

# The justice and welfare debate essay sample



**ASSIGN  
BUSTER**

Although it has been generally accepted for many years since the arrival of the youth court in the 1908 Children's Act that 'special procedures are needed to deal with young offenders, and a series of different arrangements have developed. There are conflicting views over how such offenders should be dealt with' (Davies et al, 1995: 136). These conflicting views are often referred to as the Justice and welfare debate. The arguments and different opinions of how to deal with young offenders have been in debate for many years.

In order to look at two totally different perspectives on how to deal with young people and children who commit crime the following paragraphs will consider the punishment, retribution and deterrence beliefs of the classical criminologist this being the justice approach. Whilst also comparing this to the welfare and rehabilitation beliefs of the conflict and critical criminologist. The classical theory believes that the punishment should be proportionate to the crime in order to deter the individual and others from committing crime.

Furthermore the classical criminologist places the emphasis on the criminal act and not the offender and is concerned with, 'the establishment of a reformed equitable and efficient system of justice' (Tierney J, 1996: 49). The classical criminologist would therefore advocate a justice approach as the most effective way to deal with young offenders. Supporters of the justice approach believe in using punishment and retribution to deal with young offenders, pointing out that this will not only deter them from committing further criminal acts but also act as a deterrent to others.

They strongly believe that any sentence or punishment given should reflect the seriousness of the offence committed, giving the offender their 'just deserts' and that justice should not at all consider the needs of the offender. They argue however that the police should make greater use of cautioning for minor offences. They point out that this would keep young people who had committed minor offence out of the criminal justice system and leave the courts free to deal with more serious offences.

They advocate a return to a justice system that believed in 'equality before the law' a tariff of punishments for certain offences regardless of any welfare considerations. Although this system in many ways would be quite harsh it would however call for 'certain minor offences such as drink, drugs heterosexual or homosexual sex under age be decriminalised' (Muncie J, 2001: 270).

A criticism of the justice model being used to deal with youth crime came from Wolfgang (1972) who directed a long term study of youngsters growing up in Philadelphia and concluded that. The juvenile justice system at its best, has no effect on the subsequent behaviour of adolescent boys, and at its worse, has a deleterious effect on future behaviour' (Wolfgang et al 1972: 252, cited in Rutherford A, 1992: 34. In England a Cambridge longitudinal study done by Farrington and West (1961) showed similar results. Farrington argued that 'once the young offender had been given his first conviction he would be more likely to offend in the future' (Farrington, 1977: 263, cited in Rutherford A, 1992: 34).

This return to crime seemed to be more likely if the young person had spent time incarcerated in any way. (West, 1982: 143). In direct conflict to classical theories in relation to youth crime, the conflict and critical criminologist would advocate a welfare approach in dealing with the young offender. Advocators of the welfare approach in dealing with youth criminality argue that most young people who commit crime have been subject to certain risk factors within their life that are a contributory factor in their offending behaviour.

They strongly criticise the idea of putting the young offenders through a criminal justice system that advocates punishment and retribution and makes no attempt to address the risk factors that may have been the cause of the offending behaviour in the first place. Furthermore they see this as a direct cause of the individual re-offending and eventually becoming a persistent offender or even starting to commit crimes of a more serious nature.

The welfare approach argues that the Criminal Justice Act 1989 expressly stated that 'the child's welfare should be the courts paramount consideration' (Rutherford A, 1992: 146). A criticism of the welfare approach to dealing with young offenders would be that in allowing social workers and social enquiry reports to play a big part in deciding on how the young offender should be dealt with, too much consideration is given to the offender. Thus justifying the young offender's criminal act.

Advocators of retribution and punishment as deterrence to young people not to commit crime believe that the welfare approach would escalate crime

figures even more. They argued that social workers should only be used in a supervisory capacity if the young person is looking at receiving a custodial sentence. Morris et al (1980) and Taylor et al (1979) criticised the welfare approach to youth crime arguing that it reinforced the believe that somehow the young persons criminal act could be justified because of the believe that they were in some way socially and economically disadvantaged.

The justice approach to dealing with youth crime however has been strongly criticised a lot in recent years, especially incarceration. Kagan (1979) argued that 'incarceration of a young person for a crime they had committed would almost certainly thwart their development making it difficult for them to return to society and not commit further offences' (Kagan 1979: 110, cited in Rutherford A, 1992: 34. Advocators of the welfare approach to justice criticised the use of prisons.

Pointing out that even the possibility of parole for good behaviour is hardly addressing the issues that caused the young person to offend in the first instance. They point out that all the offender has to do is behave in an appropriate manner and follow the rules and regulations whilst they are incarcerated. It in no way makes the young offender face the responsibility of his actions, to himself, his family or the victim/victims. It also releases the young person back into a society where the risk factors that contributed to him offending in the first instance still exist.

An alternative to incarceration for young people who are over the age of 16 and have committed an offence serious enough to warrant a custodial sentence is a community punishment order. A community punishment order

was originally introduced by the powers of the Criminal courts Act 1973 sections 14 to 17 and was formerly known as a Community Service Order. It was re-named the Community Punishment Order under the Criminal Justice and Court Services Act 2000. However its function remains the same.

It involves the offender in working in the community in order to pay back society for the crime they have committed. It requires the offender to do between 40 to 240 hours-unpaid work in the community over a period of a year. It is a punitive method of punishment intended to deter the offender and others from committing crime. Although advocates of community sentence as a punishment for young offenders see it as a rehabilitative punishment because of the offender's work in the community, this would be criticised by others.

They would point out that whilst the offender is working in the community to pay back society for the crime they have committed they are not being made to face the consequences of their offending behaviour on the victim/victims. Furthermore that the risk factors that were a contributory factor to the young persons offending behaviour in the first place were not being addressed. In 1997 The New Labour Government came to power and tackling youth crime became one of their main priorities. This was shown in the record time that its youth justice legislation hit the statute books (Goldson B, 2000: 5).

The 'no more excuses' white paper became the Crime and Disorder Act on July 31st 1998 after a brief consultation in 1997. Tony Blair the newly elected primeminister started to focus on what he had always promised 'to be tough

on crime and tough on the causes of crime' giving his promise to be tough on crime ' the highest possible political profile' (Muncie J 2000: 6). However as the next general election approached in 1997 Tony Blair moved youth justice from a ' political to an administrative arena'.

Giving responsibility for the new youth justice system to local authority chief executives. The chief executives were then ' charged with establishing multi-agency youth offending teams (YOTs) and producing a local Youth Justice Plan' (Muncie J 2000: 6). However ' Responsibility for central direction, oversight, the promulgation and enforcement of national standards for youth justice, quality control and the auditing of the YOTs was placed in the hands of the, Youth Justice Board for England and Wales' ( Muncie J 2000: 6).

The result of the sanctions mention in the previous paragraph means that ' political and strategic responsibility' originally held by local government we now held by the Youth Justice Board who were directly accountable to the Home secretary. However this is open to criticism as it could be argued that it allows ministers to take the credit for any successes whilst blaming the local authority for any failures.