



Youth Justice in Scotland: operating in competing paradigms

**The right system – limited
implementation?**

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2013**



• **Rationale for Change (Kilbrandon 1964)**

- **, a failure in the normal experiences of upbringing – a collective and shared responsibility**
- **criminal (youth) courts ... ‘inherently unsuited to meeting the needs of troubled young people as they seek ‘to combine the characteristics of a court of criminal law with a specialised agency for the treatment of juvenile offenders’ . (Kilbrandon 1964 para 71)**
- **The legitimacy of a criminal justice (crime-conviction-punishment) approach can only exist if the person is viewed as singly, solely and fully responsible for his/her actions –**
- **incompatible with the objectives of prevention and of shared responsibility for dealing with children and young people’s upbringing .**
- **‘communicative or constructive punishment .. seldom easy to achieve’**



- **Paradigm Shift? (N Bruce 1971)**

- **Separation of adjudication of legal fact from disposal**

- **Social Educational responses**

- **Social Education (Pedagogy)**
- **a means to individual improvement and promoting social cohesion**
- **A collectivist belief that educational success and failure is related to the social and economic circumstances faced by children and young people.**
- **Children first**
- **Shared responsibility**
- **Direct clash with criminal justice paradigm**



• **A Cultural Project and Competing Paradigms**

- **Scots Law**
- **National probation service abolished,**
- **youth courts abolished**
- **Children's Hearings introduced**
- **Integrated Social Work departments introduced**

- **Social Education Department as a unifying institution dropped.**
- **The age of criminal responsibility remained at 8**
- **1974 Rehabilitation of Offenders Act maintained criminalisation**
- **Limitations in jointly reporting young people resulted in routine prosecution of 16 and 17 in adult criminal proceedings.**



- **Interface between Children’s Hearings and Criminal Justice unresolved**
- **Prosecution from 8 remained – CHS bypassed for serious offences despite young people’s need of ‘compulsory measures’**
- **Discharge from CHS by 15.5yrs**
- **Re-entry 15.5- 17yrs blocked**
- **Prosecution in adult criminal courts routine for 16 and 17s**
- **High levels of detention of under 18s.**



• UN Convention on the Rights of the Child

• Beijing Rules, 1985

- well being of the young person
- emotional, mental and intellectual maturity
- **socio-educational** responses
- **extra judicial** approaches
- avoidance of deprivation of liberty
 - right to representation

Riyadh Guidelines, 1990

- early intervention - shared responsibility - multi disciplinary responses

• Havana Rules, 1990

- role of prosecutors and diversion

Council of Europe Rules for Juvenile Offenders Subject to Sanctions and Measures adopted on 5th Nov 2008 CM/Rec (2008)11E

- *Council of Europe Guidelines on Child-Friendly Justice* Strasbourg [CJ-S-CH (2010) 3 E] 2010

Limited impact until 2007



• **UN Convention on the Rights of the Child**

– **UN Committees 1995, 2002, 2007**

- **1995** UK ‘uncooperative and arrogant’
- **2002** UK ‘below what should be expected from a ‘great country’ (*English High Court test case*)
- **EC 2005** juvenile trouble-makers are too rapidly drawn into the criminal justice system and young offenders too readily placed in detention, when greater attention to alternative forms of supervision and targeted early intervention would be more effective’ (EC, 2005, para 81).
- conclusion that preventive intervention was ‘minimal’ in the UK (para 94).
- **2007 - similar findings and conclusions -** (*English High Court test case*)

A lack of a children’s rights approach (UNC 2007/8)



- **Scottish New Labour and UNCRC**
 - **A punitive turn**

- **Anti-social Behaviour Orders - ASBO's, ABCs**
- **Parenting Orders**
- **Street Wardens**
- **Powers of dispersal**
- **Financial penalties for noise and environment issues**
- **Youth criminal court re-introduced**
- **ISSMs - Electronic monitoring**
- **Orders of Lifelong Restriction include under 18s**



Outcomes by 2007

Age of criminal responsibility unacceptably low- age 8;

Highest number of under 18s in custody for 10 years

60-90% - repeat custody; 50-75% public care background

Numbers of persistent offenders increased by 25%

Secure accommodation (locked) places increased from 80 to 120

Orders of Life Long Restriction (20+)



Outcomes by 2007

Children's Hearings research – offenders are among those with greatest difficulties, many graduate to the criminal justice system and custody

**Youth Court research – netwidening to adult systems
8000 adult convictions for under 18s per year**

Edinburgh Study of Youth Transition – young people in the system faring badly

‘not only do some of the (UN) Committee's Concluding Observations of 2002 still lack any effective implementation.. some things have ..got worse’ (UK Children's Commissioners 2008:4)



A (new) Cultural Project? addressing competing paradigms?

**UNCRC applies to ALL young people
(Scottish Government 2008)**

prevention,

integration

engagement

communication

minimum age of prosecution raised to 12

**McLeish report (2008) – recommendation for youth
hearings for 16s and 17s accepted**



**UNCRC applies to ALL young people (SG 2008)
A return to 'upbringing' and 'wellbeing'?**

Getting it Right (GIRFEC)

**Single integrated plan, wellbeing/ upbringing
indicators for all children under 18**

SHANARRI

**Safe, Healthy, Achieving, Nurtured, Active
Respected, Responsible, Included**



UNCRC applies to ALL young people (SG 2008)

National Practice Development (Champion) Groups

- Early and Effective intervention**
- Serious violent and sexual offending**
- Girls and Young women**

Minimum age of prosecution - raised to 12

Children's Hearings Act 2010

Children's Hearings Scotland

Decriminalisation and recorded offences

Children and Young People Bill – Rights?



FRAME Standards for under 18s

Framework for Risk Assessment, Management and Evaluation

- Common Language
- Risk and NEED
- Information sharing
- Appropriate information
- to decision makers
- Links to adult justice
- MAPPA & GIRFEC





- **Getting it Right**
 - **Whole Systems Solutions**
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- **linking youth justice strategies more closely with other strategies supporting and protecting young people**
 - **victim perspective**
 - **making stronger connections between youth justice and education**
 - **developing the role of youth work**
 - **reviewing access to mental health services**
 - **enhancing the role of sport, the arts and cultural opportunities in building young people's self-esteem**



- **Outcomes to date?**

- **No ASBOs**
- **No Parenting Orders**
- **Detention – reduced from 120 to 70 daily**
- **Secure accommodation (locked) places reduced from 120 to 80– still not ‘last resort’**
- **Offence referrals to SCRA reduced**
- **Convictions in adult court reduced from 8,000 to 4,000 per year**
- **More young people subject to dual legislation**



- **Challenges**

- **Community Planning Units?**
- **16/17s in adult proceedings - Youth Hearing, Youth Court (solemn, indictment)?**
- **Girls and young women**
- **Serious and violent offending**
- **Recording/convictions and supervision?**
- **Orders of Lifelong Restrictions**
- **Responsibilisation vs needs and deeds?**
- **Dominance of criminal justice paradigm**



- **A return to Social Education (Pedagogy)?**
 - **education concerned with social development and collective responsibility**
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 - **Collective responsibility**
 - **Upbringing and wellbeing (SHANARRI)**
 - **individual improvement and social cohesion**
 - **Transformational change**