AHEAD OF THE GAME OR BEHIND THE TIMES?
THE SCOTTISH CHILDREN’S HEARINGS SYSTEM IN INTERNATIONAL CONTEXT
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ABSTRACT
The Scottish Children’s Hearings System, established in 1971, has survived largely unchanged for almost thirty years. Despite wide-ranging reform of child welfare in the Children (Scotland) Act, 1995, the key features of the Children’s Hearings System were preserved largely intact. This stability and continuity contrasts sharply with major changes in systems of juvenile justice and child welfare across the world in recent decades. This article reviews the main contours of these developments, including the shifting balance between justice and welfare; the separation of children and young people in need of care and protection from ‘young offenders’; diversion, restructuring and neo-conservative crime control strategies and considers their significance for the Scottish Children’s Hearings System. It draws on two recently published studies, Deciding in Children’s Interests (Hallett and Murray et al., 1998) and The International Context: Trends in Juvenile Justice and Child Welfare (Hallett and Hazel, 1998).1

1. THE ESTABLISHMENT OF THE CHILDREN’S HEARING SYSTEM

The Children’s Hearing System in Scotland, founded upon the Social Work (Scotland) Act 1968, was introduced in 1971. The System was based upon the recommendations of the Committee on Children and Young Persons Scotland, chaired by Lord Kilbrandon (The Kilbrandon Report, 1964). The welfare-based reforms were generally welcomed at the time, although they were criticized by some judges and police officers, for example, as ‘too soft’. (Lockyer & Stone, 1998; Finlayson, 1991; Kearney, 1998). The key components of the new System were the creation of the office of ‘reporter’, an independent, locally-based official to receive and investigate referrals concerning children in difficulty and to make initial decisions as to action, and the establishment of a new form of tribunal, staffed by lay people, known as a Children’s Hearing.

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The main courses of action open to the reporter on receipt of referrals at the initial stage under the Social Work (Scotland) Act 1968 were to take no further action (s39(1)), to refer the case to the local authority (in practice to the Social Work Department) for advice, guidance and assistance (s39(2)) or to arrange a Children’s Hearing (s39(3)). These options remain substantially the same under the Children (Scotland) Act 1995.2

The Children’s Hearing is a lay tribunal of three panel members. At the Children’s Hearing, three panel members and a reporter are always present plus, usually, the child or young person, at least one parent or carer and a social worker. Less frequently others, such as teachers, family representatives and safeguarders also attend. Within the context of the hearing, the reporter ‘acts in some quasi-legal advisory role’ (Finlayson, 1976) and no longer holds the central decision-making position as he/she does at the initial investigation stage. Under the Social Work (Scotland) Act 1968, the Children’s Hearing had essentially three main options: to discharge the referral (s43(2); to make a non-residential supervision requirement (s44 (1)(a)), or to make a residential supervision requirement (s44(1)(b)). A supervision requirement is made where the Children’s Hearing are satisfied that compulsory measures of care (now termed supervision) are necessary. These options remain essentially the same under the Children (Scotland) Act 1995.3

The Children’s Hearings System is founded on several fundamental principles. One is that measures to promote the welfare and best interests of children should be taken within a unified system of justice and welfare based on ‘needs’ rather than (or as well as) ‘deeds’. This follows from the view in The Kilbrandon Report that behaviour such as offending was generally indicative of a failure in upbringing and that measures of ‘social education’ (para 140) or of ‘training appropriate to the child’s needs’ (para 72) were required. The result was an integrated system (the Children’s Hearings System) for dealing with children in difficulty, whether they were referred for reasons of allegedly committing offences, for non-attendance at school, or as victims of neglect or ill-treatment. The ‘troubled’ and the ‘troublesome’, were to be treated in accordance with a perception of their need for help and pursuit of their best interests. At the heart of the System was an assessment of the needs of each individual child and the identification of appropriate treatment or educative measures. The Kilbrandon Report identified several principles which might govern intervention. In paragraph 13, for example, it states that disposals may be ‘for the prevention of more serious offences and for the future protection of society as much as in the child’s own interest’ but it recommends in paragraph 76 that treatment measures should be ‘determined on the criterion of the child’s actual needs’. The ensuing legislation is, however, clear that the child’s ‘best interests’ are the determining criterion ((s43(1) and s47(1) Social
Work (Scotland) Act 1968). As Kearney observes: ‘the hearing cannot impose a fine, disqualification from driving or the like: its sole concern is to decide what is “in the best interests of the child” and not to consider directly any wider public interest’ (1985, at 140). The welfare focus of the Children’s Hearings System is preserved in the Children (Scotland) Act 1995, which states: ‘in determining any matter with respect to a child, the welfare of that child throughout his childhood shall be their paramount consideration’ (s16(1)). An exception is specified in s16(5)(a); namely that a Children’s Hearing may make a decision which would not be consistent with their affording paramountcy to the welfare of the child ‘for the purpose of protecting members of the public from serious harm’.

A second principle is that cases should be heard by lay tribunals, comprising representatives of local communities, in a non-adversarial and relatively informal setting. A third is that there should be an opportunity for children and their parents to participate in discussion both of the nature of the difficulties they are facing and in framing proposed solutions. A fourth principle of the System is the separation of responsibility for deciding on disposals, which is to be undertaken by the Children’s Hearing, from the determination of fact (including guilt or innocence), which, if disputed is to be adjudicated by the judicial process. If, on appearing before a Children’s Hearing, the grounds (or reasons) of referral are denied, it is open to the hearing either to discharge the case or to refer it to a judge (the sheriff) for adjudication. If the sheriff finds the grounds proven, the case is returned to the Children’s Hearing for consideration and disposal. The Kilbrandon Report suggested the aim of the Hearing would be ‘evoking in turn from the parties concerned a constructive response, based on an increased awareness and understanding of their underlying problems and responsibilities’ (1964: para 86).

2. JUSTICE AND WELFARE IN CHILD CARE AND JUVENILE JUSTICE SYSTEMS

It is customary for systems dealing with children and young people in trouble to be differentiated in terms of the extent to which they adhere to the principles of welfare or justice. Alder and Wundersitz (1994) summarize justice and welfare models as follows:

According to this dichotomous categorization of juvenile justice the welfare model is associated with paternalistic and protectionist policies, with treatment rather than punishment being the key goal. From this perspective, because of their immaturity, children cannot be regarded as rational or self-determining agents, but rather are subject to and are the product of the environment within which they live. Any criminal action on their part can therefore be attributed to dysfunctional elements in that environment. The task of the
justice system then, is to identify, treat and cure the underlying social causes of offending, rather than inflicting punishment for the offence itself (at 3).

By contrast the justice model:

assumes that all individuals are reasoning agents who are fully responsible for their actions and so should be held accountable before the law. Within this model, the task of the justice system is to assess the degree of culpability of the individual offender and apportion punishment in accordance with the seriousness of the offending behaviour. In doing, the individual must be accorded full rights to due process and state powers must be constrained, predictable and determinate (at 3).

It is not to be expected that these models of justice or welfare are found in their pure form in extant systems, many of which combine elements of both justice and welfare, albeit in differing proportions. However, in much of the so-called ‘developed’ world, for example in the USA, Europe and Australia, the welfare model was in the ascendancy throughout much of the twentieth century. Systems of juvenile justice were established for children and young people which were separate from adult jurisdictions. They set out to give individualized consideration to the child’s situation and were more informal than the adult courts. Many of the juvenile courts were established at the turn of the century, for example in Norway in 1896, Illinois, USA in 1898, Canada and England in 1908, South Australia in 1895, New South Wales in 1905, Victoria in 1906 and Western Australia and Queensland in 1907, Slovenia and Ireland in 1908, Portugal in 1911, France, Switzerland and Belgium in 1912. (Parsloe, 1978; Naffine and Wundersitz, 1994; Grinde, 1996 and Herz, 1996).

3. BACK TO JUSTICE: THE RETREAT FROM WELFARE

During the 1960s, at a time when the welfare approach was being endorsed and adopted in Scotland, there was a retreat from it in some juvenile jurisdictions associated with the ‘back to justice’ movement. There was increasing scepticism about the benefits of the welfare approach as well as a growing concern about its perceived tendency to threaten the civil rights of the young offender (Naffine et al., 1990: 193). The retreat from welfare was associated with a concern for due process and a strengthening of young people’s access to formal justice. The developments may be traced to the USA, particularly the cases of Kent v United States and in re Gault. In 1966, Kent v United States turned on the issue of whether a case could be waived from the juvenile court to the adult court (which possessed greater dispositional powers, including the passing of a death sentence) without a hearing on the waiver decision. The judgment of the Supreme Court was that:
there is no place in our system of law for reaching a result of such tremendous consequences without ceremony – without hearing, without effective assistance of counsel, without a statement of reasons. It is inconceivable that a court of justice dealing with adults, with respect to a similar issue, would proceed in this manner. It would be extraordinary if society's special concern for children, as reflected in the District of Columbia's Juvenile Court Act, permitted this procedure. We hold that it does not (Kent v United States 383 US 554 1966, cited in Parsloe, 1978: 82).

Snyder and Sickmund (1995: 80) note that 'in theory, the juvenile court provided less due process but a greater concern for the interests of the juvenile'. The Supreme Court referred to evidence that the compensating benefit of greater concern for the juvenile's interest may not exist and thus concluded that juveniles may receive the 'worst of both worlds' – ‘neither the protection accorded to adults nor the solicitous care and regenerative treatment postulated for children' (Kent v United States 383 US554, 1966 cited in Snyder and Sickmund, 1995: 80).

A year later the case of in re Gault focused on the due process protections to be afforded to juveniles, arising from the decision to detain Gerald Gault until the age of twenty-one in a State Industrial School as a result of allegedly making lewd phone calls. The Supreme Court judgment was that:

Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the state may exercise. (in re Gault 387US 1 1967, cited in Naffine et al., 1990: 195).

The Court held that 'a juvenile who might be sent to a state institution was entitled to the due process rights of notice of the hearing, and of the alleged grounds of delinquency, of a warning of his right to remain silent when being questioned, of counsel at the hearing and of court appointed counsel if he were unable to afford to obtain counsel' (Parsloe, 1978: 82).

The juvenile courts in the USA had developed with less attention to due process than existed in some other juvenile jurisdictions (Lemert 1976), for example the juvenile courts in England and Wales and in the newly established Children's Hearings System. Nonetheless, following the due process reforms in the USA in the 1960s, a concern for the greater protection of the rights of young people in juvenile justice spread throughout many jurisdictions.

Besides the denial of due process rights, in re Gault also highlighted a second characteristic of the welfare approach, namely the lack of proportionality and the potential for indeterminacy in disposals (Geach and Szwed, 1983). The individualized welfare approach had led to indeterminate sentences in the name of treatment, reform and the 'best interests' of the child as a consequence of offences or behaviours which,
if committed by adults, might, and in some cases would, have been treated more leniently. There was a growing concern with proportionality and determinacy in sentencing for young people.

In important respects, the Scottish Children’s Hearings System bucked these trends. *The Kilbrandon Report* rejected the court setting as an arena for responding to children in difficulty and instituted the more informal lay panel. The Children’s Hearing was accorded a wide discretion in deciding upon measures of intervention in the child’s best interests. *The Kilbrandon Report* (paras 79 and 80) states:

> since there is no ‘master-key to fit all cases’, the criterion being that of the child’s needs, it follows that the new body must be accorded, subject only to certain general limits laid down by law, an unfettered discretion not only initially to apply, but to modify or vary, the measures appropriate to the individual child. It must finally be a matter of judgement how far, in relation to juveniles and their parents, the application of an educative principle in this way would in fact and in practice represent an appreciable inroad into personal and family life, amounting to loss of liberty or freedom from interference such as to be unacceptable in our society. If, on such grounds, it were to be felt that a fuller recognition of the educative principle could not be accepted, it is necessary to face the practical alternatives. A return to a purer form of the ‘crime-punishment’ concept seems altogether unacceptable.

Such a view is in clear contrast to the notions of proportionality associated with the back to justice movement. The capacity to respond to similar ‘deeds’ differentially on the basis of dissimilar needs remains a characteristic of the Children’s Hearings System to this day. Reporters interviewed in the study *Deciding in Children’s Interests* (Hallett and Murray et al., 1998) confirmed that in deciding which of the three main courses of action to take on receipt of referrals, they considered the set of circumstances associated with the referral on a case by case basis; they were clear that a focus on the child or young person as an individual was central to their decision making. One said for example: ‘that is the real strength of it, to be able to look at each case individually and weigh it up from all sorts of angles with really good information before you come to a decision’. A reporter gave an example of this process in action:

> every child’s an individual; every case is dealt with differently. You might get four boys referred to you for breach of the peace and three of them are no further actioned and one of them comes to a hearing, doesn’t even get to voluntary or anything; he’s straight into a hearing [because] the school report identifies other problems . . . the original referral wasn’t terribly serious but then you’re coming across like a can of worms.

Reporters emphasized the flexibility and individualized response as a strength of the Children’s Hearings System.
4. THE SEPARATION OF JUVENILE OFFENDERS FROM CHILDREN AND YOUNG PEOPLE IN NEED OF CARE AND PROTECTION

The Children’s Hearing System was established as a unified approach for dealing with a wide range of children in difficulty. The Kilbrandon Report stated (para. 13 & 14):

in terms of the child’s actual needs, the legal distinction between juvenile offenders and children in need of care or protection was – looking to the underlying realities – very often of little practical significance . . . From the standpoint of preventive measures children in both groups could equally be said to be in need of special measures of education and training – ‘education’ being taken in its widest sense. The emphasis in these training measures might vary according to the circumstances of the individual case: in some the protection of the child would be of prime importance, in others the training regime might place more emphasis on discipline. Each case had, however, to be assessed on its merits, and the type of training, whether stressing the protective aspect, the disciplinary, or for that matter the need for special instruction in formal educational subjects on account of educational backwardness, had no necessary connection with the legal classification of children as delinquents or as children in need of care or protection . . . The same is true of children brought before the courts as persistent truants or as beyond parental control.

The grounds of referral to the Children’s Hearings System were slightly amended in the Children (Scotland) Act 1995, for example with the addition of the misuse of alcohol or drugs (s52(2)(j)). However, they remain essentially unchanged since the 1968 Act and the Children’s Hearings System continues to operate as a unified system. Meanwhile, however, policy developments in some other parts of the world have moved in the opposite direction. As Murray and Hill (1991: 275) note: ‘if a general trend can be discerned in English-speaking countries it is towards the segregation of the processing of delinquents from that of care and protection cases’.

This change was evident in Northern Ireland in the separation of welfare considerations from criminal justice issues in 1982 (Curran et al., 1995); in Ireland in 1991 (McGrath, 1997); in South Australia under the Children’s Protection and Young Offenders Act 1979 (Wundersitz, 1996) and in Canada under the Young Offenders Act 1984 (Reitsma-Street, 1990). In New Zealand, the Children, Young Persons and Their Families Act 1989 (Part II) separated the care and protection of children and young persons who were placed under the jurisdiction of a Family Court from young offenders. Under provisions in Part IV for those aged fourteen to sixteen, this latter group came within the jurisdiction of the Youth Court (Ludbrook, 1992). In England and Wales, the Children Act 1989 excluded criminal proceedings against children from the new family proceedings court, leaving the juvenile (now youth) court with criminal jurisdic-
tion. Although the Children Act places a duty on local authorities to take reasonable steps to reduce the need for criminal proceedings to be brought against children in their area, Anderson (1995: 38) notes that:

it is widely perceived among those working with young people in the criminal justice system, that their clients have effectively been excluded from many of the more positive provisions of the Children Act, because they are seen as offenders first and children second.

The move to separate children in need of care and protection from offenders is not, however, universal. In India there is provision for young people to be referred to the juvenile justice system either as offenders or non-offending victims who may be seen to be in need of custodial care (Janeksela, 1991: 12) and in France, the juges des enfants deal both with young offenders and with children in need of care (Hackler, 1988).

5. Diversion

The Children’s Hearings System was founded upon principles of diversion. This was manifest both in the diversion of cases from courts to the less formal lay tribunal and also in the initial action taken by reporters in response to referrals, including decisions to take no further action or to refer for voluntary measures of help. The trend towards diverting cases away from Children’s Hearings has increased in recent years. In a study conducted in 1978, Martin et al. (1981) report a rate of referral of cases to hearings of 52 per cent. This had declined to 45 per cent by 1985, to 32 per cent in 1995 (Scottish Office 1997: 13) and to 23 per cent by 1997 (Scottish Children’s Reporter Administration, 1999). The decline in the rate of referral to hearings between 1995 and 1997/8 may be a consequence, in part, of Section 16 of the Children’s (Scotland) Act 1995 (the so called ‘minimum intervention principle’ which specifies that ‘no requirement or order shall be made . . . unless the Children’s Hearing consider . . . that it would be better for the child that the requirement or order be made than that none should be made at all’ (s16(3)). Accordingly ‘a child will be referred to a Children’s Hearing only when it appears likely that the making of a statutory supervision requirement will be positively beneficial for the child’ (Scottish Children’s Reporters Administration 1999, at 9). As Norrie states (1995: 46): ‘the minimum intervention principle amounts to a presumption that things are best left as they are, and the practical effect of this is that the onus lies with the person seeking intervention by . . . decision of the Children’s Hearing to justify why intervention is necessary’.
Other reasons for reporters' decisions not to refer cases to hearings include: that appropriate action may already have been taken by the child, family or other agencies; that voluntary measures may have been agreed following investigation; that a supervision requirement is already in place or there is a lack of evidence to sustain the grounds of referral.

The diversionary practices which characterize the Children's Hearings System are also a feature of juvenile justice and child welfare systems in many countries, following the destructuring of the 1970s and 1980s (Dunkel, 1996). However, in some jurisdictions, the process has gone further than in Scotland. In respect of police cautions, for example, 60 per cent of identified young offenders were cautioned by the police in England (Audit Commission, 1996) and in South Australia (Wundersitz, 1996). The rate in Scotland is low by comparison, at 3 per cent of children and young people alleged to have committed offences (Scottish Office, 1997).

6. AGE THRESHOLDS

The manipulation of age thresholds of criminal responsibility for entry to the system and criminal majority (for transfer from juvenile to adult systems) is a diversionary strategy widely practised. By international standards, the age of criminal responsibility in Scotland at age eight is very low. In 1995, of 37 European countries only Switzerland, Ireland and Liechtenstein at age seven were lower, while in nine countries the age was fourteen, in eight, fifteen, and in six the age was sixteen or above (Howard League Report 1995: 14). In practice, the rate of prosecution of children in the criminal courts in Scotland is low. Nonetheless, children as young as eight apprehended for offending behaviour will be referred to the Children's Hearings System and, with the Lord Advocate's permission, they may be prosecuted in a criminal court if the offence is particularly serious.

Again, by comparison with many countries in Europe, the age of criminal majority in Scotland, at age sixteen, is low. It is fixed at eighteen in most European countries and Dunkel (1996:66) concluded that in Europe 'there is a growing tendency to extend the ambit of juvenile justice to include young adults'. In Scotland, it is possible for young people already on supervision to a Children's Hearing to be retained in the system beyond the age of sixteen and up to age eighteen. However, for the majority of young people the supervision requirement is terminated at or before age sixteen and any subsequent offences are dealt with in the adult courts (Kennedy and McIvor, 1992). While the Criminal Procedure (Scotland) Act, 1995 makes provision for adult courts to remit offenders under the age of eighteen to the Children's
Hearings System for advice or disposal, these powers are infrequently used.

A reporter interviewed in the study Deciding in Children’s Interests commented:

I have had experience certainly of young people who offend and who got involved in the criminal justice system at a very early stage after their sixteenth birthday and who very rapidly run out of disposals in terms of the criminal justice system . . . they will maybe get community service or they will get probation and because of their age and because of their circumstances they . . . won’t be able to respond to those disposals and very rapidly they will end up in custody.

Sheriffs also spoke of the difficulty caused by time pressures in the adult courts. One said:

we would have on a typical morning sixty cases, plus or minus twenty maybe with the absolute clear expectation that we’ll be finished them by one o’clock and so that works out at two and a half minutes each or something . . . It’s just bang, bang, bang, it’s like a sausage machine . . . I honestly don’t think that’s the best way to deal with young kids. And by young kids I’m talking about young people really under twenty. I don’t think that’s your best hope of finding out what’s going on in their lives and trying to help them.

It should, however, be noted that some respondents thought that transition at the age of sixteen was appropriate, partly because it was the school leaving age and the legal age of marriage in Scotland and partly because the nature of the offending behaviour by some young people was considered to require deterrence or punishment and to be beyond the scope of the Children’s Hearings System to control.

Developments in mediation and reparation schemes, often associated with restorative justice, have been widely implemented, for example, in Germany, Australia, Ireland, New Zealand, Finland, Belgium, Norway, the Netherlands, Sweden, Denmark, Italy and Portugal (Asquith and Samuel, 1994, Marshall, 1995, Dunkel, 1996). Victim involvement is an element in many schemes, whether involving direct face to face contact between the victim and offenders or indirect or ‘shuttle’ mediation (Marshall and Merry 1990). Although there are possibilities for such initiatives within the Scottish Children’s Hearings System, Asquith and Samuel (1994: 33) conclude that ‘there does, however, appear to be some reluctance to develop such schemes for young people in Scotland’. There is, in consequence, relatively little attention paid to the victims of youth crime in the Scottish system, which is seen by some as a weakness (Hallett and Murray et al., 1998). Similarly, in many jurisdictions, there have been developments in relation to family group conferences which have spread far and wide from their origins in New Zealand. While there are pilot schemes in operation in Scotland, the involvement of families in decision making in Family Group confer-
ences to resolve difficulties without the presence of professionals or lay panel members extends empowerment (rhetorically at least) beyond the participatory opportunities customarily provided in Children’s Hearings (Murray and Hallett, 1999).

7. THE BACKLASH – ‘TACKLING YOUTH CRIME’

An important part of many diversionary schemes of mediation and reparation has been attempts to instil a greater sense of responsibility and accountability on the part of young people apprehended for offending. In the 1980s and 1990s, however, these aims have been appropriated by conservative crime control strategies which have emphasized more justice and less welfare in juvenile justice systems. In the face of perceptions that ‘youth crime’ was out of control, there have been moves to impose deterrent sentences, to waive cases to adult courts or to newly established youth courts (for serious or persistent offenders) and to provide greater protection for the community in, for example, America, Australia and parts of Europe (Wundersitz, 1996; Rayner, 1993; McGarrell, 1989).

With its retention of a unified system for dealing with children in difficulty and an approach to their needs which remains rooted in a welfare philosophy, the Scottish Children’s Hearings System remains relatively immune to such developments. This has led some to question the System’s response to that minority of young people who persistently and/or seriously offend. The respondents in the study Deciding in Children’s Interests were less confident about the capacity of the System to meet the needs of this group in contrast to children and young people who were ‘first time’ or ‘minor’ offenders or those referred specifically as a result of alleged abuse or neglect. There appeared to be several reasons for this. One was that while Children’s Hearings could make disposals they were dependent upon others, notably the social work services of local authorities, to provide the requisite resources to the child and his/her family. Resource shortages in social work departments were reported to impact adversely upon the supervision subsequently provided. Other reasons lie more directly within the Children’s Hearings System itself. Its welfare ethos was said to lead to some reluctance amongst lay panel members directly to address offending behaviour in Hearings. Reporters said, for example, ‘there is a huge tendency to read the grounds of referral that allege very serious matters and skirt round it’; ‘they don’t address the offences’; and ‘they go through the grounds, sometimes pages and pages of them and ... the reason the child is at the Hearing is because he’s committed offences and there is not a discussion about the offences’. One police officer observed ‘I still think we do see occasions where children with ... quite horrendous
records of offending, seem to waltz through the Children’s Hearing System without punishment’. This situation led reporters to observe:

I feel we’re failing a lot of these kids very much by ... not being angrier with them; it’s almost ... taking away from them the responsibility ... by the panel system with this ‘we’re here to support and give you advice’ and the wee sort of catch phrase is needs not deeds, so we’re looking at the needs of this child. Sometimes it’s maybe not been considered to be a need of this child that he requires discipline ... or punishment; that’s not been seen as need because the whole system has sort of veered away from the punishment thing.

The emphasis placed upon the co-operation of the young person in implementing supervision requirements also led to the somewhat paradoxical position that, if co-operation was not forthcoming, decisions might be made to terminate the supervision requirement, even though the offending behaviour might be deemed to be serious.

This situation led some respondents to call for alternative disposals for young people who persistently offended, for example measures of mediation, reparation, fines, forms of community service or attendance orders, compulsory attendance at alcohol or drugs awareness training or on programmes to curb violent or abusive behaviour. Others called for the establishment of a separate youth court. However, an alternative point of view was expressed by some respondents who pointed to the capacity of the Children’s Hearings System as currently operating to offer a softer and perhaps less stigmatizing approach. A panel member observed: ‘I know at times we’re perceived by the public as being the soft option and I don’t think that’s a particularly bad thing because ... while someone is still a child then I think that they should be given the option to be dealt with gently and looked at to see if we can help.’

8. CONCLUSION

This article has pointed to the radical nature of the reforms which resulted in the establishment of the Children’s Hearing System in Scotland in 1971. These included an emphasis on diversion from the courts; a focus on the needs of children (regardless of the administrative category into which they fell, for example as ‘alleged offenders’ or ‘those in need of care and protection’); an opportunity for the direct participation of the child and his/her parents in decision making and an overt concern with ‘welfare’ as opposed to retribution or punishment. The article has reviewed some key developments in international systems of juvenile justice and child welfare in the years since the early 1970s. It suggests that, in some aspects, the Scottish Children’s Hearing System seems out of step, particularly in its continued emphasis on welfare and the child’s needs when compared to the ‘back to justice
movement’, the emphasis on rights, moves to separate young offenders from those in need of care and the adoption of neo-conservative crime control strategies. However, the Children’s Hearing System has offered some protection to many of Scotland’s children and young people from the neo-conservative backlash against young offenders.

NOTES

1 Hallett and Murray et al. (1998) Deciding in Children’s Interests reports on a study of the Children’s Hearing System in Scotland conducted by researchers at the University of Stirling between 1994 and 1997. The study comprised three phases: analysis of 130 referrals to reporters to the Children’s Hearings and interviews with approximately half the reporters in Scotland; observation of sixty Children’s Hearings and interviews with ninety-eight participants who attended half of these; and interviews with key personnel in education, social work and the criminal justice system. The second study (Hallett and Hazel, 1998) reviewed key international trends in the juvenile justice and child welfare in order to contextualize the Scottish Children’s Hearing System.

REFERENCES


