

AN OVER-VIEW OF CONFLICTING VALUES AND STRATEGIES IN THE ADMINISTRATION OF YOUTH JUSTICE*

Abstract

Administration of youth justice has throughout much of its history been defined by its commitment to the welfare model in treating young offenders. This commitment has however been a source of tension in the administration of youth justice. Thus, this paper examines the nature and causes of tensions in the administration of youth justice and the different strategies that have been used to ensure differential treatment of various categories of young offenders. The study is based on content analysis of primary and secondary sources of data. It concludes that though welfare remains the underlining philosophy of the administration of youth justice, it has adopted measures that would ensure that a more punitive approach is adopted for chronic and violent offenders.

Key words: *Conflicting Values, Strategies, Youth Justice, Administration, Welfare Approach*

1. Introduction

It is generally accepted that the administration of youth justice is a fairly recent phenomenon.¹ As late as the nineteenth century, young offenders generally received the same harsh treatment as adult criminals. During this period, deterrence was the main object of punishment and youths were thus executed, flogged, sentenced to road gangs, transported and imprisoned in the same prisons as adults.² Judges were equally harsh in their attitude to young offenders. An English judge, after sentencing a ten-year old to death, stated that the child was a proper subject for capital punishment and *ought to suffer*³. The situation in the United States was no different; at the beginning of the nineteenth century, delinquent, neglected, and runaway children were treated the same as adult offenders.⁴ However, in the midst of these draconian treatments of young offenders, there were pockets of attempts to help them. These were influenced by increasing understanding of the nature of young people and of their vulnerability.

These concerns influenced the development of measures to protect young offenders from the full force of the criminal justice system. Various laws were thus enacted to humanize criminal procedure for children. One of the earliest attempts in the United States was the introduction of probation laws in Massachusetts in 1841. Probation was thus used to help children avoid imprisonment. In Australia, magistrates also helped young offenders avoid imprisonment, by using conditional discharges, by placing children in the care of parents or institutions or using conditional pardons.⁵ Similarly, in Britain, in cases relating to capital punishment, the prosecution refused to charge, the courts refused to convict, and pardons were more frequently given.⁶

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¹ It is generally agreed that the Illinois Juvenile Court Act of 1899 is the first law to establish an independent court for children. Britain had its first court in 1908 after the enactment of the Children Act 1908.

² C Cunnen & R White, *Juvenile Delinquency, An Australian Perspective* (London Oxford University Press, 1995) p.11

³ Ibid p.10. Emphasis is the writers'.

⁴ L J Siegel, B C Walsh & J J Senna, *Juvenile Delinquency, Theory, Practice and Law* (8th Ed., Belmont, California, Thompson Wadsworth, 2003) p.364

⁵ C Cunnen & R White (n.2) p.11

⁶ A M Platt, *The Child Savers* (Chicago, Chicago University Press, 1969) p.4

The main push for the development of a separate system for young offenders came from activists known as the Child Savers, who were concerned about increasing incidence of juvenile delinquency in their society. Their campaigns largely influenced the establishment of special institutions for delinquent children. The focus of these activists was however not restricted to young offenders alone. They also showed great interest in children who were at risk of becoming delinquents. Their main concern with regard to young offenders was to encourage their rehabilitation and prevent them from being entrenched in criminality through interaction with adult offenders. This disposition was reflected in 1836 report of the Inspector of Prisons of England who noted that: “The boy (sic) is thrown among veterans in guilt and his vicious propensities cherished and inflamed.... He enters the prison a child in years, and not infrequently also in crime, but he leaves it with a knowledge in the ways of wickedness”.⁷

The establishment of institutions for the care of children at risk of becoming delinquents provided the earliest opportunities of a means of separating child offenders. In order to facilitate the separate treatment of young offenders, the power of magistrates was expanded to enable them try young offenders summarily. In England, the Juvenile Offenders Act of 1847 allowed magistrates to summarily try cases of theft and larceny committed by young offenders below the age of fourteen. In Australia, aside the power to try some offences summarily, trial magistrates were allowed to give young offenders sentences that were more in tune with the objective of care and education rather than punishment and as a result, the Care and Education of Infants Act of 1849⁸ allowed magistrates to sentence young persons convicted of larceny and associated offences to a period of apprenticeship.

In the United States, courts relied on the doctrine of *parens patriae*, to give orders that would ensure that the State could intervene to prevent young people who were not getting adequate care from their parents from becoming delinquent. This same doctrine was also used to justify a rehabilitative rather than punitive approach in the punishment of young offenders. Over time however, there were challenges to the right of the State to exercise such wide and discretionary powers. This led to legal challenges of remand orders. In *Ex-Parte Crouse*⁹, the father of a girl who had been committed to the Philadelphia House of Refuge by her mother on the grounds that she was incorrigible filed a petition for her release. He argued that her incarceration was illegal because the order for her remand was not based on the jury trial which she ought to have been entitled to as of right. On appeal to the Supreme Court of Pennsylvania, this argument was rejected on the grounds that the trial court was acting based on *parens patriae* and was justified since the order was intended to serve the best interests of the child because the House of Refuge would provide her with the opportunity of training her for industry, and also imbuing in the minds of the inmates, the principles of morality, religion; furnishing them with the means to earn a living and above all separating them from the corrupting influences of improper associates. It said: ‘May not the natural parents, when unequal to the task of education, or unworthy of it, be superseded by the *parens patriae* or common guardian of the community’.¹⁰ This position changed thirty-two years later in *O’Connell’s case*¹¹. The Illinois Supreme Court rejected the *parens patriae* argument and ordered the release of O’Connell because the harsh conditions of the reform school in which he was held made the argument that he was being helped untenable.

⁷ Cited in A Morris & H Giller, *Understanding Juvenile Justice* (London, Croom Helm 1987) p.8

⁸ 13 Victoria. No.21

⁹ *Ex-Parte Crouse*, 4 Wharton 9,11(Pa 1838)

¹⁰ *ibid*

¹¹ *People ex rel. O’Connell v Turner*, 55 Ill.280,283-84,287(1870)

As a result of the decision in O'Connell and in response to the fear that the decision could undermine the power of courts to make necessary interventions and dispositions in the best interests of young people, unhindered by procedural considerations, resulted in the establishment of special courts that would be legally empowered to act based on the underlining principles of *parens patriae*. This underlining principle is reflected in the powers and procedural rules of the Illinois Juvenile Court. It has been observed that the predomination of the philosophy of *parens patriae* ushered in 'a form of personalized justice that did not provide juveniles with the full array of constitutional protections available to adult criminal offenders. The courts' process was paternalistic rather than adversarial; attorneys were not required and hearsay evidence inadmissible in criminal trials was admissible in the adjudication of juvenile offenders. Verdicts were based on preponderance of the evidence instead of the stricter standard of proof beyond reasonable doubt used by criminal courts and children were often not granted any right to appeal their conviction.'¹²

The justification for this approach at the inception of the youth justice system was again highlighted by Justice Abe Fortas of the United States Supreme Court in *Re-Gault*.¹³ He said:

The early reformers were appalled by the adult procedures and penalties and the fact that children could be given long prison sentences and mixed in jails with hardened criminals. They were profoundly convinced that society's duty to the child could not be confined by the concept of justice alone...the child especially good, as they saw it was to be made to feel that he was the object of the state's care and solitude, not that he was under arrest or on trial...the idea of crime and punishment was to be abandoned. The child was to be treated and rehabilitated and the procedures from apprehension through institutionalization were to be clinical rather than punitive.

The Illinois juvenile court model with its wide use of discretion thereafter became the template for other courts established thereafter. In Australia, for example, the juvenile court system gradually took shape between the late nineteenth and early twentieth century. Most of the laws enacted during this period were similarly based on the child saving rhetoric. The courts were thus parental in their approach and proceedings were largely informal. It was said that the Australian juvenile courts administered justice in a fatherly manner and magistrates were specially selected, trained, and were to be specially qualified to deal with young people.¹⁴

The creation of a separate system for juveniles was influenced by the prevailing attitude which resulted in a shift in the objective of punishment. Punishment had come to be viewed not merely as a means of punishing the offender, and that severity of punishment should reflect the seriousness of the offence but to a more compassionate view of using punishment to treat the offender and treatment should be based on the diagnosis of the person's pathological condition.¹⁵ Contemporary religious views also favoured leniency with young offenders. It was felt that delinquency was the result of social and moral condition rather than innate depravity.

¹² L J Siegel, B C Walsh & J J Senna (n.4) p.370

¹³ 387 U. S 1,87 S.ct 1428,18 L.Ed.2d 5

¹⁴ Probation officers also played an important role in supervising young people and preparing background reports. See C Cunnen & R White (n.2) p.19

¹⁵ Ibid p.16

There was also an increased focus on the physical conditions of the poor, as well as the view that working-class families were ineffective and unreliable in their parenting.¹⁶

This humanitarian approach laid the foundations of the very broad scope of the youth justice system. It therefore sought not only to protect young offenders from the potentially corrupting influence of the adult criminal justice system but also tried to prevent children from becoming delinquents by intervening in the lives of children who were at risk of becoming delinquent. These broad goals though laudable from a humanitarian perspective have been blamed for conflicting values of the juvenile justice system. The resulting tension was aptly described by Pickford who said:

...it can be seen that some confusion arose at the inception stage between the quite different approaches for those children who were in need of care and those who had committed criminal offences and were before the court to be tried and sentenced, since the Act gave the juvenile court jurisdiction over both criminal and care issues. The unfortunate coupling of these dual roles (care and control) had the practical effect of making the same judicial body responsible for dealing with both, the depraved and the deprived. This led to tensions....¹⁷

2. Conflicting Values of the Youth Justice System

At the initial stages of the juvenile justice system, its core objectives were to prevent the onset of delinquency and also prevent the entrenchment of delinquency by protecting delinquent children from the corrupting influence of adult criminals. It was however felt that both categories were still amenable to reform. Carpenter¹⁸ made a distinction between the two classes and suggested that reformatory schools should be established for the delinquents (of the dangerous classes) and industrial schools for the poor (the pre-delinquent of the perishing class).¹⁹ Though the need for this separation was recognised in theory, in practice, the distinctions were rarely respected. It was not uncommon to have a pre-delinquent child being sent to institutions meant for delinquent children. The enactment of single laws in respect of the two issues further blurred the lines in the administration of youth justice. A description of the situation in Australia during this period also provides additional insight into the problem. Cunnen and White said:

Although the system established two groups of neglected children and young offenders, in reality there was a blurring of distinctions. In most Australian states, young offenders could be sent to the industrial schools by the court under certain circumstances. Amendment to legislation during the 1870s further blurred the distinctions, when courts were empowered to send neglected children to reformatories if they had been leading an immoral or depraved life. In addition, neglected children could

¹⁶Ibid p.12

¹⁷ J Pickford, 'A New Youth Justice for a New Century' in J Pickford (ed) *Youth Justice: Theory and Practice* (London Cavendish 2000) p.xxxiv

¹⁸ Mary Carpenter was one of the most influential child right activists. She published widely on the subject and amongst her most influential books were: *Reformatory Schools for the Children of the Perishing and Dangerous Classes and Juvenile Offenders* (London, C Gilpin 1851) and *Juvenile Delinquents, their Condition and Treatment* (London W&F G Cash 1853)

¹⁹ C Cunnen & R White (n.2) p.14

be transferred administratively to the reformatory system if they were a management problem.²⁰

The situation in the United States and Britain were not any better. Reformatories and Industrial Schools were often combined and this further undermined the distinction between the needs of neglected and delinquent children. It is therefore not surprising that by the time laws were passed to formalise the administration of youth justice, the courts that were established continued with the long tradition of dual jurisdiction that had become pervasive in the youth justice system. The actual mixing of welfare and criminal cases within the same systems of detention became a hallmark of dealing with young people brought into the juvenile justice system until well into the contemporary period.²¹

Questions are still being asked if this dual system is justified. It has often been accused of creating a confusion of purpose and outcome in the youth justice system which has been apparent since its inception and ‘arguably continuing today, despite the separation of the criminal and civil jurisdiction of the court.’²²Cunnen and White, while quoting Harris and Webb said it has made the juvenile court itself ‘a locus for conflict and confusion ,a vehicle for the simultaneous welfarization of delinquency and the judicialisation of need.’²³Though the fact that the youth justice system dealt with the two categories of young persons was used to justify the ambivalence in its treatment and sanctions, this ambivalence has become a necessity in the light of the reality that some categories of offenders do not respond to treatment but persist in offending. The fear of this category of offenders may have informed the refusal of the Molony Committee²⁴ to heed suggestions that youth offenders should be dealt with outside the criminal justice system entirely. In their report, while giving reasons for their refusal, they said:

... It is true that in many instances, the offence might be trivial and the circumstances point to neglect rather than delinquency, but there remain cases where serious offences are committed, and neither in the public interest nor in the welfare of the young offender is it right they should be minimized. Two considerations presented themselves strongly to our minds. In the first place, it is very important that a young person should have the fullest opportunity of meeting a charge made against him. Secondly, when the offence is really serious, and has been proved to be it is right that its gravity should be brought home to the offender.²⁵

Since then, the adoption of different strategies for different categories of offenders and at different stages of their offending careers has been the mainstay of the youth justice system. Though the bifurcation strategy is easily the most recognizable strategy, but an appraisal of youth justice systems in different jurisdictions around the world reveals that there are other strategies and they shall be examined forthwith.

²⁰ *ibid*

²¹ C Ball, N McCormack & N Stone, *Young Offenders, Law, Policy and Practice*, (London,Sweet and Maxwell 1995)p.38

²² *ibid*

²³ Harris & Webb, *Welfare Power and Juvenile Justice* (London, Tavistock 1987), p.9 cited in C Cunnen & R White (n.2) p.19

²⁴Home Office Departmental Committee on the Treatment of Young Offenders. (inaugurated January 1925)

²⁵ Cited in C Ball, N McCormack & N Stone (n 21) p.36

3. Different Strategies in the Administration of Youth Justice

3.1. Bifurcation Strategy:

Youth justice system has always been billed as an essentially welfare based institution that seeks to act in the best interest of young offenders by giving dispositions that are best suited to their need and not necessarily according to the gravity of the offence. But even at its early stages, it was also recognised that some offenders were more amenable to treatment than others and that there should be a means of distinguishing between different types of young offenders that came before the juvenile justice system. According to Pickford²⁶, the tacit appreciation of this difference is a tenuous but early manifestation of the bifurcated approach. It has over the years developed to take into cognisance repeat offenders and young children who commit violent crimes. In fact, the bifurcated approach has been statutorily recognised, because most statutes regulating the juvenile court system explicitly exclude those who commit violent offences.²⁷ It should be noted that apart from the adoption of different forms of treatment for different offenders, bifurcation is also adopted in the processes and dispositions of the juvenile justice system.

Bifurcation of Offenders

Most theories of juvenile delinquency usually attributed the causes of delinquency to factors outside the control of the child²⁸. This explanation has been used as justification for treating young offenders more like victims than as criminals. As such, rehabilitation rather than punishment has traditionally been the goal of the youth justice system. However, with children committing more serious crime, the juvenile justice system is having difficulty justifying the treatment of such offenders especially when they have committed heinous crimes.²⁹ The increasing involvement of young persons in crime has varied from joy riding in deprived council estates, murder and membership of gangs and drug related offences, has prompted³⁰ the perception that youths were committing more violent offences, and that the juvenile justice system was too soft on such offenders. According to Forst and Blanquiest, Law and Order advocates have been among the most vocal in complaining that the traditional juvenile sentencing process has been too lenient particularly with serious offenders. To support their demands for substantive reforms, they have pointed at instances where violent offenders have

²⁶ J Pickford (n 17) p.xxxiv

²⁷ see generally s.215(d) Kwara State Child Rights Law No.7, 2007

²⁸This fact was reiterated by I O Connor who said: 'lack of income, homelessness, abuse and exploitation, all have detrimental effects on children. To ignore their association with crime is to engage in victim blaming' see I O Connor, 'Models of Juvenile Justice', Paper presented at the Australian Institute of criminology conference. Juvenile Crime and Juvenile Justice: Towards 2000 on 26th June 1997.

²⁹The torture and murder of two-year-old James Bulger by two ten-year-old boys in 1993, sparked wide-spread calls for the review of the administration of youth justice in Britain. (the reaction has been described as the Bulger effect) The two boys were found guilty of murder and initially sentenced to a minimum of eight years in custody, which would have made them eligible for release at eighteen. Their sentence was increased to ten years by the Lord Chief Justice. Following public out-cry and a petition signed by nearly 280,000 people urging the sentence to be increased. The Home Secretary Micheal Howard increased their sentence to a minimum of fifteen years. see Murder of James Bulger, Wikipedia availabeathttp://www.wiki.Murder-of-james-bulger>accessed on 30th March 2013.

³⁰ M L Frost and M Blanquist, 'Cracking Down on Juveniles: The Changing Ideology of Youth Corrections', *Notre-Dame Journal of Law, Ethics and Public Policy* (1991) (5)2 323<http://www.scholarship.law.nd.ed.njllepp/vol5/iss2/5> accessed on 20th March 2013; M L Frost and M Blanquist, 'Cracking Down on Juveniles: The Changing Ideology of Youth Corrections' *Notre-Dame Journal of Law, Ethics and Public Policy* (1991) (5)2 323<http://www.scholarship.law.nd.ed.njllepp/vol5/iss2/5> accessed on 20th March 2013.

been released from institutional placement after being incarcerated for shorter periods than youths committing less serious offences.³¹

In response to such concerns, politicians have in turn tried to demonstrate that the juvenile justice system is capable of communicating the right message in response to such serious crimes.³² The reaction to these concerns has been described as '*populist punitiveness*'.³³ This response has been characterized by two basic courses of actions. These include the removal of some classes of offenders from the juvenile justice system in order to subject them to more punitive criminal process and sanctions in the adult system or making the juvenile system itself more punitive in form and function by changing its underlying philosophy, goals and dispositions.³⁴

Bifurcated Process

The process of juvenile justice like all processes in the criminal justice system can be clearly divided into different stages. This process usually involves arrest, adjudication and disposition. Ordinarily, only the philosophy of welfare should guide all the different stages, but in the face of concerns over rising rate of youth crime, some of the processes have retained the welfare approach while others have become more punitive. Thus at the point of arrest, the welfare of the child remains the guiding principle. As such, police officers retain wide discretionary powers to release a child accused of committing an offence after warning him. The police also have the power to refer the child to welfare units or social services departments for counseling. But where the police deem it fit, they also have the power to charge the child to court for prosecution.

At the adjudicatory stage, a more judicial approach is adopted. At the inception of the juvenile justice system, young offenders were denied most of the procedural guarantees to a fair trial that adult offenders enjoy. It was felt that these guarantees could impede the ability of the juvenile court to achieve its welfare objectives. This view point has however changed and now juvenile courts adopt a more adversarial approach in adjudicating. However, in order to stay true to the goals of protecting the best interest of the child, disposition hearings to determine the form of sentence for the child still adopt a welfarist approach. This two stage process has been described as a bifurcated process. While describing it, Siegel, Welsh and Senna said:

If the adjudication process finds the child delinquent, the court must decide what must be done to treat the child. Most juvenile court acts require a disposition hearing separate from the adjudication. This two stage process is often referred to as bifurcation process. The dispositional hearing is often less formal than adjudication. Here the judge imposes a disposition on the offender in the light of the offense, the youth's prior record, and his or her family background. The judge can prescribe a wide range of dispositions, ranging from a reprimand to probation to institutional commitment. In theory the judge's

³¹ibid

³² D J Smith, *The Effectiveness of the juvenile justice System*, p.183 available at <http://www.sydney.edu.au/education-social-work/professional-learning/resources/papers/smithD-05-childrenRiskCrime.pdf>>accessed on 20th March 2013

³³ E Carrabine, 'Youth justice in the united kingdom', p.15 available at <http://projects.essex.ac.uk/ehrr/v7n1/carrabine.pdf>>accessed on 13th March 2013

³⁴M L Frost and M Blanquist (n 30) p.334

decision serves the best interests of the child, the family, and the community³⁵

Notwithstanding the well-meaning intentions behind the adoption of bifurcation strategies, it has been criticized by those who believe that it denies some categories of offenders the opportunity of being treated. It has been said that the policy provides a convenient excuse for the continued use of both justice and welfare measures within the same youth justice system and, thus, the continuation of what was, in effect a schizophrenic practice of youth justice.³⁶ The inherent danger in such a system is that some categories of offenders are represented as more serious and menacing while others, who had previously been regarded as a threat, are represented as relatively unproblematic. The activity of a small number of offenders is dramatized while that of others is normalized. Bifurcated penalties increase the penalties imposed on the dramatized group while reducing those imposed on the normalized group.³⁷

3.2 Diversion and Career Criminal Strategy

Most young offenders would desist from delinquency after their first contact with the juvenile justice system, usually upon being warned or after undergoing some form of counseling. There is however a group which persist and resist all efforts at rehabilitation. Various studies have shown the effect of this small group of individuals on the rate of delinquency. Wolfgang, in his study of juvenile offenders discovered the chronic offender. The chronic recidivists according to him had been arrested five-times or more. Although they accounted for only six percent of the total number of individuals surveyed, they were responsible for fifty-two percent of all offences. They perpetrated seventy-one percent of homicides, eighty-two percent of robberies and sixty-four percent of aggravated assaults.³⁸ Thus, it was widely perceived that the juvenile justice system was ill equipped to deal with the persistent offender and that they were 'getting away with it.'³⁹ In Britain, the former Home Secretary, Jack Straw expressed concerns over repeat offenders and their impact on the system. He said:

The government wants to see the youth justice system make a real difference to the lives of the children and young people with whom it deals by preventing those children and young people from offending. Too many young begin offending at a very young age. Too many continue offending in their adult lives. They cause disruption, harm and distress to others. Preventing offenders is in the best interests of all concerned and should be a priority for all those working with the youth justice system⁴⁰

Most of the early statutes contained provisions that allowed young offenders to be transferred to adult courts. The conditions for this transfer were numerous, and juveniles could be transferred because they were classified as chronic, serious, violent, sophisticated, mature, and persistent or thought to be beyond the purview of the rehabilitative-oriented juvenile court.⁴¹

³⁵ L J Siegel, B C Walsh & J J Senna (n.4) p.376

³⁶J Pickford (n17) p. xxxi.

³⁷E Mclaughlin and J Munice , *Controlling Crime*,(London Sage 1986) p.265 cited by J Pickford(n13)p. xxxi

³⁸L J Siegel, B C Walsh & J J Senna (n.4) p 380

³⁹J Pickford (n17) p.xxxiii

⁴⁰ Ibid p.xxxvii

⁴¹ L J Siegel, B C Walsh & J J Senna (n.4) p338

During this period, the courts had wide discretionary powers to transfer or waive young offenders.⁴²

However, the United States Supreme Court in *Kent v US*,⁴³ sought to regulate the exercise of this power. It struck down the arbitrary procedures implicit in the District of Columbia's waiver provision and held that a juvenile was entitled to a waiver hearing, representation by counsel during the waiver hearing, access to information upon which the waiver decision was made and a statement of reasons justifying the waiver decision. The decision to adopt waiver as a means of addressing the issue of chronic offenders has equally been justified on the ground that it would avoid the draining of limited resources of the juvenile justice system on offenders who were perceived as being un-amenable to treatment. This group has been classified as including 'older chronic offenders who had already received treatment and support services from the juvenile court services, or serious and violent offenders who posed significant and persistent threats to community safety'.⁴⁴ It has also been argued that diversion can be used to protect younger offenders from being adversely affected by the corrupting influence of older, but more experienced youthful offenders.⁴⁵ The most obvious implication of diversion is that such an offender is more likely to get a punitive sentence.

In Britain, cautioning and warning are an integral part of the juvenile justice system; however, this is only available to offenders at the early stages of their offending careers. There are statutory limits to the number of warnings a child is entitled to. Once the limit is breached, the offender is then processed through the justice system. The modalities for the use of the warning system was set out in a government White Paper issued in November 1997 entitled 'No More Excuses- A New Approach to Tackling Youth Crime in England and Wales'. In the paper, it was said that the warning system would be used to nip crime in the bud. After a final warning is given, Community intervention programmes will be used to address offending behavior and to try to turn away youth offenders from court before they end up in court. If all these steps fail, custodial sentences then become necessary.⁴⁶

3.3. The Institutional Strategy:

The institutional strategy involves the establishment of various institutions within the general juvenile justice system to deal with various categories of offenders. Questions have been asked of the inability of the juvenile justice system to make differential treatment on the basis of age and gravity of offence. In a lot of cases young persons who had committed minor offences were given custodial sentences because there was simply no other alternative even though there was no evidence to suggest that this was in the best interest of the child⁴⁷. In response to such concerns, various strategies have been devised in various countries to provide differential treatment for young offenders. In the United States, some States have established alternative courts for some offences. These include Drug Courts for drug related offences and Peer Courts

⁴² M L Frost and M Blanquist (n.30) p338

⁴³ US 541(1966)

⁴⁴ M L Frost and M Blanquist (n.30) p 334

⁴⁵ *ibid*

⁴⁶S Vernon, Magistrates in the Youth Court: Teaching Old Beaks New tricks in J Pickford (ed) (n 13) p90

⁴⁷ When the state of Delaware in the United State was trying to close down its Ferris Secure Institution, an assessment of its inmates was done and it was discovered that of the 140 inmates only 6 inmates required secure care because of the nature of their offending and their offence history. It was found that the rest were incarcerated because there was there was no viable alternative. Their parents had either given up on them, were not interested or were themselves incarcerated. See C Hunt, Alternatives Sanctions: An American Experiment Incorporating Youth Rights-An Approach for the 21st Century. In J Pickford(ed) (n.17) p 214

for minor offences.⁴⁸ Qualification for such special consideration takes into cognizance the causative factor and the pre-disposing factors for each offender.

Furthermore, in Britain, the government has sought to reform the juvenile justice system in order to make it more responsive to the needs of young offenders and as a four-tier system has been suggested. This would involve the use of warnings and reprimands for first time offenders by the police. At the next level, restorative justice will be used for those making their first appearance in court that chooses to plead guilty. They will be referred to Youth Offender Panels. At the third level, repeat offenders and those who do not plead guilty will be dealt with in the ordinary youth court, while serious offences including grave crimes will be dealt with in the Crown Court.⁴⁹

4. The Youth Justice System in Nigeria and Its Inherent Strategies

The juvenile justice system in Nigeria is a fairly recent development. It was established by the colonial government and thus its philosophy, structure and institutions are modeled after the British System. In addition, as was the case in Britain and most other countries, it developed in response to concerns about rising level of delinquency and the urge to protect orphans and abandoned children. These concerns are reflected in the Laws passed by the colonial government during this period. Oguniran⁵⁰, while tracing the sequence in which laws on young persons were passed, said that the system started with the emergence of delinquency as a social phenomenon. This was followed by the enactment of legislation such as the Prison Ordinance 1917 which provided for the separation of juveniles, who were 14 years from adult prisoners; the Native Children Ordinance 1928 to cater for the welfare of orphans, abandoned children and those who had been sold into slavery. During the same period, reformatory and industrial schools were also opened for the care of young offenders. The entire process eventually culminated in the promulgation of the Children and Young Persons Act 1943.

The Act provided for the establishment of juvenile courts. At its inception, it functioned more like a welfare agency.⁵¹ Its jurisdiction was, however, expanded under the Children and Young Persons Law 1958 to cover both juvenile delinquency and child welfare issues. This dual jurisdiction has however been the basis of some criticisms of the system. It has been said that because its underlining philosophy is characterized by dual jurisdiction over delinquency and welfare issues, it has resulted in confusion in the system about how to deal with problems of adjustment to the various pressures encountered by children and young persons.⁵² The Children and Young Persons Law 1958, aside from its dual jurisdiction also has as its legacy, the use of the bifurcated strategy and emphasis on custodial sentences. The bifurcated approach is reflected in section 4(a) and section 14, which allow for the refusal of bail to young persons accused of grave offences and also their detention in custodial institutions where they are found guilty of murder, manslaughter or wounding with intent to cause grievous bodily harm. As seen in the course of this paper, the use of these strategies is not unique to Nigeria alone. It has however continued to elicit a lot of criticism. Scranton, while criticizing bifurcation said:

... there is denial of children as rational, responsible persons able to receive information, participate in frank and open discussions

⁴⁸ L J Siegel, B C Walsh & J J Senna (n.4), p 380

⁴⁹ S Vernon, p 95

⁵⁰ I Oguniran, *A Centurial History of Child Justice Reforms in Nigeria, Law, Crime & History* (2015)2 ,44

⁵¹ Ibid p.46

⁵² E O Alemika & I Chukwuma, 'Juvenile Justice Administration in Nigeria: Philosophy and Practice' (Lagos, CLEEN 2001) p.13

and come to well-reasoned and appropriately informed decisions ...on the other hand, there is the imposition, using the full-force of law of the highest level of rationality and responsibility, on children and young persons who seriously offend...⁵³

The juvenile justice system also grappled with the sentencing of young offenders. Oguniran observed that the law did not contain any specific sentencing guidelines and this resulted in magistrates resorting to the laws creating the offence to determine the appropriate sentence. Ogbogbine while describing the dilemma faced by magistrates said:

a juvenile court is always faced with the problem of how to equate the divergent interests of society; the vindication of public justice, the rehabilitation or reformation of the juvenile at the outset of his life and the deterrent element required in all punishments, especially when the crime committed by the child is of a serious nature⁵⁴

The use of custodial sentences without adequate regard for their effectiveness was also criticised by Oguniran.⁵⁵ This criticism is especially important in Nigeria, where various studies have shown that juvenile remand homes in the country were regulated without proper policy; legal and institutional framework for juvenile offender correction and juvenile delinquency prevention. The studies also showed that the goals of the institutions are also compromised because of the lack of proper planning and implementation, gross under-funding, inadequate staff in qualitative and quantitative terms, and lack of necessary training facilities.⁵⁶ It was based on these shortcomings that a National Workshop was held on how to revamp the juvenile justice system. It was agreed, amongst other things, that the age of criminal responsibility should be raised; the juvenile court should follow its own procedures; and that the juvenile justice should de-emphasise custodial treatment and shift toward informal, non-custodial and community based methods.⁵⁷ These recommendations are a reflection of the recent trend in juvenile justice epitomized by the Convention on the Rights of the Child 1989. The Convention, in addition to three other international legal instruments on juveniles, has been praised for initiating a marked shift in the approach to juvenile justice by shifting the emphasis 'from punitive measures to advocating a child centred justice system, in which the child's interest are paramount and the inherent dignity of the child is preserved.'⁵⁸ Though the Convention was ratified by Nigeria in 1991, it was not enacted until 2003 vide the Child Rights Act. The question that now needs to be answered is whether the Child Rights Act is a clear departure from the traditional strategies of the administration of juvenile justice.

⁵³ P Scranton, *Whose Childhood? Whose Crisis* in P Scranton(ed) *Childhood in Crisis* London (UCL press 1997) p.4

⁵⁴ I Oguniran, *The Lock and Key Phenomenon: Reforming the Penal Policy for Child Offenders in Nigeria*, *Justice Policy Journal* (10)1, 7

⁵⁵ I Oguniran (n 54) 51

⁵⁶ E E O Alemika & I Chukwuma (n 52) p.43

⁵⁷ I Oguniran(n46) 54

⁵⁸ D Fottrell 'Bringing Rights All The Way Home: Some Issues of Law and Policy in International Law and Juvenile Justice' in J Pickford (ed), (n 17) p.102

The Child Rights Act 2003: A New Beginning for Juvenile Justice?

Exclusion of Status Offences:

One of the most maligned features of the juvenile justice system is its dual jurisdiction over delinquents and children in need of care. It is therefore fitting that the Child Right Act in its bid to reform the system would clearly depart from this. Thus, section 204 of the Act explicitly excludes status offences from the jurisdiction of juvenile courts.

Diversion:

The Children and Young Persons Law only granted police officers the power to release young offenders on bail, and then charge them before the juvenile court, which after finding them guilty can in its disposition, dismiss the charge; discharge the offender on recognisance; subject him to probation; commit him to the care of a fit person or an approved institution.⁵⁹ The Child Rights Act, however, gives police officers wider discretionary powers that could be used to protect young offenders from appearing before the court. It thus allows them to dispose of the case by using other means of settlement, including supervision, guidance, restitution, and compensation of victims.⁶⁰

Bifurcation:

Though the Child Right Act is often touted for its commitment to the treatment of young offenders, it appears that this approach is biased in favour of those who commit non-serious offences. This is clear from the provisions of section 209(2), which provides that the provisions of section 209(1), with respect to the diversionary powers of police officers, can only be exercised if the offence involved is non-serious.

Chronic Offenders:

The Child Rights Act has also continued with the tradition of treating youth offenders who persist in offending differently. This can be seen from the provisions of section 215(1) (d)(ii), which allow the court to remand a child who persists in offending, if there is no other appropriate response that will protect the public safety.

5. Conclusions

The enactment of the Convention on the Rights of the Child (1989), the United Nations Rules for the Administration of Juvenile Justice (1985), the United Nation Rules for the Protection of Juveniles Deprived of their Liberty (1990), and the United Nations Guidelines for the Prevention of Juvenile Delinquency (1990), within a decade was often touted as initiating a silent revolution in the administration of youth justice.⁶¹ This is reflected in the fact that these instruments have formed the basis of new legislation that have sought to establish juvenile justice systems that would be child-centered, and in which the child's interests are paramount and the dignity of the child is preserved⁶²

In Nigeria, it was hoped that the Child's Rights Act would resolve most of the inherent conflicts that hitherto characterized the administration of juvenile justice in the country. It clearly departed from the philosophy that characterized the Children and Young Persons Law by

⁵⁹Kwara State Child Right Act 2006 s.11

⁶⁰ s.209(1) and (3)

⁶¹ G Van Bueren, *The International Law on the Rights of the Child* (Dordrecht: MartinusNijhoff 1995) p.169 cited in D Fortrel (n 58) p. 101

⁶² D Fortrel (n 58) p. 102

decriminalizing status offences, emphasizing the use of diversion and providing that custodial sentences should only be used as a last resort. It however adopted a more traditional approach in relation to children who commit violent offences and those who persist in offending. It also retained the use of pre-trial detention for young offenders accused of attempting to commit violent offences in clear contradiction to the intended sentencing philosophy of the Act.⁶³

In addition, most countries have not been able to develop enough institutions that would ensure that a truly welfare model in the administration of juvenile justice is put in place. Thus, implementation has also been a constraint. Most of the dispositions exist only on paper and courts are forced to resort to traditional custodial sentences.⁶⁴ Cantwell rightly observed that States tend to have a very limited range of sentencing options for children. Often, the option is a caution or conditional discharge, a fine or suspended sentence. Other responses may be on the statute books, but are not practical propositions because of lack of financial and human resources.⁶⁵ Therefore, while the juvenile justice system has traditionally been faced with the challenge of how to maintain balance due to its conflicts arising from its dual jurisdiction, it appears the foundations of new conflicts are being laid due to the disparity in the provisions of the law and the absence of institutions to actualize its goals. Thus, it is safe to agree with those who said that while it is safe to talk of a revolution in the juvenile justice system, 'it is as yet an unfinished revolution'⁶⁶

⁶³ It has been noted that in the majority of countries most children deprived of their liberty are in fact on pre-trial remand for minor offences and will not in any case receive a custodial sentence if convicted. See D Fortrell (n 58) p. 105

⁶⁴ This situation also applies to Nigeria

⁶⁵ Cantwell N, Nothing more than Justice, Juvenile Justice Information Portfolio, 3 *Innocenti Digest*

⁶⁶ D Fortrell (n 58) p. 110