The Neglect of Power and Rights: A Response to 'Problem-Solving'

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Introduction

Rob Allen's title suggests the classical punitive approach to children in conflict with the law has persisted and a non-criminalising, innovative approach is necessary. This he characterises – but never defines - as 'problem solving'. What or who constitutes 'the problem' or whose responsibility it is to provide practical and material means to secure its solution are implicit. They are given no structural context beyond a brief, limited critique of state institutions. Allen (2006: 12) rightly criticises education, by which he means schooling, as 'not meeting the needs of children who offend'. Challenging school exclusions as a response to truancy and 'misbehaviour in schools' he proposes a 'wide range of restorative and problem-solving techniques' for resolving 'conflicts between pupils and pupils and staff' (ibid: 13). Presumably the emphasis shifts from institutional disengagement through punishment and exclusion to engagement through mediation and counselling.

Allen's second concern is the 'simply inadequate' mental health services that leave problems 'undetected or untreated' (ibid: 14). He then considers criminal justice: raising the age of criminal responsibility; promoting diversion; avoiding criminalisation; reducing prosecution. His unquestioning acceptance of family group conferencing and restorative justice appears central to his 'problem-solving approach'. It seems straightforward: 'aim to require the young person to accept responsibility for their conduct, make an apology to the victim and to undertake appropriate forms of reparation' (ibid: 20).

For 'serious and persistent offenders' the priorities are: reduction in the imprisonment of children and young people; a residential training in open conditions; placements in health and educational facilities. Secure facilities would be radically reformed to 'provide a safe and positive experience' in 'child-centred regimes' (ibid: 25). Other proposals include: ending of prison custody for 15-16 year olds; introduction of special units for 17 year olds; coherent and integrated management leadership. In aspiring to a 'more sensible approach for responses to children' Allen looks to DfES 'positive outcomes': 'being healthy, staying safe, enjoying and achieving and economic well-being' (ibid: 30). Extending these outcomes to 'offenders' presents the challenge of 'integrat[ing] both prevention and rehabilitation' with 'mainstream' children's services (ibid: 31).

Allen notes that young people in conflict with the law are typified by 'low education attainment, disrupted family backgrounds, behavioural and mental health problems … alcohol and drug misuse' (ibid: 23). Remarkably, given available critical research, he ignores: political and

economic marginalisation - particularly the 'race' - class intersection; gender roles and expectations; legacies of racial, ethnic and sectarian conflict; the impact of poverty in a society of immense wealth, acquisition and privilege; differential educational or work opportunities; under-resourced welfare; institutionalised pathologisation – personal, cultural and social. He makes only a passing comment on the contribution of media representation and political opportunism to the criminalisation of children and young people.

Moral Renewal
In June 2006 the UK Prime Minister spoke on the 'future' of the nation and criminal justice, 'the culmination of a personal journey' (Blair 2006: 85). Representing the interests of 'ordinary, decent law-abiding folk' (ibid: 86), who 'play by the rules' (ibid: 92), he bemoaned the 'absence of a proper, considered intellectual and political debate' on liberty and the urgent need for a 'rational' return to 'first principles' (ibid: 87). Critical analyses from left academics amounted to 'intellectual convulsions' proposing recidivism as 'entirely structural'. The 'political right' considered crime 'entirely a matter of individual wickedness'. Between these extremes 'rational' analysis had emerged; the 'conventional position' of 'New Labour' (ibid: 89). To achieve its mission a 'complete change of mindset' was required, an 'avowed, articulated determination to make protection of the law-abiding public the priority' measured 'not by the theory of the textbook but by the reality of the street and community in which real people live real lives' (ibid: 93). Despite calling for an informed, intellectual debate Blair caricatured those who research and work in communities as theorists detached from reality.

Blair noted the dissolution of society's 'moral underpinning' (ibid: 88) and the abandonment of the 'fixed order community' (ibid: 89) through 'loosened ... ties of home', changes in 'family structure', increased divorce rates, single person households and a reduction in the 'disciplines of informal control'. New Labour's 'tough on crime' agenda has been driven consistently by a moral imperative, embodying dubious assumptions that traditionally personal hardship was matched by collective benevolence. Men 'worked in settled occupations', women 'were usually at home' and social classes 'were fixed and defining of identity' (ibid). They constituted the bedrock on which community spirit and civic responsibility were built, reproducing social discipline through 'informal codes of conduct and order' (ibid: 88). This portrayal of law-abiding, compliant and responsible communities socialising children into the values of decency, obedience and respect does not bear scrutiny.

Earlier Blair (2002) outlined the 'Britain' inherited by New Labour: 'crime was rising, there was escalating family breakdown, and social inequalities had widened'. Neighbourhoods were 'marked by

vandalism, violent crime and the loss of civility'. The 'mutuality of duty' and the 'reciprocity of respect' had been lost; 'the moral fabric of community was unravelling'. The criminal justice system was outmoded, courts were slow and out of touch. Welfare considerations were prioritised over victims. An 'excuse culture' permeated youth justice. With police over-burdened by peripheral duties, petty crime and antisocial behaviour had escalated. Inter-agency initiatives were neither efficient nor effective and punishments no longer reflected the seriousness of offences. Four years on Blair (2006: 94) regretted that new laws had 'not been tough enough' necessitating further legislation 'that properly reflect the reality'. Only by remedying imbalances, by addressing low-level crime and broadening the definitional scope of antisocial behaviour, could 'social cohesion' be restored to 'fragmented communities'.

The message affirmed the primary responsibility of parents and other individuals in achieving safe communities, reducing crime and protecting law-abiding citizens. Taking responsibility for challenging intimidatory and abusive behaviour would secure a return 'informal controls' and safer, integrated communities. At the hub of this idealised notion of 'community' families and inter-agency partnerships would work together. In the ideology of moral renewal the corrective for crime, disruptive or disorderly behaviours is two-dimensional. First, affirming culpability and responsibility through criminal justice due process, incorporating the expectations of retribution and remorse. Second, reconstructing and supporting the values of positive families and strong communities.

For Blair, community required 'responsibilities as well as entitlements' (Gould 1998: 234). Rights, including access to state support and benefits, are the flip-side of civic responsibilities; social transactions between the 'self' and others where self-respect is attained. Blair's heir apparent, Gordon Brown, recalled his 'moral compass' being set by his parents: for 'every opportunity there was an obligation' and for 'every right there was a responsibility'.

Media Representation
In February 1993 the killing of two year old James Bulger on Merseyside unleashed a level of adult vindictiveness unprecedented in recent times. Two ten year old boys were charged with murder. Tried and convicted in an adult court, the sustained media coverage encapsulated and reflected an adult nation's demand for revenge, a sense of moral outrage closely aligned to the demand for retribution. The case became a metaphor for children's 'lost innocence' and the triumph of 'evil' over 'good'. While Prime Minister John Major urged the nation to 'condemn a little more and understand a little less' the Shadow Home Secretary, Tony Blair, warned of an imminent 'descent into moral chaos' while committing to being 'tough on the causes of crime'.

The climate in which an exceptional and tragic killing became illustrative of twin crises in the family and in childhood is well illustrated by the language of the media directed towards a generation: 'amoral childish viciousness'; 'the Mark of the Beast'; 'the Satan bug'; 'devoid of innocence'; 'undeniably corrupt'; 'savages'; 'nation of vipers'. This constituted the sharp end of a continuum of child rejection most appropriately described as child-hate, in the same vein as race-hate, misogyny or homophobia. An atypical event was recast as typifying a generation deficient in basic morality, discipline and responsibility; the atypical had transformed into the stereotypical.

In this hostile climate New Labour was elected, rushing through the 1998 Crime and Disorder Act (CDA) and establishing responsibility for crime prevention within all public agencies. The objective was early intervention - targeting children's potentially criminal behaviour while encouraging 'appropriate' parenting. To this end the CDA introduced Antisocial Behaviour Orders (ASBOs) and Parenting Orders. Rob Allen (1999: 22) identified the net-widening potential, warning that the Act 'could end up promoting rather than tackling social exclusion'. It proved prophetic.

The Authoritarian Imperative
'Moral panics' combine 'heightened emotion, fear, dread, anxiety and a strong sense of righteousness' resulting in 'tougher or renewed rules, more intense public hostility and condemnation, more laws, longer sentences, more police, more arrests and more prison cells' (Goode and Ben Yehuda 1994: 31). The now strengthened CDA epitomises the draconian potential of legislation conceived and enacted in a climate of moral panic. Our research established the punitive context under which the rhetoric of 'prevention', 'early intervention', 'positive action' and 'multi-agency strategies' became submerged. Targets were 'problem estates', 'inadequate parents', 'chaotic families', the 'Hot 100' (child offenders) and the 'Tepid 400' (associates of offenders). The initiative was undermined by: an overarching emphasis on crime and antisocial behaviour reduction; definition, assessment and management of 'risk' via 'criminogenic' indicators; tensions between proactive, welfare interventions and reactive, criminal justice interventions; failure to address poverty and under-resourced services; under-qualified staff and inexperienced management; short-term, insecure projects.

An antisocial behaviour unit coordinator in a district with low crime rates noted the 'massive pressure' exerted on the unit to achieve its first ASBO. His colleague stated, 'the more evictions and ASBOs I get, the better I'm doing'. Similarly, a city's Anti-Social Behaviour Unit strategy document claimed it 'enjoy[ed] notable success as a reactive punitive service'. As the Government's antisocial behaviour strategy unfolded there was little ambiguity in its authoritarian imperative to

'name and shame' children. The Home Office argued, endorsed by the courts, that media publicity formed a 'necessary' element in enforcement. Blair (2006: 88) confirmed this commitment: 'our antisocial behaviour legislation … deliberately echoes some of our moral categories – shame, for example that were once enforced informally'. In the North of Ireland, young people are beaten by paramilitaries, their families exiled and their names written up on gable-end walls as the chilling extreme of 'informal' enforcement.

Children as young as 10 have been photographed, named and shamed in the media, on local authority leaflets and in shop windows. Headlines include: 'THUG AT THIRTEEN'; 'FIRST YOBBO TO BE BARRED'; 'GET OUT AND STAY OUT'; 'YOUNGEST THUG IN BRITAIN'. Our research noted that solicitors and magistrates had little understanding of procedures, particularly regarding reporting restrictions. Threats were made arbitrarily by local authority officials, police officers and community wardens to intimidate children. They feared being 'fitted up' and struggled to keep the conditions imposed. Families lived in fear of being reported by neighbours, of being evicted should their children breach conditions imposed by the courts. And many children now go to prison having never been convicted of a crime other than breach.

These disturbing developments astonished Alvaro Gil-Robles, European Human Rights Commissioner. He expressed 'surprise' at official 'enthusiasm' for the 'novel extension of civil orders' (Gil-Robles 2005: 34). Likening ASBOs to 'personalised penal codes, where non-criminal behaviour becomes criminal for individuals who have incurred the wrath of the community' he questioned 'the appropriateness of empowering local residents to take such matters into their own hands' (ibid: 35). Disproportionately used against children, ASBOs brought children to the 'portal of the criminal justice system'. Their subsequent stigmatisation, imprisonment for breach and inevitable alienation risked entrenchment of 'their errant behaviour'. Widespread publicity of cases involving children was 'entirely disproportionate' in 'aggressively inform[ing] members of the community who have no knowledge of the offending behaviour' and had 'no need to know'. He 'hoped' for some respite from the 'burst of ASBO-mania' with civil orders 'limited to appropriate and serious cases'.

'Problem-Solving'?
Despite Rob Allen's intention to seek effective solutions, his 'new approach' is clothed in 'old' theoretical, methodological and political constructions. Proposals for policy reform, practices and interventions in a vacuum deny the realities and dynamics of endemic exploitation, violence and despair endured in increasingly marginalised and impoverished communities. As with New Labour, emphasis is directed towards personal and social responsibility inevitably pathologising

individuals, families and communities. Blair's concept of 'strong community' is rhetorical and aspirational, neglecting conflict in communities riven and dislocated by deep, structural inequalities evident in poverty, racism, sectarianism, misogyny and homophobia. Reconfiguring governance, focus and direction of public services, however radical, deals only with surface issues.

Yet the full spectrum of disruptive behaviours is spawned and ignited by political-economic marginalisation and criminalisation. The combination of material deprivation, restricted opportunity, access to drugs and alcohol, conflict and violence directed against the self and others, damages self esteem and destroys lives. Significantly, children and young people witness the rhetoric of inclusion and stake-holding, knowing they are peripheral, rarely consulted and regularly vilified. They experience disrespect as daily reality.

Allen's proposals for policy reform in schooling, mental health and criminal justice carry positive outcomes for some children and their families. Yet children's petty offending, truancy and antisocial behaviour can be addressed only through community development work responsive to their lack of power, rights and participation in decisions that affect their lives. It is instructive that children's rights, economic and social, civil and political, have no part in Allen's 'new approach'. This reflects a growing political dissociation with rights as foundational. While rights discourse, provision and implementation cannot redress endemic structural inequalities endemic, a 'regime of rights is one of the weak's greatest resources' (Freeman 2000: 279-80).

The institutional backlash against children and young people has brought egregious breaches of international conventions and standards, undermining the 'best interests' principle, presumption of innocence, due process, the right to a fair trial and access to legal representation. Also significant are: separation from parents; freedom of expression; freedom of association; protection of privacy. Naming and shaming seriously compromises child protection and imprisonment for breaching civil orders abandons the principle of custody as a last resort. In the North of Ireland context harsh measures alongside the realities of paramilitary beatings and the conflict's legacy endangers children's right to life while failing to protect against trauma, abuse and neglect. Together these breaches reveal a serious lack of concern for children's rights and no affirmation of their rights to consultation and participation in decisions determining their destinies. Without addressing power differentials and rights abuses central to the marginalisation and exclusion of children in conflict with the law, Rob Allen's 'problem-solving' and New Labour's 'moral renewal' are each inherently deficient.

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