenders has been the lowering of the age of criminal responsibility. With article 34 of the Crime and Disorder Act 1998, the *New Labour* government reversed the common law principal of *doli incapax* according to which children between the ages of ten and fourteen were presumed to be ‘incapable of evil’ unless prosecutors could prove that they were aware that their actions were ‘seriously wrong’. Although in England and Wales it has always been possible to imprison children as young ten for ‘grave’ crimes⁶, children of this age have, since the Children Act 1908, generally been spared criminal sanctions. However, following the 1998 Act, from aged ten children may be subject to a host of new non-custodial sanctions such as Anti-Social Behaviour Orders (ASBOs)⁷, Individual Support Orders (ISOs)⁸, Penalty Notices for Disorder (PNDs)⁹, Supervision Orders¹⁰, and Referral Orders¹¹. In 2007, the New Labour government even suggested that all children should be obliged to undergo periodic testing throughout their development in order to identify those at risk of becoming

⁵ André VARINARD, *Commission de propositions de réforme de l’ordonnance du 2 février 1945 relative aux mineurs délinquants* [en ligne], December 2008. Available at: http://www.premier-ministre.gouv.fr/chantiers/justice_856/rapport_varinard_sur_reforme_61850.html [accessed on 27 March 2009].

⁶ Section 91 of the Powers of the Criminal Courts (Sentencing) Act 2000, which replaced Section 53 of the Children and Young Persons Act, permits the Crown Court to sentence a ‘young person’ to prison when they commit an offence for which an adult could receive at least fourteen years in custody. The length of the sentence can be anywhere up to the adult maximum for the same offence, which means that in theory a ten-year old may be sentenced to life imprisonment.

⁷ *Infra.*, p. 10.

⁸ An ISO can be given to young people aged between 10 and 17, in addition to an ASBO. It stipulates that the young person attend support programmes which aim to tackle the causes of anti-social behaviour. Refusal to respect the conditions of such an order can lead to a fine.

⁹ PNDs are fines which may be handed out by the police against those responsible for behaviour which is likely to cause ‘harassment, alarm or distress’. A recent pilot programme has used them against children as young as ten.

¹⁰ These are community penalties which may require young people to respect curfews, attend drug treatment programmes or to take part in a range of activities set by the local youth offending team, which could include repairing the harm caused by their offence.

¹¹ The 1999 Youth Justice and Criminal Evidence Act requires that all first-time young offenders appear before a Youth Offending Panel, a committee composed of two volunteers from the local community and a juvenile justice specialist. The committee meets the parents or legal guardian of the offender and the offender himself in order to draw up a contract by which the young offender promises to make amends to his victims or to the community for his criminal acts. It is directly inspired by the principles of restorative justice.

the delinquents of the future.¹² Currently, children aged between twelve and seventeen may be incarcerated in Secure Training Centres¹³, whilst those aged between fifteen and twenty-one may be committed to Young Offender Institutions¹⁴. There are currently 2726 youths aged under eighteen imprisoned in various different custodial institutions in England and Wales. As the graph below shows, there are currently 3 twelve-year-olds in custody, 30 thirteen year-olds, 123 fourteen-year-olds, 341 fifteen year-olds, 778 sixteen year-olds and 1451 seventeen year-olds. Youths under eighteen account for 2.7% of the total prison population of England and Wales¹⁵.

The age of criminal responsibility in Northern Ireland is the same. There are currently 234 young people under the age of eighteen incarcerated in the province's only young offender institution¹⁶. They account for 1.3% of the total prison population¹⁷. In Scotland, the age of criminal responsibility is the lowest in Europe, remaining at only eight years old. Young people under eighteen represent 3.1%¹⁸ of the total Scottish prison population. However, in 2007/2008 just four of those serving a prison sentence were under sixteen.¹⁹ This can largely be explained by Scotland's unique system of Children's Hearings. These specialised panels, composed of social workers and lay people rather than judges, were established in 1971 by the Social Work (Scotland) Act. They aimed to remove all but the most serious young offenders aged under sixteen from criminal courts by making a child's supervision by a social worker the only sentence available. The emphasis was clearly on welfare rather than punishment²⁰. In Scotland, children under sixteen are generally only held in custody awaiting sentence if their behaviour is considered to be a cause for concern, in which case a court may issue then with an 'unruly certificate'.²¹ The small number of under-16s held in custody in Scotland contrasts

¹² Alan TRAVIS, 'Every child to be screened for risk of turning criminal under Blair justice plan', *The Guardian*, [on-line], 28 March 2007. Available at: <http://www.guardian.co.uk/crime/article/0,,2044296,00.html> [accessed on 27 March 2009].

¹³ These are purpose-built centres for offenders aged between 12 and 17. They are operated by private companies under contract to the Home Office.

¹⁴ These are specialised custodial institutions for young offenders aged between 15 and 21, run by both the Prison Service and private contractors.

¹⁵ INTERNATIONAL CENTRE FOR PRISON STUDIES [on-line], King's College, London. Available at: http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=169 [accessed on 27 March 2009].

¹⁶ NORTHERN IRELAND PRISON SERVICE [on-line]. Available at: <http://www.niprison.service.gov.uk/module.cfm/opt/8/area/Population/page/population/> [accessed on 27 March 2009].

¹⁷ INTERNATIONAL CENTRE FOR PRISON STUDIES, *op. cit.*

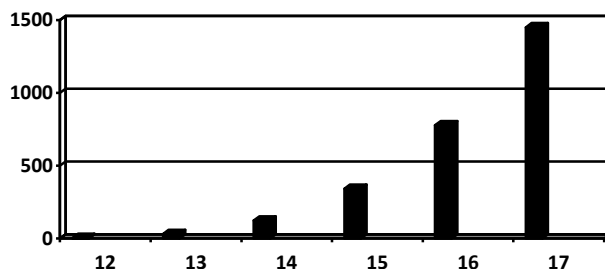
¹⁸ *Ibid.*

¹⁹ THE SCOTTISH GOVERNMENT, *Prison Statistics Scotland 2007/2008* [on-line], table 21. Available at: <http://openscotland.gov.uk/Publications/2008/08/14143909/39> [accessed on 27 March 2009].

²⁰ F. M. MARTIN and Kathleen MURRAY (eds.), *The Scottish Juvenile Justice System*, Edinburgh: The Scottish Academic Press, 1982.

²¹ Such certificates were initially created by the Children Act 1908. In 2007/2008, there were 13 young people aged under sixteen held in custody under such a certificate: The Scottish Government, Table 18, *op. cit.* Available at: <http://openscotland.gov.uk/Publications/2008/08/14143909/36> [accessed on 27 March 2009]. The Scottish government announced last

with the case of England and Wales where 496 young people of this age are held in a penal establishment.



Under 18 secure population in England and Wales by age²²

England and Wales would also appear to treat their children more severely than France in this respect. There, children under the age of eighteen represent just 1.1% of the overall prison population²³. Although France has never officially set an age of criminal responsibility, the edict of 1945 (*l'ordonnance du 2 février*) which is generally considered to be the very foundation of a welfare-oriented youth justice system, stipulated that offenders under the age of eighteen should be subject to 'educational' rather than penal measures, except in the case of serious crimes. Children aged between thirteen and sixteen may be sent to prison for such crimes but they automatically benefit from the *excuse de minorité* according to which their sentence is to be reduced to half that of an adult sentence. Those aged between sixteen and eighteen benefit from the same sentence reduction provided that 'circumstances and their personality' do not make this impossible.

Yet, even if the 1945 edict states that criminal sanctions cannot be inflicted upon children under the age of thirteen, children as young as seven may be held criminally responsible provided the prosecution is satisfied that the child is capable of judging the gravity of his acts (in which case he will be subject to lesser sanctions than those of his elders). This principle was made clear in the 1945 edict and was reaffirmed by article 122(8) of the *Code pénal* following the law of 9th September 2002 (*la loi d'orientation et de programmation pour la justice*). It is therefore wrong to suggest, as is sometimes the case, that the welfare-oriented 1945 edict, declares that minors are not held responsible before the criminal law. As Christine Lazergues and Jean-Pierre Balduyck have argued, such misconceptions result from a

year that it planned to abolish such certificates in order to spare under-16s from custody (see BBC [on-line], 'Ban on children held in prisons', 21/02/08. Available at: http://news.bbc.co.uk/2/hi/uk_news/scotland/7255857.stm [accessed on 27 March 2009]).

²² Source: YOUTH JUSTICE BOARD [on-line]. Available at: <http://www.yjb.gov.uk/NR/rdonlyres/86283FE9-8D9C-4855-A6E6-F79B715AE1C3/0/January2009Monthlysecureestatepopulationsummary.pdf> [accessed on 27 March 2009].

²³ INTERNATIONAL CENTRE FOR PRISON STUDIES, *op. cit.*

misinterpretation of the law.²⁴ Nonetheless, the edict has been the subject of considerable criticism in recent years for being too lenient, frequently being referred to as the ‘young offender’s charter’. Consequently, recent legislative modifications have rendered the juvenile justice system more severe, notably by allowing minors aged over sixteen to be subject to the same penal sanctions as adults when they are convicted for the second time and by applying mandatory minimum sentences to children from the age of thirteen.²⁵

A stricter approach has also been adopted with regard to children aged between ten and thirteen. Following the law of 9th September 2002, ten year-olds may now be made the subject of new ‘educational **sanctions**’ (*sanctions éducatives*)²⁶. Although such sanctions have rarely been used²⁷, the desire on the part of the government to responsabilise children for their criminal acts is clear. Indeed, failure to respect the conditions of such measures can lead to the placement of children in a specialised ‘educational’ institution for a period of one month. According to one juvenile justice professional, these measures are distinctly coercive in nature, blurring the boundary between ‘educational’ and ‘penal’ measures.²⁸

Most recently, the Varinard Commission²⁹ made the controversial recommendation of fixing the age of criminal responsibility at twelve. Up until now, France has been one of the few European countries not to have specifically defined such an age, which explains why children as young as seven may be held criminally responsible for their acts. Yet, rather than protecting children from the full rigours of the criminal law, it has been suggested that the commission’s recommendations would actually render the law tougher, permitting the incarceration of children as young as twelve. Although the Minister of Justice approved the proposal, considering it to be one of ‘common sense’, she seemed to suggest that prison should only be used as a last resort.³⁰ The Prime Minister, François Fillon, almost

²⁴ Christine LAZERGUES and Jean-Pierre BALDUYCK, *Réponses à la délinquance des mineurs*, Rapport au Premier ministre par la Mission interministérielle sur la prévention et le traitement de la délinquance des mineurs, Paris: La documentation française, 1998, pp. 135-136.

²⁵ Cf. The law of 11th August 2007 on the fight against recidivism (la loi de lutte contre la récidive).

²⁶ There are currently six such sanctions: the confiscation of the object with which the young offender committed his crime; the exclusion of the young offender from the place where the crime was committed (with the exception of his home) for a maximum of one year; forbidding him from meeting or contacting the victims of his offending behaviour (for a maximum period of one year); forbidding him from meeting or contacting his partners in crime (for a maximum period of one year); obliging him to make reparation for his crime; obliging him to follow a course in ‘civic education’ for a maximum of one month.

²⁷ In 2004, only 37 such measures out of a total of 31,420 different sanctions were made against juvenile delinquents. French Ministry of Justice [on-line]. Available at: <http://www.justice.gouv.fr/index.php?rubrique=10042&ssrubrique=10271> [accessed on 27 March 2009].

²⁸ Didier PEYRAT, ‘Le rappel à l’ordre, modèle de la nouvelle prévention ?’, *Actualité Juridique Pénal*, 2006, p. 350.

²⁹ *Op. cit.*

³⁰ Rachida DATI, speech at the Hôtel de Bourvallais following the publication of the Varinard Report, 3 December 2008 [on-line]. Available at: <http://www.premierministre.gouv.fr/>

immediately declared his opposition to the idea of imprisoning twelve year-olds and stated that the government had no plans to modify the current legislation in this respect.³¹ In March 2009, Dati announced that the age of criminal responsibility would not be lowered in the future penal code for minors, which is intended to replace the 1945 edict.³²

Although there are concerns about some of the Ministry's most recent proposals, notably that of creating a 'special civil system' of law for the under-13s which would allow measures of a penal nature (such as the obligation to compensate the victim of crime) to be imposed on minors in civil courts, this approach would seem to contrast with that of England, Wales and Northern Ireland, where twelve year-olds are indeed incarcerated. Despite the punitive rhetoric of the Sarkozy administration, it might appear that France is currently resisting the most draconian aspects of youth justice policy *à l'anglaise*. As Sophie Genderot has stated,

*In France, an ideal of solidarity and consideration of life inequalities still prevail over punitiveness. A commitment to youth re-socialisation endures despite doubts about the efficacy of rehabilitation programmes.*³³

L'exception française?

Despite the numerous reforms which have been made to the 1945 edict in recent years, the principle of child protection which it embodied remains firmly anchored in French law. Indeed, in its examination of the constitutionality of the law of 9 September 2002, the *Conseil constitutionnel* re-affirmed the constitutional status of the principle outlined in 1945 according to which juvenile delinquents should be dealt with by specialist tribunals which must take into consideration the age and personality of each offender in order to determine the measures which are best adapted to their particular needs.³⁴ The need to educate and protect the juvenile delinquent was also reaffirmed by the justice minister herself, who declared that punishment must be first and foremost about education, and that the principle according to which the juvenile delinquent must be regarded as a minor in danger should not be undermined.³⁵ The continued focus on education appears to be clear in the creation of specialised penal establishments for children aged between thirteen and seventeen by the law of 2002 – *Établissements Pénitentiaires pour Mineurs (EPM)*. Previously, all children sentenced to custody were held in special wings of

chantiers/justice_856/rapport_varinard_sur_reforme_61850.html [accessed on 27 March 2009].

³¹ Alain SALLES, 'Prison à 12 ans : M. Fillon désavoue Mme Dati', *Le Monde*, 7 December 2008.

³² Alain SALLES, 'Le futur code pénal des mineurs moins dur qu'annoncé', *Le Monde*, 17 March 2009.

³³ Sophie GENDEROT, 'France: The Politicisation of Youth Justice', p. 55 in John MUNCIE and Barry GOLDSON (eds.), *Comparative Youth Justice: Critical Readings*, London: Sage, 2006.

³⁴ Conseil Constitutionnel, decision n° 2002-461 DC, 29 August 2002.

³⁵ 'À l'égard d'un mineur, sanctionner c'est d'abord faire œuvre de pédagogie. Le principe selon lequel le mineur délinquant est aussi un mineur en danger ne doit pas être remis en cause.' Rachida DATI, *op. cit.*

adult prisons. Although these new institutions are totally secure, the emphasis is intended to be placed on education rather than punishment, with the adolescent following at least twenty hours of teaching per week as well as up to forty hours of sporting and cultural activities. Yet, some commentators fear that the creation of such establishments may only encourage the increased incarceration of children, leading to the erosion of the welfare model.³⁶ In addition, the capacity of these centres to 'protect' children was seriously called into question following the suicide of a sixteen year-old at an EPM in Meyzieu, near Lyon in February 2008.³⁷

It may of course be asked whether coercion is really the best way to educate young offenders. Yet, coercion lies behind even the educational sanctions which are intended to be non-penal: as we have indicated, failure to respect these measures may lead to a juvenile being placed in a closed institution. Those aged over thirteen may be sent to a *Centre Éducatif Fermé (CEF)*, also created by the law of 2002. Although these centres are 'open' and not intended to be penal in nature, a minor who 'escapes' from a CEF may be placed under a supervision order. Failure to respect such an order may lead to the minor being remanded in custody.

Given the coercive nature of the welfare approach, the exceptionality of the French situation would thus seem to be wholly superficial. Indeed, as in the United Kingdom, it would seem that the introduction of an increasing number of 'educational' and 'welfare' measures alongside penal measures has only served to disguise the increasingly punitive nature of youth justice.

Punishing through welfare

Although *New Labour* sought to 'draw a line under the past and set out a new approach to tackling youth crime' by 'tackling the excuse culture' of the youth justice system³⁸, like France it did not entirely abandon a welfare approach to the problem. It could even be said that it actually widened the scope of such an approach by moving responsibility for youth justice out of the hands of the Home Office by creating the Youth Justice Board by the Crime and Disorder Act 1998. This is a specialised independent committee responsible for supervising the functioning of the youth justice system, advising the Home Secretary in this respect and, most importantly, working with the social services to develop a joint strategy to prevent crime and to divert young people from the penal system. Thus, Youth Offending Teams were set up, involving local authorities, social workers, probation officers, police officers, health and education workers and members of voluntary organisations. The teams were given a statutory duty to work together to tackle the causes of crime – drug abuse, educational failure, family problems etc. Given the

³⁶ Christine LAZERGUES, 'La mutation du modèle protectionniste de justice des mineurs', *Revue de science criminelle et de droit pénal comparé*, n°1, 2008, p. 206.

³⁷ Cf. Commission nationale de déontologie de la sécurité, saisie n°2008-21 [on-line report]. Available at: http://www.cnds.fr/ra_pdf/reponses_fev_09/Avis_2008_21.pdf [accessed on 27 March 2009].

³⁸ HOME OFFICE, *No More Excuses: A new approach to tackling youth crime in England and Wales* [on-line], November 1997. Available at: <http://www.homeoffice.gov.uk/documents/jou-no-more-excuses?view=Html> [accessed on 27 March 2009].

emphasis placed on prevention, the reform was welcomed by the large majority of professionals working in this area.³⁹

The range of new penal sanctions created also sought to place as much emphasis on the rehabilitation as the punishment of the offender. For example, the new custodial measure, the Detention and Training Order (DTO), aimed at young people aged between twelve and seventeen who are considered to be recidivists and dangerous, stipulated that henceforth half of the sentence (which may be anywhere between 4 and 24 months) must be served in the community where the young offender is required to attend various rehabilitation programmes. However, it is this very 'welfare' element which has meant that the sanction has proved to be even more severe than previous sentences which required juveniles to serve their whole sentence in custody. Given the desire of judges to rehabilitate the young offender, they have been more willing to impose such a sentence on children aged between twelve and fourteen.⁴⁰

Similarly, the Intensive Supervision and Surveillance Programme (ISSP) targets children aged between ten and seventeen. It may be used as the second stage of a DTO or used as an alternative sentence to imprisonment. Those subject to a Supervision Order under the programme must attend a specified number of educational or treatment programmes and accept to be placed under surveillance, usually via an electronic tag. Failure to respect the order may lead to the offender being placed in custody. Such was the case for 33% of all those placed under the order between 2001 and 2003.⁴¹ NACRO (The National Association for the Care and Resettlement of Offenders) has found that these orders can have a significant net-widening effect, replacing other, less intensive non-custodial penalties.⁴²

It has consequently been extremely difficult for New Labour to reconcile the apparently conflicting aims of prevention and punishment, as the 550% explosion in the numbers of young people aged being ten and fourteen being sentenced to custody between 1996 and 2006 would suggest.⁴³ Indeed, custody accounted for 64% of the overall budget of the Youth Justice Board in 2007, compared to just 5% allocated to the ISSP.⁴⁴ Consequently, the welfare approach to juvenile offending

³⁹ Tim NEWBURN, 'Tackling Youth Crime and Reforming Youth Justice: The Origins and Nature of New Labour Policy', *Policy Studies*, 1998, vol. 19, n° 3/4, pp. 208-209.

⁴⁰ Neal HAZEL *et al.*, *Detention and Training: Assessment of the Detention and Training Order and its impact on the secure estate across England and Wales* [on-line], Youth Justice Board, 2002. Available at: http://www.yjb.gov.uk/Publications/Resources/Downloads/DTO_Report.pdf [accessed on 27 March 2009].

⁴¹ YOUTH JUSTICE BOARD, *Intensive Supervision and Surveillance Programme: The final report*, 2005, p. 30.

⁴² NACRO, *A Better Alternative : Reducing child imprisonment* [on-line], 2005. Available at: <http://www.nacro.org.uk/data/resources/nacro-2005040500.pdf> [accessed on 27 March 2009].

⁴³ BARNARDO'S, *Locking up or giving up – is custody for children always the right answer?* [on-line], 2008. Available at: http://www.barnardos.org.uk/locking_up_or_giving_up_final1_sept_08.pdf [accessed on 27 March 2009].

⁴⁴ Enver SOLOMON and Richard GARSIDE, *Ten Years of Labour's Youth Justice Reforms: An independent audit* [on-line], CENTRE FOR CRIME AND JUSTICE STUDIES, May

has been undermined as funding has been diverted from social services, health and education.⁴⁵ It may have been thought that Gordon Brown's decision to grant the newly formed Department for Children, Schools and Families and the new Ministry of Justice joint responsibility for youth justice would have fostered the development of a more welfare-oriented approach to the youth crime problem. Indeed, together with the Home Office, they published a new Youth Crime Action Plan⁴⁶ in July 2008 in which the government promised that £100 million would be made available for support and prevention. Under the plan, a duty is to be placed on local authorities to fund the education of young people in custody and more support is to be given to youths leaving custody. In addition, family intervention projects are to be extended to provide help and support to families whose children are considered to be most at risk of falling into crime.

However, as before, welfare measures are underpinned by coercion: the projects will carry non-negotiable terms and sanctions are promised for those who fail to engage. In addition, tougher measures are announced for the parents of child offenders who fail to complete their sentence. Once again, the approach resembles that of France where 'Councils for the Rights and Duties of Families' (*Conseils pour les droits et les devoirs des familles*) were set up by the law of 5 March 2007 (*loi relative à la prévention de la délinquance*), with the stated aim of providing support to parents. Yet, failure to respect parental obligations will enable the local mayor to force the parent(s) to sign a contract of parental responsibility, breach of which will lead to the suspension of welfare benefits.

Responsibilising the young

The adoption of such tough measures alongside welfare measures is justified in both France and the UK by the need to reinforce individual responsibility (of both parents and young offenders themselves), the lack of which is considered to be the principal cause of crime. This viewpoint was made clear by Jack Straw in his introduction to the 1997 White Paper, *No More Excuses*:

*An excuse culture has developed within the youth justice system. It excuses itself for its inefficiency, and too often excuses the young offenders before it, implying that they cannot help their behaviour because of their social circumstances. Rarely are they confronted with their behaviour and helped to take more personal responsibility for their actions.*⁴⁷

Consequently, all efforts to tackle the causes of crime, just like crime itself, tend to focus on individual responsibility. The measures aimed at supporting families focus on the individual failings of parents, just as efforts to tackle the problems of youth, such as unemployment, focus on the behaviour of the jobseekers themselves. In

2008, p. 22. Available at: <http://www.crimeandjustice.org.uk/opus647/youthjusticeaudit.pdf> [accessed on 27 March 2009].

⁴⁵ *Ibid.*, p. 26.

⁴⁶ HM Government, *Youth Crime Action Plan* [on-line], July 2008. Available at: <http://www.homeoffice.gov.uk/documents/youth-crime-action-plan/> [accessed on 27 March 2009].

⁴⁷ HOME OFFICE, *No More Excuses*, *op. cit.*

doing so, both the French and British governments ignore the role that their own policies may play in exacerbating the problems of youth which give rise to crime.

For example, the *New Deal for Young People*, introduced by the New Labour government in 1997, focuses entirely on the adaptation of young people to the labour market. No attempt is made to address the problems of the labour market itself which tends to favour short-term employment in low-paid jobs. Consequently, the programme has not been as successful as the government claims: it is estimated that two out of five young people aged under twenty-five find themselves back on the unemployment register just six months after starting their new job.⁴⁸ In today's flexible labour market, young people are no longer valued as the employees of the future, worthy of investment and meaningful training, but rather as 'human capital' to be used and discarded at will.

In the past, the need to invest in young people filtered into criminal justice philosophy which emphasised rehabilitation over punishment. This philosophy was clear in the preamble to the French edict of 1945 which stated:

*There are few problems as serious as those concerning the protection of childhood, in particular those which concern the fate of children brought before the courts. France does not have such an abundance of children that it can afford to neglect anything that might make them into good citizens.*⁴⁹

Such a viewpoint can be starkly contrasted with the adoption of policies which tend to encourage the exclusion rather than the reintegration and rehabilitation of young people. Children who do not respect school discipline are routinely excluded from school: it is estimated that approximately 10,000 pupils are permanently excluded from school each year in Great Britain. Between 8 and 13 pupils per 10,000 pupils are excluded a year in England and Wales, whilst 4 per 10,000 are excluded in Scotland.⁵⁰ Throughout the UK, children found guilty of 'anti-social behaviour' may be also excluded from certain geographical areas. Indeed, research has found that the Anti-Social Behaviour Order (ASBO), a civil order carrying a prison sentence of up to five years for breach, disproportionately targets children, particularly poor children suffering from family problems, educational difficulties, abuse and crime⁵¹. The behaviour of young people, such as 'hanging around' and playing games in inappropriate areas, is specifically targeted by this legislation. For example, a fifteen year-old boy was given an ASBO banning him from using a bus shelter as a football goal post on account of the fact that his behaviour bothered cars,

⁴⁸ Polly TOYNBEE and David WALKER, *Better or Worse? Has Labour Delivered?* London: Bloomsbury, 2005, p. 61.

⁴⁹ *Il est peu de problèmes aussi graves que ceux qui concernent la protection de l'enfance, et parmi eux, ceux qui ont trait au sort de l'enfance traduite en justice. La France n'est pas assez riche d'enfants pour qu'elle ait le droit de négliger tout ce qui peut en faire des êtres sains.*

⁵⁰ The Poverty Site [on-line]. Available at: <http://www.poverty.org.uk/27/index.shtml> [accessed on 27 March 2009].

⁵¹ YOUTH JUSTICE BOARD, *Anti-Social Behaviour Orders: Summary* [on-line], 2006. Available at: <http://www.yjb.gov.uk/Publications/Resources/Downloads/ASBO%20Summary.pdf> [accessed on 27 March 2009].

pedestrians and the users of public transport.⁵² Similarly in France, the non-criminal behaviour of young people was specifically targeted by the law of 18 March 2003 which created the new criminal offence of ‘hanging about the hallways and staircases of buildings’. In addition, as we have seen, in both France and Britain children who fail to respect the law are increasingly excluded from society and detained in custodial institutions.

Feral Youth?

Rather than being valued as the future of the nation, young people are increasingly perceived as being a threat to society. A report published by the Institute for Public Policy Research (IPPR) highlighted the problem of what it describes as ‘paedophobia’, citing evidence that British people are more likely than their European counterparts to be afraid of young people and to hold them responsible for crime and antisocial behaviour.⁵³ In 2008, the children’s charity, Barnardo’s, commissioned a poll which discovered that 49% of British people believe that children are increasingly a danger to each other and to adults, many of them describing children as ‘feral’.⁵⁴ The British press certainly helps to fuel such perceptions of young people, often describing them as ‘thugs’ and ‘yobs’. Such discourse has even been taken up by government and certain members of the judiciary. Recently, a Crown Court judge in Liverpool made the headlines when he declared that Britain is ‘bedeviled by wild feral youth’.⁵⁵ When in power, Tony Blair spoke about the need to tackle ‘yob culture’.⁵⁶ Although Gordon Brown has not openly used such terms since becoming Prime Minister, he has declared that ‘kids are out of control’⁵⁷ and his justice secretary, Jack Straw, has continued to use the discourse of the Blair years by describing young offenders as ‘thugs’.⁵⁸ Similarly, in France, Nicolas Sarkozy, when Home Secretary, famously described the young people of a disadvantaged Paris suburb as *racaille*.⁵⁹

⁵² Harry FLETCHER, *Anti-Social Behaviour Orders: An Analysis of the First Six Years* [on-line], London: National Association of Probation Officers, 2005. http://www.napo.org.uk/cgi-bin/dbman/db.cgi?db=default&uid=default&ID=110&view_records=1&ww=1

⁵³ Julia MARGO and Mike DIXON, *Freedom’s Orphans: Raising Youth in a Changing World*, Institute for Public Policy Research, 2006.

⁵⁴ See Barnardo’s website: http://www.barnardos.org.uk/what_we_do/children_in_trouble_campaign.htm

⁵⁵ James KIRKUP and Nigel BUNYAN, ‘Judge blames ministers for yob terror’, *The Daily Telegraph* [on-line], 19 January 2008. Available at: <http://www.telegraph.co.uk/news/uknews/1575934/Judge-blames-ministers-for-yob-terror.html> [accessed on 27 March 2009].

⁵⁶ See for example, Blair’s speech to the Labour Party Conference in September 2000: <http://www.guardian.co.uk/politics/2000/sep/26/labourconference.labour9>

⁵⁷ Gordon Brown, cited by Catherine MAYER, ‘Britain’s Mean Streets’, *Time Magazine* [on-line], 26 March 2008. Available at: <http://www.time.com/time/magazine/article/0,9171,1725547,00.html> [accessed on 27 March 2009].

⁵⁸ Jack STRAW, *op. cit.*

⁵⁹ The comment was made during a visit to Argenteuil, near Paris, on 26 October 2005, just before the riots which broke out in French cities the following month. The term ‘*racaille*’ may be translated as ‘scum’ or ‘rabble’.

Yet the notion that contemporary young people have become threatening monsters is largely unfounded. Although, according to government statistics, in England and Wales the highest rate of male offending for indictable offences is to be found amongst 17-year-olds (amongst 15-year-olds for female offending), the overall rate of offending amongst minors has actually remained quite stable over the past ten years.⁶⁰ Self-report studies have confirmed this trend.⁶¹ Nonetheless, there has been particular concern over the apparent surge in the number of violent crimes, particularly knife crimes, committed by young people, following a series of much-publicised stabbings. Consequently, the press has repeatedly referred to the existence of a growing ‘knife culture’ in the UK. Yet an independent report published by the Centre for Crime and Justice Studies at King’s College, London, has found that between 1995 and 2006, the use of knives in crimes of violence has actually remained quite constant.⁶² Moreover, the report found that the proportion of murders involving a knife has actually decreased since 1995.⁶³ Yet, it is true that some children do carry knives – a recent poll shows that they represent about 2 per cent of young people in England aged between twelve and seventeen.⁶⁴

The statistics concerning knife crime have been the focus of much debate and controversy in both the press and in Parliament but, whatever the true extent of the problem, it is patently wrong to present children who carry knives as threatening monsters. Indeed, it is often overlooked that children tend to do so not out of criminal intent but rather out of feelings of fear and insecurity.⁶⁵ Rather than demonising young offenders and advocating ever stricter penalties for their crimes, it ought to be recognised that the problem may have its sources in social inequality. As Richard Wilkinson, a social epidemiologist has argued, most crimes of violence are motivated by the desire to attract attention and the respect of one’s peers.⁶⁶

In France, too, youth crime is represented as a growing problem, with Nicolas Sarkozy claiming that young people are becoming ever more criminal and that the 1945 edict is no longer adequate to deal with the growing problem.⁶⁷ In reality, however, crime committed by minors under the age of eighteen accounts for 18% of

⁶⁰ MINISTRY OF JUSTICE, *Criminal Statistics England and Wales:2007* [on-line], pp. 44-45. Available at: <http://www.justice.gov.uk/docs/crim-stats-2007-tag.pdf> [accessed on 27 March 2009].

⁶¹ HOME OFFICE, *Young People and Crime: Findings from the 2006 Offending, Crime and Justice Survey* [on-line], pp. 13-14. Available at: <http://www.homeoffice.gov.uk/rds/pdfs08/hosb0908.pdf> [accessed on 27 March 2009].

⁶² CENTRE FOR CRIME AND JUSTICE STUDIES, *Knife Crime: Ineffective reactions to a distracting problem? A Review of Evidence and Policy*, London: CCJS, August 2006, p. 12.

⁶³ *Ibid.*, pp. 16-18.

⁶⁴ The Children’s Commissioner. Available at: http://www.11million.org.uk/adult/news/details.cfm?guid=3aa8691e3def45aabf03cd497fae771b&issueroom=gun_and_knife_crime [accessed on 27 March 2009].

⁶⁵ *Ibid.*

⁶⁶ Richard R. WILKINSON, *The Impact of Inequality*, London: Routledge, 2005, pp. 145-167.

⁶⁷ Cf. Nicolas SARKOZY, speech at Hôtel de Beauvau, 8 June 2006 [on-line]. Available at: http://www.philippevitel.com/info-FAM_43fdc8b886ccdUBq9UBS-1226.html [accessed on 27 March 2009].

all recorded crime in France, a figure which has remained fairly constant over the past ten years, even decreasing by nearly 4% since 1998.⁶⁸

It would consequently appear that claims of an increasingly criminal and ‘feral’ youth are somewhat exaggerated. Indeed, as Geoffrey Pearson has shown, concerns about the growing criminality of young people is nothing new but has rather been a constant concern at least since the Nineteenth Century.⁶⁹ Although the moral panics of the past often resulted in a temporary tightening of the law, they did not promote the sea change in youth justice policy that we are currently witnessing today. Indeed, never before has merely troublesome behaviour, such as ‘hanging around’ in the streets, been so routinely redefined as criminal behaviour. In contemporary Britain and France, more and more youths are being pulled into the penal system, not because of their criminal actions but rather because of who they are. As a breakdown of the youth custody population shows, these children are problem children rather than criminal children. Barnardo’s has compiled figures comparing the number of children in the general population experiencing certain problems and those in the prison population who have the very same problems. For example, whereas 6% of children in England have been excluded from school, 83% of the youth prison population has been so excluded.⁷⁰ Whereas those who have lived in care or had previous involvement with the social services represent 3% of all children, they represent 50% of children in prison.⁷¹ This is perhaps not surprising given that such social disadvantages are often cited as being among the principal causes of crime.⁷² However, the fact that such disadvantaged children find themselves in prison at all demonstrates a failure of the welfare system to tackle these problems at source and thus prevent crime before it occurs.

Indeed, it would seem that twelve years of a New Labour government has had little impact on the problems facing young people in modern society. Despite its investment in education and the setting up of numerous programmes such as *Sure Start*⁷³ and *Youth Inclusion Programmes*⁷⁴, designed to provide children with the best possible start in life, combined with Blair’s personal commitment to abolish child poverty by 2020, the lives of many of Britain’s children are blighted by poverty and social disadvantage. Indeed, in 2007 a UNICEF study of child well-being in 21 industrialised countries placed Britain at the bottom of the table in terms

⁶⁸ DIRECTION CENTRAL DE LA POLICE JUDICIAIRE, *Criminalité et délinquance constatées en France par les services de police et les unités de gendarmerie: année 2007* [online], p. 54. Available at: <http://lesrapports.ladocumentationfrancaise.fr/BRP/084000201/0000.pdf> [accessed on 27 March 2009].

⁶⁹ Geoffrey PEARSON, *Hooligan: A History of Respectable Fears*, Basingstoke: Macmillan, 1983.

⁷⁰ BARNARDO’S, *op. cit.*

⁷¹ *Ibid.*

⁷² Cf. <http://www.homeoffice.gov.uk/crime-victims/reducing-crime/youth-crime/> [accessed on 27 March 2009].

⁷³ There are currently over 500 Sure Start programmes throughout the UK. They aim to offer a whole range of services to families with children aged under four who live in disadvantaged areas. For more information, see <http://www.surestart.gov.uk/>

⁷⁴ These programmes organise extra-curricular activities for children aged between 8 and 17 who local authorities consider to be most at risk of falling into crime.

of relative poverty and deprivation, the quality of children's relationships with their parents and peers, health, substance abuse and subjective well-being.⁷⁵ Homelessness is a major problem for young people, with estimates suggesting that one out of every 100 young people aged between sixteen and twenty-four experiences some form of homelessness every year.⁷⁶ Although the number of British children living in poverty fell from 3.4 million in 1998/1999 to 2.7 million in 2004/2005, it has since been on the rise again, meaning that the government is currently far from achieving its target of 1.7 million by 2010/2011.⁷⁷ On the contrary, we can only assume that the situation is likely to get worse in the current economic climate. Consequently, the results of a recent Europe-wide study of happiness which show that British youths feel alienated and are least likely to have a sense of belonging should come as no surprise.⁷⁸ Overall, the UK ranked 13th out of 22 countries surveyed, with France finding itself in 16th place. Indeed, the problems of young people in France are also numerous, with unemployment amongst those aged under twenty-five rising at twice the rate of that of the adult population.⁷⁹ Although the rate of child poverty remains considerably lower than in the UK, estimated at about 1 million children, poverty affects children much more than it does the rest of the population.⁸⁰

Conclusion

If New Labour's social and crime policies have been unsuccessful with regard to young people, it may be because they are underpinned by a strict moralising discourse, aiming solely at the responsabilisation of young people and failing to recognise the negative impact that government policies themselves may have on the problem. Without a drastic change of direction in social policy, it is likely that young people will continue to be demonised and that crime will continue to represent a major public concern. Yet, it would appear to be in the interests of governments who follow socially divisive economic policies to fuel public fear of young people. This allows them to define the social problems arising from these same policies in terms of individual rather than state responsibility. Moreover, in a

⁷⁵ UNICEF, *Report Card 7, Child Poverty in Perspective: An overview of Child well-being in rich countries*, 2007.

⁷⁶ Deborah QUILGARS, Sarah JOHNSEN and Nicholas PLEACE, *Youth Homelessness in the UK: A decade of progress?* [on-line], p. 21. Available at: <http://www.jrf.org.uk/sites/files/jrf/2220-homelessness-young-people.pdf> [accessed on 27 March 2009].

⁷⁷ CHILD POVERTY ACTION GROUP, *Child Poverty: The Stats* [on-line], October 2008. Available at: http://www.cpag.org.uk/info/briefings_policy/CPAG_poverty_the_stats_1008.pdf [accessed on 27 March 2009].

⁷⁸ Martin BECKFORD, 'British youths are most alienated in Europe, a new happiness league table claims', *The Daily Telegraph* [on-line], 23 January 2009. Available at: <http://www.telegraph.co.uk/news/worldnews/europe/4323513/British-youths-are-most-alienated-in-Europe-new-happiness-league-table-claims.html> [accessed on 27 March 2009].

⁷⁹ *Le Figaro* [on-line], 25 March 2009. Available at: <http://www.lefigaro.fr/flash-actu/2009/03/25/01011-20090325FILWWW00483-2009-hausse-des-jeunes-chomeurs.php> [accessed on 27 March 2009].

⁸⁰ CONSEIL DE L'EMPLOI, DES REVENUS ET DE LA COHESION SOCIALE, *Les Enfants Pauvres en France* [on-line], 2004. Available at: <http://lesrapports.ladocumentationfrancaise.fr/BRP/044000076/0000.pdf> [accessed on 27 March 2009].

competitive neoliberal economy in which dreams of full employment have long since been abandoned, there is less interest in investing in the citizens of the future. It is this ideological convergence between Britain and France, as with many other Western countries at the present time, which may allow us to understand the policy convergence between them, not just with regard to youth justice, but with regard to a whole range of social policies.

Perhaps the picture is not one of complete doom and gloom, however. There is a possibility that the current financial crisis will cause the ideological foundations of neoliberalism to be called into question, provoking a crisis of legitimacy for the neoliberal state. In such a situation, a complete policy rethink may occur. However, it is also possible that the very opposite could turn out to be the case, with the state becoming ever more authoritarian in order to cling to power. Indeed, it might be suggested that the new approach to social and crime policy adopted by New Labour was itself a response to the crisis of legitimacy resulting from the socially destructive neoliberalism of the Thatcher years: greater interventionism in the social sphere allowed the Blair and Brown administrations to give neoliberalism a human face. In reality, however, as we have pointed out, greater social interventionism has acted as a cloak for moral and penal authoritarianism.

Although the overall picture of the youth justice systems in the UK and France is one of punitiveness, regional divergences should not be overlooked. Although the youth justice system in Wales is closely tied to that of England, the two nations sharing the same legal system and a single Youth Justice Board, the Welsh Assembly has sought to differentiate its policy from that of England by locating youth justice services in the portfolio of Health and Social Services rather than that of Crime Prevention.⁸¹ In addition, the All Wales Youth Offending Strategy made it clear that Wales would attempt to treat young people as children first and offenders second.⁸² Yet, whilst overall responsibility for youth justice system remains with Westminster, it is doubtful how far this objective may be realised. Northern Ireland has been a pioneer in the UK with regard to the development of an alternative, informal youth justice system based on restorative justice. However, the incorporation of the system into the formal justice system via the Justice (Northern Ireland) Act 2002 may leave it open to the same punitive trends as may be seen in England.⁸³ Indeed, as we noted above, the number of youths incarcerated in Northern Ireland remains high. Finally, Scotland's system of Children's Hearings has ensured that it has so far followed a more distinctively welfare-oriented approach than in England.⁸⁴ Yet, there too a punitive approach has been applied to those who fall outside this system, resulting in the harsh penal treatment of young people over the age of sixteen. In the final analysis, although punitive trends are not

⁸¹ John MUNCIE, *Youth and Crime*, London: Sage, 2006, p. 275.

⁸² WELSH ASSEMBLY/ YOUTH JUSTICE BOARD, *All Wales Youth Offending Strategy* [on-line], 2004. Available at: <http://wales.gov.uk/dsjlg/publications/communitysafety/youthoffendingstrategy/strategy?lang=en> [accessed on 27 March 2009].

⁸³ Kieran McEVOY and Harry MIKA, 'Restorative Justice and the Critique of Informalism in Northern Ireland', *The British Journal of Criminology*, 2002, vol. 42, n° 3: 534-562.

⁸⁴ Peter DUFF and Neil HUTTON (eds.), *Criminal Justice in Scotland*, Aldershot: Dartmouth Publishing Ltd., 1999.

uniform, they are rather ubiquitous on both a national and international scale, threatening to completely overwhelm any remaining genuine welfare-based approaches to youth justice.

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