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Authors	McCullagh, Ciaran
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UCC
University College Cork, Ireland
Coláiste na hOllscoile Corcaigh

Juvenile Justice in Ireland – Rhetoric and Reality

Introduction

Since the foundation of the state there has been remarkable agreement about the juvenile justice system. There was consensus that it was not working, there was considerable consensus over how it should be reformed and there was a seeming consensus that nothing would or could be done about it.

In 1936, for example, it was noted in the Cussen Report that, "the Free State is behind most European Countries in its arrangements for dealing with this important social question" (quoted in Sugrue, unpublished research). In 1945 Judge Henry McCarthy, complained about the confusion created by having several government departments responsible for dealing with young people in trouble and about the absence of "comprehensive statute, which would simplify the procedure concerning delinquent and neglected children" (Burke, Carney and Cook, 1981: 32).

The same concerns animated a series of official reports throughout the 1970s (the Kennedy Report), the 1980s (The Task Force and the Whitaker Report) and the 1990s (First Report of the Dail Select Committee) (For accounts of these see Walsh, 2005: 464-519). They were all concerned with the same set of issues relating to young offenders –the age of criminal responsibility, the use of detention, the question of more community based facilities and the need for some secure facilities for young offenders – though they did not always come up with the same solutions. The Kennedy Report, for example, recommended raising the age of criminal responsibility to 12, the majority report of the Task Force recommended that it be kept at 7. But they all shared the same fate. Their findings were ignored by successive governments.

It seemed to some at least that these issues had at last been resolved in the present decade with the enactment of the Children Act in 2001. The long hiatus on reforming the system had, it seemed, ended. The Act made a

number of important changes to the way in which young offenders were to be dealt with and it was broadly welcomed by most of the interests involved in the issue of juvenile offending and juvenile justice. Mary Hanafin (at the time Minister for Children) said that this "was the most significant piece of legislation in relation to juvenile justice since 1908" (press release 27th March, 2002). Criminologist Paul O'Mahony (2001) praised it for the "positive bias against detention" and the Director of Public Prosecutions (Hamilton, 2004) welcomed the focus on rehabilitation and deterrence rather than retribution.

The Level of Juvenile Offending

However before going on to look at what the Act proposes it is important to sketch in some of the background features of the system, not in itself the easiest of task. Basic information on how the juvenile justice system operates can be difficult to come by most notably because of the diversity of groups involved in its management. For example the most basic piece of information would be some indication of the level of juvenile offending. But official statistics in this area tend to be significantly less revealing than they should be. All juvenile cases are now referred to the National Juvenile Office of the Garda Siochana in Dublin, so you might anticipate that their figures would be a fairly indicative guide to the level of juvenile offending. But there is little relationship between the data provided by this office and that in official crime statistics also produced by the Garda Siochana. There are seriously unhelpful discontinuities between sets of data. The definition of a child under the Children's Act is 18 and while this is reflected in the statistics produced by the National Juvenile Office, the categories in official crime statistics are different - under 14 years, 14-16 years, 17-20 years and 21 years and over. Similarly national crime statistics now include a breakdown between headlines offences and non-headline offences, based largely on the level of seriousness of the offences involved, but the reports of the National Juvenile Office do not. All of which makes it impossible to be definitive about the level and seriousness of the criminal behaviour of those aged less than 18 years. There are, as Walsh (2005: 313) puts it, "major constraints... on the reliability of the

conclusions that can be drawn from the incidence and trends in juvenile offending".

Dermot Walsh (2005) has analysed these diverse sets of figures and subject to these qualifications his conclusions suggest that there has been a downward trend in convictions for indictable offences throughout the 1990s but this came to a halt and may indeed be reversed somewhat in the 2000s, a change brought about by the increase in the numbers convicted for public orders offences. Nonetheless the decline is still significant. The numbers aged under 21 who were either convicted or against whom a charge was held proved or order made without conviction fell from 3,660 in 1976 to 1856 in 2002. The fall in the latter period reflected the overall decline in indictable crime while that for the earlier period coincides with the expansion of the juvenile diversion programme. As we shall see below some commentators have argued that serious offenders are not considered "suitable" for diversion so the fact that so many juvenile offenders are now being diverted raises questions about the level of seriousness of many of the offences that were taken to court prior to the diversion programme. This fall in the numbers convicted of indictable offences coincides with a remarkable increase in the numbers dealt with by the Juvenile Office. There were 686 referrals in 1976 and 17,493 in 2002, though most of this increase was concentrated in the period after 1991 when the diversion programme was extended. The most common offences are larceny (mainly shoplifting), accounting for 27% of offences over the period 1994-2002, followed by criminal damage at 15% with drink-related offences and burglary at 9% each (Walsh, 2005: 388). But it is the movement of public order offences that is most striking. These constituted 4% of offences in the period 1994-1996 but now have risen to 19% in 2002.

It has been argued that within juvenile offenders there is a clearly identifiable group of persistent criminals, some having in excess of twenty charges when they appear in court (see Kilkelly, 2005). However though this is clearly of importance to policy development there is no precise information on how large or small this group is. Furthermore there may be some difficulties in working out its size. It has been claimed that the number of offences may not be totally

reliable guide. The National Youth Federation (2004:5) has, for example, said that “there are persistent complaints from youth workers that unsolved offences are ‘loaded’ onto young people on the basis that since they are pleading guilty to a particular offence it will make no difference”. This, they argue, may be one of the reasons why some defendants come to courts with large numbers of offences against them. They got on to say that it is “difficult to establish the degree to which this is the case” but the fact that it might go on is sufficient reason to be cautious about claims about the level of persistent and extravagant offending

The Use of Detention

The analysis of the data on detention is even more problematic than that on the incidence of offending. The prison service produced Annual Reports up to 1994 and then produced composite reports for 1995-1998 and 1999-2000. These remain, at the time of writing, the most up to date information on the prison system. Nonetheless there are certain observations that can be made about the Irish system that make it fairly unique in a European context. Ireland has one of the largest proportions of its prison places taken up by young men under 21 years of age in Western Europe (O’Mahony, 1997). For many years almost a third of the prison population at any point in time was under 21. This is over twice the English level and that in turn is one of the highest in Europe. It is one of our national achievements that we used to be somewhat silent about. But it is an interesting change in the nature of debates about crime in Ireland is that the size of the prison population was one of those things that the government was embarrassed about. Now it is something that Government ministers often cite as a political achievement.

This is compounded by the fact that there is no evidence that this level of imprisonment is having any immediate impact of juvenile offending. It is the case in Ireland as elsewhere that most juveniles grow out of crime. One of the few things that impedes this “natural process” is the experience of prison. The cruel fact is that once you go into prison you are unlikely to be deterred or reformed, you are more likely to be confirmed, hardened and affirmed in a

criminal identity. So once a young person enters prison his chances of doing so again are significantly increased.

One “graduate” of St. Patrick’s Institution – a prison for juvenile offenders – said that the place was “a college of crime”. “I met in there guys I would have known from around – there’s kind of a bravado amongst yourselves, kind of a hard man. You learn things in Pat’s where you can become a hardened criminal. I learned things in Pat’s that when I left Pat’s… I was a better thief basically” (Sugrue, unpublished research).

There are a number of particular reasons why prison in Ireland may not work with juveniles. These include the lack of meaningful daily activities for the prisoners, particularly in St Patricks. The Committee on the Prevention of Torture and Ill-Treatment (1993; Paragraph 113) commented that, “the regime activities at St. Patrick’s could not be said to be appropriate for the young offenders who were held there. The work offered was of a menial nature, take-up of educational opportunities was low and some of the facilities for association were drab and dingy”. There is also the amount of time Irish juvenile delinquents are locked up each day. Currently this can be as much as eighteen hours a day. It is interesting to note that this is an area in which we have significantly regressed. In 1934 borstal inmates had nine hours out of cell time and in 1948 they had 13 ½ hours out of cell time per day.

However while proposed closing of St. Patrick’s Institution, the opening of Wheatfield Prison and the proposal for a new juvenile prison may improve the physical surroundings and physical environment and may make possible more enlightened regimes in the prisons and detention centres it is by no means clear that they will make prison any more effective in controlling, challenging and changing the behaviour of young people.

This is because the failure of prison to reform juveniles is not a peculiarly Irish phenomenon. It is very much universal. The Public Accounts Committee in the UK said in October 2005 that the £243 million spent on youth custody was

wasted as many as 85% of those incarcerated offend within 2 years. It went on to say that sentencing young adults to custody was counterproductive because it delayed and retarded the “natural” process of desistance from or growing out of crime. Yet despite this realisation that prison is a failure with juvenile and indeed an expensive one, the number of young adults in custody has not fallen (Barrow Cadbury Commission, 2005)

Restorative Justice: What is it?

This is the context within which the Children Act (2001) (see note 1) is to operate. It is committed to using detention as a last resort for juveniles and this is to be achieved through a commitment to restorative justice. Restorative Justice is unique in that it is one of the few proposals in the area of criminal justice in a considerable period of time that has the support of the Department of Justice, the Gardai and the Irish Penal Reform Trust.

The notion of restorative justice has a history and emerged in a particular context and from a particular set of concerns. The context was the apparent failure of the traditional adversarial justice system to impact on offending and the dissatisfaction of victims with their experience and treatment in the process. The traditional system was felt to be overly offender centered. The main focus was on their guilt or innocence and the main concern was with finding a punishment that somehow fitted the offence and the needs of the offender. Yet despite this focus there is argued that the traditional system still allowed offenders to evade responsibility for what they had done, a process that continues in prison where the nature of the subculture amongst prisoners allows them to neutralise any sense of guilt that they might feel by promoting the notion that offenders were unlucky to be caught rather than guilty of causing harm to others. Also while the system of justice may be offender focused the injured party, the victim, is margin to the process and is only involved as a witness for the state and hence the right to speak is controlled by and at the discretion of the state. Victims, not surprisingly, were seldom satisfied with their experiences of the system. Finally this system of justice

was not notably successful in that there is little evidence that it was reducing offending.

Restorative justice is intended to solve these kinds of problems. It is based on a number of principles (for an account see Marshall, 1999). The most important of these is that offenders must confront and deal with the fact that their behaviour has done serious harm to actual victims and that real people have been hurt by it. It also requires them to acknowledge that their behaviour, as Valerie Bresnihan (1998) puts it, “harms relationships in the context of the community”. This is further underpinned by three other principles. It says that offenders are capable of accepting responsibility for what they do and that when offenders make reparation to victims this, again to quote Bresnihan (1998), “is a substantive and healing form of justice for both victim and offender”. Finally as the community is involved in the response to offending, restorative justice processes are also a means through which communities can be empowered. Morris and Maxwell (2000: 207) summarise the case for restorative justice as “returning the offence to those most affected by it and encouraging them to determine appropriate responses to it”.

Three benefits are supposed to flow from this system, one for offenders, one for victims and one for communities. Where offenders are concerned, the process is intended to stop them offending. The assumption is that if they meet victims, if they see the harm that they do and if they are involved in the process as active rather than the passive participants that they are in court then they are more likely to see the error of their ways. They will see that their behaviour is harmful and the encounter with the victim makes their behaviour more difficult to rationalize and diminish. For the victim, involvement in the process should reduce the sense of isolation and of irrelevance that crime victims say they experience in court appearances and increase the satisfaction that they get from their involvement in the justice system. Communities should also benefit through the reduction in crime that restorative justice will produce and this in turn will lead to an increased sense of safety and a strengthening of community.

The central mechanism through which these considerable benefits are to be achieved is the encounter between the offender, the victim and some representatives of the community. This can occur in a number of different ways but the model proposed for this in Ireland by the Children Act is family conferencing. This can only begin when the offender has admitted guilt and agreed to participate in the process. The encounter with the victim and the community then takes place in a controlled setting facilitated by Gardai who have been trained for this kind of work. The victim tells the offender what impact and hurt the offence caused and a community representative may outline the damage to the community. These must then be acknowledged by the offender and they then all work collectively work out some agreement through which the hurt can be repaired and the balance restored. The belief of those committed to this model is that it will reduce crime, increase confidence in the criminal justice system and impact positively on community life.

Bresnihan (1998) argues that this form of justice is “particularly suited” to Irish culture. “Community involvement, victim and offender satisfaction and the notion of repairing harm done” are all, she says, present in Irish culture. There are, she maintains, precedents in the Dail courts of the early 1920s and in more ancient examples such as the Brehon laws which were based on ideas about compensation and restitution. These kinds of claims are made more generally for restorative justice by people who argue that its origins are either Biblical, in pre-colonial Maori culture in New Zealand or in pre-Norman forms of justice. She also says that “the roots of restorative justice have been silently in place since 1963” in the Juvenile Justice System”. But like many of these claims they need to be treated with a certain degree of skepticism. They function more an ideological justification for a new innovation than as a precise historical account of its origins.

Restorative Justice: Problem with the Model

The appeal of restorative justice is obvious and it has been welcomed as an important evolution in our ways of responding to juvenile offending. Nonetheless there are a series of legitimate questions that can be asked

about the process and most importantly questions can be asked about the manner in which its success is measured. There are many positive elements to restorative justice, most notably the notion of repairing the damage done by offenders, the involvement of victims, the involvement of the parents or guardians of offenders, the replacement of adversarial processes by dialogue and negotiation, and the commitment to reintegrate offenders into their communities rather than excluding them.

But the kinds of criticisms that are made point out, for example, how in practice family conferences do not always meet the ideal that is set out for them, there can often be little dialogue and a lot of censure (for a range of these criticisms see Daly 2004, Ashworth, 2002) . The decentralisation of justice to community setting runs the risk, critics claim, of eroding the legal rights of offenders and by turning crime into what can appear to be a private matter, it denies offenders access to the normal range of procedural rights. Some would also be concerned that admissions of guilt can be strategic and designed more to avoid a prison sentence than as a form of active engagement with the process. There is also some debate about how involved the victim is, with some schemes using what are called “surrogate” or “representative” victims as for example in cases of shop-lifting where the store is represented by a staff member. Finally a number of questions have been raised about the difficulties involved in community representation, most notably that of who will represent community (could restorative justice become an age based system of justice in which the old sit in judgment on the young, in which case it is no challenge to the current system which operates in the same way) and how can communities with high levels of crime represent themselves as their high crime rates may be an indication of community disorganisation.

There are three more particular problems with Restorative Justice in Ireland. One is that despite the apparent official commitment to it only a small number of family conferences have actually been held – 147 from May 2002 to November 2003. Ursula Kilkelly, a law lecturer in UCC, has responded to these figures by saying that “when you think of the numbers going through the

(juvenile justice) programme, it is incredibly low" (Irish Examiner, 8 November 2004). It is by no means clear why this is happening. It could be a resource question, in that there may not be sufficient trained personnel available or it could be a selection problem in that large numbers of offenders are being considered unsuitable for the process. The issue here is that we do not have sufficient information available to us to choose between these kinds of possible explanations.

This second is potentially of huge significance. The current Minister has proposed a legal amendment that would allow details of a young person's involvement in the Garda Diversion Programme to be taken into consideration in a criminal trial. This is very much contrary to the basic principles of restorative justice and for some offenders this condition may shorten the road to prison and certainly become a disincentive for people to participate in the scheme. Much the same issue arises in relation to Anti-Social Behaviour Orders which will also require a compromise on the anonymity of proceedings against juveniles by requiring them to be named in public.

The third is one that is seldom mentioned but clearly has the potential to be extremely significant. The main organisers and facilitators of the conferencing process will be members of the Gardai Siochana and that raises the issue of the relationship between young people and the Gardai. While confidence levels in the Gardai are generally high in Ireland they are significantly lower among young males from working class backgrounds. In other words the kinds of people who may show up in the conferencing process may be people who don't trust the Gardai.

There are a number of reasons for this low level of confidence, the most notable is that they may have had very different experiences with the Gardai and may have experienced a very different style of policing to their more middle class counterparts. A study conducted for the National Crime Council (Institute of Criminology, 2003:67) found that the policing style in a suburb in Dublin that they referred to as "Parkway", which had "an established, negative history" in the eyes of the Gardai was more confrontational and verbally

aggressive than that in found in “Liffeyside” a city centre location. The researchers said that the Gardai “feel no sense of obligation to engage sympathetically with potential public order offenders in ‘Parkway’. They simply asserted their authority and appeared unconcerned about the nature of the reaction that might be elicited as a consequence” (Institute of Criminology, 2003: 69). The other factor that might be relevant here is that of the experience of ill treatment at the hands of the Gardai. Raymond Dooley, Chief Executive of the Children's Rights Alliance put it like this in a letter to the Minister for Justice on 14th January 2003. He said that “advocates working with children who interact with the Gardai state that they routinely hear credible individual allegations of ill treatment of juveniles by Gardai at Garda Stations... not surprisingly, allegations of ill-treatment against members of the Gardai are often unreported or not verified” (see letter on internet at www.childrensrights.ie/pubs/14jan03lettertomcdregardainsp.doc).

Quite what impact these factors might have on the conferencing process is unknown but in a situation where confidence is a central ingredient to how the process works they cannot be ignored.

Restorative Justice: What the Research Shows

There is a lot of research on the success of this form of juvenile justice and in general this has tended to focus on the satisfaction of the various participants with the process. It has to be said that the research is slowly changing from the enthusiasm of early work to the more qualified conclusions of later work. But in general it shows that victims are satisfied if the conference works as promised and if the offender accepts responsibility for what happened. Also while victims may not be fully satisfied with what goes on they are less angry than they are after courts cases. So their satisfaction is relative but the difference is significant. But there is some disagreement in the literature on perceptions of the genuineness of apologies. The majority of offenders said their apologies were genuine, the majority of victims think they are not.

The research in Ireland is both limited and still very much at an early stage. “The early indications”, according to Assistant Garda Commissioner McHugh, “ of research carried out by the Garda Research Unit indicate that in the region of 90% of victims who attended such events were satisfied with the process and would be happy to recommend it” (Irish Examiner, 10th August 2005). Whether this high level of satisfaction will be maintained when the system of restorative justice expands remains to be seen.

There is also the issue that is seldom posed in the literature on restorative justice yet is fundamental to its philosophy. This is the question, “to whom is justice being restored”. The answer from restorative justice advocates is the victim and the community. Both of these have been harmed and the balance needs to be restored by the victims making restitution, first to the victim though an apology and compensation of some form and secondly to the community through the agreement to stop behaving in an anti-social or criminal way again. But what about the offender? For the most part the typical serious young offender is socially marginalised through poor education, poor employment prospects, a significant history of alcohol and drug abuse, few marketable skills and no real prospects of any kind of social mobility. What if these were brought into the process as injustices that have to be restored? Would it lead to a situation in which the outcome of restorative conference was that society needed to make some form of compensation to the offender? Nils Christie (1993:137) has argued that if such mitigating social factors were taken into account maybe “the judge would be obliged to sentence society to give them compensation”. And if that were to be the case would the agreement and consensus on Restorative Justice survive?

Then there is the question of the standards that are used to assess the effects and effectiveness of restorative justice. One of these is the impact on re-offending though it is not yet clear how successful it is in this regard. It may do so in the case of those who commit violent offences, but it is not so clear where property crime is concerned. The problem here is that while re-offending is the most common standard in terms of which restorative justice is assessed it may not be the most important one to use. It is necessary to bear

in mind that that most juvenile offenders do not become adult criminals, they mature out of crime. Restorative Justice processes may help them to do this but it may take longer than a lot of research tends to measure, simply measuring reoffending after six months may be too short to pick this up. A more important and more significant standard to use is whether having a system of restorative justice in place reduces the number of young people being sent to prison. It is the prison experience that makes juvenile offenders into adult criminals so it is the prison experience prison that we have got to protect them from. So unless restorative justice produces significant diversion from and reduction in the number of people going to prison then it is not as radical a process as it is claimed to be. So is it being effective at this level? It is difficult and possibly somewhat premature to answer this question at this stage given the limited roll out of restorative justice but initial indications would suggest not.

A Two tier System?

The available evidence is limited but it suggests that what we are seeing is the creation of a two-tier system of responding to juvenile offending. For the most part the offenders that are being referred to diversion processes like family conferencing are those who are easy to work with and unlikely to reoffend. This is partly the reason why figures from the Juvenile Liaison service show such high rates of success and indicate, according to Paul O'Mahony (2001:6) that the service is "very successful with the children it accepts". The National Youth Federation (2005: 3) says that "the statistics for these projects show very positive outcomes in terms of re-offending …of the 137,000 people involved in (juvenile diversion) projects, nearly 88% have reached the age of 18 without having been charged with a criminal offence". But they also got on to tell us tell us that those involved in serious crimes are generally not admitted to community based or restorative projects.

This is supported by research on 77 juveniles who had contact with the National Juvenile Office. It found that 38% were rejected for diversion and were sent forward to be prosecuted in the courts. It would also be supported

by a number of pieces of research on the Children Court. These show what Kilkelly (2005: 27) says is a significant increase" in "the rates at which detention is imposed". This has risen from 6% of cases in the 1908s to 10% in the 1990s and in her study of courts in Dublin, Limerick and Cork she found a detention rate of 20% or 30% if suspended sentences were included. McPhillips (2005) looked at cases in the Dublin Children Court in 2004 and found that half of those convicted were committed to prison. These tended to be offenders from difficult family backgrounds with significant histories of educational disadvantage and of alcohol and drug misuse.

So in effect what is happening is that we are developing a juvenile justice system in which the most serious offenders are being excluded from the new kinds of community and restorative services despite the fact that these offenders are arguably "the ones most in need of diversion" (Lyne, 2004: 5). Those who might be termed "hard" end offenders, those who offending is serious, persistent and often violent, are the ones most in need of non-custodial alternatives and most in need of a "bias against detention" but they are the ones least likely to be allowed access to them.

This is one of the problems with the proliferation of community based schemes, often described by sociologists as "net widening" or "over intervention". The presence of alternative ways of dealing with young offenders is drawing young people into the criminal justice system who do not need this kind of intervention and whose offending is generally fairly minor and generally easily given up while at the same time we continue to send more or less the same number of offenders to prison. It is one of the paradoxes in this area that if you are the kind of young person whose parents are likely to accompany you to a restorative conference then you are most likely the kind of offender who doesn't need it.

The rise in the number of young people involved in community projects and sanctions may reflect the fact that we are creating new and elaborate process for people who do not need them. We do this by finding new needs that are not being met and new problems that are not being dealt with and then set up

projects to meet and deal with them. In the process we may be ignoring the "old" problems that still make the most significant contribution to delinquency and we may ignore the "old" groups that cause so many of the problems. In the process our attention and resources may be directed at what are often termed "soft" offenders, those whose initial offences are relatively minor and whose prospects of re-offending are slight. They also have the further benefit of being easier to work with. An example here might be the increasing number of young people being referred to National Juvenile Office for public order offences. In the process we may be ignoring the more serious ones who continue to be sent to prison and so are most in need of community intervention.

Hence we have recently discovered new needs and new problems among other things, "dysfunctional families", "low self esteem", and "inadequate parenting" to name but three. Part of this reflects the spread or the infiltration of the language of therapy into society generally and particularly into the vocabulary of those dealing with young people. Look, for example, at the range of government funded projects that offer courses on parenting. Inadequate parenting has now become defined as a problem and as one that must be addressed. The Inter-Departmental Group on Urban Crime and Disorder (1992) mentioned this as a factor contributing to delinquency. This is very much in line with international research on the factors associated with delinquency and it is one that has been identified in a number of studies that followed the careers of groups of young offenders over a period of time. But what has been lost here is the fact that the researchers see this as operating alongside unemployment, poor schooling, and low income and not as separate from them. Moreover they argue that it was not possible to distinguish between risk factors as to which were causes and which were effects but research does suggest that poor parenting is not a risk factor in well-resourced and high status neighborhoods. So to the extent that poor parenting exists and to the extent to which it impacts on young peoples behaviour it may be a consequence of living in a poor area.

So when we separate poor parenting out from poor command of economic resources we are in danger of missing the key factor that certainly assists in what is defined as good parenting, namely income. We also create another set of problems. We use terms like dysfunctional families without looking seriously at what we mean by the term, “a functional family”. We talk about the television family, the Simpsons as dysfunctional but as they behave in ways that are similar to many other families, they have always seemed as functional a family to me as most I know. What makes them dysfunctional is not their behaviour but their class. We privilege a certain way of parenting as good parenting and when we look closely at this it turns out to be a particular middle class way of doing things. In doing that we are going back to the beginning of the whole movement in the United States at the turn of the twentieth century when rich women went into working class ghettos to teach parenting skills to poor women but what they saw as skills were merely middle class ways of life being proposed for people who could not afford them and didn’t want them (see Platt, 1977).

This narrow focus on parenting also creates an atmosphere in which it seems reasonable to impose what can be presented as new obligations on parents. The press release from then Minister for Children Mary Hanafin welcoming the new Children Act (27th March, 2002), was headed “curfews, fines and parental responsibility for children in trouble” rather than emphasising the restorative justice dimension or the raising of the age of criminal responsibility. It highlighted those aspects of the Act that appear tough and punitive but which will, most likely, be at least ineffective and at most unenforceable. In reality many of the provisions that she emphasises share both qualities. What is interesting, for example, about the emphasis placed on curfews is that the power to impose them already exists and is currently often part of probation orders, so there is nothing new in that.

The power to fine parents is somewhat similar. It resonates with political demands that parents take responsibility for their children’s behaviour but while ideologically satisfying it may have little effect on their capacity to regulate their children, do little to help them manage their children’s criminality

and may indeed result in their own criminalisation, through an unwillingness or an inability to pay whatever fines may be imposed on them. As O'Mahony (2002) puts it, the parents that the Act wishes to hold responsible "will often be people who have always lacked the kind of supports that would enable them to exercise this kind of responsibility".

The new provision reflects a notion that there are parents out there who can cope, who can control the behaviour of their children but who choose not to. But as Arthur (2005: 239) points out, "many juvenile delinquents are victims of deprived and depriving families" but in punishing parents who "fail" to control their children, we are punishing parents "who are likely to be striving to hold their families together in the face of severe pressures". Imposing penalties on them may "deepen divisions and further alienate vulnerable families". It is also an area where enforcers may be more sensible than legislators. Arthur notes the lack of enthusiasm among the judiciary in Britain for similar provisions.

The solution has to be more radical. "Given" what Arthur (2005: 239) says is "the need to make families function better, the obligation and objective of our society must be to develop and provide the environment, the resources and the opportunities through which families can become competent to deal with their own problems".

Conclusion

If the Children Act and the processes that it sets out are anything to go by then the promise and potential that the act is supposed to offer namely what O'Mahony (2001) says is the "positive bias towards alternative sanctions" and the use of detention as a last resort, may not be realised. We may end up targeting our resources at the kinds of minor offenders that are easiest to work with and that are not very likely to re-offend anyway, and in the process we may be ignoring or failing to cater in the community for "hard end" and more serious offenders, the kinds who are ending up in prison, and the kind of

offenders that are becoming adult criminals. We may also end up punishing parents who are already living under the stresses of deprivation and poverty.

When we combine these with the knowledge that as Kilkelly (2005:19) puts it "many young people (appearing in court), though not all, showed clear signs of either deprivation (including educational disadvantage) or outright poverty", then what we have standing behind the reform of the juvenile justice system is the spectre of deprivation. We are facing the possibility that what we might be doing is copper-fastening a two-tier system in which the relatively minor wrong doings of the better-off are dealt with though restorative conferences and systems of compensation to the victims, while the more serious behaviour of the deprived will be punished by prison and the financial and possibly penal sanctioning of their parents. If this is the outcome then we are ensuring the continued reproduction of a class of future adult criminals.

Notes

1. Instinctively it might appear that this should be the Children's Act but the official title of the legislation is the more awkward Children Act.

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Ciaran McCullagh

Lecturer in Sociology

University College Cork