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## **TO WHAT EXTENT HAS MUNCIE'S 'PUNITIVE TURN' BECOME A GLOBAL TREND IN INTERNATIONAL YOUTH JUSTICE?**

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**Keywords:** Punitive Turn, Youth Justice, Criminal Responsibility, Restorative Justice, Welfare.

### **Introduction**

Youth justice is still a fairly new aspect of the criminal justice system in England and Wales and the rest of the world. It was established on the premise that children and adults should be dealt with differently and separately in the criminal justice process, and since then a welfare model of youth justice has typically prevailed on an international level, with an emphasis upon the individual's needs. However, Muncie (2008) argues that this is no longer the case. He believes that youth justice is currently undergoing a 'punitive turn', which has a much heavier focus upon the punishment of the offender and has moved away from the previously employed welfare initiatives. This article seeks to explore the extent of this 'punitive turn' within youth justice. To achieve this, an adaptation of John Muncie's analytical framework of globalisation and convergence shall be employed, as well as his framework for cultural divergence. To explore just how far there is global convergence within youth justice policy in an international forum, this article will explore the issues of adulteration within youth justice, penal expansionism, and the dwindling use of welfare-based approaches of disposal for young offenders. Following each segment, the arguments for socio-political and cultural divergence will be

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put forward, with a strong emphasis upon the diverse ages of criminal responsibility, the still present use of welfare principles in many countries, and the growth of interest in the principles of restorative justice.

## **1 The Punitive Turn**

In his 2008 work *The 'Punitive Turn' in Juvenile Justice: Cultures of Control and Rights Compliance in Western Europe and the USA*, John Muncie asserts that world youth justice policy has taken a 'punitive turn', as there has become a much larger emphasis upon the use of punishment for young offenders. This differs inherently from the stance of previous youth justice policies, which dominated in the 1970s and early 1980s. Previous policy focused intently on the welfare of deviant children who needed to be protected from the full weight of the adult law (Muncie, 2005), achieved by emphasising a child's vulnerability and lack of awareness for the consequences of their actions (Muncie, 2008b). It fixated upon the child's 'criminogenic needs' and the need to change the offender's behaviour. This was done by concentrating on tackling the offence, rather than the offender (Muncie, 2009).

However, since this period, youth justice policy has been in a constant state of flux. Since the turn of the century, youth justice policy has become increasingly complex and has started to 'unravel' the welfare initiatives previously employed; governments across the world began to recognise that young offenders should be dealt with through control via the criminal justice system, rather than by caring for them under a welfare methodology (Muncie and Goldson, 2009). For Muncie, the 'punitive turn' originated in the USA, when the 'youth problem' came to the forefront of the political spectrum during the 1990s (Wacquant, 1999, in Muncie, 2008). This led to the increasing use of custody as a response to young offenders – a notion which was previously seen as a last resort – which Muncie saw as the 'diminution of the social or welfare state... and the expansion of a penal or punitive state' (2008a: 107). Muncie's work proceeds to argue that this 'punitive turn' has expanded and been implemented into youth justice policy in the United Kingdom, as well as much of Western Europe, a conclusion which is widely supported by the likes of Junger-Tas (2006). This article will now consider to what extent the 'punitive turn' has become an international phenomenon – or as Muncie put it a 'global punitive turn' (2009) – rather than something confined to the USA and UK.

## **2 An International Phenomenon?**

The *Dictionary of Youth Justice* defines adulteration as follows:

The unravelling of those processes of youth justice that were based on the recognition that children and young people should be dealt with separately and differently from adult offenders, in recognition of age-related differences in levels of capacity, competence, responsibility and maturity. (Muncie, 2008b)

It emphasises a move away from welfare methods of dealing with juveniles to a more justice focused model, which shows a number of parallels with the adult criminal justice system (Fionda, 1998; Muncie, 2009). The adulteration of youths is very prominent in the UK, as, bar Scotland, it has the lowest age of criminal responsibility across Europe at just ten years old. Adulteration in the UK began to occur in the 1990s; youths were heavily demonised by the media following the murder of James Bulger by Jon Venables and Robert Thompson, both ten years old. This inevitably led to the reduction of the age of criminal responsibility from 14 and the abolition of the principle of *doli incapax* (the presumption that children under this age could not be criminally liable) (Moore, 2000).

Unsurprisingly, the USA has incorporated adulteration on a much larger scale than anywhere else, with the highest rates of juvenile incarceration anywhere in the world. In 2006, 105,635 juveniles were incarcerated in a number of facilities (Muncie, 2008b). In addition, the USA has created laws to allow for the transfer of youths into the adult courts, which directly breeches the United Nations Convention on the Rights of the Child (UNCRC); Snyder has reported that approximately 200,000 children are processed as adults in the courts each year (2002). This has meant that in some states children as young as seven have been prosecuted and sentenced as adults (Muncie and Goldson, 2009). Adulteration is not just a British and American phenomenon, as it is also present across Europe, with the majority of continental jurisdictions having equally low ages of criminal responsibility. The UK, Northern Ireland and Australia have set the age of criminal responsibility at just ten; Turkey, Ireland, Canada and the Netherlands at 12; France, Greece and Poland at 13; and another ten European countries consider 14 to be appropriate (Muncie and Goldson, 2009). Even Japan, which is regarded as having the greatest welfare-based approach to juvenile justice, shows the effects of adulteration.

After a spate of murders by juveniles, Japan's Juvenile Law was changed in 2000 (Fenwick, 2009), reducing the age of criminal responsibility from 16 to 14 (Muncie and Goldson, 2009). Scotland has the lowest age of criminal responsibility in the entire world, with children as young as eight eligible to be processed through the criminal justice system. However, it is key to highlight that although Scotland appears to have the most punitive youth justice policy, many offending juveniles are not dealt with via criminal justice until the age of sixteen; anyone under this age is typically dealt with by welfare tribunals (McAra, 2009).

Although there is strong evidence to contend that on an international scale the threshold for criminal responsibility – and in turn the definition of 'child' – is becoming more restrictive, this is not a fully implemented concept. Whilst it is difficult to ignore that more and more countries have begun to align the age at which they prosecute delinquent children, some countries have kept their ages constant, while some have even increased it. Muncie (2008a) supports this notion, highlighting that both Belgium and Luxembourg will not prosecute any child under the age of 18, in compliance with the recommendation of the European Convention, as they classify that no child should be liable to criminal sanctions (a child being anyone under the age of 18). Furthermore, Muncie also highlights that four of the countries listed in his research have raised their age of criminal responsibility – a complete reversal of the 'adulteration' process. These countries include Switzerland, who in 2006 raised the age from seven to ten; Ireland, which increased its age from seven to 12 in 2001; Spain, which raised their age for criminal responsibility from 12 to 14 in 2001; and finally Norway, which raised its age from 14 to 15 in 1990 (Muncie, 2008a). These statistics partially discredit the notion of global convergence, in terms of the acceptance and implementation of the 'punitive turn'. This research shows that there is still some level of divergence present in modern youth justice policy.

### **3 Penal Expansionism**

A factor which suggests global convergence of the 'punitive turn' is the high levels of 'penal expansionism' reported across the international youth justice forum. Penal expansionism is the increasing use of penal sanctions and punishment, namely the use of custody, as a means of dealing with young offenders. Re-penalisation has drastically increased over Europe in the last decade, as many countries have seen a drift towards

more punitive responses to youth offenders (Muncie, 2009). Cavadino and Dignan have argued that in many western countries there is a 'global penal crisis', with serious overcrowding in prisons (2009:43). This is strongly supported by the 2006 prison population list compiled by Walmsley, which showed that over 200 of the countries examined had increased their intake of offenders into incarceration facilities by 73 per. cent. Following this, in his 2009 work, Walmsley reported that in Europe alone there was a 68 per. cent. increase from the 2006 prison list, with an outstanding increase of 83 per. cent. in the Americas (Canada, North America, Central America, and South America) (Walmsley 2009: 1). Although Walmsley does not specifically tell us the rates of youth custody, his work does represent the overall rise in the use of penal sanctions as a response to crime and deviance.

However, there are other issues surrounding the comparability of Walmsley's work, which he himself draws attention to. Due to the extensive scale of Walmsley's article and the differential times in which the data was collected, a direct comparison between prison populations cannot be conducted. Furthermore, as Muncie and Goldson (2009) have stated, some of these statistics also include individuals held in prison on remand. Nevertheless, this does not detract from the fact that this work demonstrates that worldwide penal expansionism is occurring. In addition, the evidence of Pakes (2000) has shown that penal expansionism and re-penalisation have occurred in countries such as the Netherlands, where an extreme reversal in their juvenile policy has occurred. From the mid-1980s onwards, the Netherlands embarked upon a dramatic prison building programme in order to deliver longer sentences to juvenile offenders (Muncie, 2009). In England and Wales, penal expansionism has also been apparent and the juvenile custody rate has been increasing at a steady pace since the 1990s. After the enactment of the Criminal Justice Act 1993, there was a dramatic increase in the level youth custody in England and Wales, with a 30 per cent increase in the level of under 18s incarcerated between 1995 and 1996 alone (White and Woodbridge, 1998). Penal expansionism has also occurred in Australia. For example, in 1992, Western Australia introduced a range of mandatory sentences for juvenile offenders to deal with the rising levels of delinquency amongst aboriginal children, who are regarded as being 18.5 times more likely to be incarcerated than the typical Australian child (Raynor, 2005).

#### **4 Restorative Justice, Reconciliation and Conflict Resolution**

Although it is apparent that the punitive turn has brought with it a decrease in the use of welfare-based disposals for juvenile offenders, some research has highlighted that there has been a growing interest in the use of restorative justice, reconciliation and conflict resolution in recent years. The concept of restorative justice was first conceptualised in New Zealand by the Maori society and focused solely upon restoring juvenile offenders back into the community by enforcing 'informal social control mechanisms' (Crawford and Newburn, 2003: 23). Since the enactment of the Young Persons and their Families Act 1989, New Zealand has introduced family group conferencing as an alternative to court proceedings for young offenders (Bratt, 1996). This has led to high levels of juvenile diversion from the courts since these conferences are headed by welfare representatives. In recent years, there has been an influx of restorative justice practices throughout European countries as an adaptation of the New Zealand model; this can partly be attributed to the United Nations Economic and Social Council resolution of 1999, encouraging member states to use 'mediation and restorative justice in appropriate cases' (Crawford and Newburn, 2003: 23).

At present, aspects of restorative justice and family group conferencing are being employed in the UK as a method of pre-court disposal for young offenders, and have been in place since the 1990s (Gill, 2008). However, unlike New Zealand, conferencing has developed outside of the statutory framework (Crawford and Newburn, 2003). Restorative justice has also become common practice in Australia, as conferencing is used as a form of cautioning by the police, as well as being police-led. Although the Australian version of restorative justice, and conflict resolution, is not as rigorously implemented as its New Zealand counterpart, 'it has been found in some form in all jurisdictions across Australia', thus showing a well-founded dedication by youth justice agencies (Crawford and Newburn, 2003: 29). Finally, aspects of restoration, reconciliation and conflict resolution have been found in Japan, as Japanese culture embraces the notions of restorative justice as it is centred on the community and builds on the notions of the community coming together to correct delinquent behaviours (Haley, 1996).

## **5 The Diminishing Use of Welfare-based Approaches**

A final point which supports Muncie's theory of international convergence of the 'punitive turn' in juvenile justice is the diminishing use of welfare-based approaches. Since the rise of the punitive turn, which Muncie and Goldson date from the 1980s, there has been a decline in the use of welfare-based disposals for juvenile delinquents (2009). This has been mirrored by a shift in the priorities of youth justice agencies throughout the world. The principles of welfare, as well as those of the UNCRC, state that children should be protected and their needs met. However, Fionda (1998) contends that in the UK a series of legislative changes within youth justice led to a 'blindness' regarding the limited responsibility of child offenders, which in turn meant that more children were dealt with via criminal justice agencies, rather than through social services and the education authorities. This is also the case in Canada, where, in most states, the key aims of the youth justice authorities have focused more on the protection of the public, rather than the child's 'best interests'. This has manifested itself more severely in the USA, where a much harsher sentencing process sometimes results children aged 14 and above can be imposed with an adult sentence (Muncie and Goldson, 2009). Another reason for the diminution of welfare in juvenile justice can be linked to the growing emphasis in many westernised countries for the 'responsibilisation' of children, which is heavily influenced by 'actuarial justice' and the increasing use of 'risk management'. This became prominent in the UK after the 1997 election of the New Labour government, which focused upon the rights and responsibilities of individuals. Beck (1992) stated that we live in a 'risk society', which, since the punitive turn, has become heavily intertwined in youth justice policy. The increasing use of this type of policy has been noted by Bateman and Pitts who stated that 'one of the defining features of contemporary youth justice is its emphasis upon "evidence"... policy must be "evidence-led" and practice, "evidence-based"' (2005, cited in Case 2007:91).

In many countries the welfare ideal is still present and used as the predominant method to dispose for juvenile offenders, a concept which is wholeheartedly endorsed by the UNCRC. A prime example of welfare approaches being used to deal with young offenders can be clearly seen in the Norwegian government's response to the murder of Silje Raedergard, a five year old girl who was beaten to death by three young boys in



1994. This case was deemed to be very similar to that of the murder of James Bulger a year earlier; however, the young offenders in this case were dealt with through a multitude of welfare-based approaches, which emerged from society's need to explore the complexities of the case, rather than just condemning the children as 'evil' (Franklin and Petley, 1996). This meant that all three boys were dealt through the health service and social services, as there was a strong sense that all the boys were too young, and so were deemed to not fully understand the consequences of their actions. Maclure et. al. (2003) have highlighted that the Canadian Courts, particularly those in Ontario, have begun using more welfare-based disposals for juvenile offenders. The Alternative Measures programme was introduced by the Young Offenders Act 1984 and is an alternative to the available court sentences for young offenders, which aims to address the needs of the juvenile placed in it. The programme is a 'post-charge' measure for those who have been formally charged by the Police Service, and is only given to juveniles who accept responsibility for their actions (Maclure et. al., 2003: 138). Welfare can also be seen to be heavily dominant in countries such as Belgium and Luxembourg who deal with all juvenile offenders under the age of criminal responsibility (18) through the welfare system, rather than the criminal justice system. For example, in Belgium, the Youth Protection Act 1965 enacted that, with few exceptions, no child under the age of 18 would be punished for committing an act defined as an offence but would instead be referred to social services (Put and Walgrave, 2009).

## **Conclusion**

After examining the extent to which Muncie's 'punitive turn' has become a global phenomenon, it can be concluded that there is strong evidence to support his work. Evidence shows that there has been a global alignment with the USA's punitive policy for juveniles, with many countries worldwide reducing the age of criminal responsibility as well as severely diminishing the number of welfare-based disposal methods available to the youth justice system. In turn, this has led to a dramatic increase in the prison population of under 18s, as well as a decrease in the use of welfare-based disposals by the courts. However, it has also been noted that not all countries have succumbed to this 'punitive turn', but have instead strongly resisted introducing penal policy into their youth justice systems. Many jurisdictions, particularly the 'Benelux' countries, have sought to keep with the tradition of welfare, and divert their juveniles from the criminal justice

system and instead treat them on a needs basis. Despite the efforts of these countries, however, we can see that Muncie's 'punitive turn' has more or less become a global trend, with the majority of countries now favouring a stance of punishment and retribution, over one of welfare and protectionism.

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