EARLY INTERVENTION AND YOUTH JUSTICE IN ITALY AND ENGLAND AND WALES

OBJECTIVES

Our study examines youth justice culture in England and Wales and in particular its developing focus on ‘early intervention’. But it places these questions in broader comparative context by taking advantage of the opportunity presented by the decision of the Italian Ministry of Education to finance empirical research on youth justice in three areas of Italy directed by one of the researchers (Nelken). This enabled us to propose an empirical study comparing youth justice in a provincial urban area of England and Wales (South Wales) with a provincial urban area in Italy (Emilia Romagna) while only asking the ESRC to fund the empirical research in Britain. Thus the project’s objectives can be seen as involving linked domestic and comparative objectives.

Domestic objectives

We were interested in the reality and nature of any ‘culture change’ in youth justice The Government presented its reforms as fundamental change in underlying values, resolving traditional tensions between punishment and welfare so that earlier state intervention would combat exclusionary social forces rather than reinforce them while developing a sense of responsibility. Sceptics saw earlier intervention as inevitably more coercive and socially excluding, while agnostics saw some potential for new ways of doing things.

Our research questions thus started first with the preliminary issue as to how far the system was really seeing earlier intervention. Our case-sample did not involve longitudinal research but interviews tested the views of practitioners about the realities of change. Secondly, we examined the underlying values and purposes of early intervention. How far was this really a ‘punitive’ or coercive turn? How far was welfare still an important principle in the design and delivery of social intervention? Thirdly, was a distinctively new, unified youth justice culture developing which evaded tensions between professional ideologies and social objectives of intervention?

Comparative Objectives

Ultimately, we wanted to examine the social and cultural conditions which make contrasting penal strategies possible in different societies. Youth justice culture in England and Wales is perceived to be out of line with much of Continental Europe - both in assumptions about the criminal responsibility of young persons (YPs) and the relative (lack of) priority accorded to their welfare in the criminal process. We noted apparently striking differences between Italy and England and Wales in the use of both diversion and custody.

Our first (and most basic) set of research questions involved asking whether the Italian system was in fact less interventionist or punitive. Did Italian diversionary policy really apply to the kinds of offenders and offences who would be routinely prosecuted in South Wales or were differences explained by different types of cases coming into the system? If there were differences, what were their limits? Did particular social groups receive a more punitive response? Secondly, if limited intervention is the norm in Italy, what promotes or enables this: for example what part is played by specific institutional or cultural relationships, different assumptions about the criminal responsibility of young people or the threat of youth crime? Thirdly, do different forms of professional ‘knowledge’ interrelate differently? Lastly, if Italian youth justice is less interventionist, what are the perceived consequences, positive and negative, for social exclusion, crime management and victims.

METHODS

Comparing patterns: case file analysis and gathering statistical data

First, a comparative quantitative and qualitative profile of patterns of diversion and disposal in the two criminal justice systems was established. A closed case-file sample was constructed to provide a reasonable match with that
already existing from Emilia Romagna. This was not a random sample of all cases coming into the system but a random sample of 50 cases dealt with by each of the three primary forms of disposal for youth justice cases (150 cases in all). Data had been collected under the supervision of Nelken on type and circumstances of offence, the offender’s personal and family background, previous record and case assessments by magistrates and social workers.

To best match the existing Italian sample, in South Wales we sought samples of cases dealt with by the major forms of disposal: 15 of each of the main sentence disposals and 25 each of NFAs (no further action), reprimands and final warnings. We took case-files from each of our seven police division/YOT team areas in proportions that corresponded approximately to the volumes of cases actually dealt with by these areas. With some shortfalls where certain areas were not (or could not) use particular disposals this produced 235 cases. Similar data to that existing from Italy was collected. Randomness was achieved by taking the first instances after 1 April 2002.

**Semi-structured interviews**

Data on actors’ reasoning and perceptions of early intervention was provided in part by file-based evidence such as PSRs but this was supplemented by semi-structured interviews.

In Wales we conducted 56 interviews (60 participants). A custody sergeant, police operational Inspector, YOT-seconded police officer, YOT Operational Manager and a YOT practitioner (probation officer or social worker) were interviewed from each police division/YOT team. 15 lay Magistrates (8 Chairs, 6 Wingers) and 4 Legal Advisers to the Magistrates were interviewed from a variety of Magistrates’ Courts as well as 6 Crown Prosecutors specializing in youth justice from three sites. Pilot interviews were conducted outside the research area to test different categories of interview schedule. The interviews ranged from 45 minutes to 1.5 hours with predominantly semi-structured questions but also a series of vignettes or hypothetical cases. Practitioners were then asked to reflect on how he or she might expect the particular fact situation to be dealt with. All the interviews were taped and transcribed. Atlas data coding is in progress but is not yet complete.

In addition, researchers observed training days, attended local conferences and policy meetings.

In Italy, 17 semi-structured interviews were conducted with social workers (3), public prosecutors (5), pre-trial judges (2), court Presidents (6) and a defence lawyer (1) with particular experience of, and responsibility for, young offenders. We used similar semi-structured questions and many of the same vignettes. We could not interview police officers due to their traditional refusal of such co-operation. Because of the legality principle and the constitutional responsibility of the public prosecutor to supervise all charge decisions, police officers do not play quite the same diversionary gate-keeping role in Italy as in England and Wales. This is thus unfortunate but not catastrophic.

These accounts by actors within the systems are being supplemented by analysis of the legal framework, official policy documentation and discussion, political debate and media coverage.

**RESULTS**
At the moment data analysis is incomplete and ongoing: what follows remains impressionistic rather than fully systematized interrogation of the data and some of the judgements will require refinement and qualification. For example, we are coding the interviews using Atlas qualitative indexing and sorting software, but this is incomplete. The essentials of the British case-file sample has been constructed into an Access database which will enable highly flexible interrogation of the data. But we are only beginning to explore the possibilities. To save space and to give as full a flavour of the arguments that we are exploring, what follows is a broad summary of data with little direct quotation.

YOUTH JUSTICE CULTURE IN ENGLAND AND WALES

The reality of early intervention

Our case-file sample provides only a snap-shot of diversionary and disposal practice in 2002: it does not permit systematic comparisons over time (‘before’ and ‘after’ the reforms). But our interviews with practitioners about their perceptions of change do shed some light on the extent to which there is a new logic to youth justice. There does seem to be a new and widespread belief within the system in early and increasing social intervention through penal sanctions. This logic is most obvious and ‘automatic’ with the new reprimand and final warning scheme. But much later sentencing decision-making also seemed predicated on a `lock-step’ presumption whereby each time the offender re-offended the intervention should normally become more intense and/or prolonged. In interviews, Magistrates gave indications that offenders ‘coming back’ was as important as the precise seriousness of the re-offending. This was a logic about which YOTs officers with a probation or social work background, who had adhered to the minimal intervention philosophy of the 1980s, expressed doubts. They had real concerns about spreading the resources for intervention too thinly amongst low-risk offenders. They felt the warning system too inflexible and some sought to resist the notion that each return to court should be met prima facie by greater intervention. But many offenders followed an almost conventional step-by-step path through different levels of social intervention in community towards custody. This increasing community intervention seemed to be part of an accommodation between two institutional logics. The magistrates’ assumption was that there MUST be an effective state response to this YP’s offending through the criminal justice system. If the YOT could not offer it, it must be in the custodial estate. And the status, raison d’être (and funding) of YOTs depended on acceptance of the idea that they could normally effectively intervene in the community to reduce offending. Committed to minimizing the use of custody, YOTs were thus concerned in the management of magistrates’ disappointment. Absent particular exceptional circumstances, this generally meant more and more intervention: reports could not normally simply suggest that the same intervention be tried again because this would ‘lose’ the magistrates. As a result serious community interventions could be arrived at quite quickly by relatively low-level offending.

Values and purpose of intervention

If there is evidence that the new youth justice is indeed a more interventionist youth justice, the evidence about the feared ‘punitive turn’ seems more ambiguous - at least where YOTs retain control over the content of intervention. However much the structure of the current sentencing arrangements suggests a range of different finely calibrated responses, the recommendations in different orders were often similar. They addressed personality and circumstances with measures justified in terms of the new statutory primary purpose of reducing offending but which could just as easily have been justified in terms of welfare. YOTs members recognized that their status and resourcing was linked to a presentation of what they are doing in terms of reducing offending. This was seen as both a new emphasis and something they had always been doing because risk and need were indissociable. Thus emphasis on crime prevention was not seen as challenging the importance of welfare. References to punishment and controls were made but there was a sense that they were directed at convincing magistrates that these were tough sentences. In practice, the ‘control’ elements often simply meant attending appointments, notifying change of address and complying with reasonable instructions, that is to say the control and discipline needed to make the delivery of the change or welfare programme possible. For YOTs members, initial suspicion of new coercive
elements had given way to a feeling that it helped to enable the provision of services and to enable YPs to comply with requirements while ‘saving face’ with peers. YOTs had eliminated the use of certain orders that they regarded as inappropriately coercive: there were very few parenting orders even though magistrates talked positively of the measure because YOTs simply refused to recommend them. On the other hand, it was clear that elements of controlling and punitive practice were developing where YOTs had little or no control over orders (eg. ASBOs, community punishment orders and attendance centre orders).

Nevertheless new roles for team members from a social work or probation background were creating new tensions. The most obvious new developments were an emphasis on offence-specific work (especially cognitive behavioural work), a broader crime preventive role outside the direct work with particular offenders and a greater role in relation to the victim. The first two were presented as raising questions for YOTs of prioritizing resources rather than philosophical tensions. But some YOTs gave more priority and showed greater enthusiasm for new ‘responsible’ cognitive interventions around exercising choice. Others seemed less enthusiastic about driving forward this new aspect of work and more focused on traditional welfare issues. But the place of the victim in YOT work raised more obvious philosophical questions. For example, an elderly robbery victim told a YOT victim liaison officer (police officer) in interview that she was convinced that the stress of the robbery had lead to a stroke some weeks later. Eventually the PSR contained positive comments by V about understanding the problems and difficulties of youth but omitted this reference. This caused real conflict within and between YOTs. Some argued that the need to address D’s problems in the community and avoid custody meant the damaging information should be left out. (D was at risk of and indeed was sent to custody despite YOT recommendations). For others this was a rejection of an important more balanced new role for YOTs: considering victim needs and impact was part of a necessary culture shift away from unconditional help. Despite this, the practical problems of getting victims involved in restorative justice practices in a speeded up youth justice system meant that much that is classed as reparative work for victims was only very indirectly so and in several cases tokenist.

A number of further tensions existed around the welfare role of YOTs given the widespread perception of their superior resourcing and effectiveness when compared with youth social services. Unless there was a clear accommodation or child protection issue, social services, faced with limited resources, sometimes wanted YOTs to provide the welfare services for YPs involved in offending even where the link between need and offending was not obvious. Further, the availability of resources and the demands of national standards meant services that might have been delivered by non-criminal agencies were delivered by YOTs so that they became primary deliverers of welfare needs. This is completely the reverse of the situation in Italy where local social services responding to what are essentially problems of offending have to define those problems as welfare problems because the local state does not have jurisdiction over crime. So in the delivery of services, there is a logic to ‘talking down’ crime in Italy and ‘talking up’ crime in Britain.

Professional tensions and interagency co-ordination

Interviewees all generally took the view that speeding up youth justice was helpful in making the moral connection between criminal act and state response. But approval of some YOTs members was qualified with reservations about undue pressures to plead guilty and the difficulties in ensuring appropriate victim involvement in restorative or reparative practices. There was general acceptance across agencies that there was now better co-ordination and that this was beneficial. Nevertheless, tensions remain. Although magistrates thought social inquiry reports were now more objective, PSRs remain argumentative documents negotiating the philosophical and cultural differences between YOTs and magistrates in which one never quite trusts the other enough to be completely open about doubts and counter-arguments. Differences were most obvious in the ways that age and criminal responsibility were understood. Magistrates were confident that all sorts of social cues could be interpreted as evidence of sufficient maturity to accept criminal responsibility. YOTs members emphasized limitations in YP’s understanding of the consequences of actions at the time. Similarly there were differences
between police and YOTs in attitudes towards punishment and especially custody and even in terms of their understanding of final warnings as a form of diversion: police tended to feel it was avoiding punishment whereas YOTs saw it as the start of intervention.

**COMPARATIVE QUESTIONS**

**Comparing practices**

In Italy around 84% of cases where young people are charged are dealt with by diversionary ‘filters’ so that there is no conviction. *Irrelevanza de facto* (insufficient seriousness to warrant conviction) was used as a simple diversionary measure for crime perceived by magistrates as having limited social impact and threat and not part of an entrenched pattern. Minor property offending such as shop lifting and handling stolen goods was routinely treated in this way. *Perdono giudiziale* (judicial pardon) was used for some quite serious offences (robbery, certain forms of homicide) and although in theory it could only be used for first offences, record-keeping is such that many of those receiving judicial pardons have committed previous offences. This produced a kind of institutionalized optimism about young people: the system thought well of them in part because it did not have the information to think badly about them.

By arguing either that routine crime was not serious enough to warrant intervention or the defendant showed no signs of entrenched patterns of offending magistrates justified diversion without any social intervention through the criminal process. This left *mesa alla prove*, (education and training programmes) for more serious offending where there was a prospect of rehabilitation identified by social services. Thus its use was based on an assessment of the individual rather than a routinized progressive social intervention for all offenders (more typical of practice in South Wales). *Mesa alla prove* involves suspending the criminal prosecution where the young person admits his or her involvement in an offence for a period of supervision by social workers. During this period the young person is expected to undergo education or training, follow voluntary or activity programmes, accept restrictions such as staying in at night or avoiding certain places (perhaps accompanied by some reparative act). If the period is designated as successfully completed – as it is in 80% of cases - magistrates will end the prosecution. There are post conviction supervision orders but they are very rarely used: in part because the time lapse before conviction is so long the system prefers action before rather than after conviction.

There are broad contrasts between the style of Italian and British decision-making. Although *irrelevanza* and judicial pardon appear to be based on legalistic categorisation of acts, Italian decisions seemed to be much less geared to types of offence or offence gravity and much more to an assessment of the individual offender’s risk of continuing criminality. There was a *prima facie* assumption by magistrates that offending probably had no deeply entrenched roots in family or community problems and that the best response for most Italian youths was to avoid intervention through *irrelevanza* or judicial pardon. Where there was more serious offending, or a significant previous record does come to light but the offender is not without hope, *mesa alla prove* is the usual response. A punitive response to youth crime, and especially prison, was seen by magistrates as pointless or harmful. But certain kinds of offenders tend to be seen as beyond hope: drug addicts, immigrants, gypsies and those from criminal families or with organized crime connections. For these conviction and custody are common disposals. Thus, in comparison to South Wales, disposals were linked more to an assessment of the risk of the particular offender (based of course on stereotypical social understandings) rather than a presumption of a graded application of increasing levels of social intervention for most young persons. Thus in Italy there was a clearer sorting process between offenders: the vast majority do not need any intervention, a few need the social intervention of *mesa alla prove*, and for some it would be a waste of time. Judgements in Italian case-files are often positive about the background of YPs but social workers will not suggest social intervention if YP is a bad
prospect, having escaped from a residential home, coming from a criminal or gypsy background or showing lack of motivation. YOTs in our sample almost always found some reason to suggest social intervention in the community might work.

**Explaining limited intervention**

Our explanations are developing around the culture of Italian magistrates, their institutional relationships with other actors within the criminal justice system, seen within the context of a distinctive cultural and social background.

Italian magistrates - prosecutors, pre-trial judges and trial judges – tended to draw on a self-identity in which legal values, and the ‘judicial’ nature of what they did, was central. But in interviews, several also stressed they had specialized in youth justice in order make a positive impact on the lives of young people. Even prosecutors talked of ‘recovering’ young people in difficult circumstances as central to what they did. The interests of the child as a concept seemed to play a more central part in what they saw themselves as doing than our Welsh prosecutors. From a British perspective this might be seen as privileging a ‘welfare’ approach - something traditionally contrasted with a ‘justice’ approach (where justice is seen as proportionate punishment and protecting formal legal rights). But this interest in the welfare of young people was not seen by Italian magistrates as a challenge to their views of themselves as expressing and defending legal values but an expression of it. To understand this, it needs to be remembered that the central goal of Italian youth justice as defined by the Juvenile Penal Code is the psychological and social rehabilitation of YPs and ensuring that the penal process does not interrupt or interfere with their psychological and social development. The new 1989 Code writes even more clearly into the legal fabric assumptions about the need to promote maturity by limiting the use of punishment-oriented sanctions and preventing stigmatizing effects. Punishment was sometimes said in interview to be part of the process because a just punishment is an element in re-education. But welfare and rehabilitation are not easily contrasted with justice when justice is defined by the Code – and never forget the central legitimating force of the Code in the civil law world – in terms of welfare and rehabilitation.

**Relationship between civil and criminal intervention.**

Another significant difference that plays in the relationship between punishment and welfare is the co-ordinate civil and criminal jurisdiction of prosecutors and juvenile judges. Judges that sit in criminal cases will spend most of their time dealing with minors in civil cases and will have chosen that career path. Magistrates can ensure civil interventions are taking place alongside preliminary criminal investigations. Prosecutors can define an event as non-criminal but ensure state intervention takes place through social work intervention through the civil courts. Indeed often civil intervention is quicker than waiting to put a *messa alla prove* in place. There are practical limits to what can be done but none of the feeling in our Wales interviews that the criminal side is so much better resourced and organized that effective social intervention is better done through the criminal process.

**Assumptions about responsibility and youth**

Italian magistrates were clear that below the age of 14 young people were not mature enough to appreciate sufficiently the consequences of their action to be held criminally responsible. They stressed YPs’ limited understanding of the consequences of their acts. In part this may be a matter of intellectual sophistication. Our most sophisticated British lay magistrates could see that it was not simply understanding that one had done wrong after the event that was critical. It was a question of how far one thought through consequences at the time. But for our less sophisticated British interviewees ‘guilty’ body language or ‘fronting up’ before the court meant that the young person knew exactly what he or she was doing. This seemed to bear the mark of lay non-expert gut reaction.
Magistrates, other youth justice actors and their external environment

This double stress by magistrates - on rehabilitation and welfare as central legal values of the system and on legal values as being central to their self-identity and status within the system - has to be considered in the light of magistrates’ relationships with other actors. The legal structure of the civil law judicial tradition gives relatively unambiguous power to the professional magistracy to direct social workers and police officers in pre-trial investigation. Rather than multi-agency working where there is not supposed to be a dominant player (England and Wales), in Italy that is exactly what magistrates are supposed to be. In interviews, magistrates saw themselves leading the youth justice network with police and social workers clearly seen as supportive of the main magisterial role. Prosecutors talked of explaining to the police the distinctive characteristics and functions of youth justice and the advantage of developing special police sections dealing with minors where these ideas were better understood. Thus ‘recovering’ children as a function of the system was one defined by magistrates and conveyed to police.

The importance of this is in shaping the cool expert ‘tone’ of youth justice in Italy. This ‘tonal’ factor is reinforced by the complete absence of the unqualified layman in a judicial role: the only lay persons to sit with professional magistrates in Italy are ‘expert’ lay-judges (with professional backgrounds in education or child psychology). This has implications for the relationship between the actors within the system and their external environment. When asked what the consequences of following an ‘Italian’ approach in South Wales might be, many lay magistrates were quite clear that their function was in part to reflect the opinions of the communities which they in some sense ‘represented’. And even for those magistrates who could see the logic of the Italian position, public opinion would not allow them to pursue a less punitive or more diversionary policy. In contrast, public opinion played little or no part in the thinking of the Italian magistrates whose self-image of legitimacy derived not from any claims to popular representation but rather from their role as bearers of the law. David Garland in recent work has charted within the Anglo-Saxon world a move away from a cool expert-dominated vision of penal justice to a more emotional and political penal justice shaped much more by mass media and public opinion. This seems to find less easy expression in Italy when the key decision-makers are all expert professionals finding legitimation for their decisions in the values of the law or a child-related profession. Further, there is no politically powerful victims’ movement, no equivalent of the British tabloid media, and the social power of the professional magistracy and expert lay judge is more potent in the defence of a ‘cooler’ approach.

Family and Community

Not surprisingly perceptions of family and community played a key part in decision-making as revealed by case-files and interviews. Magistrates in Wales were forceful in their view that the ‘collapse of the family’ meant the solution of problems could not be left to parents. We used a minor shoplifting vignette where YP had two previous similar convictions but where the family is said to be solid and supportive. Yet British interviewees characteristically asserted that this could not be right: there must be something wrong at home or there would not be such offending. Thus it was not accepted that a phase of minor offending might be something of no great significance in the longer term, out of which the young person might grow. Thus minor acts of delinquency were invested with a high degree of social significance. Italian attitudes started from a ‘default setting’ that the vast majority of acts of delinquency required no criminal state intervention and could be left to the family and community. Case-files and interviews showed a strong separation between the family background of most offenders and that of specific social categories (essentially immigrants, gypsies and organized crime families) where the family could not be ‘trusted’. These offenders were very likely to be defined as requiring state intervention but also to be defined as ‘beyond hope’ for community social intervention and thus ended in custody.

As we begin to contextualise and theorize these different perceptions of the resources of the community available to deal with youth crime, it already seems clear that they have some roots in reality. The relative strength of the Italian family and the social status and priority accorded to parenting is important and not just a myth. It must also be seen in the context of an Italian economy built around small businesses for which recruitment is largely
in formal. Informal channels (through friends or the extended family) frequently provided the evidence of community reaction that justified limited state intervention.

**Evaluating limited intervention**

At this stage and with limited space we can only hint at the issues. When asked how Italian youth justice achieves ‘responsibilization,’ magistrates argued that is not conviction or punishment that responsibilizes but interaction with the state. There seemed to be a paternalist cultural confidence about the viability of communication between state and youth that contrasted with a more pessimistic view from British respondents.

However, the great absent from Italian youth justice was the victim. Reparative initiatives were starting but hard to reconcile with the centre-stage dominance of judicial discretion and judgement.

**ACTIVITIES**

Seminar papers or lectures have been given by Nelken in Macerata in 2002 and Edinburgh, Leeds and Melbourne in 2003. Field gave a lecture and participated in a round-table discussion in Rennes in 2003. Holgate attended Cynnydd conferences (all Wales Youth Justice organisation) in March and October 2002 as well as Nacro conferences.

**OUTPUTS**

Two papers published:


We will

present papers to the leading relevant academic conferences such as Socio-Legal Studies Association, Law and Society Association, British Criminology Conference and conferences of local practitioners and policy makers such as Cynedd (Wales Youth Justice organisation).

publish academic papers in relevant leading journals such as British Journal of Criminology, Punishment and Society, Howard Journal, Theoretical Criminology, Criminal Justice.

present our findings to relevant policy makers and practitioners such as South Wales police, magistrates, YOT team members and Crown Prosecutors.

**IMPACTS**

Findings presented to local practitioners will be used to develop best practice and reduce unjustified variations (‘justice by geography’).

**FUTURE RESEARCH PRIORITIES**

   concept of ‘engagement’ in England and Wales;

   relationship between civil and criminal jurisdictions and the extent to which ‘responsibilization’ can or should occur outside formal criminal prosecution processes.