

Part 1.

Law, Criminal Justice



Part 1. 1) The Crime and Disorder Act (CDA) 1998 changed the operation of the age of criminal responsibility in England at Wales, ten years, (Carvadino and Dignan, 2007: 326), when the principle of *doli incapax* was abolished following the murder of James Bulger in 1993 by two children. *Doli incapax*, defined as "incapable of committing an offence" (Howard & Bowen, 2011: 381.), meant children between the ages of ten and thirteen could only be convicted of an offence if the prosecution could prove that the child knew the difference between right and wrong (Carvadino and Dignan, 2007: 327). This suggests that children became dealt with more similarly to adults, placing an increased emphasis upon young offenders' actions being moral choice and personal responsibility, rather than being misguided or as a product of social and economical deprivation. This opposed welfare justice policies of the 1960's and minimal intervention practices of the 1990's (Bateman & Pitts, 2005: 2-7), effectively serving to criminalise more young people by exposing them to criminal justice intervention. The attitude expressed in *Misspent Youth*, a research paper considered as being critical in the formation of the CDA 1998 (Unitas, 2012: 23), considered that more needed to be done to protect victims of "young peoples' inconsiderate behaviour" (Carvadino and Dignan, 2007: 98). This statement lends emphasis to the view that youths were deemed to have more autonomy over their choices and the CDA 1998 founded itself on the belief that involvement the range of robust interventions would deter and rehabilitate young offenders, meaning more youth's were dealt with by means of formal sanctions. (Bateman & Pitts, 2005: 9). 2. The abolition of *doli incapax* as part of the CDA 1998 gave influence to the response of youth justice being

concerned with the 'deeds' of the child rather than the 'needs'. It influenced a 'justice' approach focussed on addressing offending behaviour through robust punitive interventions and increased levels of supervision which resulted in the increased use of custody (Bateman & Pitts, 2005: 34-35). Whilst increased supervision and incarceration does make some difference in reducing offending behaviour due to the restriction upon one's liberty which is used as a preventive and risk management measure (Jones, 2002: 16), it does not address the underlying causes of offending behaviour in regard to welfare needs which need to be addressed in order to sustain change. I feel the abolishment of doli incapax and the primary focus upon youths accepting criminal responsibility may have hindered youth justice workers recognition of the biological, cognitive and welfare factors related to delinquent behaviour (Elliott, 2011: 295-297). West and Farrington (in Elliott, 2011: 297) identified that: "parental criminality or social deviance, conflict ridden or broken homes, lack of early care and supervision and living in a delinquent neighbourhood were all predictive of delinquent behaviour, while 'good homes' were protective factors against offending". I feel addressing these external welfare factors may have been a difficult task when blame was placed upon the assumed logical internal functioning of autonomy and decision a child of the age ten was deemed to have. Part 2 1) New Zealand uses a restorative justice approach to youth justice. Restorative justice is an approach which aims to repair the damage caused to the victim, family and community as a result of the consequences of the criminal act. Impetus is placed upon the offender to repair relations by accepting responsibility for their actions, giving explanation and acknowledging the harm caused to

those who have been harmed by the crime (Carvadino and Dignan, 2007: 48). An agreement is made between the parties involved as to a method of resolution suitable for the offender, empowering all those involved in the process (Hazel, 2008: 51). 2) Restorative Justice Approaches are used in New Zealand as a formal alternative to court proceedings. Despite New Zealand having a low age of criminal responsibility at age ten, this 'out of court' disposal is effective in diverting offenders away from the courts as very few are formally prosecuted, effectively raising the age of criminal responsibility. This means that less young people receive punishments through the courts, positively reducing the risk of custody. (Hazel, 2008: 33). Although research has suggested that Family Group Conferencing, a restorative justice approach, may not be as effective in reducing rates of recidivism in comparison to Youth Court (Stevens et al, 2006, in Hazel 2008: 51), it can be argued that this is outweighed by the reduction in use of custodial sentences as reconviction rates of prisoners suggest that prison actually increases not decreases rates of reoffending (Carvadino and Dignan, 2007: 193).

Reparation as the concept that people who have offended should make actions to repair the wrong that they have caused, can take the form of actively compensating the victim or community by doing something to directly make amends, such as repairing criminal damage, or as a formal apology. These actions can be productive in reintegrating the young person with their local community, reducing social exclusion and repairing relationships, factors which are recognised as being correlated with offending (Hazel, 2008: 29). Through engagement in a restorative justice intervention such as family group conferencing, it is likely that this process

of meeting with the victim of the offence could benefit the youth by improving their skills in areas such as negotiation, victim awareness, empathy, and which promotes protective factors preventative of further offending (Hazel, 2008: 37). In my opinion I would like to work in the approach of restorative justice due to the advantages it brings the young person in diverting them from the negative implications of court and the risks of custody. The impact of the stigma attached with the youth justice system which affects one's self-identity through the effects of labelling, having an influence upon future behaviour and making positive social integration difficult (Unitas, 2012: 19), is an effect which I feel can have extreme consequences to children who are developing their sense of self-identity. Braithwaite (1969, in Carvadino and Dignan, 2007: 48) argued that societal responses to crime are effective when 'reintegrative shaming' of the offender occurs as this combats the effects of labelling. The process of restorative justice due to the victim and community involvement seems extremely relative and suitable to pursue reintegrative shaming strategies.

Words: 1034

References Bateman, T & Pitts, J (ed.) (2005). *The RHB Companion to Youth Justice*. Lyme Regis: Russell House Publishing LTD.

Cavadino, M & Dignan, J (2007). *The Penal System: An Introduction*. London: Sage Publications.

Elliott, C. (2011). *Criminal Responsibility and Children: A New Defence Required to Acknowledge Absence of Capacity and Choice*. *The Journal of Criminal Law*, pp. 289-308.

Hazel, N (2008) *Cross-National Comparison of Youth Justice*. London: Youth Justice Board.

Howard, H. & Bowen, M (2011). *Unfitness to Plead and the Overlap with Doli Incapax: An Examination of the Law Commission's Proposals for a New Capacity Test*. *The*

Journal of Criminal Law, pp. 380-390. Jones, D. (2002). Questioning New Labour's Youth Justice Strategy: A Review Article. Youth Justice, vol. 1, no. 3, pp. 14—26. Unitas (2012). The Youth Justice Effective Practice Certificate. Learners guide 1: blocks 1 — 3. London: Author.