European Civil Liberties Network

Essays for civil liberties and democracy in Europe

The denial of children's rights and liberties in the UK and the North of Ireland

Phil Scraton

Introduction

"…a regime of rights is one of the weak's greatest resources." (Freeman 2000:279-280)

Children's rights are prescribed and protected by the United Nations Convention on the Rights of the Child (UNCRC), ratified by the UK Government in 1991. Binding in international law, the expectation is that states will develop a programme of legal and policy reform and establish formal interventionist practices compliant with the Convention's Articles. The right of children to adequate care and protection, the provision of services and facilities appropriate to their basic needs and the formulation of institutional arrangements that enable children's effective participation, particularly in decisions that impact on their lives, are central to the UNCRC and its complementary instruments. [1]

Following submission of the UK Government's initial report to the UN Committee on the Rights of the Child in 1994 the Committee raised several concerns. It criticised the lack of progress in ensuring implementation, specifically insufficiency of measures taking account of the 'best interests of the child' (Art 3.1). It noted that the low age of criminal responsibility and key aspects of national legislation concerning the administration of juvenile justice were incompatible with the Convention. Of profound concern was the ethos of guidelines for establishing and managing secure training centres and the emphasis on incarceration and punishment. Further, that children placed in care under the social welfare system could easily be diverted to custodial centres. The Committee affirmed its commitment to the imprisonment of children as a last resort (Art 37b) and to alternatives to custody. This is best illustrated in Article 40.4 which commits member states to dealing with children in conflict with the law 'in a manner appropriate to their well-being and proportionate both to their circumstances and the offence'.

The UN Committee presented the UK Government with a raft of recommendations giving greater priority to the general principles of the UNCRC regarding legislative and administrative measures. More specifically it recommended the raising of the age of criminal responsibility and it criticised the placement of secure training orders on 12 to 14 year-olds, indeterminate detention and the doubling of custodial sentences on 15 to 17 year-olds. It stressed the need for strategies and programmes to ensure appropriate measures promoting the physical and psychological recovery and social reintegration of children engaged by the youth justice system.

In 1999 the UK submitted its second report to the UN Committee. It followed the 1997 election of the Labour Government and was a year after the passing of the 1998 Crime and Disorder Act which introduced a range of civil orders relating to children and overhauled the youth justice system. Using a transactional discourse of 'rights' set against 'responsibilities', and without a hint of irony, the UK Government (1999:179) stated, 'It is in the interests of children and young people themselves to recognize and accept responsibility, and to receive assistance in tackling criminal behaviour'. It commented that the UN Committee 'may have misunderstood the purpose and ethos' of secure training centres, whose 'primary purpose' was 'not penal'.

Equivocating on each of the Committee's recommendations, the UK Government defended the age of criminal responsibility set at 10 in England and Wales. It was 'appropriate … reflecting the need to protect the welfare of the youngest'. For, in 'today's sophisticated society, it is not unjust or unreasonable to assume that a child aged 10 or older can understand the difference between serious wrong and simple naughtiness …' (ibid:180). The principle being that courts could 'address offending behaviour by children … at the earliest possible opportunity, and so nip that offending behaviour in the bud' (ibid:177). Courts would be permitted to draw inferences from the failure of an accused child to give evidence or answer questions at trial. By appearing before a criminal court children would be able 'to develop responsibility for themselves' (ibid:180). The inference was clear – the UK Government regarded the criminal courts as the site most appropriate for educating children in conflict with the law or behaving 'in an anti-social way' (ibid).

This brief and schematic overview introduces some of the issues central to the children's rights debate regarding the administration of youth justice within the UK following the ratification of the UNCRC. The Convention provides no more than a baseline statement of children's rights and the reporting guidelines issued by the UN Committee no more than a detailed statement of minimum expectations. Yet, during the decade in which all state signatories to the Convention should have been working towards full compliance what happened in the UK amounted to a grudging acceptance of the UN Committee's concerns verging on rebuttal.

The Arrival of 'Antisocial Behaviour'

Until 1996 and the build up to the UK General Election the following year the term 'antisocial behaviour' had appeared occasionally in popular discourse and the responses of politicians to a perceived breakdown in working class communities. The focuses of attention were 'problem families', 'lone mothers' and 'persistent young offenders'. Immediately prior to and after the Election, antisocial behaviour gained significant political currency as a 'catch-all' phrase that represented all that was ill with estates and neighbourhoods from town to city; a depiction that something was rotten at the core of the urban heartland. The background to and significance of these political developments, their media representation and policy consequences have been detailed elsewhere (see: Scraton 1997; Haydon and Scraton 2000; Scraton 2002a; Scraton and Haydon 2002; Scraton 2004). Within a year of being in office the Labour Government introduced the 1998 Crime and Disorder Act which made antisocial behaviour subject to a civil injunction: the Anti-Social Behaviour Order (ASBO). By the time further legislation, the 2003 Antisocial Behaviour Act, was introduced antisocial behaviour had become established as a central plank in the Labour Administration's political programme. Yet, in definition and in context antisocial behaviour remained conceptually ambiguous resulting in inconsistent, and occasionally bizarre, interpretations and applications in the courts.

Within a relatively short period ASBOs have developed from being used against children only in exceptional circumstances to a situation in which the majority are targeted against children and young people. Based on primary research and drawing on previously published work (Scraton 2004), this paper traces these developments in the UK. It then moves on to consider the implications of the extension of the legislation to Northern Ireland (Anti-Social Behaviour [Northern Ireland] Order 2004). It argues that the failure to consider the particular circumstances and complexities of context within which antisocial behaviour is defined and regulated is markedly significant in the North of Ireland where punishment beatings and exiling already prevail in many communities.

'Tough on Crime …'

"By the mid 1990s crime was rising, there was escalating family breakdown and drug abuse, and social inequalities had widened. Many neighbourhoods had become marked by vandalism, violent crime and the loss of civility. The basic recognition of the mutuality of duty and reciprocity of respect on which civil society depends appeared lost … the moral fabric of community was unravelling." (Blair 2002:26)

As the British Prime Minister formally introduced the 2002 Queen's Speech outlining the Government's annual agenda, his language was familiar: 'crime and social breakdown'; diminished 'quality of life'; 'social disintegration', and so on. The 'new opportunities' in health, welfare and education claimed by Blair could not be experienced 'if people walk out of their doors and are confronted by abuse, vandalism, anti-social behaviour'. A 'new, simpler and tougher approach to anti-social behaviour' would be the priority. He continued, 'It is petty crime and public nuisance that causes so much distress … vandalism, graffiti, low-level aggression and violence … Families have a right to be housed. But they have no right to terrorise those around them'. As the 'war on terror' was being mobilised globally so the war on terror at home would be pursued relentlessly. In Blair's analysis the issues are primarily moral and social rather than political and structural (see: Scraton 2002b).

Blair's explanation for the upsurge in petty crime, antisocial behaviour and public nuisance was predictable but more in keeping with successive Home Secretaries' utterances throughout the Conservative Thatcher and Major years. He attacked the criminal justice system as outmoded, over-indulging offenders. Courts were slow in processing cases and out of touch with the needs and demands of justice administered in the 21st Century. Welfare approaches continued to dominate proceedings, bending to accommodate defendants in their pleas of mitigation and in lenient sentences. In this skewed process consideration for perpetrators had become prioritised above the needs of victims. Hard core, persistent offenders, presented by Blair as responsible for the majority of crimes committed, were tolerated, even excused. In high risk neighbourhoods police were thin on the ground, over-burdened with peripheral duties. Thus unpoliced low level crime and antisocial behaviour had escalated. Despite the emphasis in recent legislation on multi-agency strategies, inter-agency initiatives were neither efficient nor effective. For those prosecuted, the public perception, assumed by Blair as reality, was that the punishments meted out failed to reflect the seriousness of the offences committed. Only by remedying such issues and imbalances, by addressing low-level crime and by broadening the definitional scope of antisocial behaviour, would 'social cohesion' be restored to 'fragmented communities' (ibid). Blair's message was not new.

A decade earlier, as Shadow Home Secretary, Blair deplored the 'moral vacuum' prevalent throughout British society. Instructing children and their disaffected communities in 'the value of what is right and what is wrong', offered the only salvation from the

sure descent into 'moral chaos'. A future Labour government, he promised, would be 'tough on crime and tough on the causes of crime' (*The Guardian*, 20 February 1993). He was speaking in the immediate aftermath of the abduction and killing of 2-year-old James Bulger by two 10-year-olds, Jon Venables and Robert Thompson. Taking an exceptional situation, however serious, out of its specific context displayed political opportunism rather than analytical awareness. Those events, he continued, were 'hammer blows against the sleeping conscience of the nation'. The distasteful metaphor was not lost in a media caught up in the 'crime of the decade'.

The killing of James Bulger occurred within the context of 'a fermenting body of opinion that juvenile justice in particular, and penal liberalism in general, had gone too far' (Goldson 1997:129). During the early 1990s a series of unrelated disturbances in towns throughout England and Wales raised the profile of youth offending. Media coverage focused on 'joyriding', 'ram-raiding', 'bail bandits' and 'persistent young offenders'. Senior police officers directed sustained pressure at Government to address the 'issue' of repeat offending. The elevation of James Bulger's tragic death as the ultimate expression of a 'crisis' in childhood offered an unprecedented opportunity for leading politicians to out-tough each other. It was exploited to the full, 'a catalyst for the consolidation of an authoritarian shift in youth justice … a shift which, in legal and policy initiatives, was replicated throughout all institutional responses to children and young people' (Scraton 1997:170).

… tough on Liberties

"Property owners, residents, retailers, manufacturers, town planners, school authorities, transport managers, employers, parents and individual citizens – all of these must be made to recognize that they to have a responsibility [for preventing and controlling crime], and must be persuaded to change their practices in order to reduce criminal opportunities and increase informal controls." (Garland 1996:445)

However clumsy the term, 'responsibilisation' carries a simple message: the state alone cannot, nor should it be expected to, deliver safe communities in which levels of crime and fear of crime are significantly reduced and potential victims are afforded protection. While private organisations, public services and property owners take measures to tackle opportunistic crime, thus turning the private security provision into one of the most lucrative contemporary service industries, in addressing prevention the 'buck stops' with parents and individual citizens. Civil rights, including rights of access to state support, intervention and benefits, are presented as the flip-side of civic responsibilities. Being responsible for challenging intimidatory behaviour, small-scale disorder and criminal activity is part of a network of 'informal controls' contributing towards safer and more cohesive communities. At the hub of this idealised notion of 'community' is the relationship between families and inter-agency partnerships working towards common, agreed social objectives. The live connection between a new form of communitarianism and the liberal tradition of shared responsibility underpinned the much-vaunted 'Third Way' politics adopted by Clinton's Democrats and Blair's 'New' Labour.

New Labour's reclamation of 'community' was consistently evident in Blair's remoralisation thesis that first surfaced in the aftermath of James Bulger's tragic death. Five years on he stated: 'Community defines the relationship not only between us as individuals, but also between people and the society in which they live, one that is based on responsibilities as well as entitlements' (quoted in Gould 1998:234). For Blair, rewards to individuals are earned through altruism, whether meeting family obligations or community responsibilities. Core values and principles are derived, therefore, in the mutually beneficial and benevolent social transactions between the 'self' and others; 'others' being the mirror in which self-respect is reflected, an image made tangible through 'communitarianism'.

Within this process of reclamation, itself a form of moral renewal, crime represents a betrayal of the self and a betrayal of the immediate social relations of family and community. The corrective for crime, however petty, and for disruptive or disorderly behaviours, is two-dimensional. First, affirming culpability and responsibility through the due (and assumed to be fair) process of criminal justice – from apprehension to punishment incorporating the expectations of retribution and remorse. Second, the reconstruction of and support for the proven values of positive families and strong communities. The New Labour agenda established the priority of crime prevention within *all* public agencies. The social objective was early intervention - targeting children's *potentially* criminal behaviour by children in a context of 'appropriate' parenting. It extended to a promised increase in secure accommodation for young offenders and 'curfews for 10-year-olds' (*Sunday Times* 18 August 1996).

Following the 1997 Labour victory, Home Secretary Jack Straw returned the popular debate to familiar territory: 'Today's young offenders can too easily become tomorrow's hardened criminals' supported by 'an excuse culture [that] has developed within the youth justice system' (*The Guardian*, 28 November 1997). It was an inefficient youth justice system that 'often excuses young offenders who come before it, allowing them to go on wasting their own and wrecking other people's lives'. Meanwhile parents 'are not confronted with their responsibilities' and 'offenders are rarely asked to account for themselves' (ibid). Straw's message was unambiguous: victims were disregarded, the public was excluded.

He reiterated four key propositions. First, when tolerated or indulged, the disruptive and offensive behaviour of children leads inevitably to their eventual participation in serious and repetitive crimes. Second, that within the community, the primary responsibility for regulating and policing such behaviour rests with

parents. Third, professionals entrusted on 'society's behalf' with initiating purposeful, correctional interventions had betrayed that trust, excusing unacceptable levels of behaviour and their own lack of effectiveness. Fourth, existing processes and procedures over-represent the needs and rights of perpetrators while under-representing victims.

From within the prevailing political rhetoric, endorsed by the independent Audit Commission (1996), emerged the ubiquitous and conveniently elastic term 'antisocial behaviour'. Its new-found status quickly consolidated as *the* key issue. As journalists, academics and practitioners sought a more precise definition the newly elected Government obliged with a less than precise definition via a rushed consultation document. It was defined as behaviour that 'causes harassment to a community; amounts to antisocial criminal conduct, or is *otherwise* antisocial; disrupts the peaceful and quiet enjoyment of a neighbourhood by others; intimidates a community or section of it' (Local Government Information Unit, 1997: emphasis added). The slide between 'criminal conduct' and 'antisocial behaviour' was calculated and reflected in the ambiguity of 'otherwise' amounting to a definition open to broad interpretation and subject to conveniently wide discretion in its enforcement.

A group of established academics, one of whom – Rod Morgan – later was appointed as the Head of the Youth Justice Board, collectively attacked the conceptualisation of antisocial behaviour as, 'neither sensible nor carefully targeted' (Ashworth et al 1998:7). They condemned the proposed legislation for taking 'sweepingly defined conduct within its ambit', granting 'local agencies virtually unlimited discretion to seek highly restrictive orders', jettisoning 'fundamental legal protections for the granting of these orders', while authorising 'potentially draconian and wholly disproportionate penalties for violations' (ibid). Rather than providing effective interventions to tackle 'those who terrorise their neighbours', the 'actual reach is far broader', covering 'a wide spectrum of conduct deemed antisocial, whether criminal or not'. The early warnings, exposing the implicit authoritarianism within the Bill, went unheeded. The consultation period was brief and failed to develop an inclusive practitioner-informed debate. Politically, it is fair to assume, that was the intention.

Consequently the 1998 Crime and Disorder Act (CDA) quietly became law, its wide-ranging content introduced over three years. Generically it aimed to reduce crime, improve community safety, promote more effective multi-agency approaches and increase public confidence in the criminal justice system. To these ends it obliged local authorities to present a crime strategy derived in a crime and disorder audit involving consultation with local communities, 'hard to reach' groups and all public sector agencies. It placed a responsibility on statutory agencies to participate in the operational planning, realisation and evaluation of local strategies.

In addition to the overhaul of youth justice, the CDA abolished the presumption of *doli incapax* and allowed courts to draw inferences from the failure of an accused child to give evidence or refusal to answer questions at trial. Parenting Orders, Child Safety Orders and local Child Curfew Schemes were also significant new developments. Perhaps the most immediately contentious initiative, however, was the introduction of Anti-Social Behaviour Orders (ASBOs). These community-based civil injunctions, applied for by the police or the local authority – each in consultation with the other, were to be taken against an individual or a group of individuals (eg families) whose behaviour was considered 'antisocial'. Applications were to be made to the magistrates' court, acting in its adult jurisdiction and in its civil function, with provision for the use of professional witnesses. ASBOs were considered, in principle, to be preventative measures targeting 'persistent and serious' antisocial behaviour. Antisocial behaviour was defined as 'acting in a manner that caused or is likely to cause distress to one or more persons not in the same household as himself [sic]'. The 1998 Act Guidelines stated that 'prohibitions in the order must be such as are necessary to protect people from further antisocial acts by the defendant in the locality', targeting 'criminal or sub-criminal behaviour, or minor disputes …' (CDA Introductory Guide, Section 1). A criminal offence was committed only on breach of the order without a 'reasonable excuse'.

Instructively, given the pattern of events that followed, the Guidelines stated that ASBOs would 'be used mainly against adults' (ibid). This commitment was affirmed by the UK Government's (1999) submission to the UN Committee on the Rights of the Child in which it set out the changes in legislation regarding children. While all other CDA orders were discussed, the ASBO was omitted suggesting that it was of little, if any, significance regarding the behaviour of children. Given that the CDA concentrated heavily on the criminal and disorderly behaviour of 10 to 18 year olds, and was the vehicle through which youth justice was structurally reconfigured, it is unsurprising that it came to be viewed as legislation primarily concerned with the regulation and criminalisation of children and young people. The UK Government's submission to the UN Committee states that 'it is not unjust or unreasonable to assume that a child aged 10 or older can understand the difference between serious wrong and simple naughtiness'. But, it proposed, for children lacking 'this most basic moral understanding, it is all the more imperative that appropriate intervention and rehabilitation should begin as soon as possible' (ibid:180).

'Serious wrong' and 'simple naughtiness' were presented as opposite ends of a spectrum, yet no acknowledgement was made regarding the complexities of understanding, experience and interpretation that lie between. Also significant are issues of premeditation, intent and spontaneity. As stated elsewhere, '[r]educing these complexities, difficult to disentangle at any age, to simple opposites in the minds of young children amounts to incredible naivety or purposeful misrepresentation' (Haydon and Scraton 2000:429). Further, the courts are proposed as 'the site most appropriate to intervene and

rehabilitate …' (ibid). Yet, the UK Government (1999:180) stated that 'emphasis is firmly placed not on criminalizing children, but on helping them to recognise and accept responsibility for their actions and enabling them to receive help to change their offending behaviour'.

The combination of major institutional change in youth justice, new civil injunctions – particularly ASBOs, the removal of *doli incapax* and the right to silence and an expansion in secure units sealed the Labour Government's intent to 'out-tough' its predecessors. As Johnston and Bottomley (1998:177) state, while 'the Conservatives talked tough, it is Labour that introduced stringent measures such as child curfews, antisocial behaviour orders and parenting orders'. The result was a 'regulatory-disciplinary approach to crime prevention, combined with welfarist assistance to help people meet its standards'. What the CDA exemplifies is the tangible outcome of New Labour's law and order rhetoric; 'an amalgam of 'get tough' authoritarian measures with elements of paternalism, pragmatism, communitarianism, responsibilization and remoralization' (Muncie 1999:169). It was to be delivered, using the language and theory of 'risk', through a 'burgeoning new managerialism whose new depth and legal powers might best be described as 'coercive corporatism"' (ibid).

Writing as the CDA was being implemented, Allen (1999:22) registered concern regarding the net-widening potential of targeting antisocial behaviour alongside the increasingly 'coercive approach of zero-tolerance policing' interventions leading to the promotion rather than eradication of 'social exclusion'. Thus the 'promise of speedier trials, new teams and panels to monitor action plans, restorative justice and the inadequacies of the pre-1998 system' was the justification for the CDA but the fast-emerging concerns voiced by academics and practitioners included 'its potential for net-widening, over control, lack of safeguards and what one can only call 'joined-up labelling'' (Downes 2001:9). Goldson (2000:52) put this position more strongly: 'Early intervention, the erosion of legal safeguards and concomitant criminalisation, is packaged as a courtesy to the child'. Yet it amounted to 'an interventionism which 'promotes prosecution' … violates rights and, in the final analysis will serve only to criminalise the most structurally vulnerable children' (ibid).

Introduced without any convincing evidence of the 'graduation' of 'at risk' children and young people into crime, ASBOs received 'a degree of political backing out of all proportion to their potential to reduce crime and disorder' while the 'demonisation' of parents through Parenting Orders 'will exacerbate a situation' that was 'already complex and strained' (Hester 2000:166/171). Hester predicted that ASBOs would be used primarily in 'poor communities' and 'by definition' would be 'disproportionately deployed' (ibid:172). More problematic still, the policing and regulation of children and parents within the most politically and economically marginal neighbourhoods effectively expects people to take responsibility for all aspects of their lives in social and material contexts where they are least able to cope. As Pitts (2001:140) reflected, the 'managerial annexation of youth justice social work … effectively transformed [social workers] into agents of the legal system, preoccupied with questions of 'risk', 'evidence' and 'proof', rather than 'motivation', 'need' and 'suffering''. In interpreting the Labour Government's swift delivery of the CDA and its concentration on ASBOs Gardner et al (1998:25) noted the contradiction in 'tackling social exclusion' while passing legislation 'destined to create a whole new breed of outcasts'.

Within a year the Government strongly criticised local authorities for failing to implement child curfews and ASBOs, thus intensifying pressure on local authorities to establish antisocial behaviour initiatives. Newly appointed or seconded staff, often under-trained and poorly managed, were impelled into using ASBOs without having the time or opportunity to plan appropriately for their administration or consequences. ASBOs soon became a classic example of net-widening through which children and young people in particular, who previously would have been cautioned, became elevated to the first rung of criminalisation's ladder. The vindictiveness of local media, alongside the triumphalism of local councillors and their officers, provide dramatic illustrations of the public humiliation associated with authoritarian policies conveyed through sensationalist reporting.

Naming and Shaming

Liverpool's first ASBO was served on a disruptive 13-year-old. On 5 June 2002 the *Liverpool Echo* dedicated its entire front page to the case. A large photograph of the child's face was placed alongside a banner headline: 'THUG AT 13'. Within a month he was sentenced to eight months for his third breach of the ASBO. Also in June 2002 the *Wigan Reporter* gave its front page to a 'mini menace' who was to be 'sent on a trip to a remote Scottish island' where 'there was nothing to break and nothing to steal'. The headline read 'COUNCIL FUND SCOTTISH TRIP FOR A TINY TERROR'. The caption under the colour photograph named the 13 year old, stating: 'The youngster leaves court, pretending to play the flute with his screwed-up anti-social court order'. A case in West Lancashire, involving the banning of a brother and sister from a specified neighbourhood, was headlined 'STAY OUT!' and 'Taming two tearaways' (*Skelmersdale Advertiser* 30 May 2002). Such cases were not exceptions. Children, not charged with any criminal offence, were named and shamed and their neighbours were invited to note the conditions attached to ASBOs and report any breach to the authorities.

On 20 March 2002 *The Mirror*, proclaiming on its masthead the award of 'newspaper of the year', devoted the full front page to the photographs of two boys, aged 15 and 17. Above their faces ran the heading: 'REVEALED: The lawless teenagers who are laughing at us all. Every town has them'. Beneath the photographs, occupying a quarter of the page was the word 'VILE'. Under each photograph were boxes

arrowed to the faces above: 'Ben, age 17 Crimes: 97'; 'Robert, age 15 Crimes: 98'. The distinction between 'crime' and 'antisocial behaviour' was not made and the two page detailed coverage would not have been permitted had they been convicted of crimes.

In September 2003 ASBOs were obtained against seven young men. One was issued for life, a second for 10 years and the remainder for five years. The hearing lasted for 15 weeks and there followed a five week hearing in the crown court which dismissed their appeal application. 3,000 copies of a police approved leaflet entitled 'KEEPING CRIME OFF THE STREETS OF BRENT' were distributed, containing photographs of the seven young men, their names, their ages and the details of the orders. The local authority posted details of the proceedings on its web-site, describing the gang as 'animalistic', 'thugs' and 'bully-boys'. It justified the publicity by stating the necessity to keep people in the community fully informed. The behaviour of the seven young men had been threatening, abusive and violent to the extent that many residents were fearful in their homes. The use of leaflets, the web-site and the community newsletter was considered an exceptional response to an exceptional case. Yet it had set a precedent in issuing photographs and personal details, demonstrating a commitment to using publicity as part of the ASBO enforcement strategy.

On 17 February 2004 the *Daily Express* devoted its front page to the headline: 'TERRORISED BY GIRL GANG BOSS AGED 13: She led 50 hooligans on violent rampage'. Alongside the story, particularly significant because of her age and gender, was her photograph and name. Under the Page 9 headline, 'High on glue, the teen gang leader who spread alarm and fear to a city', were the 12 conditions of her five year ASBO. Among these were: mixing with 42 named young people, 'the Leeds Town Crew'; using the terms 'Leeds Town Crew, 'LTC', 'TWOC Crew', 'GPT', 'Cash Money Boyz', or 'CMB', in any correspondence, spoken or written; barred from areas of central Leeds unless accompanied by parent, guardian, social or youth worker; travelling on buses unless accompanied by parent or guardian; wearing a hood or scarf that might obscure her identity. As she left the court she pulled up her hood to guard against the press photographers and instantly breached her ASBO.

The *News of the World* (10 October 2004) exposed a young child and his family to serious risks of reprisals. Across two inside pages it ran the 'Exclusive': 'Stefan is first 11-year-old to have Anti-Social Behaviour Order served on him'. A full page showed the child behind a driving wheel, the headline took up half a page: 'YOUNGEST THUG IN BRITAIN!' Alongside a 'stamp' marked 'OFFICIAL', it listed the 'Tiny tearaway's rap sheet from hell'. The list included: 'Theft'; 'Drugs'; 'Booze'; 'Arson'; Joy-riding'; Truancy'. It concluded: 'TOTAL NIGHTS LOCKED UP IN JAIL: 50'. On the opposite page was a photograph of Stefan seated with his mother and father and seven brothers and sisters. Under the heading 'Crowded house', Stefan's face and those of his parents were visible. The faces of the other children were pixillated to 'protect their identities'. The headline was condemnatory: 'Yob's jobless parents rake in equivalent of more than £40k a year'. The story-line was unforgiving: 'He's 11 years old – and terrifying. A swaggering little shoplifting, fire-raising, joyriding, fighting, drinking, drug-taking, nightmare doted on by his benefit-sponging parents'.

The child protection issues in the presentation of this story are self-evident but the *News of the World* was fortified by the fact that earlier in the week 'three yobs failed in a High Court bid to prove that publicity about their ASBOs had infringed their human rights'. This was a reference to the 'right to privacy challenge' brought by three claimants supported by the civil liberties' group, Liberty, against the Metropolitan Police Commissioner, the London Borough of Brent and the Home secretary over the 'Keep Crime off the Streets of Brent' leaflet referred to above. The claimants alleged that the extent of the publicity was unlawful, breaching Article 8 of the European Convention on Human Rights. They argued that the publicity was disproportionate and unnecessary particularly in its reference to personal details couched in sensational language. Responding that the content of the publicity was already in the public domain, the police submitted that public confidence had to be restored, ASBOs required local support in their enforcement and publicity was an essential factor in securing deterrence.

The Court held that where 'publicity was intended to inform, reassure, assist in enforcing the orders and deter others, it would not be effective unless it included photographs, names and partial addresses'. Local residents had experienced 'significant criminal behaviour' over an extended period, the individuals concerned were well known in the area and the publicity was central to ending their antisocial activities. The publicity's 'colourful language' was necessary to draw residents' attention to the issue. The Judge criticised the claimants' protracted legal challenges, stating that time limits should be imposed on contesting ASBOs. The claimants 'had been shown to be members of a gang responsible for serious antisocial behaviour over an extended period' and had been 'stopped, searched arrested and brought before the courts' yet they had 'continued with antisocial behaviour and defiance of authority' (quoted in *The Guardian*, 8 October 2004). In this context the publicity and language was considered appropriate.

The Leader of Brent Council expressed surprise that Liberty had supported the case given the claimants' 'serious and persistent bad behaviour' which had been 'dangerous, threatening and violent'. The judgment, she stated, had been awaited with interest by local authorities throughout England and Wales. A Home Office spokesperson considered that it supported the Home Secretary's policies determination to tackle antisocial behaviour. The principle, that 'publicity is necessary to help with the enforcement of an order', had been established by the court. It was clear that the judges took the view that the criminal and antisocial behaviour of the extended gang had been so serious and sustained that their identities were already well known, their reputations well established. By their actions they had compromised their right to privacy.

‘Crusading Against Crime’: A Brief Case Study [2]

Newtown is a Northern second generation new town built in the 1970s within a shire county. Of the eight districts within the county it has the lowest recorded crime rate yet from the outset showed a marked enthusiasm for the clampdown on antisocial behaviour and was quick to establish and antisocial behaviour team. The antisocial behaviour co-ordinators stated their reluctance to be over-eager in seeking ASBOs, maintaining they should be used as a last resort and then only in extreme cases and with appropriate and workable arrangements for their administration in place. Yet the political dynamics were considerable:

“There was massive pressure on us. We needed an ASBO. The [area] hadn’t had one and the Chief Executive was on the case all the time. The police hadn’t had one, the Council hadn’t had one, so we had to get one.” (Personal interview)

The investment in and success of the antisocial behaviour unit was tied to:

“…how many evictions I get and how many antisocial behaviour orders, injunctions and how many notices seeking possessions I serve. It always gets in the paper and I know that’s how my bosses think I’m doing my job well … the more evictions and antisocial behaviour orders I get, the better I’m doing.” (Personal interview)

Naming and shaming played a significant part in Newtown’s determination to ‘get tough’ on antisocial behaviour. The local newspaper ran the front page headline ‘FIRST YOBBO TO BE BARRED: Tough new line to stop louts terrorising neighbourhoods’. It published two photographs and stated that the 10 conditions imposed on the 18 year old, ‘James’, ended the ‘yob’s reign of terror’.

Interviews with James and his mother, Mary, provide stark testimonies regarding the impact of restrictions and media coverage. James had caused considerable disruption within his neighbourhood for several years. Of ‘mixed-race’ parents James endured racism on a daily basis in a predominantly white community. This came to a head when he brought home a present for his step-father. James’ mother recalls:

“James said, ‘Dad, Look what I’ve bought yer’ and Billy (step-father) turned round and said ‘You’re not mine. I’ve only got one son. You’re a nigger.’ And I think it all went downhill from there.” (Lawrenson 2002:29)

James and Mary were convinced that racism played a significant part in being singled out for an ASBO. He was an easily recognisable target from a group of twelve boys who hung around the shops each night. Once the ASBO had been served and multiple copies of his newspaper photograph appeared across the windows of Newtown’s superstore, his notoriety was complete.

“If I stand anywhere longer than 10 minutes I can get arrested! It upsets me mum. They put it in the papers and that, said it wasn’t even gonna be front page or anything like that, and then it was all over the front page! Done me head in, man.” (ibid:31)

Neither his solicitor nor the magistrates who heard the case were aware that reporting restrictions on the case did not apply. With the entire community aware of his ‘Yobbo’ status James was on the receiving end of a barrage of racist, verbal abuse whenever he went any where in the community. A woman ‘started giving me loads (shouting at him). I hadn’t done anything … saying, “Ah, you can’t say anything to me”, and stuff like that. It’s mad.’ Mary stated:

“Young lads shouted at him: ‘Ah, you’ve got an ASBO, you can’t touch me, you fat bastard’ and all that stuff. He’s had everything. It’s like they’re taunting him to have a go.”

James was critical of his treatment by the police on the street where, ‘they think they’re kings, walking with their heads held high, lookin’ at you like you’re dirt … they’re lovin it’ (ibid:47).

Banned for 8 months from entering his home James’s mother was aware that the house was under surveillance.

“It’s been horrible. I feel like I’m livin’ in a godfish bowl. Permanently watched and judged. Scared of every movement me or the kids make. God knows how James must feel. One time it was throwin’ it down (heavy rain). James is outside, soakin’ wet, freezin’ and cryin’ and I’m inside cryin’. Helpless. There’s nothing I could do.” (ibid:32)

James was in no doubt about the family’s neighbours and their intention to have the family evicted: ‘They’re all grasses … like people goin’ to the Council an’ that over me mum about me bein’ in the house … it’s a sad life … nothin’ better to do than chuck me mum out with twin babies, out on the streets’. The consequences were dire.

“They (local authority) took me to court sayin’ I’d let James in the house. They said at first it was neighbours who’d seen him, then they changed it and said it was council workers (ASBO Unit). But then said a warden had seen him, ‘leanin’ against the property, changing his socks and drying his hair, but it had been raining heavily’. So he wasn’t in the property! I’d probably give him some dry socks and a towel if it was raining!”

The case was dismissed as the witnesses failed to appear before the court. Within a year James was given a custodial sentence for breaching his ASBO. This resulted in an open letter from the Chief Executive, ‘on behalf of all law-abiding citizens’, thanking the local newspaper ‘for again giving front-page coverage

to the crusade against crime'. The 'jailing' had 'remove[d] from the streets an individual who appears to be hell-bent on causing mayhem and who appears to show no remorse'. Also, 'particularly because of the high profile coverage and the fact that the [newspaper's] editorial line has not minced words on this issue – we have sent out a message loud and clear to '[Name] Wannabies' that the community will not stand idly by watching their thuggery go unchecked'.

Carry on Regardless …

As the academic debate regarding 'responsibilisation' and 'communitarianism' continued, it became clear that in the public domain the 'responsible community' was mobilised as a blunt instrument to regulate, marginalise and punish children whose behaviour was labelled in some way antisocial. Far from selective and exceptional use, the popular and much publicised assumption that ASBOs apply primarily to the behaviour of children and young people has consolidated.

While local authorities have been inconsistent in their implementation of the new legislation, new interventionist initiatives continued to develop. The Government's Social Exclusion Unit, through its National Strategy for Neighbourhood Renewal, prioritised target-setting for measurable reductions in antisocial behaviour. Central to this process was the adoption, by the Youth Justice Board, of a Risk Factors Screening Tool as 'suggested by research' (YJB/CYPU, 2002:15-16). To assess, track and monitor children and young people 0 to 16 years, 29 risk factors were specified including: holding negative beliefs and attitude (supportive of crime and other antisocial acts - not supportive of education and work); involved in offending or antisocial behaviour at a young age; family members involved in offending; poor family relationships; friends involved in antisocial behaviour; hangs about with others involved in antisocial behaviour; underachievement at school; non-attendance or lack of attachment to school. Lack of participation in structured, supervised activities and 'lack of concentration' were further indicators.

National policies for tackling antisocial behaviour were presented as coherent and comprehensive, protecting those 'at risk', processing effectively a 'hard core' of repeat offenders and challenging 'deep-seated' problems within the most vulnerable and 'deprived' areas. Yet, as far as children and young people are concerned, the indications have been that antisocial behaviour units, and those recruited to them, are engaged in a targeting process which selectively employs a range of risk factors, each open to interpretation. These were broad discretionary powers implemented by teams more informed by an ideology of policing than one of support. For example, the opening sentence of Liverpool Anti-Social Behaviour Unit's draft strategy for 2003-2006 stated that the Unit enjoyed 'notable success as a reactive punitive service' (Liverpool ASBU 2003:1).

Despite concerns being raised regarding the administration, use and consequences of the 'first wave' of ASBOs the Home Office launched new guidance in November 2002, extending and strengthening powers through the 2002 Police Reform Act. These included: the issuing of interim ASBOs; the widening of their geographical scope up to and including England and Wales; the extension of orders against people convicted of a criminal offence. In April 2003 Acceptable Behaviour Contracts (ABCs) were introduced. These are voluntary agreements through which those 'involved in' antisocial behaviour commit to acceptable behaviour. In November 2002 the then Home Secretary, David Blunkett, announced the appointment of the Director of the newly established Home Office Anti-Social Behaviour Unit, intended as a 'centre of excellence on anti-social behaviour, with experts from across Government and local agencies' (Home Office Press Release, 14 November 2002).

In March 2003 the White Paper, *Respect and Responsibility – Taking a Stand Against Anti-Social Behaviour*, was published. David Blunkett introduced the document with a challenge to parents, neighbours and local communities to take: 'a stand against what is unacceptable… vandalism, litter and yobbish behaviour' (Home Office, 2003: Foreword). He continued: 'We have seen the way communities spiral downwards once windows are broken and not fixed, streets get grimier and dirtier, youths hang around street corners intimidating the elderly… crime goes up and people feel trapped' (ibid). The agenda included: more police officers, the consolidation of community support officers, neighbourhood warden schemes, crime and disorder partnerships, increased use of ASBOs, fixed penalty notices for disorder offences and new street crime initiatives.

The White Paper also focused on families, children and young people with particular reference to the prevention of antisocial behaviour. Its premise was that 'healthy communities are built on strong families' in which parents 'set limits' and 'ensure their children understand the difference between right and wrong' (ibid:21). On the justification that children and young people were 'at risk', a 'new Identification, Referral and Tracking system (IRT)' was to be universally adopted 'to enable all agencies to share information' (ibid:22). Information on antisocial behaviour given to the police would be 'shared with schools, social services, the youth service and other agencies …'

Families 'described as "dysfunctional"' or 'chaotic' would be targeted. Parenting classes were regarded as 'critical in supporting parents to feel confident in establishing and maintaining a sense of responsibility, decency and respect in their children, and in helping parents manage them' (ibid:23). The White Paper quoted the Youth Justice Board's evaluation that Parenting Orders issued under the 1998 CDA 'contributed to a 50% reduction in reconviction rates in children whose parents take up classes' (ibid:25). Parenting Orders would be extended giving schools and local education authorities powers to initiate parenting contracts. Refusal by parents to sign contracts would constitute a criminal offence. Intensive fostering would

be imposed on families unwilling or unable to provide support.

YOTs were also to be given powers to initiate Parenting Orders 'related to anti-social or criminal type behaviour in the community where the parent is not taking active steps to prevent the child's behaviour …' (ibid:34). The issuing of children under 16 with ASBOs would oblige courts to serve a concurrent Parenting Order. Based on 2001 figures, which number persistent young offenders in England and Wales at 23,393, Intensive Supervision and Surveillance Programmes (ISSPs) would be initiated, 'combin(ing) community based surveillance with a comprehensive and sustained focus on tackling the factors that contribute to a person's offending behaviour' (ibid). Individual Support Orders will be used to ensure that children aged 10 to 17, against whom more than half all ASBOs are issued, address their antisocial behaviour.

Fixed Penalty Notices (FPNs) were to be administered by police officers, school and local education authority staff to parents who 'condone' or 'ignore' truancy. FPNs might also be issued to parents of children 'where the children's behaviour would have warranted action … were they to be 16 or over' (ibid : 9). The White Paper stated that sanctions directed towards children and families 'involved in anti-social activity' were 'strong' but the 'principle' remained 'consistent' – 'the protection of the local community must come first' (ibid : 35). This brief excursion into the White Paper's proposals demonstrates that harsh measures and unprecedented discretionary powers became central to essentially authoritarian cross-agency interventions.

In October 2003 the Government gave the results of a Home Office survey which recorded 66,000 antisocial behaviour incidents at an estimated daily cost of £13.4 million. The Prime Minister stated that powers should be used 'not occasionally, not as a last resort' but 'with real energy'. And should the extended powers of the imminent 2004 legislation prove insufficient 'we will go further and get you them' (*The Guardian* 15 October 2003). Yet the potential for applying ASBOs with 'real energy' had not been lost on judges. In February 2003 a Manchester district judge lifted reporting restrictions on a 17-year-old and, in addition to serving an 18 months detention order, imposed an ASBO. Breach of the ASBO carried a further period in detention of up to 5 years. Eight months later, also in Manchester, another 17-year-old was served with a 10 year ASBO in addition to an 18 months detention and training order. In this case the ASBO was sought after sentencing and while the young person was detained in custody. The terms of the ASBO were not restricted to his home area but extended throughout England and Wales. Used alongside sentencing ASBOs had become a form of 'release under licence'.

While Manchester City Council led the way in the use and expansion of the terms of ASBOs the picture across the UK remained inconsistent. It is important to reflect on the available statistical evidence. From April 1999 to March 2004 2,497 ASBOs were applied for throughout England and Wales. Only 42 were refused by the courts giving a 98.3% success rate. It is clear that the lower burden of proof, the admission of hearsay evidence, the use of professional witnesses and easily convinced magistrates each contributed to this high success rate. The overall figure, however, was not evenly distributed over the five years. In the 12 months to March 2004 more ASBOs were issued than in the preceding four years taken together and there was a 60% drop in refusals. Those local authorities that use ASBOs most regularly proportionately had the lowest rate of refusals in the courts.

Throughout the five year period 74% of all ASBOs were issued against under 21s and of these 93% were to boys or young men. 49% of all ASBOs were issued against children aged 10 to 17. Between June 2000 and December 2002, the most recent figures available, of those young people prosecuted and found guilty of breaching their ASBO 50% were sentenced to a Young Offenders' Institution. The Home Office has not provided current information on breaches. Given the increase by a factor of five in the issuing of ASBOs between April 2003 and March 2004 it is fair to project the previous figures on breaches and custodial sentences by a similar factor. This would suggest 300 to 400 custodial sentences each year for breach. Put another way, these are children and young people who receive a custodial sentence having not been charged with a crime other than a breach of a civil injunction.

The Northern Ireland Context

"ASBOs were introduced to meet a gap in dealing with persistent unruly behaviour, mainly by juveniles, and can be used against any person aged 10 or over." (NIO 2004:4)

It is instructive that when the Northern Ireland Office (NIO) published its consultation document, *Measures to Tackle Anti-social Behaviour in Northern Ireland*, it misrepresented the initial focus of ASBOs, making it appear that they were directed primarily towards children. The brief and limited consultation was predicated on a previous consultation (NIO 2002) and strategy document (NIO 2003) each entitled *Creating a Safer Northern Ireland Through Partnership*. The consultation paper 'used recorded crime data, research findings on victimisation and the fear of crime, and consultation with key people working in community safety, to identify specific issues which needed to be addressed' (NIO 2002). From this, 'street violence, low level neighbourhood disorder and anti-social behaviour', emerged as significant and the resultant community safety strategy 'identified that the legislation in England and Wales on anti-social behaviour needed to be examined to see if it was appropriate for Northern Ireland' (NIO 2003). ASBOs were to be given particular consideration.

The 2004 consultation also included the proposed introduction of Anti-Social Behaviour Contracts (ABCs). Three specific measures were proposed. First, the development of ABCs as a non-statutory intervention which might provide a sufficient warning to people

considered to be involved in antisocial behaviour. For children it would involve parents or carers and could be used as a precursor to enforceable interventions. Second, the introduction of ASBOs as an option in cases where there already has been a conviction for a related criminal offence. Third, the use of ASBOs without any related criminal offence administered through a partnership between the police, district councils and the Northern Ireland Housing executive.

Considerable controversy surrounded the consultation and the children's sector was united in its opposition to the introduction of ASBOs. The Northern Ireland Commissioner for Children and Young People (NICCY), with support from the leading children's NGOs challenged the proposed legislation on several grounds, not least the lack of consultation with children and young people. In rejecting the application the Judge concluded:

"… one wonders in practical and realistic terms what meaningful response could be obtained from children unless they were in a position to understand the legal and social issues to anti-social behaviour, the mechanisms for dealing with it. The shortcomings of existing criminal law and the effectiveness or otherwise of the English legislation and its suitability for transplant to the Northern Ireland context, and the interaction of Convention and international obligations [sic]."

The Anti-Social Behaviour (Northern Ireland) Act was introduced on 25 August 2004. At no point was any reference made to the circumstances unique to Northern Ireland. The fact that antisocial behaviour, particularly that of children and young people, has been identified as an issue within communities was taken as sufficient justification to introduce legislation that is already controversial in terms of children's rights breaches in England and Wales. No serious consideration was given to the success of restorative justice and youth conferencing approaches in Northern Ireland and the potential disruption of those approaches through the introduction of a more directly punitive and criminal justice oriented mechanism. In its well argued submission to the Consultation an umbrella children's organisation observed that ASBOs have 'the potential to demonise and further exclude vulnerable children who already find themselves on the margins of society and the communities in which they live' (Include Youth 2004:5).

Further, and carrying potentially serious consequences, is the relationship of ASBOs to paramilitary punishments of children. For ASBOs and evictions have been introduced in circumstances where naming, shaming, beatings, shootings and exiling already exist regardless of their effectiveness. As a children's NGO focus group concluded: 'It's seen and represented as justice. It's concrete and immediate … a quick fix. It doesn't work. It's brutal, inhuman and ineffective and doesn't challenge antisocial behaviour' (research focus group, Belfast, May 2004). Negotiations are already well developed within communities regarding paramilitary and vigilante interventions in the lives of children and young people. It is within this delicate climate, a process of real transition that antisocial behaviour legislation has been imposed. Additionally, as the Human Rights Commission (2004:8) noted: 'Information regarding the identity, residence and activities of those subject to an order [will] be in the public domain and could lead to the breach of a right to life were paramilitaries to act on that information'.

Within a month of their introduction the following unattributed poster appeared in East Belfast:

"DUE TO THE RECENT UPSURGE OF ANTI-SOCIAL BEHAVIOUR AND THE VERBAL AND MENTAL ABUSE ENDURED ON A DAILY BASIS BY THE ELDERLY PEOPLE IN THE SURROUNDING AREA
YOU ARE FOREWARNED IF THIS DOES NOT STOP FORTHWITH IT WILL LEAVE US WITH NO ALTERNATIVE BUT TO DEAL WITH THE SITUATION AS WE DEEM NECESSARY
NOTE: NO FURTHER WRITTEN OR VERBAL WARNING WILL BE GIVEN
BE WARNED"

A research focus group (May 2004) concluded that 'Supporting ASBOs and supporting paramilitary beatings are derived in the same emotion: they're about revenge'.

The debate over the continuing conflict in Northern Ireland, particularly regarding the control of the streets and public space within communities returns the analysis to context. Hillyard et al (2003:29) make the important point regarding poverty:

"… the impact on the development and opportunities of these 150,000 children and young people [living in poverty] should not be under-estimated. The wider consequences and costs for society as a whole must be a concern. These children and young people occupy … 'spaces of dispossession', growing up as excluded people in excluded families increasingly characterised by antisocial behaviour, insecurity and threat."

Children in Northern Ireland in conflict with the law cannot be viewed as simply manifesting antisocial behaviour in a form and content that is consistent with children in Liverpool, Glasgow, Birmingham, Dublin or Limerick. Their behaviours are rooted in the recent history of the conflict. The following comments, from community-based or children's sector NGO workers are typical:

"These are children of those whose childhood was dominated by the Troubles. We're talking about the experiences of children: house arrests, military presence, parents imprisoned, parents on the run, parents shot and killed. No allowances have been made in school. These experiences and their lasting effects aren't recognised.

House-raids have lessened and the physical harm is over, to a point, but emotional harm is still there.

Children and their parents are in dire need of medical support. The children are accused of misbehaving, of antisocial behaviour rather than their mental ill-health being recognised.

Whether it's antisocial behaviour or suicidal tendencies, you cannot disconnect that from the anger of death in the communities. Shoot-to-kill, plastic bullets, collusion … these are the experiences. Children often took over running of the home. The physical and psychological impact means these children have never been able to take their place in society. Transgenerational trauma affects every part of their lives: education, mental health, social participation. And in schools, in criminal justice agencies, trauma is not even part of the equation."

Without taking these dynamics into account and contextualising the perceived and experienced antisocial behaviour of children and young people in Northern Ireland's most economically marginalised communities, the authoritarianism of ASBOs as they have been administered in England and Wales has the potential to feed into that which already exists. It also has the potential to corrode the significant advances in alternatives to the 'criminal justice' option in undermining, both in philosophy and political direction, youth conferencing, parent support and restorative justice. They are incompatible with the draconian measures that constitute the armoury of the ever-expanding punishment industry.

The Gil-Robles Report

In June 2005 Alvaro Gil-Robles, European Human Rights Commissioner, reported on his visit to the United Kingdom 'on the effective respect of human rights in the country' (Gil-Robles 2005:4). Reflecting on the 'range of civil orders designed to combat low level crime and general nuisance' he focused on the ASBO which he identified as being 'particularly problematic' (ibid:34). He raised four principal concerns: '[t]he ease of obtaining such orders, the broad range of prohibited behaviour, the publicity surrounding their imposition and the serious consequences of breach …'(ibid). While accepting the principle of civil orders, such as restraining orders, that 'protect an identifiable person or group … from clearly specifiable behaviour on the part of another' , 'the multiplication of civil orders in the United Kingdom … are intended to protect not just specific individuals, but entire communities'. Their scope, in terms of the types of behaviour against which ASBOs are targeted, could be excessive and 'conditional on the subjective views of any collective'. Noting that the breach of an ASBO is a criminal offence with 'potentially serious consequences', he was concerned that 'the terms of orders' were defined in terms that 'invite[d] inevitable breach'. ASBOs were 'like personalised penal codes, where non-criminal behaviour becomes criminal for individuals who have incurred the wrath of the community'.
Gil-Robles was 'surprised by the enthusiasm' of the executive and legislature for 'this novel extension of civil orders'. He questioned 'the appropriateness of empowering local residents to take such matters into their own hands' particularly as this constituted 'the main selling point of ASBOs in the eyes of the executive' (ibid:35). He proposed that the main purpose of ASBOs was 'more to reassure the public that something is being done … than the actual prevention of anti-social behaviour itself' (ibid). In this context the impression given was that the ASBO was 'touted as a miracle cure for urban nuisance'. This placed the police, local authorities and others 'under considerable pressure to apply for ASBOs' and magistrates similarly pressured 'to grant them'. The Commissioner 'hoped' for some respite from the 'burst of ASBO-mania with civil orders 'limited to appropriate and serious cases'. This would be dependent on '[r]esponsible guidelines and realistic rhetoric'. Gil-Robles contested the expansion of ASBOs to include direct applications by individuals or groups and proposed 'responsible screening' of applications by a 'responsible authority' as a 'minimum guarantee against excessive use'.

Significantly he raised the issue of the appropriate standard of proof required for determining antisocial behaviour. While recognising the House of Lords judgment that the criminal standard of proof should apply, he noted that it accepted the admissibility of hearsay evidence because proceedings are civil. He found 'the combination of a criminal burden of proof with civil rules of evidence rather hard to square' and doubted that 'hearsay evidence and the testimony of police officers and professional witnesses' could 'be capable of proving the alleged behaviour beyond reasonable doubt' (ibid:36). If, as had been claimed, the rationale behind admitting hearsay evidence was to challenge witness intimidation the cases in question would constitute 'serious and actual harassment'. 'It is unfortunate', he continued, 'that ASBO proceedings are drawn up in such a way as to permit a range of behaviour that is merely disapproved of … to be brought within their scope'. He concluded that Home Office Guidelines on targeted behaviour and evidence required 'unduly encourage the use of professional witnesses and hearsay evidence' while failing to 'emphasise the seriousness of the nuisance targeted'.

Gil-Robles, troubled that children between 10 and 14 could be considered 'criminally culpable' for their actions (ibid:33), was profoundly concerned that ASBOs brought children to the 'portal of the criminal justice system' (ibid:36). Reporting 'numerous complaints of excessive, victimising ASBOs' served on children, he proposed that such use was 'more likely to exacerbate anti-social behaviour and crime'. With a considerable number of children imprisoned for breaching orders and high reconviction rates for young offenders, he noted that the 'detention of juveniles for non-criminal behaviour' could 'lead to more serious offending on release' (ibid:37). The stigmatisation of children and their consequent, inevitable alienation ran the risk of further 'entrenching … their errant behaviour'. He expressed surprise that widespread publicity of cases involving children was central to Home Office guidelines.

He concluded:

"It seems to me … to be entirely disproportionate to aggressively inform members of the community who have no knowledge of the offending behaviour, and who are not affected by it, of the application of ASBOs … they have no business and no need to know … The aggressive publication of ASBOs, through, for instance the door step distribution of leaflets containing photos and addresses of children subject to ASBOs risks transforming the pesky into pariahs. The impact on the family as a whole must also be considered. Such indiscriminate naming and shaming would … not only counter-productive, but also a violation of Article 8 of the ECHR. Stricter guidelines and greater restraint would reduce the risk in practice and are urgently necessary." (ibid:37)

While not calling for the abolition of ASBOs, Gil-Robles made five significant recommendations. These were: clear guidelines to delimit the behaviour targeted; no ASBOs to be issued on hearsay evidence alone; no expansion of recognised applicants for ASBOs to be made; no children under 16 to be imprisoned for breach of ASBOs; restrictions on excessive publicity and the prohibition of the reproduction and public dissemination of posters and photographs of children.

Concluding Comment

This paper has argued that under the auspices of inter-agency co-operation and the promotion of 'collective responsibility', the veneer of risk, protection and prevention coats a deepening, almost evangelical, commitment to discipline, regulation and punishment. As the grip tightens on the behaviour of children and young people minimal attention has been paid to social, political and economic context. The reality is one in which authoritarian ideology has been mobilised locally and nationally to criminalise through the back door of civil injunctions. In-depth, case-based research already indicates that the problems faced by children and families are exacerbated by the stigma, rumour and reprisals fed by the very public process of naming and shaming.

ASBOs have been extended to the jurisdictions of Scotland and Northern Ireland and will be introduced in the Irish Republic. Despite a series of legal challenges, their continuing refinement and expansion of powers continues unabated. Yet they constitute serious breaches of the UNCRC. In general these include: undermining of the 'best interests' principle, of the presumption of innocence, of 'due process, of the right to a fair trial and of access to legal representation. More specifically are breaches of Article 9 (separation from parents and the right to family life), of Article 13 (freedom of expression), of Article 15 (freedom of association) and of Article 16 (the protection of privacy). Given the North of Ireland context and the risk of paramilitary beatings Article 6 (the right to life, survival and development) and Article 19 (protection from abuse and neglect) are, at best, compromised.

Further, it is evident that by imprisoning children for breaching ASBOs in England and Wales there is egregious breach of Article 40. In the context of Article 40, ASBOs do nothing to promote 'the child's sense of dignity and worth', have no consideration of age and limit the possibility of 'reintegration' into the community (Art 40.1). They conflate civil law and 'penal law' (Art 40.2a), compromise the presumption of innocence (Art 40.2bi), deny access to a 'fair hearing' (Art 40.biii), prevent cross examination of all witnesses whose evidence is before the court (Art 40.biv) and fail to respect privacy at all stages of the proceedings (Art 40.bvii). Imprisonment for breach of a civil order cannot be in keeping with the principle of depriving a child's liberty as a last resort. Nor does it deal with children 'in a manner appropriate to their well-being and proportionate both to their circumstances and the offence. Finally, significant child protection issues are raised by publicly naming and shaming children as young as 10. Taken together, these breaches and circumstances amount to the most serious attack on children's rights since the UK Government ratified the UNCRC.

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Phil Scraton is professor of criminology, Queens University, Belfast

Notes

[1] The UN Rules for the Protection of Juveniles deprived of their Liberty, 1990; the UN Standard Minimum Rules for the Administration of Juvenile Justice – the Beijing Rules, 1985; the UN Guidelines for the Prevention of Juvenile Delinquency – the Riyadh Guidelines, 1990; the UN Standard Minimum Rules for non-custodial measures –the Tokyo Rules, 1990.

[2] These interviews were carried out within the Centre for Studies in Crime and Social Justice, Edge Hill University College. With thanks to Donna Lawrenson and Julie Read.

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contact: info@ecln.org
website: http://www.ecln.org

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