

Children's Justice in Disarray

Of Novices and Neuroses

A novice, contemplating recent political history, could scarcely fail to be struck by the paradoxical nature of the government's policies towards children.

Labour deserves credit for having removed over half a million children from poverty, for having significantly increased expenditure on education, for creating and expanding the SureStart network and for its initiatives to combat child poverty in the third world.

And yet, on the other side of the ledger, nearly four million children, almost a third of the total, continue to live in poverty in the UK. Too many young people leave education without any useful qualifications and even the apparently successful are over-tested to distraction. We are extraordinarily punitive towards troubled youngsters, spending ten times more on incarceration than prevention. Barnardos recently revealed that, in 2006, 572 youngsters aged between 10 and 14 were in custody, only a fifth of whom had committed grave or violent crimes. Not only has the government been criticised recently by the UN Committee on the Rights of the Child for this sorry record but it has also been taken to task by the Children's Commissioner for England for its "inhuman" treatment of children detained for immigration purposes.

The Children Act 1989, which came into force with all party support in 1991, was rightly hailed as the most significant reform of children's law for 40 years. In relation to public law (cases brought by local authorities in relation to children considered to have suffered or to be likely to suffer significant harm) the Act swept away the inadequate and unfair procedures of the juvenile court and introduced a new code of law and procedure enabling the parties, typically the local authority, the parents and the child, to be equally represented and for evidence to be presented in an open and accessible manner. A crucial innovation was that the child's welfare, which was paramount, was to be safeguarded by a court appointed guardian from a panel of highly experienced and able social workers who were, of course, independent of the local authority bringing the case. In the early years, as case law developed in accordance with the liberal and purposive philosophy of the Act, the new system promised well but was dogged by chronic under funding and the bureaucratic obstructionism of new public management throughout local authorities, the Children and Families Court Advisory and Support Service (set up in 2001 to manage guardians) and the Legal Services Commission. By the middle of 2003 the then Lord Chancellor's Advisory Committee on Judicial Case Management in Public Law Children Act Cases identified the following "major obstacles" to success: the serious understaffing of social services departments; the shortage of guardians; legal aid underfunding; shortage of court time; shortage of specialist judges and a shortage of experts. The government's response to the gathering crisis has been to introduce reductive protocols and further cuts to legal aid thus making it harder for the most vulnerable children

and their families to have an effective voice in the legal process. Bizarrely the government has recently raised the cost to local authorities of bringing care proceedings from £150 to upwards of £5,000 which has had the unsurprising effect that in recent months local authority applications in England and Wales have plummeted by 25%. Partly as a result of the sharp drop in public law care proceedings there is a substantial funding gap in the court service budget recently estimated at 90 million pounds over the next three years.

Judges, normally reticent, have begun to speak out. Two years ago Lord Justice Wall lamented the “devastating haemorrhage of talent and ... an acute shortage of competent guardians in public law cases” and lambasted the Carter Review of Legal Aid. Mr Justice Coleridge said recently that “government’s treatment of the [family justice] system is nothing less than death by a thousand cuts. So far as the Ministry of Justice is concerned it seems to be treated as little more than a rather irritating item of ‘any other business’, way below the building of prisons or the criminal justice system”. In his foreword to my pamphlet “The Forward March of Children’s Justice Halted” * District Judge Crichton of the Inner London Family Proceedings Court wrote of the “systematic dismantling of all that has been achieved in the last 17 years”.

How has such destructive absurdity come about? How can an avowedly social democratic government, which prides itself on having mitigated child poverty and aspires to eliminate it, so terribly undermine the system of children’s justice in an area where the stakes are so high - frequently the issue is no less than whether a family may remain together, with support, or whether a child should be permanently removed?

Our novice may contemplate the paradox that while the government has been largely content to acquiesce in the ideology of free market fundamentalism and to apply light touch regulation in the economic sphere, it has swamped the public realm with neurotic top down command and control managerialism that has sapped the energy and motivation of many of the most able practitioners engaged with the lives of society’s least favoured. As David Marquand observed in his new book “Britain since 1918” (Weidenfeld and Nicolson, 2008) “Both [Blair and Brown] were captives of the audit culture which had done so much damage to the professional ethic under Thatcher and Major”.

While cuts have been made in services to the most vulnerable the government’s management consultancy friends have continued to prosper. Indeed, at an estimated 1.8 billion the government spends more on the dubious services of the snake oil vendors than on the entire legal aid budget (for all civil and criminal advice and representation) of 1.6 billion.

No one now, it seems, wishes to risk the accusation of being a “free” market idolater. Sober scepticism and robust regulation is to be the order of the day now that history has restarted. Lionel Jospin’s warning of a few years ago: ‘a market economy Yes, a market society No’, largely derided at the time by hubristic advocates of the superiority of the Anglo-American economic model,

now has a powerful resonance. If the government is to carry conviction in its new found determination to clean up the City it must, as a logical corollary, liberate the public realm of the wasteful and damaging practices and procedures imposed as a consequence of its adherence to neo-liberal nostrums. The very considerable savings that would ensue should then be redirected to where they are truly needed. Any novice would surely agree with that.

* Edward Lloyd-Jones is a solicitor. "The Forward March of Children's Justice Halted" is available from Triarchy Press for £5.99 - call 01297 631456 or visit www.triarchypress.com.