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# Policing Youth Anti-Social Behaviour and Crime: Time for Reform?

Tim Newburn<sup>1</sup>

## Abstract

Like many other reviews of youth justice, and proposals for reform, *Time For a Fresh Start* has relatively little to say about policing. Though understandable in some respects this nonetheless represents something of a missed opportunity. As gate-keepers and agenda-setters for much of the remainder of the criminal justice system, the police occupy a key position and this article consequently argues that reform programmes must focus upon the role the police play in regulating the flow of young people into the justice system. More particularly, it argues that we need to rehabilitate the idea of 'diversion' and, in particular, to rescue it from the one-sided picture that became dominant from the mid-1990s onward.

**Keywords:** Youth crime; anti-social behaviour; policing; reform

## Introduction

The main argument in this article is a straightforward one. It begins with the simple observation that the recently published Independent Commission report – *Time for a Fresh Start* – like many previous reports advocating reform of youth justice, has relatively little to say about the role of the police. Despite its many other strengths, this relative absence of comment on policing represents a missed opportunity. That is, without engagement with the role of the police – in relation to such issues as their day-to-day interactions with young people, stop and search practices, responses to 'pre-criminal', antisocial behaviour, the operation of cautioning systems and, more generally, their role as gatekeepers to the criminal justice system – efforts at reform will be at best incomplete. My argument, therefore, is not with what the Independent Commission has to say – much of which I agree with – but largely with what it doesn't say. In short, my view, hardly a novel or a controversial one, is that much of what happens in the youth justice system depends upon a series of decisions taken earlier by the police. These decisions – how best to respond to allegations of anti-social or criminal behaviour, whether or not to stop and search (and how often), when to issue reprimands or final warnings, whether to arrest and construct cases for consideration by the Crown Prosecution Service – all have a potentially dramatic effect on the later operation of the youth justice system. Because the police are indisputably the principal gatekeepers to the youth justice system any radical review of the ways in which youth antisocial behaviour and crime are dealt with must, therefore, address the role of the police as well as the institutions and procedures more usually associated with the youth justice system.

At its crudest, this is simply an argument about numbers. The fewer young people that filter through from the police to the youth justice system, the fewer there are who can be subjected to formal intervention (anything from restorative justice to incarceration). This is the simple old-fashioned argument that diversion from the criminal justice system may, at a very general level, be desirable and that scaling down certain police

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<sup>1</sup> I am indebted to Rod Morgan for considerable assistance with this article and to the anonymous readers for thoughtful comments on an initial draft.

activities may be a necessary part of overall reform. Looked at from a broader perspective – that is beyond the questions of gatekeeping and diversion - my argument is that an overhaul of the operation of the youth justice system, if it is to be far-reaching, requires the ‘buy-in’ of all its major institutions – including the police. Without police involvement and agreement, reforms to other aspects of the system will be at best mitigated and at worst undermined. I return to these two points below, but first a word about the report itself.

### ***Time for a Fresh Start***

It is not necessary to review the full range of the Commission’s recommendations. Rather, I wish to draw attention to those aspects of the report which, *ceteris paribus*, might be expected to lead to some observations on the role of the police. The Independent Commission identifies three primary principles - prevention, restoration and integration – each of which has implications for how the police operate. In relation to prevention, it reviews the by now copious literature on risk and protective factors and argues that there exist ‘crucial and underexploited opportunities...to prevent prolific, serious and violent offending careers’ (2010: 41). Intervening early is a cost-effective option the Commission argues, though in doing so, it acknowledges, it is vital to avoid stigma by not employing labels like ‘potential criminals’.

A substantial element of the Commission’s report is given over to the second principle: restoration. In this connection it highlights the potential illustrated by Northern Ireland’s Youth Conference Service, a youth justice-based restorative justice initiative working on referral from the Public Prosecution Service or as a result of a court order. The Commission also presses for greater use of informal responses to antisocial behaviour such as the youth restorative disposal (YRD) currently being piloted in eight police forces in England and Wales, and greater use of ‘triage’ procedures within police stations, enabling YOT workers to assess the ‘risk’ presented by particular young offenders and tailoring responses accordingly. Such schemes, where they work particularly well, the Commission argues, make a significant contribution to reducing the number of ‘first-time entrants’ to the youth court.

The Commission’s third principle is ‘integration’. Underpinning this, the Commission argues, are three subsidiary principles: that sanctions and other consequences of intervention should be proportionate; that custody should be used as a last resort; and that responses to youth offending should do no harm. Beyond these underlying assumptions, the Commission suggests that it should be realistic in future to hold fewer than 1000 young people in prison at any one time (at the time of writing there are 2,100), abolish the shortest custodial sentences, amend the Rehabilitation of Offenders Act so that ‘non-persistent offenders are given a clean sheet at, or not long after, their 18<sup>th</sup> birthday’ and institute ‘buffer periods’ of perhaps two years for those who have been in custody whereby it would no longer be necessary to disclose their conviction to an employer if there have been no further convictions during this period (2010: 81).

In all this the Commission has relatively little to say about the police or about policing. This is in some respects understandable, but it represents an opportunity missed. The Commission’s main references to policing are primarily in relation to restorative justice initiatives (including the YRD). There are references to stop and search and disproportionality (pp.14; 89); cautioning and discretion (p.31), victimization (p.47) and general relationships between the police and young people (p.89). But, in the main, these references are fleeting. What might the Commission have said or proposed? In what follows, my observations are divided

into two main parts. In the first, I want to return to the importance of the police role as gatekeepers to criminal justice. My remarks here will focus primarily on the recent history of cautioning, the police role in responding to antisocial behaviour, and the broader question of the police role in influencing recent patterns of first time entrants into the criminal justice system. In the second section I turn my attention to the possible impact of government policy in relation to policing and criminal justice, and offer some speculative comments on how developments such as budget restrictions, the Green Paper proposals on devolving to local authorities certain costs relating to youth justice, the future of neighbourhood policing, and the proposed introduction of Policing and Crime Commissioners might affect the general territory of youth justice, and the Independent Commission's proposals more particularly.

### ***The Police and Young People***

Let us begin at the same point as the Independent Commission: that the focus should be upon instituting changes which will enable 'a continuing decline in the number of children and young people appearing in criminal courts and in custody' (2010: 17; and see Smith, 2010a). I agree with much that the Commission urges by way of reform: much greater emphasis on restorative approaches (though in the absence of significant victim involvement in such processes there are doubts as to how truly 'restorative' they are); increasing investment in early preventative activities; and reforms to community-based sanctioning. However, the Commission misses an opportunity by failing to address in any detail what currently happens at the earliest stages of the criminal justice process – such as the use of out-of-court warnings and penalties – as well as what happens in police-youth interactions prior to any criminal justice intervention. A growing body of research evidence appears to confirm aspects of labelling and social reaction theory regarding the importance of 'diversion', particularly in the lives of children at risk of criminalisation.

Contact with the police is a far from unusual occurrence for certain categories of young people (McAra and McVeigh, 2005). Research suggests that young working-class males, especially from ethnic minorities, who have an active 'street life' – or who exhibit what in some contexts has simply been termed 'availability' (MVA and Miller, 2000) - are particularly likely to experience 'adversarial' contact with the police (Aye Maung, 1995; Flood-Page et al, 2000). McAra and McVie's (2005) Edinburgh-based research offers evidence that the police disproportionately target the 'usual suspects'. Whilst they are in the first instance 'suspects' because of their behaviour (including often the volume and seriousness of their alleged offending), 'once identified as a trouble-maker, this *status* appears to suck young people into a spiral of amplified contact, *regardless* of whether they continue to be involved in serious levels of offending' (2005: 9). Their conclusion from the analysis of police-youth interaction suggests that although the police in some respects adhere to the Kilbrandon<sup>2</sup> aim of avoiding the criminalization of young people, nevertheless an unintended outcome of their available discretion is the creation of a stigmatized 'permanent suspect population' (2005: 27) of young people. Similar patterns can be seen in relation to the contested territory of stop and search, and although the Independent Commission commends the NPIA's 'Next Steps' initiative<sup>3</sup> in attempting to increase the 'fairness' of use of such police powers, it offers no real comment on the very substantial expansion in stop

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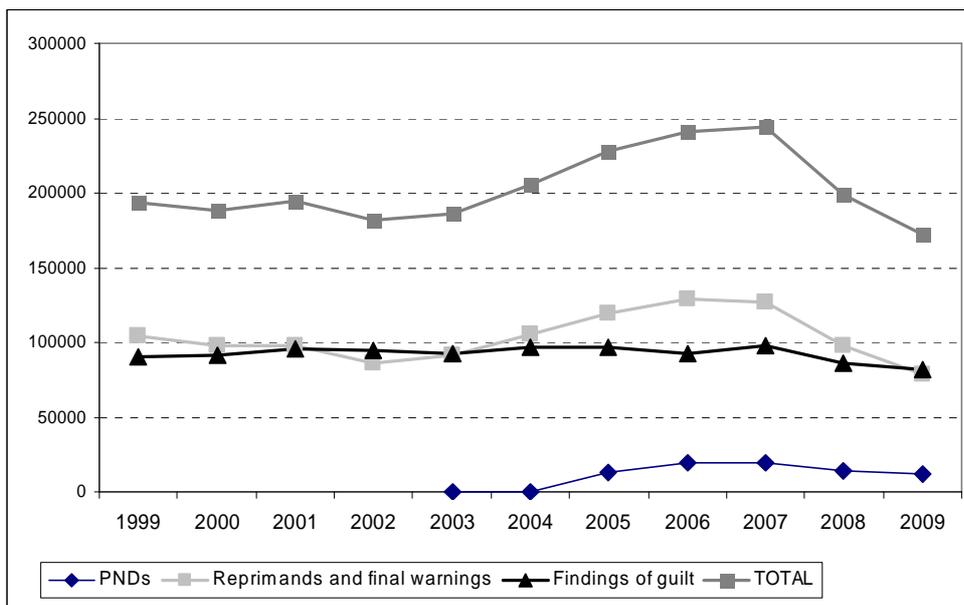
<sup>2</sup> After the chairman, Lord Kilbrandon, of a Committee of Inquiry in Scotland into the treatment of young people in trouble or at risk. Established in 1960, it reported in 1964 and led, via the Social Work (Scotland) Act 1968, to the establishment of the Scottish Children's Hearings System.

<sup>3</sup> Described by Baroness Neville-Jones in parliament as, 'a diagnostic tool to ensure that a force's use of stop and search is not driven by other unjustified factors such as discrimination or stereotyping', <http://services.parliament.uk/hansard/Lords/ByDate/20100712/writtenanswers/part028.html> (accessed 31.1.11)

and search powers in the quarter century since the passage of PACE. A return to something closer to the immediate post-PACE position would significantly enhance efforts at limiting the criminalisation of young people (Bowling and Phillips, 2007).

Turning to more formal interventions, the Government has noted that the criminal sanctioning of young people aged under 18 has in the last few years declined markedly. From a high point in 2007 when over 240,000 young people were sanctioned, the number had dropped by a quarter, to roughly 172,000 two years later (Ministry of Justice, 2010a). This is by any measure a very substantial drop and there are good reasons to believe that this shift is less a product of any changes in youth criminal behaviour and is more to do with the way in which the youth justice system and, crucially, the police, are managed and operate. Fig. A illustrates the changes over the last decade. It shows that the number of young people found guilty in the criminal courts remained relatively stable between 1999-2007, since when the numbers have declined by about one sixth. The pattern of use of other sanctions is quite different and much more marked. Thus, the significant rise in overall sanctioning from 2003 to 2007 was almost entirely due to an increase in the use of penalty notices for disorder (PNDs) together with reprimands and final warnings. Moreover, in the two years after 2007, over four-fifths (82 per cent) of the overall drop in sanctioning was accounted for by declining numbers of young people receiving PNDs, reprimands or final warnings.

**Fig. A: Criminal sanctions imposed on young people aged 10-17, 1999-2009**



**Source: Ministry of Justice (2010a)**

What lies behind these significant shifts? There is a growing consensus that the answer is to be found in government targets and, more specifically, in the pressure brought to bear on the police and other agencies via the measurement of ‘offences brought to justice’ (OBTJ). This refers to the 2002 PSA target, set for the Home Office, which required that the delivery of justice be improved by ‘increasing the number of crimes for which an offender is brought to justice to 1.25 million by 2007’ – in effect a 20 per cent increase in five years. OBTJs for under 18-year-olds were crimes reported to the police that were resolved by means of a conviction, reprimand, final warning, PND or offences taken into consideration. The outcome was predictable. Having been set such a target, having their performance monitored by HM Inspectorate of

Constabulary through the Police Performance Assessment Framework (and since 2008 the Assessment of Policing and Community Safety), the police went for the quickest and easiest wins or what various commentators have referred to as 'low-hanging fruit' (Morgan, 2007; Farrington-Douglas with Durante, 2009). Brian Paddick, a former Assistant Commissioner in the Metropolitan Police, described the situation in evidence to the Home Affairs Select Committee as follows:

For example, in terms of offences brought to justice, I am sure the Committee will realise that it is one point on the score board for a complex case of murder which might take 18 months to investigate and six months to try in court, provided there is a conviction that counts as one offence brought to justice, and a cannabis warning that takes 20 minutes to deal with on the street which counts as exactly the same under current Home Office targets.<sup>4</sup>

A similar view of the impact of the targets was outlined by the Chief Inspector of Constabulary in the interim report in his *Review of Policing* (Flanagan, 2007: 10) in which he said:

The recording and level of investigation of a vast swathe of minor crimes incidents (sic) is in my view, a key area that needs to be re-considered. This was raised in the majority of stakeholder submissions to the Review. An emphasis on sanction detection levels has undoubtedly to a degree produced the unintended effect of officers spending time investigating crimes with a view to obtaining a detection even when that is clearly not in the public interest. An example of such would be a low-level playground common assault. The sometimes inordinate amount of time spent by officers in such tasks could and should be channelled into more appropriate activity.<sup>5</sup>

In this regard 'low-hanging fruit' may mean more than simply focusing on relatively easy offences 'brought to justice'. There is also evidence that police activity has tended disproportionately to be focused on the very youngest age groups, and not just the most minor offences. A freedom of information request by the Institute for Public Policy Research found that whereas between 2002 and 2006 there had been an approximately 10 per cent increase in adult OBTJ cautions and convictions, the increase was well over 25 per cent in relation to young offenders. Moreover, within the 10-17 age group, the increase in cautions and convictions of those aged 10-14 was 35 per cent compared with 24 per cent for 15-17 year olds (Farrington-Douglas with Durante, 2009). Finally, any doubt about the vitally important role of managerial targets and incentives is dispelled by the Ministry of Justice explanation for the recent decline in the use of PNDs: it coincided 'with criminal justice agencies being asked to focus on improving performance in bringing to justice crimes involving serious violent, sexual and acquisitive offences' (2010: 20). That is, put simply, the police and others have, as a result of government instruction, shifted their focus away from 'low-hanging fruit'.

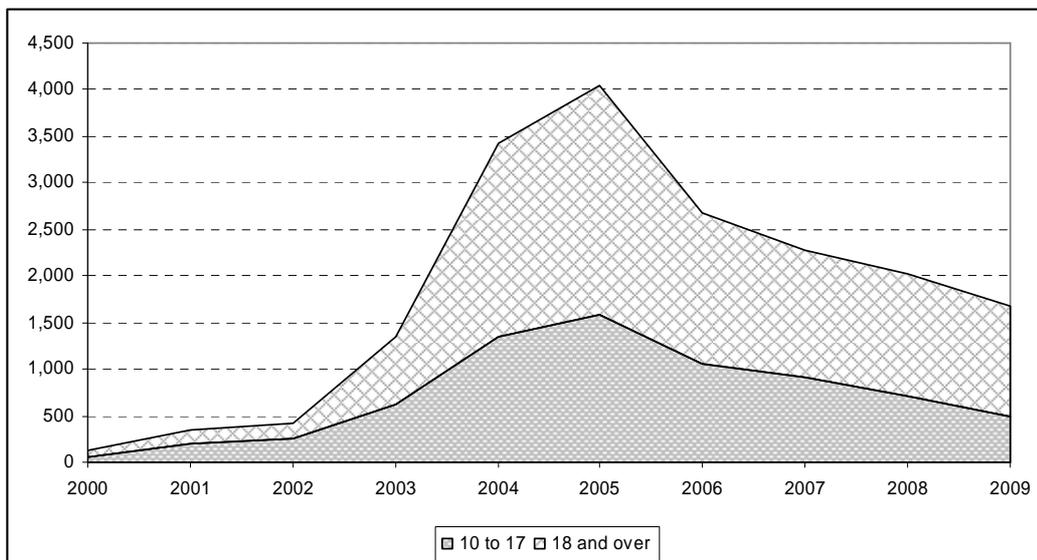
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<sup>4</sup> <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmhaff/364/36406.htm#n18> (accessed 20.1.11). Under 18-year-olds are not eligible for warnings for possession of cannabis but the same argument applies for the out-of-court penalties for which they are eligible.

<sup>5</sup> In his Final Report (2008: 56), Flanagan observed: 'The Home Office has realised the perverse incentives caused by sanction detection rates and Public Service Agreement 24 provides the opportunity to reduce the use of "offences brought to justice" targets. The centre must ensure that these targets are not reinstated and AC PO must ensure that this behaviour no longer manifests at force level. There are also further opportunities to look at the issues surrounding sanction detections.'

Among the lessons we might draw from this experience, two are particularly pertinent. First, and so obvious that it hardly needs saying, much of what happens to young people is dependent on decisions taken by the police. A great many of these decisions involve the exercise of substantial discretion, and often there will be an alternative to intervening formally. It makes sense, therefore, when seeking to limit resort to criminal justice sanctions, to start with the police. Second, and relatedly, it is clear that government targets can have a dramatic effect. The extent to which young people are formally processed and drawn into the youth justice system has, in the past decade, been very significantly shaped by governmental diktat. There are clear signs now that the retreat from some of the more egregious targets is having a substantial impact at least at the lower reaches of the criminal justice system. A similar pattern is visible in relation to one of the better-known recent developments in the policing of youth misconduct: the anti-social behaviour order (ASBO). Introduced by the Crime and Disorder Act 1998, the use of ASBOs began significantly to increase after their scope was expanded by the Police Reform Act 2002 and again by the Anti-Social Behaviour Act 2003. Since their introduction a very sizeable proportion of ASBOs have been targeted at young people – somewhere between one third and two-fifths of the total (see Fig. B).

**Fig. B: ASBOs imposed, 1999-2009, by age group (total number and as a proportion of total)**



**Source: Home Office (2011a)**

Many concerns have been raised about the use of ASBOs, especially in relation to young people. The crucial ones for my purposes here are those that focus on overly-hasty or excessive intervention in the lives of young people. They include the alleged failure to engage in such activities as home visits or agreeing acceptable behaviour contracts (ABCs) before imposing ASBOs, agreeing to unrealistic or inappropriate conditions, failing to address young people’s support needs<sup>6</sup> and, crucially, potentially ‘widening the net’ by bringing young people into contact with the youth justice system and, most worryingly, increasing the number of young people in custody (Home Affairs Committee, 2005). In the period June 2000 to December 2009, a total of 221 children aged 12-14 received a custodial sentence for breaching their ASBO (or nearly 13 per cent of all ASBOs imposed on this age group). The average sentence imposed was six months. In the same

<sup>6</sup> The Home Affairs Committee (2005: 123), for example, noted that, “There is a clear need for youth offending teams to be involved in the response to young people who behave anti-socially—especially when formal measures are used. We were concerned to learn that Youth Offending Teams are not always consulted by those taking out an ASBO.”

period, 1,111 young people aged 15-17 received custodial sentences for breach of their ASBO (20.6 per cent of all ASBOs imposed on this group) and the average sentence was 6.4 months (Home Office, 2011a).<sup>7</sup> Now, as Fig. B. illustrates, rather like PNDs and cautions, though for somewhat different reasons, there has been a significant decline in the use of ASBOs and the Coalition Government has signalled that their days are numbered.<sup>8</sup> The crucial questions are what will replace them and what sort of lead will the Government give to the police (and others) in responding to anti-social behaviour? Most importantly, and following the line of argument above, will there be sufficient political will to continue to reduce the numbers of young people subjected to stop and search, reprimands and final warnings, penalty notices, ASBOs and the Criminal Behaviour Orders and Crime Prevention Injunctions that it is now proposed replace CRASBOs and ASBOs (Home Office, 2011b)?

### ***The Future Shape of Police Politics***

Recent work by HMIC (HMIC, 2010) and by Cardiff University for HMIC (Innes and Weston, 2010) provides some possible pointers to future policing activity in this area. The Cardiff report, building on data which suggests that the public make few consistent distinctions between ASB and crime when calling the police, suggests that it is vital for public confidence that the police take seriously and respond to all reports of significant social harms, whether criminal or not. It proposes a problem-oriented and harm-focused approach to dealing with ASB. There are, however, a number of issues one might raise about this. First, in taking what it calls 'an avowedly victim- and citizen-focused approach' (2010: 10), based on what is considered to 'work' by 'ASB victims and the public', the report arguably presents an overly benign view of community views. Certainly existing research indicates that we should question such assumptions (Girling et al, 2000). Related to this, the government's proposed introduction of a 'community trigger for action' - where local agencies will be compelled to take action if several people in the same neighbourhood have complained and no action had been taken; or the behaviour in question has been reported to the authorities by an individual three times, and no action had been taken (Home Office, 2011b) - may be viewed as a welcome democratic shift on the one hand, but also as a reform which carries the potential for ever-greater intervention in the lives of young people. Second, the report has relatively little to say about the nature of the powers used by the police, and other agencies, or what the potential impact of such an approach might be on young people. Although the declining numbers of ASBOs - and other low level interventions with young people - are welcome, sustaining them may be difficult. Crucially, therefore, any new initiatives in this field must be accompanied by careful controls and restrictions, perhaps underpinned by the form of joint inspection arrangements advocated by the Independent Commission in relation to its other proposed reforms.

In the general territory of policing there are a number of changes likely to occur in the coming years which we might anticipate will have an impact on the issues considered here. It is clear, for example, that the very significant reductions in local authority finance announced in 2010 will potentially jeopardise the ability of councils and the voluntary sector to maintain front-line diversionary and preventive activity. It is equally clear that police budgets will shrink dramatically, a projected 20 per cent over the period 2011-15 (HM Treasury 2010). It is difficult to anticipate what the impact of fiscal restraint will be. One can imagine very different

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<sup>7</sup> The average custodial sentence imposed on adult offenders in breach of the terms of their ASBO was 4.9 months.

<sup>8</sup> 'Moving beyond the ASBO', speech by Teresa May, 28<sup>th</sup> July 2010, at <http://www.homeoffice.gov.uk/media-centre/speeches/beyond-the-asbo> (accessed 27.1.11)

outcomes. Budgetary restrictions might push the police in the direction of greater parsimony so far as intervening in the lives of young people is concerned: intervention is costly and competition for resources within the police service will undoubtedly be intense. On the other hand, one of the ways in which the police service has traditionally sought to protect, or indeed increase, its budget has been by 'talking up' both the crime problem and the police role in crime control. Though the most recent crime statistics suggest that the incidence of crime has not yet been driven up by rising unemployment, it nonetheless seems probable that the greatly increased youth unemployment rate, which most labour market analysts anticipate getting worse<sup>9</sup>, combined with other social tensions arising from the planned cuts in public expenditure, will mean that the demands for service made on the police will likely increase. It remains to be seen whether the police are able significantly to reduce their costs (by merging or out-sourcing back-office functions, for example) without reducing visible, front-line policing. What is clear is that a question mark now hangs over the capability of front-line policing teams comprising sworn officers and PCSOs to deliver the 'neighbourhood policing' which HMIC and independent research suggests is critical to maintaining public confidence (Jackson and Bradford, 2009). Dedicated neighbourhood policing teams also comprise the persons arguably best equipped to exercise the diversionary decisions and deliver the restorative justice interventions which the Independent Commission recommends. Employing specialist, civilian RJ conference convenors on the Northern Ireland model would be both time-consuming and expensive, and in the current fiscal climate it is difficult to see where the funding for an addition to the youth justice infrastructure for these purposes would come from. A more sensible approach might be to train neighbourhood policing teams to deliver restorative solutions and to reward the police for making greater use of these and other non-stigmatic non-criminal justice interventions which the evidence suggests would better satisfy victims and reduce reoffending.

In this regard the invitation sent to all local authority chief executives alongside the December 2010 Green Paper (Ministry of Justice 2010b) and the provisions of the Police Reform and Social Responsibility Bill published at roughly the same time opens up an intriguing possibility and an additional risk. The Green Paper announces that there are to be a small number of pilot projects based on consortia of local authorities working in partnership who will be awarded a 'reinvestment grant' to help them achieve reductions in the number of young people in custody from their areas (para. 257). The accompanying letter to local authority chief executives<sup>10</sup> explains that those consortia successfully bidding for money will be allocated a grant which after a certain period of time they will be allowed to keep - *providing* the numbers of young people in custody from their area have reduced by an agreed number. How this initiative is to be paid for is unclear given, as the government has made clear, there is no 'new money' on the table. The 'pathfinders' represent the youth justice trial run for the 'payment by results' model which the Government commends generally. How the desired outcome is achieved is for the local authority consortia to determine – a reflection of the devolution and revived discretion approach which runs like a *leitmotif* through the Green Paper – but to have any prospects of success they will need to have close working agreements with the police. For it is a mistake to see resort to custody as an issue concerning the relatively isolated top stratum of the youth justice pyramid. The size of the top stratum is a function of the size of the whole pyramid. To reduce the top layer

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<sup>9</sup> See, for example, the report in the *Financial Times* on 19.1.11, <http://www.ft.com/cms/s/0/32a8c8c0-23b4-11e0-8bb1-00144feab49a.html#axzz1CcAnQnoT>

<sup>10</sup> Letter dated 9 December, 2010 from Frances Done, Chairman, YJB, to all local authority chief executives concerning the 'Youth Justice Reinvestment Pathfinder Initiative'.

one must consider the system as a whole, how many youths are drawn into it and, once drawn in, pushed through it. Reducing resort to custody means reducing resort to criminalisation and intervention at all levels. The gatekeeping role of the police will be crucial as will the local authority precept be crucial to police budgets under strain. Partnerships for collective parsimony seem on the youth justice cards.

Parsimony, however, requires a political context sympathetic to such ends. This brings us to the proposed changes to police governance included in the current Police Reform and Social Responsibility Bill. The provision which has attracted most attention to date is that for directly elected Police and Crime Commissioners (PCCs) to replace police authorities. The Government's aim is to increase local democratic accountability and responsiveness in policing. One needs, however, to ask how this new arrangement for the governance of the police is likely to work? Who will likely stand for office? It is possible that one or two 'celebrity' candidates will be attracted but it is difficult to see how most candidates will achieve a sufficiently high profile to have any prospect of success without sponsorship by the major political parties. In which case, on what basis will candidates campaign for office? Most likely is that they will seek to appeal to those sections of the electorate whose voices tend to be loudest on law and order matters: those who are older, more affluent, least likely to live in high crime areas, and yet most anxious about youthful behaviour (Roberts, 2004). If that proves to be the case the entry of PCCs to the politics of local policing may signal increased pressure on the police to make greater rather than reduced use of their powers to criminalise youth. These pressures may be particularly acute in urban areas where youth gang-related offences are most troubling and which attract substantial mass media attention. This is speculative of course. However, on the assumption that the emergence of these new political contests has at least the potential to lead to calls for greater use of formal police powers in respect of youth crime and antisocial behaviour, it reinforces the need to think carefully now about the principles upon which we would wish police activity in this area to be governed and, if necessary, restricted.

### **Conclusion**

Whilst I remain broadly in sympathy with both the underlying philosophy and the majority of the recommendations made by the Independent Committee, my view is that without considering the role that the police play in regulating the flow of young people into the justice system, any programme of reform is incomplete. More particularly, my argument is that we need to rehabilitate the idea of 'diversion' and, in particular, to rescue it from the one-sided picture that became dominant from the mid-1990s onward. Smith (2010a), in his review of possible reforms, argues against any return to the practices associated with the 'diversionary interlude' of the 1980s, when there was a very substantial reduction in both convictions and custodial sentences. His major charge against this 'interlude' is that it brought the system into disrepute and led to the backlash of the 1990s. Whilst quite a strong case can be made that 'repeat cautioning' was used inconsistently, perhaps inappropriately and too frequently – essentially the case made by the Audit Commission in *Misspent Youth* (Audit Commission, 1996) – it is more difficult to sustain the argument that this was the direct cause of the punitive, political backlash of the 1990s onwards is more difficult to sustain. The inconsistent and inappropriate use of discretion in youth justice may have been a partial spur to the punitive populism that gripped the politics of law and order from the early 1990s (see Downes and Morgan 2007), the shifting politics of the time have far broader (beyond youth justice) and deeper (beyond issues of crime and antisocial behaviour) roots (Garland, 2001).

My plea therefore is, whilst recognising the dangers of inappropriate or over-use, it is important not to lose faith entirely in diversion – particularly for the youngest age groups. In this context, therefore, whilst there is much to be said for the Independent Commission’s proposal to invest faith in ‘triage’ (Smith, 2010a: 389) - police station-based assessments following which, it is argued, significant numbers of young offenders might be diverted from criminalising measures – this still ignores the base of the youth justice pyramid. There still remains the question of how to limit the potentially negative consequences of all those informal, street-based contacts between police and young people which can result in anything from an on-the-spot fine to a reprimand or even a final warning. All such ‘formal’ actions can be taken long before triage occurs within a police station. The Independent Commission’s aim of encouraging a continuing decline in the number of children and young people appearing in criminal courts and in custody, requires quite possibly radical reforms to the youth justice system, but it also needs action at an earlier point. As HM Chief Inspector of Constabulary put it, this is not to say that the police should have no role in relation to low-risk activity, ‘but rather, a strong feeling that it can be dealt with in much more expeditious and indeed effective ways without having for example, the rest of the criminal justice system brought into action’ (Flanagan, 2007: 10).

What all this raises is the important question of the proper limits to police discretion in connection with youth crime and antisocial behaviour. The Edinburgh research cited earlier suggests that one of the consequences of the very wide discretion available to police officers in their dealings with young people was to create a ‘permanent suspect population’ which led, irrespective of later offending patterns, to enhanced police contact. This targeting of particular young people had the potential to exacerbate a number of risk behaviours amongst this population, including offending. In short, therefore, whilst there was some evidence of officers engaging in diversionary activities, it was also clear that one of the consequences of general police practices in relation to many other young people – however unintentionally – was to ratchet up the likelihood of the formal criminal justice intervention. By contrast, however, we might return to the recent experience of the impact of extant government targets such as OBTJ where it can be argued that, by restricting police discretion, encouragement was given to conduct which targeted, labelled and ‘re-cycled’ (McAra and McVie, 2010) particular groups of young people, resulting in an over-use of a wide range of low level interventions with, almost certainly, predictable consequences for these youngsters’ future involvement with the youth justice system. The challenge for policy-makers consequently remains one of designing systems for constructive early intervention and prevention activity whilst avoiding the dangers of stigmatization and over-criminalization. The success or otherwise of such a system will very much depend upon the role of the police as first line of contact and as gatekeepers.

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### **Biography**

Tim Newburn is Professor of Social Policy and Criminology and Head of Department of Social Policy at the London School of Economics. He is a former President of the British Society of Criminology (2005-08) and was elected an Academician of the Academy of Learned Societies for the Social Sciences in 2005. In 2009, together with two colleagues, he was appointed Official Historian on Criminal Justice. He is a member of the Home Office's Scientific Advisory Committee and numerous other advisory bodies. He is the founding editor of the journal *Criminology and Criminal Justice* and is the author or editor of 35 books, including the leading undergraduate textbook in the field: *Criminology* (Willan Publishing, 2007).