

Still waiting for a 'Third Way' in Criminal Justice – New Labour, and Young People in Britain

Presumably travel is supposed to broaden the mind because one is faced with something different from those circumstances that are encountered at home. But on a recent trip to Sydney I was struck not by the differences between Britain and Australia, but by the similarities, especially in relation to criminal justice. This *déjà vu* was of course exacerbated by impending elections, where, as in Britain, crime and punishment has become 'the politics of law and order', and each party competes with one another so as to appear 'tougher' on crime, and thus attract votes. Indeed The Sydney Morning Herald, in an article titled 'Law and Order: The Policy Auction', had Bob Carr and Kerry Chikarovski try and outbid each other about policy initiatives that they would introduce if they were elected (The Sydney Morning Herald, 6 February 1999). Ironically in Britain this process has been accommodated within a New Labour strategy of presenting itself as being both different from the Conservatives, and 'old' Labour – dominated by the Trade Unions – and is described as being a 'Third Way'.

Whilst primarily the 'Third Way' is concerned with Labour restructuring itself in relation to the market, there has been an acceptance that this rather imprecise re-positioning can also include law and order. A recent book by Anthony Giddens, 'Tony Blair's favourite author', for example, included a section on 'crime and community', advocating 'collaborative policing', crime prevention, and the policing of 'disorderly behaviour' (Giddens 1998). Significantly, the only sources cited for these views related to two American studies that have developed the 'broken windows' thesis, but nonetheless there is a sense in which the book stands as a focus for those who believe that there is an alternative approach to crime and punishment from those of the past.

Yet is it really possible to determine a Third Way in criminal justice? If it is, where should we look for signs of change from the policies of the Conservative dominated Home Office of the last 18 years? In our rising prison populations, and the extension of private enterprise into HM Prison Service – all incidentally opposed by New Labour whilst in Opposition? Or perhaps in new policing techniques, such as 'zero tolerance' imported almost wholesale from New York, and in the extension of mandatory minimum sentences for sex offenders, drug dealers, and house burglars? All of these would be equally worth pursuing, but it is New Labour's approach to young people that is particularly illuminating about the 'Third Way'. Policy initiatives related to young people reveal much about the 'Third Way', not only because the policies adopted have been so reactionary, more characteristic of a party of the Centre Right than a supposed party of the left, but also in New Labour's approach to young people we see the workings of the 'politics of law and order' laid bare.

The human equivalent of 'dangerous dogs'

In April of 1998, almost a year after coming to power, New Labour opened the Medway Secure Training Centre, at Cookham Wood in Kent, the first of its five proposed Secure Training Centres (STCs) to house young offenders sentenced to Secure Training Orders (STOs). Medway is purpose built, and is run by Rebound ECD, a division of Group 4,

which is also part of the consortium which has won the contract to design, build, manage, and finance the second STC at Onley, which is expected to open in the Spring of 1999. A further three STCs are also planned, each housing 40 offenders, thus making a total of 200 spaces available. The Director of the Medway STC is Sue Clifton, an ex-police sergeant, who in an interview with the national press just days before the STC opened claimed that the regime of the STC would be 'an integrated school, care and discipline package' (*The Daily Telegraph*, 15 April 1998). Indeed this regime aspiration seems to have been inspired by their initials – ECD – which stands for 'education, care and discipline'.

Provision for STOs was made in Part One of the Criminal Justice and Public Order Act 1994, which was implemented by the Government in March 1998. STOs are applied to 'persistent' young offenders who are at least 12 when the offence was committed; who have been convicted of three or more imprisonable offences, and found by the court to be in breach of a supervision order; or, convicted of an offence whilst subject of a supervision order. However, provisions within the Government's Crime and Disorder Act replaced the STO with a Detention and Training Order (DTO), which is the new generic sentence in England and Wales for 10 – 17 year olds, but in the first instance will only be applied to 12 – 17 year olds. This in turn is merely one small part of the Government's determination to overhaul the youth justice system 'root and branch', and the Crime and Disorder Act has been described by Jack Straw, the Home Secretary as 'the biggest shake-up for 50 years in tackling crime' (*The Guardian*, 26 September 1997), which is itself largely concerned with youth crime and young people.¹

Just why the Government is so keen to tackle youth crime is neither surprising, nor difficult to understand. As I have argued elsewhere, the youth crime problem is perhaps *the* crime problem (Wilson & Ashton, 1998). It is well known, for example, that the peak age of offending in England and Wales is 18 for males, and 15 for females, and that the vast majority of career criminals start when they are relatively young. Similarly it is estimated that over 40 per cent of indictable crime is committed by people under the age of 21, and 26 per cent by under 18s, and self-report studies indicate that offending amongst young people is widespread. Indeed the Audit Commission estimated that youth crime costs public services £1 billion each year (Audit Commission 1996).

Yet whilst these figures are undoubtedly worrying, it is also evident that most young offenders commit only one or two mostly minor crimes, and that to have the criminal justice system intervene against them in these circumstances would be costly and counter-productive. There is also evidence that, contrary to the impression given in the British tabloid press, the problem of youth crime might actually have fallen. For example, the reported rate of offending among young people in the age group 14-17 has fallen from 8,142 per 100,000 in 1985 to 6,468 per 100,000 in 1995, and it has also fallen among 10-13 year-old males from 3,231 per 100,000 to 1,605 per 100,000 over the same period (NACRO 1997). All of this makes the determination of the Government seem somewhat misplaced, especially given New Labour's opposition to penal privatisation whilst in opposition, and the fact that the new STCs will merely add to the profits of private companies. Indeed, whilst he as Shadow Home Secretary, Mr Blair was less than enthusiastic about the whole

1 The Government set out its proposals for youth justice in three consultation papers: *Tackling Youth Crime: A Consultation Paper*, London: HMSO; *New National and Local Focus on Youth Crime: A Consultation Paper*, London: HMSO; *Tackling Delays in the Youth Justice System: A Consultation Paper*, London: HMSO. These consultation papers were followed by a White Paper in November 1997, *No More Excuses: A New Approach to Tackling Youth Crime in England and Wales*, CM 3809, London: HMSO, and much of what was proposed by this White Paper subsequently appeared in the Crime and Disorder Act.

concept of STCs when they were proposed by the last Conservative Government, describing their establishment as 'insane'. Outlining his views about crime and punishment to the Perrie Lectures in 1993, for example, he commented that,

I really do not believe that setting up a series of new centres for young offenders is the right way to deal with this problem...setting up 5 or 6 new centres is simply to go over the mistakes of the past. I point out to people who say that this is about training and education now and not simply about punishment that they should recall borstal training. It has always been said that if you look at young offenders' institutions and the prospectuses for them, the prospectus is actually very good. It's a bit like the Chinese Bill of Rights; the rights are absolutely fantastic, but the worries are whether they are actually implemented...the last thing that you want to do with persistent young offenders is to put them alongside 40 or 50 other persistent young offenders and lock them up for a considerable period of time. All the evidence is that they come out worse than they went in (Blair 1993).

So what has brought about this change of heart, and why is the Government so determined to be seen as being 'tough' on young people? What is the rationale for their thinking, and does it markedly differ from that of the previous Government? Is there evidence of a 'Third Way' in the Crime and Disorder Act, and are STCs a suitable way of dealing with very young children who commit crime, or might they in fact, as the Prime Minister suggested, make matters worse? Indeed would not greater resources spent on offering voluntary support to families, helping schools to reduce truancy and exclusions, and increasing leisure opportunities for young people go further in reducing youth crime, rather than the pot pourri of measures introduced under the Crime and Disorder Act? A rationale for this latter approach would be the desire to value young people, and hang onto them in the community, as opposed to using them for political advantage, effectively turning them into the human equivalent of dangerous dogs.

Communitarianism

All of this is of interest because it suggests the type of society that New Labour wants to develop within Britain. Provisions within the Crime and Disorder Act reveal the emergence of a communitarian World-view of rights and responsibilities – especially for those lower down the social scale, and with the establishment of a Youth Justice Board for England and Wales in October 1998, the re-emergence of 'crime prevention' as the principal focus for agencies working within the Criminal Justice System. Lord Warner, for example, the new Chair of the Youth Justice Board, writing in *The Guardian*, maintained that 'the Board's job is to keep everybody's eye on the ball of "preventing offending"' (*The Guardian*, 30 September 1998).

Yet communitarianism is often just a short step away from authoritarianism, and one can detect in the Crime and Disorder Act the whiff of punishment and penalty. Local child curfews, parental responsibility orders, and especially anti-social behaviour orders, which are potentially the most insidious attack on civil liberties in Britain, might all serve merely to pull Britain apart, and increase our already record level prison population, rather than bring us all closer together.

The anti-social behaviour order, for example, does not actually define what anti-social behaviour is. Instead it is left to the discretion of an individual police officer – or Local Authority – to seek an anti-social behaviour order at the Magistrate's Court against a person *suspected* of conduct *likely* to cause alarm, harassment, or distress. However, no one actually has to have suffered such alarm, harassment or distress. Indeed these orders are

now also being made under the civil law burden of proof of 'the balance of probabilities', rather than the criminal law burden of proof of 'beyond reasonable doubt'.

This is of concern, especially as the British police haven't exercised discretion in ways that have promoted community confidence in the past, and as I write we await the results of the Stephen Lawrence enquiry. That having been said, there was virtually no opposition to the Crime and Disorder Act, partly as a consequence of it having presented as if is either 'value free', or alternatively as some ill-defined 'Third Way'. On the contrary, the anti-social behaviour order is inextricable linked to Wilson and Keeling's 'broken windows' thesis, which in turn implies 'order maintenance' through the policing of 'minor incivilities'. In short the anti-social behaviour order has its roots in a theory which sees crime as the by-product of disorderly communities, with beggars, vagrants, drug abusers, prostitutes, and young people marginalised from mainstream culture, as the architects of that disorder. But whose definition of 'order', either when we are describing a 'disorderly community', or seeking an anti-social behaviour order, should be accorded priority? The police officer's, or the community's? And if the latter, which community? These seem important questions, but they have been almost universally ignored.

We can develop some of these themes by investigating the ideological roots of New Labour's concern with young people, and in particular suggest the dramatic origin of what has now appeared in the Crime and Disorder Act. In doing so it is also helpful to sketch in our recent attempts to construct regimes for young offenders in the shape of 'boot camps', for these are the logical forbears of the STCs. What is revealed are not only the historical trends that have been adopted with regard to young offenders, and the difficulties of establishing practical policies based on theories of this kind, but also the twists and turns of New Labour moving from opposition to exercising power in Government.

Tough on crime, tough on the causes of crime

The key defining moment of Britain's recent criminological past was the murder of James Bulger in February 1993 by two ten-year-old boys. This provoked, almost overnight, a highly moralised debate not just about the nature of crime, but also about the very fabric of British society itself (Wilson & Ashton 1998). Both Labour and the Conservatives attempted to outbid each other in a 'Dutch auction' of 'toughness', with Tony Blair, at the time Shadow Home Secretary, demanding that children 'be taught the value of what is right and what is wrong', and John Major, at the time Prime Minister, asking the public to have a 'crusade against crime and change from being forgiving of crime to being considerate of the victim. Society needs to condemn a little more and understand a little less' (The Daily Mail, 21 February 1993). Almost immediately the prison population began to grow, a process further exacerbated by Michael Howard's 'Prison Works' speech to the Conservative Party Conference of 1993. Given the nature of the murder, young people were at the very heart of this increase, and despite the general trend downwards of the reported rate of offending of young people, the number of young offenders in custody began to rise steadily. Quite apart from this increase in the numbers of young people being sent to custody, the nature of the type of custodial setting itself was also changing. Indeed it was in the immediate aftermath of the Bulger murder that the idea of building a series of 'child jails' for 12-14 year-olds was first proposed.

It was to be five years before the first STC opened for business, but in the meantime the Conservatives introduced American-styled 'boot-camps' in 1996, effectively ignoring all the evidence from the 'short, sharp, shock' experiments in the early 1980s (Muncie 1998). The first 'boot camp' was introduced at HMYOI Thorn Cross in 1996, but instead of being

based on a military regime, opted for a 'high intensity' mixture of education, discipline and training. The second 'boot camp' promised a much more Spartan regime, given that it was based at the Military Corrective Training Centre (MCTC) in Colchester, and which opened in February 1997. However, from the outset, what was intended politically became difficult to sustain practically, and Lt Colonel Julian Crowe, for example, the Commandant/Governor of the MCTC, writing in the *Prison Service Journal*, complained about the fact that the 'national media' was presenting the MCTC as 'a boot camp with harsh treatment and "in your face" discipline'. In fact, Lt Colonel Crowe believed that the young offenders responded better to 'being kept busy on worthwhile activities, and to being treated in a fair, humane and adult manner', and had built the regime around these values (Crowe 1998).

The MCTC was closed barely 12 months after its opening, and when only 44 offenders had passed through its regime. Its closure seems to have been as a result of cost. Each place cost £850 per week, which compared badly to the cost of £250 per week in other young offender institutions. This led to some negative publicity, and *The Daily Telegraph*, for example ran a story on March 1998 pointing out that 'a week in the Boot Camp costs as much as the Savoy' (*The Daily Telegraph*, 20 March 1998). It also mentioned that it was five times more expensive to send a boy to the MCTC than it was to send someone to Eton. Nonetheless the 'high intensity' boot camp at HMYOI Thorn Cross has survived the change of Government, as have the STCs.

The Home Secretary – one of the key New Labour architects - has been unequivocal about his reasoning for 'tackling youth crime', and his desire to accommodate HMYOI Thorn Cross and the STCs. Writing in a preface to the Government's White Paper, published in the aftermath of three consultation papers, he maintained that '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. The system allows them to go on wrecking their own lives as well as disrupting their families and communities. This White Paper seeks to draw a line under the past and sets out a new approach to tackling youth crime (Home Office 1997).

In one sense it is difficult to see where this 'excuse culture' exists, given the concerted efforts of successive Home Secretaries and Straw's 'new approach' – code for a 'Third Way' – consists of a variety of proposals that would not have been out of place within a Conservative Government. Indeed no less a person than the former Conservative Home Secretary Douglas Hurd, now Lord Hurd of Westwell, has commented that Straw 'carried his fervour too far in his determination to match or outdo Michael Howard. I once predicted in the Commons that we would eventually find him proposing the public hanging of burglars outside a prison gate' (Hurd 1998). It hasn't quite reached that stage yet, but the Crime and Disorder Act has introduced amongst a draft of proposals parental responsibility orders; night curfews for children under the age of ten on the presumption, rather than the committal, of crime; anti-social behaviour orders; parenting orders; new powers for the police to tackle truanting; and, the abolition of the ancient legal presumption of *doli incapax*.

This latter proposal brings us back to the Bulger murder, and the STCs. Few will forget that James Bulger was murdered by two ten-year-olds, and as a consequence of their age were entitled to be protected from the full force of the criminal law as a result of being *doli incapax* – incapable of wrong doing. Throughout Europe the age of criminal responsibility varies widely. In Scotland, for example, it is eight. In Germany it is 14; in Spain, 16; and, in Belgium it is 18. Significantly in England and Wales it is 10, the age of James Bulger's

murderers. Thus the abolition of this legal presumption reminds us that at its heart the Crime and Disorder Act is no 'Third Way', but rather populist, authoritarian, and moral. It sees youth crime as the product of a dysfunctional underclass of absent or ineffectual parents, or that staple of right-wing ideologies everywhere, the single parent, encouraging a generation of amoral young people to become incapable of overcoming their deprived social circumstances, and take personal responsibility for their lives.

If all that wasn't bad enough, in the right circumstances they are capable of murder. The solution is therefore to enforce the moral World-view of one section of society onto another, through education and training in the community if possible, but not shying away from the use of custody – even for their parents – if this is also necessary. Whilst inside this dangerous and feckless generation will learn to become responsible, educated, develop a skill, and in so doing become social 'included' rather than 'excluded'. Hence in the words of Ms Clifton, the need for Medway's regime to be 'an integrated school, care, and discipline package'. Unfortunately, as the Prime Minister observed whilst he was Shadow Home Secretary, these objectives often seem like a 'Chinese Bill of Rights'. In June of 1998, whilst the STC had only 15 inmates, the police had to be called into the centre to deal with a riot that had flared up over a game of pool. If Rebound ECD can't even deliver on the 'discipline' component of the package, what hope have we got for the rest? In the meantime we await a 'Third Way' in criminal justice, despite the fact that each new policy initiative seems far more rooted to the old ways, than anything new and imaginative.

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REFERENCES

- Audit Commission (1996) *Misspent Youth...Young People and Crime*, Audit Commission, London.
- Blair, T (1993) 'The Future of the Prison Service', *Prison Service Journal*, Issue 90, March, pp 20-26.
- Crowe, J (1997) 'HMYOI Colchester: Marching Towards Better Citizenship', *Prison Service Journal*, no 113, September, pp 45-49.
- Giddens, A (1998) *The Third Way: The Renewal of Social Democracy*, Blackwell Publisher's Ltd, Oxford.
- Home Office (1997) *No More Excuses – A New Approach to Tackling Youth Crime in England and Wales*, CM 3809, HMSO, London.
- Lord Hurd (1998) 'Jack Straw's Battle on Tiptoe', *Prison Service Journal*, no 117, May, pp 2-3.
- Muncie, J (1998) 'Failure Never Matters: Detention Centres and the Politics of Deterrence', *Critical Social Policy*, no 28, May, pp 53-66.
- NACRO (1997), *A New Three Rs for Young Offenders: Towards a New Strategy for Children Who Offend*, NACRO, London.

Wilson, D & Ashton, J (1998) *What Everyone in Britain Should Know About Crime and Punishment*, Blackstone's, London.