

## *Social Work with Children in Conflict with Law*

Steve Case & Joe Yates<sup>1</sup>

### *State of art*

This paper attempts to outline the state of the art of social work with children in conflict with the law. In doing this it provides a critical appraisal of the hegemonic discourses that shape the current paradigm of knowledge, which in turn has shaped, or some would argue constrained, social work practice with children in conflict with the law. The paper challenges some of the assumptions which inform the contemporary policy trajectory which, on the international stage, shape, and direct, how we, as a society, respond to children in trouble. The paper does not offer solutions or a detailed analysis of developments within individual jurisdictions - rather it seeks to sketch out some of the overarching themes of the current direction of travel in terms of social work, in both policy and practice terms. The paper seeks to contextualise social work practice, more broadly, in terms of how society, collectively treat/support/respond to these children in order to critically appraise the 'state of the art' of social work in this area. The paper therefore explores the 'intersection' between what Wright Mills (1959, pp. 7 – 8) referred to as the 'personal troubles of the milieu' and the 'public issues of social structure' (and the position of social work practice in this dialectic). Here the paper argues that, as social work practice moves forward, the importance of context needs to be foregrounded in order to critically appraise the nature, purpose and ethics of social work interventions with children in conflict with the law and how contact with criminal justice and welfare systems impacts on them. The paper therefore critically appraises the current trajectory of social work practice in this area of the field, critiquing the knowledge base which underpins it and propositioning how social work interventions could be positioned to intervene progressively.

There is a long and well documented history of 'respectable fears' regarding youth and crime (Pearson, 1983) and throughout recent history these 'respectable fears', whether related to perceived (Pitts, 2001) or actual increases in children and young people's involvement in crime (Pitts, 2008) have been presented as evidence 'of the disintegration of social order' (Hall *et al.*, 1978: vii). Indeed, historically youth - or more accurately the 'threat of youth' - has served as a cipher for much wider hopes and fears about social order, progress and social change' (Jamieson & Yates, 2009). There are well rehearsed and important arguments regarding the 'profound historical amnesia' and 'perpetual novelty' (Pearson, 1983) which characterise hegemonic discourses around youth and crime. Here, the perception that children's behaviour, and in particular the behaviour of children, who are marginalised and socially excluded, is becoming more problematic has been presented as a barometer of wider social ills and has been juxtaposed against a valorisation of how children behaved historically. However, it is apparent from a historical analysis that these discourses and the 'imagined communities' (Anderson, 1983) conjured up by these 'jeremiads of national decline' (Pearson, 1983, p. 45), are dislocated from any meaningful historical context and 'fail to stand up to sustained historical scrutiny' (Muncie, 2004, p. 51). Indeed, childhood transgression has been, and remains to be, an element of growing up and getting by for many children. The extent to which these behaviours are criminalised is contingent on historical juncture and legal jurisdiction.

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<sup>1</sup> Correspondence to: Steve Case, Swansea University, E-mail: S.P.Case@swansea.ac.uk; Joe Yates, Liverpool John Moores University, E-mail: j.yates1@ljmu.ac.uk

However, whilst continuity, in the perennial concerns around children rule breaking, is evident change is also apparent. Pitts (2008, p. 32) observes that whilst ‘detrimental representations of lower-class youth are perpetually recycled by government and the media’ this ‘is not to argue that every manifestation of youth crime, violence and disorder has the same origin, meaning or impact’. Thus, whilst there are clearly continuities in the representation of the ‘criminality’ of socially excluded children and young people we must not lose sight of the fact that these emerge from specific social, economic and historical contexts and these contexts not only shape how criminality is represented and how the state responds to it (Jamieson & Yates, 2009) but also how it manifests itself (see Hall *et al.*, 2008; Pitts, 2008). Thus context matters - young people growing up in post-industrial societies and societies undergoing transition clearly ‘face new risks and opportunities’ (Furlong & Cartmel 1997, p. 8) as well as challenges which were ‘only glimpsed by previous generations’ (Wood & Hine, 2009, p. 4). These risks are associated with the specific socio economic, historical and cultural junctures. For example the structural changes to the economy, as a result of economic crisis, and neo liberalism, have served to elongate adolescence. In the post-crisis post-industrial city (see Hall *et al.*, 2008) adolescence has become protracted for most and hopelessly fractured for a many. Culturally too, neo liberalism and neo monetarist economics have heralded significant changes.

Whilst the proliferation of the mass media with its ‘speed and immediacy, its technological advances and its global reach’ has transformed our existence’ (Young, 2007, p. 2) they have also played a significant role in fostering what Young (2007, p. 2) refers to as ‘heightened individualism in an era of mass consumerisms’ and a ‘new culture of narcissism’ (Hall *et al.*, 2008). In addition youth crime has become highly politicised in the late 20<sup>th</sup> century (Goldson, 2005) and attitudes towards young people and children in conflict with the law have become more hardened (Hewlett, 1993), their communities demonised (McCauley, 2006; Yates, 2006), their rights circumscribed (Goldson, 2005) and new and ever more intrusive forms of social control applied to them (Jamieson & Yates, 2009). Similarly the material position of these people has deteriorated with many young people suffering ‘sustained exposure to acute social and economic disadvantage’ contexts which history tells us ‘spawns forms of crime that have catastrophic effects upon the vulnerable populations amongst whom and against whom they are perpetrated’ (Pitts, 2008, p. 33). As such whilst we can chart continuities in societal concerns regarding children’s rule breaking and criminal activity there are clearly different challenges which children face at different historical junctures. It is also clear that it is the most marginalised and socially excluded children, who are often troubled as well as troublesome, who come into conflict with the law (Yates, 2010).

For most, traditional transitions to adulthood, such as securing a job, can prove difficult to negotiate as they can often encounter limited opportunities to secure meaningful employment. Poverty or more specifically lack of opportunity to ‘get on’ is, for children on the cusp of adolescence, an important issue. In addition, as White and Cuneen (2006, pp. 19-20). argue ‘Many young people in ‘modern’ and ‘advanced’ industrialised societies are not simply marginal to the labour markets, they are literally excluded from it – by virtue of family history, structural restrictions on education and job choices, geographical location, racial and ethnic segregation, stigmatised individual and community reputation’. As Scraton and Haydon (2002, p. 325) argue ‘young people’s ‘offensive’ or ‘offending’ acts may be ways of coping with, or reacting to, their experiences of social injustice’. Here crime acted as a mechanism to manage the risks associated with social exclusion and poverty and illustrates how risks associated with structural factors find form in young people’s offending.

## *Contradictions and challenges*

Within Youth Justice across the western world, the positivistic risk factor research paradigm has become hegemonic (Case & Haines, 2009). It has gained pre-eminence in policy making circles – informing and shaping a range of policy and practice frameworks. In terms of its general thrust of analysis, and its aetiological focus, the risk factor paradigm is, in many ways, not new. Its genealogy can be traced back through the long history of the science of causality within criminology characterised by the Lombrossian tradition which has been reimagined and reconstructed at a range of points over the last century (see Garland, 1997). It is here that its focus on causality, its predictive claims, its focus on quantification and its perceived utility for governance can be located and best understood. This particular historical seam of criminological knowledge production, with its focus on bio-genic, socio-genic and psycho-genic causation, has had a particularly strong influence in youth criminology (Armstrong, 2004; Brown, 2005). An influence which Lapis (1981, pp. 157-58, in Walters, 2003) argues has historically been used ‘to justify, scientifically, social inequalities, considering them as natural differences’.

The new generation of this science of causality, heavily influenced by developmental psychology, manifested itself in the risk factor paradigm (RFP) (see Armstrong, 2004; Case & Haines, 2009 for a critical appraisal). The focus of these studies stressed the capacity of a range of risk factors which create the propensity for individuals to become involved in criminality. This research sought to classify these factors and in doing so constructed them into a number of risk artefacts such as hyperactivity and high impulsivity, low intelligence and school failure along with poor parenting. These were considered alongside other factors such as peer influence, school and community influences, and socio-economic deprivation (narrowly understood as low family income and poor housing). Within this model the presence of these factors were purported to play a significant role in propelling children into criminal careers. In doing so, through the model of classification adopted, risk became constructed as uni-directional with little consideration of the contextual influences or structural constraints which shaped young peoples’ lived experience. It also offered little consideration of how interventions with children in conflict with the law, through the auspices of the criminal justice system, could, through labelling and the criminalisation of childhood transgressions (see Goldson & Yates, 2008), be counterproductive - confirming and consolidating children in criminal pathways. The often crude reductionism associated within this paradigm also ensured that the meanings associated with various forms of criminal action were negated – with young people silenced in their methodological construction as passive recipients of decontextualized risk factors. Here young people’s perspectives on why they became involved in criminal action has become obfuscated (Yates, 2015).

The reasons for the ascendancy of the risk factor paradigm, was its perceived utility in understanding youthful transgression in simple and easily understood terms (see Armstrong, 2004; Case & Haines, 2009; Jamieson & Yates 2009; Kemshall, 2008; Goldson & Yates, 2008 for further discussion). Indeed, its provision of standardised, quantifiable, individualised and static metrics of risk, coupled with powerful claims around their predictive capacity chimed with the political moment. The rediscovery of the Risk Factor Paradigm, at this particular juncture, was embraced as it offered a perceived ‘scientific’ evidence base to inform to not only get tough on crime’ but also ‘get tough on the causes of crime’. As such it was utilised to legitimate, and inform the development of, a swathe of interventionist preventative policy developments targeting resources to inform social work interventions, within criminal justice settings, to more effectively manage crime (Armstrong, 2004; Goldson, 2001; Yates, 2004). The primacy afforded to individualised factors enabling policy makers to conveniently step aside what the influences of social exclusion and neighbourhood

destabilization (Armstrong, 2004). Here the focus of social work interventions move away from community based solutions towards targeted interventions calibrated around assessments of the 'risk' individuals are purported to pose.

Within social work practice, attempts to standardise and quantify risk into a series of measurable variables, which were perceived to propel children and young people into criminal pathways, served to re-orientate 'thinking about youth crime in favour of a focus upon those psychogenic antecedents of criminal behaviour which (were) believed to lie in the immediate social environment of the child (rather than in the structural characteristics of society itself)' (Armstrong, 2004, p. 103). Thus risk became framed in terms of individual responsibility (Kemshall, 2008). This factorisation of risk, and in particular its tendency to focus on psychogenic factors, in the realm of individuals and their families, has been criticised as being implicitly reductionist (Armstrong, 2004), for obfuscating the complex aetiology of youth crime (Goldson & Yates, 2008) and for viewing young people as malfunctioning 'passive' recipients' of risk (Case & Haines, 2009). All of which have served to marginalise attempts to understand the complex subjective meanings attached to various forms of criminal activity by individual social actors in the context of the broader structural constraints which shape their lived experiences. In this context the traditional value base of social work has, it has been argued, become subsumed into a sterile actuarial framework devoid of any attention to meaning or context.

However, whilst the influence of the risk factor paradigm, in terms of both policy and the research agenda itself is indisputable (Armstrong, 2004; Kemshall, 2008) there are, as Case and Haines (2009) identify, a range of questions regarding the research base which underpins it in terms of; its static and uni-directional conceptualisation of risk; its methodological rigour; the efficacy of utilising meta analytical frameworks and the problems associated with this method; the limitations of its approach to factorisation; its tendency towards determinism; its reductionist tendencies; its tendency to over generalise and the extent to which it has obfuscated the complex aetiology of youth crime. Indeed as Case and Haines (2009, p. 310) argue 'critical analysis has exposed the limitations, weaknesses, fallibilities and fallacies of risk factor research' and raised 'serious doubt about the legitimacy and validity of the methods, analysis, findings and conclusions of much risk factor research and its claims to be atheoretical, value free and scientific'. This focus on factorisation has meant that young people, and particularly marginalised young people, have been objectified within the narrow confines of artefact risk research (Armstrong, 2004), their voices 'pathologised, muted or silenced altogether' (Griffin, 1993). The penetration of this hegemonic discourse has meant that, within social work practice, little attention paid to the perspectives of children regarding 'risk' in their own lives, how this impacts on them or how they interpret, construct, negotiate and manage 'getting on' and 'getting by', in situ, during their adolescent transitions.

### *Programme for the future: Moving Forward: Beyond the Risk Paradigm*

The hegemonic discourses of risk emanating from the portals of the risk factor paradigm have shaped the power interplay between different professionals (Yates, 2015) and have served to influence social work practices. However, it is clear that moving forward social work can serve as a vehicle to educate professionals regarding the complex needs and requirements of children in conflict with the law. Social work skills can assist in building relationships that support change and in assessing risks, needs and strengths, in a child centred and holistic manner, ensuring that this focusses on the self-expressed needs of the individuals, utilising research to plan and deliver interventions which empower children in conflict with the law.

We can see from recent history that insights from a range of sociological and

criminological perspectives, such as interactionism and labelling theory, have cast the analytic gaze towards critically appraising how system contact impacts on children in conflict with the law (see Goldson & Yates, 2008). Indeed, research indicates that transgression is a normal part of transition for children and interventionist strategies, within criminal structures, can prove costly, counter-productive and ultimately damaging for children who become labelled as ‘criminal’. Developments within criminology which seeks to understand children in conflict with the law, their motivations, the context of their offending acts (in the context of often troubled life histories) should not be constructed as providing ‘excuses’ for children’s transgressive acts which can often be damaging for themselves and for others – rather such perspectives can provide deeper insights into children’s behaviour, the reasons for it, the relevance of context in order to understand their offending acts and offering insights into how society through social work interventions and support can effectively respond to these acts. This requires a break from a myopic focus on the individual and a reawakening to the importance of structure and how this interacts with young people’s lived experience. Some of the most innovative and progressive social work practices have emerged by focusing on the voices of young people and attempting to understand their perspectives – perspectives which shed light on the complexity of their lives, the meanings children assign to their experiences, the challenges they face and the role crime played in negotiating some of these challenges (Yates, 2015). This requires collaboration between academic researchers, practitioners, policy makers and *children* - to refocus practice towards children and away from the prescriptions and requirements of adult stakeholders.

As we’ve discussed, contemporary European social work practice with children in conflict with the law has too often fostered retrospective, risk-focused and reductionist views of children. Enforced, inequitable, prescriptive and adult-led youth justice relationships which have adulterised children and responsabilised them for their offending behaviour, disengaging them from constructive youth justice interventions. Moving forward social work with children in conflict with the law requires an alternative, principled, progressive model of practice. For example, Haines and Case (2015) advocate Children First, Offenders Second (CFOS). The CFOS model offers a whole child, preventative and diversionary approach that normalises offending by children and promotes strengths and positive behaviour. The model is grounded in the principles of child-friendly, child-appropriate and legitimate practice as a means of engaging with children (e.g. through consultation and eliciting their views) and engaging children with youth justice services and interventions.

If children in conflict with the law are to benefit from social work ‘interventions’, they must be enabled to engage with these interventions, otherwise they are likely to become further disengaged, to experience further disaffection, to be ‘disabled’ from benefiting from support mechanisms, and to actively or passively inhibit the intervention from achieving its goals. To these ends, the guiding principles of the CFOS model seek to enable practitioners to work with children in a manner that they are capable of engaging with and responding to (Haines & Case, 2015). The CFOS model promotes relationships between children and social work/youth justice practitioners that are child-friendly, child-appropriate and considered to be legitimate (fair, moral, justified, deserved) by children. However, considerations of engagement have been little more than an addendum to recent youth justice policy and practice in England and Wales. Although research has asserted the need for ‘understanding and addressing the “fluid dynamics” of children’s ‘lived experiences’ (Farrow, Kelly & Wilkinson 2007, p. 87) and the importance of focusing in more detail on the nature of engagement in youth justice practice, such research has tended to de-emphasise the role and influence of children’s perspectives and experiences in favour of focusing on practitioners and the skills they need (for example, communication and empathy) in order to form engaging relationships with children (Mason & Prior, 2008). Therefore, engagement has been

largely understood from the perspective of adult practitioners, rather than prioritising the need to enhance children's motivation and commitment to become involved in youth justice activities, thus missing the point that if it is to be effective, engagement needs to be understood and practiced from a child's perspective.

The CFOS model conceives of offending as only one element of the child's broader social identity (see Drakeford, 2010), rather than their defining master status. Accordingly, all social work practice with children in conflict with the law should be child-friendly, child-appropriate and focused on the whole child, examining the full complexity of their lives, experiences, perspectives, needs and their multi-faceted, context-specific interactions. Children are part of the solution, not part of the problem – so practitioners and policy makers should work in partnership with children to hold their interests, needs, rights and views as paramount throughout the youth justice process. The priority for adult practitioners must be to engage closely and regularly with children. Children who come into contact with the youth justice systems should be facilitated (by adult practitioners) to express their views on issues that affect them (cf. Article 12 of the UNCRC, UNICEF, 1989), enabled to participate equitably in decision making regarding their futures, and supported to access their universal entitlements as set out in progressive policy statements and international conventions is promoted. In this way, children's engagement with youth justice practice and practitioners goes deeper than the fundamentals of voluntarism, trust, respect and fairness (although these remain essential building blocks of the engagement relationship) and moves towards more positive notions of partnership, reciprocity, investment, the legitimate participation in decision-making processes and the achievement of (and recognition for) positive outcomes.

CFOS de-emphasises responding/reacting to children in conflict with the law as offenders and instead emphasizes engaging with children, first and foremost, by recognising their status as children. The CFOS approach does not seek to dictate to policy makers or to tell practitioners what to do when engaging children; instead, it places the child at the heart of the system, makes service delivery responsive and the achievement of maximum positive outcomes primarily the responsibility of the adults involved. The philosophy of CFOS acts as a touchstone against which staff can assess their daily practice and seek to better engage the children with whom they come into contact.

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