

Tackling ‘Anti-Social Behaviour’ in Britain and New South Wales – a Preliminary Comparative Account

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Abstract

This article offers a preliminary comparative account and evaluation of approaches to anti-social behaviour in New South Wales (NSW) in light of experiences under the more established British system. Specifically, it compares the British regime of ‘Anti-Social Behaviour Orders’ or ASBOs with the scheme of ‘Youth Conduct Orders’ in NSW. While the UK system is largely punitive, the NSW scheme seeks to integrate justice and welfare considerations, and to address the underlying causes of anti-social behaviour. However, because the nature and scope of anti-social behaviour are not clearly delineated, there is potential for the NSW system to suffer a similar fate as the UK system, which stands accused of ‘criminalising incivility’ and eliding anti-social behaviour and criminal conduct, thus undermining some of the traditional safeguards and protections that are integral to the administration of criminal justice.

Introduction

The stock welfarist image of the delinquent as a disadvantaged, deserving, subject of need has now all but disappeared. Instead, the images conjured up to accompany new legislation tend to be stereotypical depictions of unruly youth, dangerous predators, and incorrigible career criminals (Garland 2001:10).

This article seeks to engage with the broader criminological context depicted here by David Garland via a comparative account of approaches to ‘anti-social behaviour’ in Britain and New South Wales (NSW). In particular, the focus is on comparing the use of Anti-Social behaviour Orders (ASBOs) in the United Kingdom (UK) with the relatively new scheme of Youth Conduct Orders in NSW. While the former tend predominantly to offer punitive solutions to social problems, the latter purports to integrate justice and welfare considerations and to address the reasons and underlying causes of anti-social behaviour. The article provides a preliminary comparative analysis of the two regimes and offers a provisional evaluation of the NSW scheme given the experiences of the more established British system. To that end, the article is intended to open up discussion and encourage debate, highlighting the dangers of basing laws on people’s perceptions and fears, and

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warning against the conflation of incivility and criminality as has happened in the UK, where it is argued the system of criminal justice has encroached upon the welfare system. By way of qualification, it should be stated that this article uses the terms 'Britain' and 'the UK' interchangeably. However, as shown below, it is important to distinguish the approach to anti-social behaviour in England and Wales from the system in Scotland—the latter being a welfare-based system of juvenile justice that is not punitive. In this way, the Scottish system bears some resemblance to the system in NSW. Finally, this article should be read in light of the British Home Secretary's announcement in July 2010 that the UK Government intended to replace ASBOs with sanctions that are 'rehabilitating and restorative rather than criminalising and coercive' (Travis 2010). But it has been argued the new gang-related violence injunction or 'gangbo' is actually worse because, among other things, it undermines burden of proof safeguards, defines 'gang' in vague terms, and imposes conditions that far outstrip ASBO sanctions, including that a person be in a certain place for up to eight hours (Sankey 2011).

Anti-Social Behaviour in NSW: Policy and Legislation

The Larrikins, who can be traced back to 1870 in Australia, were also organised into local gangs or 'pushes', and even allowing for exaggeration and over-involvement [...] their behaviour was unbeatably appalling. Assaults on policemen, Chinese and defenceless women, window-smashing, gang fights, breaking up holiday resorts, and gobbing on the steps of churches and also the worshippers assembled there, were among their least terrible adventures. (Pearson 1983:100)

The NSW Government's recently published 2010 State Plan pledges to continue to reduce anti-social behaviour, which was a central aim of its earlier 2006 State Plan. Chapter 2 of the 2006 Plan, entitled 'Rights, Respect and Responsibility', set out four priorities, including the aim to reduce levels of anti-social behaviour (Priority R3), with the 'target' to 'reduce the proportion of the NSW population who perceive problems with louts, noisy neighbours, public drunkenness or with dangerous, noisy, hoon drivers' (NSW Government 2006:32). Chapter 2 states that there are limits to the role government can play in building harmonious communities and improving conduct, manners and common courtesy: '[r]espect and responsibility are learned at home and should be reinforced by the broader community – by neighbours, friends, coaches and tutors, religious leaders and others' (NSW Government 2006:32). Furthermore, despite communities and public spaces across NSW being welcoming places, and notwithstanding falling crime rates, 'citizens in some communities in NSW hold fears for their personal safety, particularly when they are out at night' (NSW Government 2006:32). Apparently, these fears are born of the anti-social behaviour of a minority in the community. 'Anti-Social behaviour' is defined as:

... behaviour that while generally falling short of being criminal, causes harassment, alarm or distress to others. This can include anything from playing loud music to verbal abuse, harassment or threatening behaviour. Anti-Social behaviour that is also a crime, such as vandalism, graffiti or even violence, requires a law enforcement response. (NSW Government 2006:32)

In October 2008, the NSW Government enacted the Children (Criminal Proceedings Amendment (Youth Conduct Orders) Bill 2008 (NSW)—inserting Part 4A into the *Children (Criminal Proceedings) Act 1987* (NSW) (*CCP Act*) as one measure to tackle anti-social behaviour in the State. This piece of legislation introduced a scheme of Youth Conduct

Orders (YCOs), recognising that 'young people engaging in anti-social behaviour, where they have been charged with a criminal offence, will benefit from an approach that integrates justice and welfare considerations' (Hatzistergos 2008:10489). Accordingly, the scheme is intended to direct young people to participate in intensive early intervention programs—thereby diverting them from the criminal justice system—and focuses on the reasons and underlying causes of their offending and/or anti-social behaviour, such as truancy, drug and alcohol problems, mental illness and homelessness. Furthermore, some young people will also have access to the 'anti-social behaviour pilot project' (ASB pilot project), which was launched in September 2006.

The ASB pilot project and the scheme of YCOs are intended to operate in tandem in three pilot locations/local area commands, namely Campbelltown, Mount Druitt and New England (i.e. lower socio-economic areas with high ethnic or Indigenous populations, high concentrations of young people and higher ratios of public housing). Although there is not yet any publicly available data providing demographic information on young people's involvement in the ASB pilot project, the way it works in conjunction with YCOs has been described as a technique of 'intensive case management' designed to control and target members of a risk population (young people) within 'high risk' communities (Osmond 2010:337). Critically, there are several key steps in the process of ordering a YCO that need to be taken, not least that young people must meet eligibility criteria, including that:

the young person was 14 years or older, but less than 18 years, at the time the offence was alleged to have been committed; the young person is under 19 years of age when it is proposed to make the youth conduct order; the young person permanently or temporarily resides in, or is a habitual visitor to, the area of the participating local area command; and the Children's Court has not yet imposed a penalty on the person concerned for the offence. (Hatzistergos 2008:10489)

Police officers act as gatekeepers here. Thus, if a young person has been charged with an offence, the police are required to consider a range of criteria to decide whether the young person is eligible, and whether it is appropriate to issue a YCO. If they are eligible, and it is deemed appropriate to issue an order, the police officer produces a 'scheme participation approval' (*CCP Act* s 48B), which has to be presented before the Children's Court to ensure accountability and guard against children being inappropriately nominated for a YCO. A scheme participation approval must also be approved in writing by a senior police officer. There is a crucial role too for the Children's Court in making a 'suitability assessment order' (*CCP Act* s 48G). Where the Court agrees it is suitable, it can place the young person on an 'interim youth conduct order' that cannot exceed two months (*CCP Act* s 48L(1)(a)). During this period, the young person and his or her family may be required to prepare a 'final conduct plan' (*CCP Act* s 48K), which might involve the Court imposing a 'final youth conduct order' that can last no longer than 12 months (*CCP Act* s 48L(1)(b)).

Under section 48C of the *CCP Act*, a YCO may include both 'positive' and 'negative' conduct provisions. Pursuant to section 48C(1), 'positive conduct provisions' aimed at addressing the underlying causes of the child's anti-social behaviour may include: attending or completing a course of study or training; meeting with health professionals or other persons with backgrounds or experience that may assist the child; or participating in sporting or recreational activities. Under section 48C(2), 'conduct restriction provisions' may include: provisions prohibiting or restricting a child from associating with specified persons or kinds of persons or from frequenting or visiting specified places or kinds of places; provisions imposing curfews on a child; provisions requiring a child to reside at a

specified place or places; provisions requiring a child to report to a specified person, court or other body; and provisions requiring a child to be of good behaviour.

Where a plea of guilty has been entered or there has been a finding of guilt and the young person has ‘substantially complied’ with the terms of a final YCO during the period it was in effect (*CCP Act*, s 48R), the Court can take that compliance into account in mitigation before issuing any penalty (Hatzistergos 2008:10490, 10492). One of the penalty options is to dismiss the charge and administer a caution; failure to comply with an order does not constitute a criminal offence (Hatzistergos 2008:10490). In short:

The scheme offers a unique opportunity to young people in the pilot area to participate in a program that will provide them with interdepartmental support to address the underlying causes behind their anti-social behaviour. It is intended that the scheme will divert these young people away from the criminal justice system. (Hatzistergos 2008:10490)

Anti-Social Behaviour in Britain: Critique and Comment

In Britain, government responses to anti-social behaviour have been framed in a media context consisting of ‘diatribes against hoodies (young chavs), street corner socializing’ (Martin 2009:236), tabloid sensationalism over ‘neighbours from hell’ (see Field 2003)—which explicitly connects anti-social behaviour to (social) housing (see Flint 2006)—and moral panic over the ‘hen party menace’ (Skeggs 2005:966; see also Redden and Brown 2010). Waiton (2008), though, has argued it is better to talk of an *amoral* panic around anti-social behaviour, since the panic is not driven by moral concerns so much as by an anxious preoccupation with risk, safety and security. On this view, there is a clear connection between reactions to anti-social behaviour in Britain and the rationale for introducing measures to tackle anti-social behaviour in NSW, as set out originally in the 2006 State Plan: it is based on perception and fear. As in NSW, the purpose of UK government policy on anti-social behaviour was set out in a White Paper pertaining to ‘respect and responsibility’, which presented a definition of anti-social behaviour founded on perception (Squires 2008:7); that is, ‘behaviour which causes or is likely to cause harassment, alarm or distress to one or more people who are not in the same household as the perpetrator’ (Home Office 2003:5). Subsequently, the *Anti-Social Behaviour Act 2003* (UK) was introduced to reinforce and extend provisions originally contained in the *Crime and Disorder Act 1998* (UK), which created ASBOs under section 1(1):

1 (1) An application for an order under this section may be made by a relevant authority if it appears to the authority that the following conditions are fulfilled with respect to any person aged 10 or over, namely—

(a) that the person has acted, since the commencement date, in an anti-social manner, that is to say, in a manner that caused or as likely to cause harassment, alarm or distress to one or more persons not of the same household as himself; and

(b) that such an order is necessary to protect persons in the local government area in which the harassment, alarm or distress was caused or was likely to be caused from further anti-social acts by him.

Alison Brown (2004:204) says the term ‘anti-social behaviour’ (to the extent it is defined in the above provision) is ‘strongly symbolic and evocative’, as well as vague. That is evident in the emphasis not only on the causes of harassment, alarm or distress, but also the *likely* causes of harassment, alarm or distress. She argues this effectively constitutes a

reversal of the presumption of innocence whereby, in issuing an ASBO, '[a] case goes to court not to prove someone is a perpetrator of anti-social behaviour; but to authorise a sanction against one who is *already* a perpetrator' (Brown 2004:205, emphasis in original). However, this is commensurate with what Lucia Zedner (2007:262) calls 'pre-crime', which 'shifts the temporal perspective to anticipate and forestall that which has not yet occurred and may never do so'. In the emergent 'pre-crime society', pre-emptive measures are increasingly taken to avert risk, meaning people might be charged and prosecuted (and thereby criminalised) on the basis of fear or anticipation of crime, rather than on the basis of something that has actually occurred or been done, which is how the criminal justice system has tended traditionally to operate. In the NSW context, Zedner's work has been applied to the proliferation of preparatory offences in the State (Loughnan 2010:20; see also Martin 2010).

For Brown (2004:208), the inclusion of 'sub-criminal' behaviour within the scope of anti-social behaviour leads to a scenario where 'new categories of people and behaviour are brought into the control system', which is an instance of Stanley Cohen's (1985) prediction that deviancy control measures will increasingly entail 'widening the net' and 'thinning the mesh' of social control. An important facet of this process is that it blurs boundaries. Most strikingly, here, the approach to anti-social behaviour in Britain breaches the fundamental boundary between criminal and civil law: it potentially introduces a lower standard of proof; effectively reverses the presumption of innocence; conflates criminality and incivility; and indeed 'substitutes a rule so vague almost anything could break it' (Brown 2004:205). For Ramsay (2004), problems flow from the ASBO's 'hybrid' procedure and the fact that the definition of anti-social behaviour in the *Crime and Disorder Act* contrasts with the conceptual structure of the substantive criminal law. In some cases too the rules of evidence are ignored. For instance, hearsay evidence has been admitted into court in cases where people are reluctant to appear as witnesses who 'grass' on their neighbours for fear of retaliation (Burney 2002:479; see also Flint 2002:630; Prior et al. 2006:11).

In 2002 these matters were at issue in the case of *R (McCann and Others) v Crown Court Manchester* [2002] All ER (D) 246 (Oct) where the House of Lords had to consider whether proceedings under section 1(1) of the *Crime and Disorder Act* for the imposition of an ASBO should be classified as civil or criminal proceedings and the implications that had for the admissibility of hearsay evidence. In a unanimous judgment, the House of Lords decided such proceedings are properly classified as civil and, therefore, that hearsay evidence is admissible. However, given the seriousness of the matter involved in proceedings for an ASBO application, the House of Lords held that the heightened criminal standard of proof should always apply (see Macdonald 2003).

The debate about boundary blurring has extended beyond the courts to the social policy field where Peter Squires (2006:160) has noticed the response to anti-social behaviour 'blurs a number of the familiar boundaries within criminal justice whilst neutralizing some of the important rights and "due process" safeguards of traditional criminal law'. Foremost here is the blurring of boundaries between the civil and criminal law and between care and control processes. Squires (2006:159) argues that rather than consisting of a new range of behaviours unique to late modernity, anti-social behaviour 'is simply a convenient term for a selected group of behaviours against which a more streamlined package of enforcement procedures are being adopted'. Efficiency then is the reason for attaching ASBOs to criminal conviction, rather than ASBOs being a precursor to full criminal proceedings. However, for Squires, the anxiety over youth as rude, loud, intolerant, selfish,

disrespectful, drunken and violent also has moral roots and is based on longstanding respectable middle class fears (see also Squires and Stephen 2005b:522–3; Scraton 2008). Politicians (and particularly New Labour) have tapped into these sentiments and have effectively repositioned the criminal justice system, which ‘is more explicitly becoming a criminal law service working for victims and the “moral majority”’ (Squires 2006:151; see also Jamieson 2005:182).

However, these strategies are not only moralising but individualised, since they do not consider the structural context of anti-social behaviour, and particularly the ‘harsh lived reality in many marginalized estates throughout the country’ (Squires and Stephen 2005a:148; see also Tisdall 2006:113). Put simply, the UK Government’s rhetoric and practice has tended to ‘overlook the criminogenic social contexts bearing down upon the “delinquent” and concentrate largely upon their choices and behaviour’ (Squires and Stephen 2005a:7). Ian Brownlee (1998:330, 333) sees this as indicative of New Labour’s ‘selective borrowing’ from Left Realism, which has provided theoretical justification for adopting a tough stance on crime control without being equally tough on the social causes of crime. Thus, rather than paying attention to the wider contextual factors, social forces and urban processes that generate problems associated with anti-social behaviour, ‘New Labour sought to reassert its notions of community and moral responsibility’, which has led ultimately to the ‘criminalization of social policy’ (Squires 2006:152, 154) and being ‘tough on liberties’ (Scraton 2004:143–53).

From this perspective, contemporary approaches to anti-social behaviour are almost entirely about enforcement. However, as Squires (2006:153) suggests, negation of the social causes of anti-social behaviour has gone hand in hand with a ‘responsibilization strategy’ (Garland 2001:124–7), i.e. a form of ‘government by proxy’ relying on informal and non-State organisations and actors for crime control instead of the police, the courts and other State criminal justice agencies. Both Burney (2002:482) and Brown (2004:210) point to the reluctance of local agencies and professional bodies to apply for ASBOs—instead preferring their own ways of working in partnership to resolve problems—as evidence of the limits of the responsibilization thesis. Moreover, the research of Squires (2006:156) highlights the ways in which the practices designed to combat anti-social behaviour vary according to locality—showing how residents of high prevalence anti-social behaviour areas complain of being poorly served by public services, the local authority and police; specifically often mentioning the lack of police presence and failure of local authorities to deal with known anti-social behaviour perpetrators. In the end, a lack of interest in the wider structural causes of anti-social behaviour has led to what Alison Brown sees as a ‘triumph of behaviourism’:

Anti-social behaviour is purely about behaviour. Motivation and intention are largely irrelevant. This explains why anti-social behaviour control is unconcerned about mental health problems, learning difficulties, addictions, domestic violence and other potential ‘mitigating’ factors that are common features of anti-social behaviour cases. (Brown 2004:206–7)

Concentrating on the Scottish example, Tisdall (2006:105) reinforces this, saying: ‘The focus of the ASBO is a child’s behaviour and not the child’s welfare; it seeks to stop and prevent behaviour and not to provide support and services’. For Tisdall (2006:116), the discourse of ‘individualization’ and ‘responsibilization’ evident in the imposition of ASBOs (and Parenting Orders) provides another instance of the ‘conditionality of social rights’, reflected in the mantra: ‘no rights without responsibilities’, which was championed by the New Right, but was also manifest in policies of New Labour (see Clarke 2008:127). Many

of the arguments discussed thus far are echoed by John Rodger, who worries about the 'criminalisation of incivility' where, 'the boundaries between social policy and criminal justice blur' (Rodger 2006:123; see also Rodger 2008). Like others, Rodger is concerned with the social policy and welfare context and the notion that welfare benefits and other 'benefits', such as the right to buy council houses, can be withdrawn if minimum standards of civility are not adhered to.

What is most distinctive about Rodger's approach is that it, arguably more than most, attempts to locate the source of anti-social behaviour; which is surely imperative if welfarist (rather than punitive) solutions are to be sought. For Rodger, it is essential to understand the social background that leads to estrangement and resentment stemming from the disjunction between the aspirational messages our society gives out, but which also excludes many from its material benefits (see also Martin 2009). By contrast, recognition by the New Labour Government of the socio-economic sources of incivility was only ever rhetorical, as summed up in Tony Blair's slogan while in opposition: 'tough on crime, tough on the causes of crime'.

Discussion: Evaluating Responses to 'Anti-Social Behaviour'

There is an emerging consensus in Britain that a significant section of the current cohort of young people constitutes a 'lost generation'. Francis Beckett (2010:187–8) lays the blame for this squarely at the feet of Blair and his baby boomer colleagues who, as the architects of New Labour's anti-social behaviour policy, demonised children and teenagers for wearing 'hoodies' (when in the 1960s they defended their right to wear exactly what they pleased) and talked darkly of imposing curfews on teenagers who, unlike their 1960s counterparts, now have few recreational alternatives other than to hang out together on street corners. New Labour also continued the neoliberal Thatcherite agenda that was responsible for the loss of opportunities to win respect and 'get on' in a materialist consumer society and new career culture so that now, '[t]here are increasing numbers of young people [...] whose sense of frustration leads to anti-social and self-destructive behaviour' (Cohen 1999:425; see also Rodger 2006:133). For those young people living on society's margins, disrespect is an 'expected daily reality' (Scruton 2008:9) and often the only way of gaining some semblance of recognition, meaning and control over their lives (having been excluded from the formal night-time economy and mainstream consumer culture) is via behaviour deemed anti-social, such as socialising on street corners (Martin 2009), and more exciting pursuits involving the thrills and dangers, intoxicating pleasures, and adrenaline rushes associated with 'edgework' (Lyng 1990), such as clandestine graffiti writing (Ferrell 1997) and high-speed car chases with police (Halsey 2008).

Anti-social behaviour, however, is not exclusive to the young. Provision for the making of Parenting Orders under sections 8–10 of the *Crime and Disorder Act* demonstrates clearly that responsibility for aberrant children and youth is also believed to lie with parents and families. Notwithstanding that, Burney (2002) argues the system of ASBOs, in England and Wales at least, does in fact target young people. In Scotland, on the other hand, the use of ASBOs against young people is less widespread because there is a children's hearing system that is founded, among other things, on the principle of welfarism, which aims to integrate childcare and juvenile justice systems (Macdonald and Telford 2007:609). Either way, even though young people are themselves the most likely group to be subject to anti-social behaviour such as insults, pestering and intimidation, they are generally not perceived as

victims, but prime perpetrators. This perception has been perpetuated by deep-seated fears over ‘youths hanging about’ and images presented in the British media of a country being overrun by teenage tearaways. So, although it was not intended that ASBOs should be used as a device to tackle juvenile crime, some local councils and police forces have used them in cases where it is apparently known who committed a crime, but that could not be proved to the criminal standard (Burney 2002:474; cf Macdonald 2003). Worryingly, ‘the civil order becomes an imprisonable criminal offence when breached, and the breach may only be simply a technical violation, such as visiting a prohibited public space, rather than any repetition of the anti-social conduct’ (Burney 2002:475–6).

Therefore, the first lesson to be learned from the British experience is the need for a balanced approach (see Millie et al. 2005; Matthews et al. 2007; Mayfield and Mills 2008), since ‘enforcement alone will never be sufficient’ (Squires 2008:19). On the face of it the NSW regime of YCOs, as outlined above, does offer a balanced approach that intends to divert young people from the criminal justice system, integrate justice and welfare considerations, and address the underlying causes of anti-social behaviour (Hatzistergos 2008:10489–90; *CCP Act* s 48A). The attempt to provide a balanced or integrative approach in NSW is also demonstrable by the fact that the *CCP Act* sets out both negative *and* positive conduct provisions. Positive conduct provisions include requirements that the child engage in kinds of conduct aimed at addressing the underlying causes of his or her anti-social behaviour—although this may or may not include an acknowledgment of the wider social-structural causes of anti-social behaviour. The inclusion of positive conduct provisions thus marks a welcome point of distinction from the UK system where the content of ASBOs is essentially prohibitory; even though Home Office guidelines state that ASBOs should be linked to the mobilisation of appropriate services (Matthews et al. 2007:23). Burney (2002: 476–7) provides an example of an ASBO issued by Haringey Magistrates’ Court in May 2000, which prohibited the person (for two years) from:

- shouting, spitting, using verbal/physical and/or racial abuse, swearing, drinking alcohol;
- smashing bottles, throwing eggs, stones or other items at vehicles or property in any street in the LB of Haringey including inciting or encouraging others in the commission of any of the above;
- entering the Park Ward area of Tottenham (other than to remain at his home address) for one hour before and after the scheduled kick off time of any football match held at White Hart Lane football stadium; and
- leaving his home address between the hours of 8pm and 7am unless under the direct supervision of a youth worker for the LB of Haringey on an organised event.

This raises a number of issues. First, the minimum length of an ASBO is two years, with no upper limit. Burney (2002:477) tells of a 15-year old boy who was convicted of a string of offences and given a 10-year ASBO banning him from an estate in Manchester where his family had been evicted after he had threatened to terrorise and firebomb witnesses. Under the NSW legislation, by contrast, a final YCO can last no longer than 12 months (*CCP Act* s 48L(1)(b)).

A second issue relates to curfews and the associated matter of dispersal orders (see Walsh 2003). One of the conduct restriction provisions in the NSW statute includes provision for imposing curfews on a child (*CCP Act* s 48C(2)(c)). In the UK context, curfews have been designed to prevent teenagers ‘hanging around’ (especially at night), which is routinely cited

as a form of (anti-social) behaviour of most concern to people (see Ames et al. 2007). Like ASBOs, local authorities have been reluctant to apply for curfew orders, which led to the British Government increasing the powers of police to apply for curfews under the *Criminal Justice and Police Act 2001* (UK), on the (correct) assumption the police would be more inclined than local authorities to do so (Walsh 2002:71). Drawing on evidence from the United States (US), Walsh shows how this use of curfews can easily backfire. It makes the job of the police more difficult, rendering them unpopular with the group they seek to control, such that, 'police officers' relationships with young people can degenerate into ones which instil feelings of fear and hostility, rather than of respect' (Walsh 2002:72).

The *Criminal Justice and Police Act* also expanded the age range of those upon whom a curfew can apply to include children under the age of 16, whereas previously the *Crime and Disorder Act* restricted curfews to children below the age of 10. Thus, like ASBOs, curfews in the UK target young people and, indeed, 'have been expanded to encompass the group that some would argue was always intended to be their true target: teenagers' (Walsh 2002:72). Walsh concludes that the imposition of youth curfews is undesirable because it undermines young people's human rights under the *European Convention on Human Rights* (for example, the right to freedom of association). Moreover, evidence from the US suggests curfews have a limited effect upon crime control and may even lead to higher crime rates among formerly non-criminal youth, who being prevented from participating in constructive activities, 'no longer have meaningful distractions from petty crime' (Walsh 2002:78).

A third issue is that, while ASBOs proscribe or prohibit the person from doing things, the YCO legislation contains positive conduct provisions (*CCP Act* s 48C(1)). This may be compared to what in the UK are called 'Acceptable Behaviour Contracts' or ABCs, which have been developed as an alternative to ASBOs. An ABC is a 'written, voluntary agreement between a youth, the local housing office and the police' (Bullock and Jones 2004:14). ABCs have received mixed reactions from commentators and practitioners. Adam Crawford (2003) sees them as an example of 'contractual governance', which represents a pre-eminent form of social regulation in today's individualistic consumer age and is a manifestation of the crisis of penal modernism and the neoliberal critique of the welfare state. For Burney, the use of ABCs is 'more stick than carrot, since it carries the threat of eviction of the whole family, or can be used to promote an ASBO, should it fail', although the process, with no status in law, but engaging the agreement of young people and their parents 'seems to achieve improved behaviour more effectively than the ASBO' (Burney 2002:481; see also Millie 2009:130).

In their study of a team of anti-social behaviour officers working in the city of Birmingham, Prior et al. (2006) talk in positive terms about this method of informal intervention with young perpetrators. Not least, they say, 'an ABC offers a means of pointing out quite dramatically to a young person what the impact of their behaviour is on others and the potential consequences for themselves' (Prior et al. 2006:11). In this respect, an ABC (and an ASBO) can act as a 'wake-up call' for offenders (Matthews et al. 2007:25). Therefore, where successful, the use of ABCs is diversionary; acting as a means of early intervention and reducing the prospect young people will develop a 'criminal career'. Anti-social behaviour officers in the study by Prior et al. also noted that the ABC process provides a good vehicle for inter-agency cooperation and is popular with the police.

While ABCs have been taken up with greater enthusiasm than ASBOs, they are not without drawbacks and a lot depends upon how they are administered (Burney 2005:90). A small action research project conducted in Brighton by Stephen and Squires (2003) is a case

in point. Stephen and Squires found ABCs were applied to families with multiple problems who suffered stigma and stress as a consequence. Even though 12 out of 13 children in the study saw out their contracts, due to mental health problems and learning difficulties many had limited understanding of what was involved or ability to conform. Consequently, the children and their families underwent considerable strain, and with the threat of eviction hovering over them, some parents kept their children indoors almost all of the time. Out of the eight families included in the study, only two had entirely positive feelings about the experience (whereas in another larger study conducted by Bullock and Jones (2004), 85% of participants in ABC schemes said they were happy with them (see Millie 2009:130)). In conclusion, Stephen and Squires thought more should have been done to connect research participants to support networks and services, and that a restorative justice process could have been tried before ABCs were entered into.

For Brown (2004:205), the development of ABCs is another manifestation of boundary blurring: they have the appearance of an agreement or contract, have an uncertain (legal) status, are not enforceable as a contract, but, if breached, are 'not without consequences for the future of one's tenancy'. Consistent with his concern over welfare recipients forfeiting benefits if they do not meet minimum standards of civility, Rodger (2006:138) is also critical of the idea that a 'welfare contract' should lie at the heart of policy initiatives to tackle anti-social behaviour. Rather than withholding welfare, resources should be redirected to the inner cities and peripheral housing estates to build cultural capital and foster social solidarity. In short, there should be more welfare support not less.

In NSW there is a similar regime of civility contracts linked to social housing. The *Residential Tenancies Amendment (Public Housing) Act 2004* (NSW) introduced the concept of anti-social behaviour to the *Residential Tenancies Act 1987* (NSW), including provisions relating to 'acceptable behaviour agreements' (ABAs). However, unlike the UK's informal, voluntary ABCs, ABAs are compulsory, making them more like ASBOs, and with some of the attendant problems, such as the reversal of the onus of proof whereby 'once a tenant has signed an ABA they are [...] effectively presumed to have broken it' (Martin 2004:229). With this in mind, a cautious welcome should be given to the fact that under the NSW system, failure to comply with a YCO does not constitute a criminal offence (Hatzistergos 2008:10490). This stands in stark contrast to the UK system where, under section 1(10) of the *Crime and Disorder Act*, breach of an ASBO without reasonable excuse is a criminal offence (Macdonald and Telford 2007:605), and failure to comply with the terms of a Parenting Order also can result in criminal proceedings, a return to court and a possible fine of up to £1000 (Jamieson 2005:183).

The UK Government chose to adopt a harsh, punitive, interventionist approach when faced with the challenge of curbing youth offending in a context that increasingly requires a streamlined system for the administration of justice, the meeting of national standards and performance targets, and the pursuit of 'what works' based upon evidence-based research and practice. However, it might have considered reconfiguring youth justice along more enlightened lines such as reviving interest in social crime prevention, committing to restorative justice or delivering youth justice services at local level (Jamieson 2005:182). Fortunately, the NSW Government appears intent on pursuing an approach that includes the latter, that is, a justice approach tempered by the inclusion of welfarist elements, which operates in relatively deprived localities across the State.

Indeed, UK evaluations of approaches to anti-social behaviour propose that 'support rather than enforcement and more holistic forms of intervention [...] seem to offer more

lasting solutions' (Squires and Stephen 2005b:520). That is why Macdonald and Telford (2007) argue there are lessons to be learned from Scotland, which has an integrated child welfare system. Founded on the principles of participation, liberalism and welfarism, the Scottish children's hearings system is diversionary and constitutes a welfare-based system of juvenile justice where punishment is not an option and the 'paramount consideration' is the welfare of the child. In this sense, the Scottish system 'adopts a forward-looking approach, focusing on what needs to be done to address the underlying causes of the offending [...] rather than a backward-looking approach which focuses on punishing the individual act' (Macdonald and Telford 2007:609).

On a superficial level at least, the Scottish system resembles the system in NSW. Accordingly, the differences between the England and Wales and NSW anti- and pro-social behaviour regimes might be explained by the fact that the former is administered using a hybrid civil system—i.e. via a civil court, but having to prove the civil offence according to the criminal standard of proof (see Macdonald 2003)—whereas NSW uses a criminal/welfare (care and protection) system that operates through the Children's Court. The differing underlying ethos may thus help to explain some of the differences between the two regimes as well as predict their future trajectories.

While in its language and intent the NSW anti-social behaviour regime is reminiscent of the Scottish system, it may differ in its operation. The fact that in NSW police officers act as gatekeepers when determining whether a young person is eligible for a YCO gives the impression the scheme is more enforcement- or justice-oriented; although, on the other hand, the YCO legislation implies police will have specialist knowledge of a young person's welfare needs by, for instance, providing that the relevant police officer has to produce a scheme participation approval to be presented before the Children's Court (*CCP Act* s 48B). This would seem onerous and may be quite unworkable. It might be suggested, then, that at the stage of determination a 'multi-agency' or 'joined up' approach (see Bright and Bakalis 2003:309) be adopted that allows those working on the ground to use their local knowledge and expertise to assist police officers in their deliberations. This could be particularly useful in areas such as those studied by Squires (2006:156), where 'community policing' is virtually non-existent and thus where the police presumably have little knowledge and experience of localities and the residents living in them. Arguably, too, if 'respect for police officers' is to be fostered, as was proposed in the original 2006 State Plan (NSW Government 2006:34), a return to this style of policing would be desirable, rather than the degeneration into paramilitary-style policing that occurs increasingly in urban no-go zones (de Lint 1999:134). That more 'feet on the street' are needed is a view endorsed by Her Majesty's Inspectorate of Constabulary (HMIC) in its recent report on anti-social behaviour in England and Wales (HMIC 2010:11). The study concluded that public dissatisfaction with the policing of anti-social behaviour was partly a consequence of control room operators downgrading telephone calls about anti-social behaviour when what is required, among other things, is timely action by Neighbourhood Policing Teams, which provides reassurance and helps communities reclaim the public domain (see also Innes and Weston 2010:45).

Moreover, the distinction between the British and NSW systems is quite clear if one considers that the former refers to 'behaviour' in seeking remedies, while the latter points to 'conduct'. The emphasis in the UK is on controlling the behaviour of those who are regarded beyond redemption, whereas in NSW anti-social behaviour appears to be seen as a symptom of external factors exerting themselves to adverse effect upon the individual,

which, if addressed, might help the person improve their circumstances and life chances. In this sense, ABCs are unlike the positive conduct provisions of YCOs, which, on the face of it, operate more as carrot than stick to borrow Burney's (2002:481) phraseology. Therefore, in some respects at least the UK and NSW approaches represent two sides of the same criminological coin. The NSW approach retains a semblance of the criminologies of the welfare state era, whereas the UK approach is redolent of the more recent turn to control theories, which 'begin from a much darker vision of the human condition', assuming 'individuals will be strongly attracted to self-serving, anti-social, and criminal conduct unless inhibited from doing so by robust and effective controls' (Garland 2001:15).

This difference in regimes, however, has not only a temporal dimension, but also a spatial dimension, which highlights some of the problems of comparative criminology and 'policy transfer'. Loic Wacquant (2001) has talked about the diffusion of US penal policy throughout the world and those working in the field of juvenile justice too have focused on policy transfers from the US to England and Wales (Muncie 2001). However, as Muncie (2004:163) points out, 'policy transfer is rarely direct and complete but is partial and mediated through national and local cultures'. Indeed, O'Malley (2002:217) has argued that in contrast to the anti-welfare neoliberalism of the US and Britain, in Australia the conservative elements of neoliberalism have been moderated by a social-democratic tradition. Moreover, in Australia youth justice in particular has a post-colonial influence whereby restorative justice initiatives have drawn in part from Aboriginal customary practices (Muncie 2004:161). Consequently, not only have young Aboriginal people been seen 'as falling victim to a pathogenic situation in the legacy of racism and colonialism' (O'Malley 2002:212), but young people in general have been perceived as 'victims' of broader structural transformations, such as rapid social and economic change (Hil 2000). In these ways, policymakers in other jurisdictions could learn from Australia where the approach has tended to be less punitive and more socially integrative, inclusive and participatory (see O'Malley 2002:206; Muncie 2001:30). However, recent amendments to bail legislation, which now make it harder for young people to get bail and have resulted in a steady increase in the numbers of young people being held on remand in the State (Stubbs 2010), serve to contradict that point.

Indeed, there are some troubling features of the NSW approach to anti-social behaviour that mirror problematic aspects of the UK approach. First and foremost there is the matter of basing criminal justice policy and legislation on public perceptions and fears of crime, which are often distorted by news media coverage (see Weatherburn and Indermaur 2004; Green 2006; Lee 2007; Davis and Dossetor 2010). Moreover, the lack of a precise definition of anti-social behaviour—which was defined nowhere in the Children (Criminal Proceedings Amendment (Youth Conduct Orders) Bill 2008 (NSW), nor in the accompanying Explanatory Note or subsequently enacted legislation—is also cause for concern. This makes for a somewhat vague and confusing situation that could lead to the elision of incivility and criminal conduct, with all of the associated dangers. On one level, the NSW scheme of YCOs targets young people, 'where they have been charged with a criminal offence' (Hatzistergos 2008:10489). However, ambiguity creeps in when one considers also the aim is to target 'young people engaging in anti-social behaviour' (Hatzistergos 2008:10489). That ambiguity is compounded if the NSW Attorney-General's second reading speech is scrutinised further: it states the scheme of YCOs aims to target young people 'who have been charged with or convicted of anti-social offences' and will 'offer support for children and young people engaging in offending behaviour' (Hatzistergos 2008:10489).

The problem here is that there is no clear distinction between terms and, importantly, no distinction between nuisance, anti-social behaviour or incivility and criminal conduct. Arguably, then, use of the term 'anti-social offences' is an instance of boundary blurring. It is not altogether clear what these offences might consist of—although the difference between 'anti-social offences' and 'offending behaviour' would seem clearer: *prima facie*, the latter would presumably constitute incivility not amounting to criminality. While the 2006 NSW State Plan recognised a difference between anti-social behaviour that is criminal and anti-social behaviour that is not (NSW Government 2006:32), the YCO legislation is remarkably silent on this particular matter. Certainly, there is no schedule in the *CCP Act* setting out, for instance, a list of 'anti-social offences' or providing relevant examples of 'offending behaviour'.

So, despite recognising that young people 'have multiple problems and complex needs, and are often engaging in anti-social behaviour rather than offences' (Hatzistergos 2008:10489), the legislation could quite easily be construed as conflating anti-social behaviour and criminality. On its face, that may make good policy sense as anti-social behaviour is considered by some to be an influential risk factor that correlates highly with future criminal conduct (see Smart et al. 2004; Case and Haines 2007). However, this is far from a foregone conclusion, as young people having many of the risk factors associated with social exclusion do not necessarily go on to pursue full-blown criminal careers (MacDonald 2006). While the NSW scheme of YCOs should be commended for impliedly acknowledging the socio-economic and psychological origins of young people's problems and considering welfare goals, the reservations expressed here in this article mean a cautious optimism should be adopted in respect of how things might pan out. Not least, this discussion must be seen in the light of subsequent legislative developments in NSW that blur civil and criminal legal forms (Loughnan 2009:462–3) as well as the recent tendency in NSW for parliament to respond to social problems by creating new offences, which has the effect of reducing the status and communicative power of the criminal law (Loughnan 2010).

The introduction of YCOs in NSW also takes place against the backcloth of 'law and order' politics, which influences reform of the criminal justice system to the extent that politicians play upon the general public's irrational and frequently incorrect fears and assumptions about crime to win votes (see Hogg and Brown 1998; Weatherburn 2004). Often influenced by sensationalist media stories, the ethos of what Hogg and Brown (1998:16) call the 'uncivil politics of law and order' is 'short-term, unreflective, opportunist and authoritarian'. Some of the legislative changes that have occurred in this context that are relevant to young people and 'anti-social' behaviour include the introduction of the *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001* (NSW) that aimed at reducing gang-related crime. This piece of legislation amended the *Bail Act 1978* (NSW), the *Crimes (Administration of Sentences) Act 1999* (NSW) and the *Children (Detention Centres) Act 1987* (NSW) to provide for non-association and/or place restriction orders as conditions of bail, parole and leave. As well as 'structuring and restricting judicial decision-making to emphasise punishment' another theme of these legislative changes has been to 'expand the powers and functions of the police' (Martin 2004:227). Thus, under the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), police have enhanced 'move on' powers, including the power under section 197 to give a direction to a person in a public place if the police officer believes on reasonable grounds that the person's behaviour or presence in the place 'constitutes harassment or intimidation of another person or persons, or is causing or likely to cause fear to another person or persons'.

The development of the YCO legislation must also to be connected to the earlier *Young Offenders Act 1997* (NSW). This piece of legislation formally recognised warnings, cautions and restorative provisions such as ‘youth justice conferences’ as diversionary alternatives to court proceedings (see Cunneen and White 2007). On the one hand, it could be argued the YCO legislation effectively dilutes the *Young Offenders Act* and that the two pieces of legislation now potentially work in different directions: whereas the latter stresses diversion from the criminal justice system, the former could bring young people back into the system not only by widening the scope of behaviour that now falls within the jurisdiction of ‘juvenile justice’, but also by requiring them to report to court (*CCP Act* s 48C(2)(e)), perhaps on several occasions. Thus, despite the intention to divert young people away from the criminal justice system one probable outcome of the YCOs scheme will be that more young people are brought within the purview of the Children’s Court. Alternatively, it may be suggested the existence of the *Young Offenders Act* makes the YCO legislation redundant by creating a new regime when existing legislation is more than adequately equipped to deal with youth justice matters.

Conclusion

This article has touched upon just a few key issues that have been raised in Britain around anti-social behaviour that are pertinent to the NSW approach. In some ways, comparing the two regimes is like comparing apples and oranges. The NSW system of YCOs differs significantly from the UK regime of ASBOs. While the UK system appears wholly punitive, the NSW system provides for an integrative and seemingly more balanced approach, recognising background factors and underlying causes, taking welfare considerations into account, and attempting to divert young people away from the criminal justice system via early intervention strategies and the provision of productive alternatives. However, a note of caution should be sounded because there are some potentially undesirable directions in which the NSW system might go (including the route the UK has gone down), deriving largely (as in the UK) from there being little clarity as to what exactly constitutes anti-social behaviour and how it differs from criminal conduct. A turn to what Hogg and Brown (1998) call the ‘uncivil politics of law and order’ must also be resisted. Though there is obvious political purchase in being hard on miscreant youth, there is little political capital in criminalising social policy and welfare need; which could become an act of political suicide if it elevates crime rates. Long-term (welfare) solutions are preferable to short-term (political) gains. Although the impact and effectiveness of the ASB pilot project in NSW remains to be seen (UnitingCare Burnside 2009:12; Osmond 2010), one possible direction for future research might be to consider the extent to which YCOs could be setting up young people to fail in areas that are under-resourced and where there is a lack of community and welfare support.

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