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## **YOUNG PEOPLE, CONFLICT AND REGULATION**

DEENA HAYDON, SIOBHÁN MCALISTER and PHIL SCRATON

### **Abstract**

Set against the progress claimed since the *Good Friday/ Belfast Agreement*, this article reflects the reality of life for children and young people as they negotiate the aftermath of the Conflict in Northern Ireland. Their experiences of informal and formal policing, community and State control, demonstrate the need to understand the lasting impacts of the Conflict when developing policies and practices affecting their lives. At a crucial defining period in the devolution of justice and policing, and based on primary research conducted by the authors, the article establishes key rights-compliant principles central to reform of youth justice.

**Keywords:** youth justice; marginalisation; children's rights; regulation; Northern Ireland

### **Introduction**

In-depth qualitative research on which this article is based reveals that the experiences of children and young people contrast starkly with claims that Northern Ireland is a progressive, rights-centred, post-conflict society. Those living in economically deprived communities most affected by the Conflict disproportionately experience its legacy: historical under-investment; inadequate services to meet identified needs; material poverty; mental ill-health; trans-generational trauma; sporadic violence; isolation, fear and restricted movements (Haydon 2009; McAlister *et al.* 2009).

As a social group, young people in Northern Ireland feel under-valued and negatively stereotyped:

‘Young people are not valued in our society. We are all labelled as bad news, as trouble, nagged at.’

‘No adults treat young people with respect – I wear a hood, I am a hood.’ (Haydon 2009, p.14)

The significance of considering the interests, needs and views of children and young people in progressing towards ‘peace’ is acknowledged in policies and agreements, yet they report exclusion from every aspect of social life:

‘Adults think “Kids should be seen and not heard” – in politics, the community, everywhere ... They should be seen and heard. But you have to be seen first to be heard.’ (Haydon 2009, p.8)

Reflecting a pervasive climate of intolerance, young people feel marginalised within their communities:

‘People aren’t bothered with us. They just want us out of the area. But it’s our area as well. It’s not their place, we’ve been reared here too ... We should have more say.’ (McAlister *et al.* 2009, p.73)

Such intolerance is not new. In chronicling a ‘history of respectable fears’, Pearson (1983, p.207) notes a ‘seamless tapestry’ of ‘cultural inheritance’ about the ‘deteriorated present’ derived in ‘simple nostalgia’ for a Golden Age. Young people’s ‘deviance’ and ‘delinquency’, ever-spiralling beyond parental control or institutional regulation, has been represented as destabilising well-functioning communities from Victorian times to the present. ‘Inadequate parenting’, ‘excessive leniency in the law’ and ‘interference of sentimentalists’ have been a persistent trinity as it is claimed that each rising generation ‘soars to new heights of insubordination and depravity’ (Pearson 1983, p.208). In Northern Ireland, the legacy of the Conflict is an added dimension, underpinning the informal and formal regulation of young people.

### **Myth versus Reality**

The demonisation of young people in popular and political discourse was central to the classic analyses of ‘folk devils’ and ‘moral panics’ first conceptualised by Cohen (1972) and Young (1971). Cohen argues that ‘stylised and stereotypical’ media representations have ‘serious and long-lasting’ repercussions for ‘legal and social policy or even in the way society conceives itself’ (Cohen 1972, p.9). As Muncie and Fitzgerald (1981, p.422) state, folk devils become ‘visible symbols of what is wrong with society’.

When the perceived and persistent threat to social order centres on those labelled ‘young and morally weak’, whose actions are considered ‘wounding to the substance of the body social’, it initiates a call for ‘tougher or renewed rules, more intense public hostility and condemnation, more laws, longer sentences, more police, more arrests, and more prison cells ... a crackdown on offenders’ (Goode and Ben-Yehuda 1994, p.31). In this hostile climate, as Goldson (2000, p.52) notes, ‘[e]arly intervention, the erosion of legal safeguards and concomitant criminalisation, is packaged as a courtesy to the child’. Subsequent ‘interventionism ... promotes prosecution ... violates rights

and, in the final analysis will serve only to criminalise the most structurally vulnerable children’.

Politically and professionally, State intervention is often informed by psychological and environmental theories locked into pathological explanations about ‘deviant’ and offending behaviour being rooted in the ‘aberrant’ individual, ‘dysfunctional’ families or ‘disorganised’ communities. Corrective, punitive and rehabilitative interventions service the ideological imperatives embedded within individual and social pathologisation, reinforcing a regulatory discourse foregrounding risk assessment and personal responsibility. Consideration of the social, material and political contexts in which behaviours occur, and harm is perpetrated, remain conspicuously absent. Creation of the ‘folk devil’, and the ensuing rush to judgement, reflects ideological imperatives while denying the significance of structural inequalities. It also generates and sustains a climate of intolerance and fear.

Although often derived in unfounded assumptions, ‘fear of crime’ shapes and sustains a significant political agenda. Over 50 per cent of those surveyed by McClure *et al.* (2007, p.5) ‘believe there has been an increase in crime levels in Northern Ireland in the last year’, a ‘perception ... informed by increased media coverage of crimes’. They conclude that ‘the fear of crime is much higher than the actual level of crime itself’. Further, ‘[d]espite a lower prevalence of crime in Northern Ireland, respondents to NICS [Northern Ireland Crime Survey] 2008-2009 displayed higher levels of worry about each of the crime types examined than their counterparts in England and Wales’ (Department of Justice 2010, p.4).

Media coverage of violent crime, particularly against the elderly, reinforces perceptions that levels have increased although there has been no significant change (Freel and French 2008, p.8). The proportion of those victimised at least once by violent crime in 2009-2010 was lower in Northern Ireland than in other UK jurisdictions (Regional Trends Online 2011). In contrast to popular opinion, ‘the risk associated with violent crime victimisation has an inverse relationship with age; the younger the respondent, the greater the likelihood of falling victim to violent crime’ (Freel and French 2008, p.20).

Public perception, fuelled by irresponsible journalism, is that youth crime has escalated and young people’s behaviour has become increasingly disrespectful and aggressive. In reality, between 1996 and 2006 there was no significant change in the conviction rates of children aged 10 and over in Northern Ireland (Department of Justice 2010, p.75) and the numbers held in the Juvenile Justice Centre on sentence has remained relatively consistent from 2006 to 2011 (YJA 2011, p.i). Negative stereotypes, however, focus on ‘anti-social’ behaviour, reflecting

the assumption that groups of young people in public spaces are at best 'troublesome', at worst 'threatening' (McAlister *et al.* 2011). Mackenzie *et al.* (2010, p.7) note that the 'presence of notable numbers of young people in an area seems to be something to which the public in the UK has an unusually delicate sensitivity'. Following its last examination of the UK Government, the UN Committee on the Rights of the Child (2008, para 24) noted the 'general climate of intolerance and negative public attitudes towards children, especially adolescents ... may be often the underlying cause of further infringements' of children's rights.

### *Defining Acts: Challenging the Notion of 'Recreational Rioting'*

Given Becker's (1971, p.341) long-standing proposition that an 'act's deviant character lies in the way it is defined in the public mind', the significance of condemnatory public discourse shapes and reinforces ideological constructions, providing 'ready justification for the marginalisation, differential policing and punishment of identifiable groups' (Scruton and Chadwick 1987, p.213). This can induce inappropriate and potentially harmful responses if contextualisation is ignored. Interpretation of 'riotous' behaviour between communities in Northern Ireland, or between communities and the police, provides an illustrative example. Media representations of sectarian rioting have reduced complex political, ideological and economic grievances within marginalised communities to the simplistic notion of 'recreational rioting'. This conceptualisation, and media coverage emphasising young people's involvement, presents 'a distorted picture of Northern Ireland's young people and has, very likely, contributed to their further demonisation' (NIPB 2011, p.13).

The conceptualisation of rioting as 'recreational' requires careful consideration. More searching analyses locate its legitimacy within communities as a means of defending space and expressing resistance (Leonard 2010; Smyth 2011). This is consistent with responses by children and young people to the informal and formal regulation of their behaviour. For many living in predominantly Catholic/ Nationalist areas, the police symbolise danger and threat rather than safety and protection, their presence synonymous with rioting:

'They [the police] are the problem. It's them that leads to people petrol bombin' and all that and then they just destroy the place.'  
(McAlister *et al.* 2009, p.75)

Some young people in these areas consider relations with the police are embedded within the social, cultural and historical context of their lives. They have grown up in families and communities that never trusted the

police, among relatives and neighbours who experienced abuse or intimidation by partisan policing during the Conflict:

'The younger ones is just bargain' [starting on] the police cos they don't know what's right and what's wrong, they just see the police as bad because we're never taught any different.' (McAlister *et al.* 2009, p.76)

Continuing paramilitary presence also contributes to violent confrontations with the police. In Nationalist communities, this is ascribed to activities of 'dissidents' exploiting the vulnerabilities and insecurities of those socially and economically marginalised: 'politicising young people on the streets ... taking what was a contention between the community and the police and using it to incite violence among young people - passing on and glorifying the stories of the past' (Community Representative, McAlister *et al.* 2009, p.108). In Loyalist communities, influential adults stress the importance of defending their culture, suggesting that, in the transition towards peace, politicians representing 'their side' have reneged: 'Catholics get everything', 'Sinn Féin win everything' (McAlister *et al.* 2009, p.98, 76). In this context street violence directed towards 'the other community' and/or the police expresses discontent with current or past treatment and resistance to perceived inequalities. Youth violence and rioting does not occur in the vacuum often represented in simplistic media accounts. As Smyth (2011) notes: 'Our young people act out of the dynamics that we have created, and recreate through our segregated and divided society'.

Yet, under pressure to respond to rioting in Ardoyne, North Belfast in July 2010, the Police Service of Northern Ireland (PSNI) released photographs of children they wished to interview. Simultaneously, 'Operation Exposure' was initiated in Derry. Images of 50 young people were released to the press, followed by distribution to 25,000 households of a leaflet publishing photographs of 23 young people. This process breached children's right to privacy, undermined the presumption of innocence and access to due process, and increased risk of community-based punishment for those children identified. Despite criticism, the PSNI claimed consistency with the 'best interests' of children: 'Our intention is to keep our communities safe and protect our young people by preventing them from getting drawn into further disorder ... if we want to be in a position to help our young people then we need to identify them first' (Burrows 2010). This questionable justification, illustrating Goldson's (2000, p.52) claim that rights violations are often presented 'as a courtesy to the child', contrasts with young people's experiences:

'Once you're labelled a trouble-maker, it's really hard to shift that image - even if you're trying not to get into trouble. The police will

always come to you first if something has gone on in your area.’  
(Haydon 2009, p.14)

### *Informal Regulation*

In Northern Ireland, the representation of children and young people as anti-social, out-of-control and violent has implications specific to the legacy of conflict. During the transition to ‘peace’, cessation of paramilitary activity and control within communities was welcomed alongside progression towards a democratically accountable police force. Yet a ‘policing vacuum’ remains evident in those communities most affected by the Conflict. In many Republican/ Nationalist communities mistrust of the police remains, while in many Loyalist/ Unionist communities there is a reticence to involve the police for fear of reprisals. This is regretted by some adults given that their communities are no longer ‘policed’ informally by paramilitaries:

‘If something happens now, you feel you have nowhere to go.’

‘From when the paramilitaries moved on it is like a free for all here ... the days of running to someone and getting it sorted are gone.’  
(McAlister *et al.* 2009, p.71)

Although arms have been formally de-commissioned, young people in Republican and Loyalist communities involved in behaviour deemed ‘inappropriate’ or ‘anti-social’, continue to be threatened by adults they define as ‘paramilitaries’:

‘We woulda had a meetin’ with them [paramilitaries] and it woulda been maybe four of them and only you sittin’ there and like “Jesus, I’m gonna get killed now” ... we were threatened.’ (McAlister *et al.* 2009, p.107)

They also continue to experience punishment beatings and shootings. Between January 2008 and December 2010, 47 per cent of 272 recorded ‘casualties as a result of paramilitary style attacks [assaults/ shootings]’ were carried out against young people aged under 25. This included 91 assaults and 38 shootings (PSNI 2011a, p.4). These figures are likely to be an under-estimate, as they relate to incidents reported to and investigated by the PSNI.

Distinct from State interventions, in 1998/9 community-based restorative justice schemes were established in Republican communities (Community Restorative Justice, Ireland) and Loyalist communities (Northern Ireland Alternatives). Based on discussions between community activists, ex-political prisoners and local community

members, these schemes initiated viable, non-violent systems of community-based justice to replace existing systems of paramilitary punishments (Gormally 2006). Offering an alternative response to low-level offending by young people, they aim to challenge and reduce offending or harmful behaviour, develop opportunities for reconciliation of offenders and victims through mediation, establish safe environments in situations where there is lack of trust in statutory agencies, and develop educational activities in communities. Despite some tensions with statutory providers, the schemes were accredited in 2008 by the Criminal Justice Inspectorate to implement an agreed operational Protocol. This was developed by the Northern Ireland Office to establish the projects as diversionary schemes alongside restorative justice processes provided by statutory agencies.<sup>1</sup>

The schemes' success depends on consolidating trust, established over time and reflecting positive relationships with community-based workers (English and Moorehead 2011, p.92). Anecdotal evidence, however, suggests that introduction of the Protocol, and the formalisation of information sharing, has had a detrimental impact on perceptions of the schemes within communities: 'Its formal tie-in with the police means that it struggles to be seen as a parallel or as a genuine alternative, but more importantly it is the poor relation [to fully funded Youth Conferencing provided by statutory services]' (Enright 2011, p.30). Further, young people are sceptical regarding the schemes' capacity to replace paramilitary regulation:

'I wouldn't trust them [community based restorative justice schemes], but I'd give it a go. It's better than getting beat [by paramilitaries]. But I'd still be suspicious, on my guard.'

'Even if they [paramilitaries] say they won't, if they want to beat you they'll find a reason. If they want to do it they will.' (Haydon 2009, p.63)

### *Formal Regulation*

Since the ceasefires young people's increased presence on the streets, combined with sensationalist media reporting, has led to constant regulation of their movement and behaviour. They describe feeling unwelcome in public spaces - moved on by community members, paramilitaries and the police. While recognising public pressure to respond to 'anti-social behaviour', the Policing Board's Human Rights

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<sup>1</sup> The Northern Ireland Office (NIO) was replaced by the Department of Justice (DOJ) in April 2010, with a range of devolved policing and justice powers established in the *Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010*.



and Professional Standards Committee has expressed concern about differential and discriminatory policing of young people. It notes that reinforcing the assumption that the 'mere presence of young people on the streets' is anti-social encourages 'negative stereotyping' (NIPB 2011, p.25). Ultimately, this creates a barrier to effective police engagement with young people.

Contrary to adult representations of a 'policing vacuum', young people recount high levels of police contact amounting to what they define as harassment. This includes being stopped and searched, having their names taken and being moved on:

[Police] tell you to move on but there is nowhere to go. And then when you move on, they tell you to move on from there. You can't win.' (Haydon 2009, p.60)

'You can't even stand about without bein' moved on – "I'd like your address for breathing". They'll be askin' for your blood group next!' (McAlister *et al.* 2009, p.36)

The lack of respect shown by some police officers is particularly significant for young people, who report being threatened with Anti-Social Behaviour Orders (ASBOs) for simply 'hanging about' their own communities:

'You don't feel respected by the police ... they say "I'm going to put an Order on you wee girl, wee boy"'. (McAlister *et al.* 2009, p.77)

'Police get into young people's faces and tell them "Don't talk shite"... [and] don't give young people an opportunity to explain'. (Haydon 2009, p60)

Young people also report ridicule, provocation or taunting by police officers, generating violent responses:

'They try to entice you to lose your temper – tell you you're worthless, say things about your family to make you lose it.'

'They provoke you until you hit them. Then they can restrain you or hit you back.' (Haydon 2007, p.54)

Following arrest some young people note physical and verbal abuse, fear and isolation:

'They take you away from your streets and your family. And they treat you like shit in the station. They leave you in the cell all day.'  
(Haydon 2009, p.61)

A review of the handling of complaints within the criminal justice system found that many young people detained in the Juvenile Justice Centre (JJC) 'would have liked to complain about how they had been treated by the police (in terms of the degree of restraint used and/or discriminatory attitudes and actions) but did not because they felt they wouldn't be believed' (CJINI and NICCY 2007, p.12). While the *United Nations Convention on the Rights of the Child* (UNCRC) has been incorporated into PSNI policy directives, the experiences of young people indicate a weak transition of policy into practice. Indeed, the data presented throughout this section exposes the rhetoric of 'peace', 'inclusion' and 'rights' in the lives of the most marginalised children and young people in Northern Ireland.

### **Processes of Criminalisation**

The 'principal aim of the youth justice system', affirmed by Part 4 Section 53(1) of the *Justice (Northern Ireland) Act 2002*, is 'to protect the public by preventing offending by children'. Children, it continues, should 'recognise the effects of crime and ... take responsibility for their actions' and the youth justice system should 'have regard to the welfare of children ... with a view (in particular) to furthering their personal, social and educational development'. Although this reference to welfare is important, it contrasts with international standards which establish the 'best interests of the child' as the *primary* consideration in all legislative and policy matters affecting children. The *Review of the Youth Justice System in Northern Ireland* (Youth Justice Review 2011, p.101) recommends that the aims of the youth justice system be amended to include the best interest principle.<sup>2</sup>

Consistent with international obligations, however, current legislation reinforces a commitment to diversion from criminal justice disposals. Following admission of guilt, the Public Prosecution Service can impose one of three diversionary disposals. Not available to serious or persistent offenders, these include informal warnings, restorative cautions and diversionary youth conferences. While not constituting convictions, these

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<sup>2</sup> The *Hillsborough Castle Agreement* (2010, p.7) established priorities for a devolved criminal justice system, including a review of 'how children and young people are processed at all stages of the criminal justice system, including detention, to ensure compliance with international obligations and best practice'. An independent review of the youth justice system was subsequently commissioned by the Department of Justice. Published in September 2011, the Review is subject to public consultation at the time of writing.

disposals remain on a young person's criminal record (warnings for twelve months; cautions and diversionary youth conferences for thirty months). In 2010 cautions were issued for 2,197 offences admitted by children (PSNI 2011b, p.2). During 2010-2011, 1,051 young people were referred for diversionary youth conferences, of whom 861 had their plans approved (YJA 2011, pp.21-22).

Reflecting habitual policy transfer from England and Wales, and justified as non-criminalising disposals, Anti-Social Behaviour Orders (ASBOs) were introduced in Northern Ireland in 2004. Issued through the Courts, these civil orders apply to children as young as 10. Since their controversial inception in England and Wales, ASBOs have generated extensive criticism regarding the blurring of civil and criminal law, admission of hearsay evidence, lack of legal protection, 'naming and shaming' children and use of custody for breach of conditions (see: Scraton 2007). Campaigns against their introduction, coupled with vigilant monitoring of their implementation, have limited their use in Northern Ireland where 58 ASBOs were served on under-18s between 2005 and 2010 (PSNI 2011b, pp.1-2). The Criminal Justice Inspectorate noted their inconsistent use, concluding: 'Anecdotal evidence suggests that alternatives are as effective, if not more effective, than ASBOs. The use of alternatives appears to be critical in assisting individuals to change their behaviour patterns and therefore should be developed and used as a precursor to ASBOs' (CJINI 2008a, p.viii).

Juveniles (29%) charged and found guilty of offences in Northern Ireland are much more likely than adults (7%) to receive a community-based disposal (Department of Justice 2010, p.63). The Youth Court can request a youth conference between a young person and her/his victim(s), providing the offence is admitted. An agreed action plan results in a Youth Conference Order. In 2010-2011, 961 young people received a Court ordered youth conference, 750 of whom had their plans approved by the Court and recorded on their criminal record like any other Court disposal (YJA 2011, pp.21-22). The Youth Justice Agency also implements other community-based measures. During 2010-2011, these included 48 attendance centre orders, 49 community responsibility orders, 2 reparation orders (YJA 2011, p.2), and a bail support scheme which is an alternative to custodial remand. The Probation Board for Northern Ireland supervises probation orders (10-17 year olds) and community service for 16 and 17 year olds.

The Court is obliged to provide justification for each Juvenile Justice Order; a custodial sentence between six and 24 months, half of which is served under supervision in the community. Woodlands Juvenile Justice Centre (JJC) is a secure facility for the detention of 10 to 17 year olds. Although the *Justice (Northern Ireland) Act 2002* provided for the

introduction of Custody Care Orders for 10-13 year olds, so that offenders of this age could be accommodated within the care system, this has not been implemented. Consequently 10-13 year olds on remand or sentenced are detained in the JJC alongside young people aged 14-17. In 2010-2011, the JJC admitted 472 males and 79 females (YJA 2011, p.8).

Children can be admitted to the JJC under the *Police and Criminal Evidence (Northern Ireland) Order 1998* (PACE), usually for one to two days. Using PACE to remove disruptive children from care homes was identified as a significant problem by research for the Children's Commissioner in 2004 (Kilkelly *et al.* 2004, p.234). A review of 10-13 year olds admitted to custody between January 2003 and August 2004 found that over half were admitted from a residential childcare facility (McKeaveny 2005). Between January 2006 and October 2007, 48 per cent of the 655 admissions to the JJC were PACE placements, although the court subsequently released 42 per cent of these children. The Criminal Justice Inspectorate questioned 'the value of placing them in custody in the first instance, in terms of individual impact as well as the disruption to other children living in the JJC' (CJINI 2008b, p.4). Yet in 2010-2011, 46 per cent of admissions to the JJC were PACE (YJA 2011, p.8). The most recent inspection (CJINI 2011, p.4) noted the percentage of PACE admissions was steadily increasing. It found that '[m]ost PACE children stayed for less than 24 hours, which begs the value of admitting them to custody in the first place'. The justification presented to Inspectors was 'that JJC placements were used for some of these children in the absence of alternative accommodation when they presented chronic social problems' (*ibid*). Recognising this issue, the Youth Justice Review (2011, p.54) recommended development of an appropriate range of supported (if necessary secure) accommodation which is accessible at short notice.

The *Criminal Justice (Children) (Northern Ireland) Order 1998* stipulates that a child or young person should be remanded in custody for public protection or if the alleged offence is serious. Between January 2006 and October 2007, however, 45 per cent of admissions were remands and only 8 per cent of these received a custodial sentence (CJINI 2008b, p.4). Inspectors were concerned that: 'many of the children ... were neither serious nor persistent offenders' but 'were troubled children whose JJC placements often resulted from benign intent on the part of courts or police'. They 'were placed in custody as much for their own safety as in response to their offending behaviour ... breach[ing] international safeguards'. Their report concluded: 'inappropriate use of custody for children remains a more pronounced problem in Northern Ireland than elsewhere in the UK' (CJINI 2008b, p.vii). Despite these concerns, in 2010-2011 remand to the JJC comprised 46 per cent of all admissions (YJA 2011, p.8). A 2011 inspection (CJINI 2011, p.4) noted that: 'Even in

England and Wales, where the Youth Justice Board and Government acknowledge custody remands are over-used, the average remand population was only 25%.' The Youth Justice Review (2011, p.55) reinforces this concern, noting that the figures suggest 'the courts are using custodial remands wrongly – as a kind of “short, sharp, shock” or more benignly to secure the young person’s safety’ . Whether remand is used inappropriately as a punishment or because there is a serious gap in provision of suitable bail packages, its consistent over-use breaches children’s rights.

Operated by the Northern Ireland Prison Service, Hydebank Wood Young Offenders Centre (YOC) accommodates 17 to 21 year-old males on remand, committal or convicted. Should the court decide there is a risk of self harm, suicide or violence towards others, 15 and 16 year olds can also be remanded to the YOC. A 2007 inspection of the YOC noted the 'plight of juveniles' including: 'insufficient separation of juveniles and young adults in escort vans and an overuse of handcuffs while travelling'; 'ill-suited' reception procedures; 'routine strip-searching'. Young people felt unsafe, child protection was inadequate, 'adjudication punishments were excessive' and 'a more caring and therapeutic approach was required for those at risk and those withdrawing from substance use'. There was 'little confidence in the request and complaints systems', healthcare 'remained inadequate', there was minimal 'purposeful activity and opportunities were poorly utilized'. Out-of-cell time was severely restricted and 'exercise in the fresh air' was rare. 'Opportunities for work, learning and skills were limited', and the 'quality of education was mixed'. Arrangements for resettlement 'had not progressed sufficiently', sentence plans 'were of limited quality', with 'too little ... done to deliver against them' (HMCIP/ CICJNI 2008, pp.5-6). In 2008 the Independent Monitoring Board reiterated these concerns and questioned 'the rationale of housing boys under 18 at Hydebank Wood when there is no discernible difference in their regime and the regime of older male inmates' (IMB 2008, p.18).

The most recent inspection (CJINI/HMCIP 2011, p.v) found that 'reasonable progress was being made in each area, apart from purposeful activity'. However, there were three significant issues where 'major progress is essential' – better procedures such as those involving the care of vulnerable young people 'need to be implemented more consistently'; 'the regime needs to be more closely tailored to the needs and ages of the YOC prisoners'; and 'most importantly, as we have said before, Hydebank Wood YOC is quite simply an unsuitable place to hold children under the age of 18' (ibid, p.vi). Alongside the Youth Justice Review, the Department of Justice also established an independent review of prisons. In its report, the Prison Review (2011, p.70) considered young prisoners to be a 'forgotten group in the Northern Ireland penal system',

accommodated in an institution in the 'worst shape' (ibid, p.36). Noting that resources in the YOC 'are far poorer than those for the under-18s held at Woodlands' the Prison Review stated emphatically that 'children under 18 should not be held there' (ibid, p.66).

Proposing a fundamental 'change of culture, approach and provision' the Prison Review (ibid, pp.71-72) recorded 'insufficient activity, some of dubious quality ... no coherent strategy, an outdated curriculum, insufficient collaboration with external partners, serious problems of teaching' alongside 'wasteful' and 'under-use' of existing resources. It recommended 'proper transition between youth and young adult services' employing 'key workers' to establish 'effective support in the community, as an alternative to, or support after, custody'. This is particularly significant in Northern Ireland given the persistence of 'community divisions and paramilitary activity' (ibid, pp.70-71). Young adults in prison 'fall outside the remit of the Youth Justice Agency and the innovative restorative approach' and also 'lose the support of child and adolescent mental health services' (ibid, p.70). The deficiencies noted within the YOC were so imbedded and extensive that the Prison Review argued progress towards a constructive regime 'cannot be sustained without overhauling the whole system' (ibid, p.36). It proposed a pilot project connecting 'statutory, voluntary and community sector partners' to provide 'holistic community-based support for young adults who have offended' - identifying and seeking 'solutions to barriers to their reintegration, such as safe and suitable accommodation' (ibid, p.71).

The Prison Review also highlighted a broader issue – the deficiencies associated with young people's alienation at all levels within the criminal justice system. A common concern, recognised by the Inspectorate (CJINI 2010) and the Youth Justice Review (2011, p.68-73), is delay:

'It takes too long to get sentenced - you have to go back to Court about fifteen times before you know what's happening to you'.  
(Haydon 2009, p.64)

At Court, accommodation is poor:

'The cells are stinking, they don't get cleaned. It makes you depressed and it makes you more worried about court.'

'They shouldn't have any cells – that's the worst thing. It's just you and the four walls. You get really claustrophobic. It makes you think things, like about suicide'. (Haydon 2009, p.65)

Young people also describe the intimidation experienced in Court:

‘The Judge made me feel really, really small ... they make you feel like the lowest of the low.’

‘The Judge made my Ma feel like shit – had her in tears’. (Haydon 2009, p.65)

Based on observations, the Youth Justice Review (2011, p.65-67) noted a ‘disjunction’ between the intended process, according to *Guidelines for Operation and Layout: The Youth Court, 2006*, and what is experienced. Key concerns include limited understanding and participation on the part of young people and lack of preparation or attention to detail by young defendants’ representatives.

On the purposes of custody, children in the JJC recognise that deprivation of liberty is *the* punishment, rather than harsh treatment while in detention:

‘You’re not sent to prison for it to be hard – it’s about taking your freedom. The punishment is not being able to go out in your community, being free.’

‘Prison shouldn’t be about punishing – you shouldn’t get punished by the people in prison. The staff aren’t there to punish you, they’re there just to look after you.’ (Haydon 2009, p.67)

Further, they emphasise the need for rehabilitation and re-integration:

‘Helping you learn stuff so that when you go out, you won’t want or need to do crime any more. Like, if you’re stealing cars, you should get taught all about mechanics – it means you can make a life for yourself.’ (Haydon 2009, p.67)

Consistent with the Prison Review, the Youth Justice Review (2011, p.85) recommended that ‘Greater priority should be accorded to the rehabilitation and re-integration of young offenders in custody’, who should be prepared for release from the outset, sustained by access to multi-agency support.

### **Beyond Devolution: Prioritising Social Justice and Children’s Rights**

Within marginalised communities, transition from conflict has not resulted in significant progress (McAlister *et al.* 2009). Statutory services depend on non-statutory provision to meet local needs yet this provision remains under-funded, leading to insecure and short-term interventions. Community representatives view under-investment in local services as evidence of the low value placed on children, young people,

community/youth work and disadvantaged communities (McAlister *et al.* 2009). Demonisation and vilification of young people provide a convenient front to the reality of political and economic marginalisation. This encompasses: the cumulative effects of poverty; lack of educational and employment opportunities; inadequate play and leisure facilities; compromised parenting; domestic violence; limited support and lack of positive, encouraging role models; drug and alcohol use; poor health and well-being within families; low-level crime and anti-social behaviour within communities. Young people's understanding of this situation is clear:

'Young people like us already get the blame for near enough everything. I suppose it's easy to do that – blame it on the teenagers. But people just don't know the lives we lead, the problems a lot of us have.' (Haydon 2009, p.17)

While demonised as perpetrators of crime, the evidence demonstrates that young people are more likely to be victims. In Northern Ireland, informal regulation by paramilitaries has resulted in intimidation, physical assaults and exiling from communities. Regarding formal regulation, the processes of negotiation required to build trust and confidence in the police during a time of transition remain deficient. Young people make no distinction between formal and informal regulation in their routine experiences:

'What we need is a bit of support and understanding – what we get told is that we're bad and end up on the receiving end of police and paramilitaries.' (Haydon 2009, p.8)

Calls for harsher policing, punitive sanctions and civil injunctions to regulate behaviour labelled 'anti-social' within communities, as evidenced in England and Wales, result in net-widening (Scruton 2007). Being 'moved on' restricts access to public space, leisure and freedom of movement. But in Northern Ireland it also increases risk of sectarian attack if young people move outside the boundaries of their communities (see McGrellis 2004; Leonard 2007; McAlister *et al.*, 2009; McAlister *et al.* 2011). Punitive sanctions increase the criminalisation of children and young people while failing to address social injustice.

As has been the case historically, it is the most disadvantaged and vulnerable young people who become involved in the youth justice system. Of the 30 children in the Juvenile Justice Centre on 30<sup>th</sup> November 2007, 20 had a diagnosed mental health disorder, 17 had a history of self harm, eight had attempted suicide at least once, eight were on the child protection register and 14 had a statement of educational needs (CJINI 2008, p.32).



Youth justice responses in Northern Ireland continue to emphasise criminal justice disposals rather than combating the impact of social injustice on the lives of children, young people and their families. Statutory (Youth Justice Agency) youth conferencing and restorative approaches remain attached to the criminal justice system. Community safety proposals, early intervention and crime prevention initiatives are tied to risk assessment and its management. A key issue for the devolved administration is acceptance that children and young people in conflict with the law are not exclusively a youth justice responsibility.<sup>3</sup> While the rhetoric of responsibility focuses on individuals, parents and communities, the State's responsibility is cross-departmental and should take into account the particular circumstances of Northern Ireland:

'Resources are not directed towards the consequences of 40 years of conflict. Whole communities are managing and suffering the pain. Trans-generational trauma is one issue – new trauma which is a result of the unaddressed trauma of parents. How do we support the parents of children who have been medicated and who have self-medicated for 30 years? It is their kids who are the ones ending up in Maghaberry [prison].' (CTSJI 2011, p.99)

Reform of youth justice requires development of rights-based policy and practice predicated on the principles of human dignity, fairness and equality. This would regard those in conflict with the law as 'children in need', rather than 'children in trouble', 'at risk of offending' or 'perpetrators' of crime. Their well-being and personal development should be prioritised over 'crime prevention' and 'community safety'. In line with other social responsibilities, the age of criminal responsibility should be raised to 16.<sup>4</sup> Early intervention should be provided whenever it is needed, regardless of age, through universal services which ensure that children fulfil their potential and families are adequately supported. Multi-agency, preventative services should help guide children away from behaviour that might lead to offending; addressing their rights to

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<sup>3</sup> The Youth Justice Review (2011, p.37) recommended that the Northern Ireland Executive develop an early intervention and prevention strategy (to be delivered through the Children and Young People Strategic Partnership), with co-ordination of policy through an inter-departmental Early Intervention Unit. However, early intervention and family support for 0-13 year olds may not be enough in isolation - availability of services and support throughout the life-course are equally important.

<sup>4</sup> The Youth Justice Review (2011, p.107) recommended that the minimum age of criminal responsibility in Northern Ireland 'should be raised to 12 with immediate effect, and that following a period of review of no more than three years, consideration should be given to raising the age to 14'. Based on figures from 2009, a minimum age of criminal responsibility at 12 would remove only 143 children (approximately 3%) from the criminal justice system, as opposed to 2,590 (approximately 43%) if the age was raised to 16 (ibid, p.104).

education, play and leisure, family support and alternative care, an adequate standard of living, physical and mental health services (see Include Youth 2008).

Children convicted of offences should receive proportionate disposals that avoid criminalisation and divert them from the criminal justice system. Community-based disposals involving informed consent, including community restorative justice schemes, should be prioritised and appropriately resourced. Custody should be used as a last resort, for the shortest possible period, and restricted to those presenting serious immediate risk to themselves or others. This requires increased use of alternatives such as bail support, remand fostering and supported accommodation. The rights of young people detained in secure facilities should be protected, including: separation from over-18s; age-appropriate regimes and programmes; access to health, education and care based on assessment of individual need; access to leisure and contact; appropriate disciplinary procedures; accessible information and advocacy services; access to pre- and post-release support.

Active participants in their communities, children and young people are legitimate rights-holders. Codified children's rights (Beijing Rules, OHCHR 1985; Riyadh Guidelines, OHCHR 1990a; Tokyo Rules, OHCHR 1990b; Havana Rules, OHCHR 1990c) are minimum standards guaranteed to all under-18s, rather than aspirations or privileges. State agencies are duty-bearers, obliged to promote and protect children's social, economic, civil and political rights. In Northern Ireland, devolution and independent appraisal of youth justice provide a timely opportunity to address concerns consistently raised by young people, children's rights advocates, inspection bodies and those monitoring the implementation of international standards.

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